

A.F.R.



HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 1470 of 2024

X- Juvenile- Rehabilitation and Reintegration

.....Appellant(s)

Versus

State of UP and 3 others

.....Respondent(s)

Counsel for Appellant(s)	: Dharmendra Kumar Nirankari, Javed Alam, Manu Srivastava, Yashaswin Venugopal Bajpai
Counsel for Respondent(s)	: G.A., Nirbhay Singh

With

CRIMINAL APPEAL No. - 2446 of 2026

X Minor – Rehabilitation and Reintegration

.....Appellant(s)

Versus

State of U.P. and 3 others

.....Respondent(s)

Counsel for Appellant(s)	: R.P.S. Chauhan, Tarun Jha
Counsel for Respondent(s)	: G.A.

Court No. 49

HON'BLE AJAY BHANOT, J.

1. The judgement is being structured in the following conceptual framework to facilitate the discussion:

I	Introduction
II	Questions arising for consideration
III	Submissions of learned counsel at the Bar

IV	Children and the laws:		
	A	Children and the Constitution	
	B	Children and International Law	
	C	Children in conflict with law and in need of care and protection: International Law, JJ Act, 2015 and Constitutional Law	
V	Rehabilitative justice under the JJ Act, 2015 read with JJ Rules, 2016		
VI	Duties of Juvenile Boards/Children’s Court to discharge adjudicatory functions and serve rehabilitative justice:		
	A	JJ Act : Duty of JJB/Children’s Court to serve rehabilitative justice: General	
	B	Bail jurisdiction and rehabilitative justice under the JJ Act, 2015 and JJ Rules, 2016	
	C	Scope of Section 101(5) of JJ Act, 2015	
VII	Framework of rehabilitative justice for children in conflict with law under the JJ Act, 2015 read with JJ Rules, 2016: Statutory Scheme		
	A	JJ Act, 2015 : School education and R & R as primary measures of rehabilitative justice	
	B	Framing of an R & R programme/individual child care plan	
	C	Authorities in aid of JJB/Children’s Court	
	D	R & R Programme : A learning process and an educational programme	
VIII	School education and education as constituent element of R & R programme under the JJ Act, 2015: Interface of multiple statutes		
	A	Interplay of JJ Act, 2015 and RTE Act, 2009	
	B	Multiple statutes with common aim for benefit of children : Interplay of JJ Act, 2015; RTE Act, 2009; PwD Act, 2016; MH Act, 2017	
		I.	R & R : Children in conflict with law having intersectional disabilities/Multiple enactments: Multiple enactments
		II.	R & R : Multiple enactments : Statutory linkage of JJ Act, 2015,

				RTE Act, 2009, PwD Act, 2016 and MH Act, 2017
			III	R & R : Blending of Statutes : Principles of Interpretation and Manner of implementation
IX	Implementation of the rehabilitative justice under the JJ Act, 2015 read with JJ Rules, 2016 framework : Duties of JJBs/Children's Courts and Obligations of the State to serve restorative justice			
		A	School admission and Continuity of education	
		B	Phases of R & R : Pre release and post release	
		C	R & R : Pre release	
		D	R & R : Continuity and Post release	
		E	R & R : Post release- Identification, recognition and activation of "fit institutions" and "fit persons"	
		F	R & R Post release : Eco system and Resources	
		G	R & R : Post release:	
			i	Family and social environment of the child: Parents as fit persons and appointment of more than one fit person for implementing post release R & R programme of child.
			ii	Schools, educational institutions, teachers as "fit institutions/fit facilities", "fit persons"
			iii	Schools as "fit institutions": Precautions
			iv	Other "fit institutions" /"fit facilities", "group foster care", "fit persons", "care workers"
			v	Social Reintegration and duties of schools and community groups and other non-governmental organizations

X	Stand of the State Government-Affidavit of the Additional Chief Secretary, Department of Women and Child Development, Government of UP
A	Stand of State Government on institutions existing in the State for post release R & R
B	Stand of the State Government on nomination of schools/teachers as “fit institutions/fit persons” to implement the education content of R & R programme/individual child care plan
C	Stand of State Government regarding lack of budget allocation
D	Stand of State Government/Affidavit of the State regarding Rules for recognition of “fit institutions/fit persons” to implement the education component of R & R
XI	The Road Ahead
XII	Answers to the Questions
XIII	Conclusions
XIV	Need for R & R programme for the minor appellants
XV	Bail on merits

I. Introduction

2. The criminal appeal registered as Criminal Appeal No. 1470 of 2024 (X Juvenile-Rehabilitation and Reintegration Vs. State of U.P.) is directed against the order dated 03.01.2024 passed by the Children’s Court/Special Judge (POCSO Act), District Kasganj declining the bail application of the minor appellant in S.C. No. 1133 of 2023 arising out of Case Crime No. 203 of 2023 under Sections 328, 363, 366, 376D,506 IPC and Section 5/6 of POCSO Act and Section 67A of I.T. Act, Police Station Patiyali, District Kasganj.

3. Similarly Criminal Appeal No. 2446 of 2026 arises out of a bail rejection order dated 25.11.2024 passed by Additional District and Sessions Judge/Special Judge (POCSO Act), District Jalaun at Orai in Case Crime No. 223 of 2023, under Sections 376(3) IPC and Section 3/4(2) of POCSO Act, Police Station Kuthaund, District Jalaun.

4. Both the criminal appeals have been connected and are being heard together.

II. Questions arising for consideration

5. The questions of law that arise for consideration in both criminal appeals are:

(A) Whether the High Court while granting bail to a child in conflict with law in exercise of its appellate jurisdiction under Section 101(5) of Juvenile Justice (Care and Protection of Children) Act, 2015¹ dispense rehabilitative justice by initiating the process of R & R under Section 39 of the JJ Act, 2015, and also cause the framing of an individual child care plan under Rule 2(ix) of the Juvenile Justice (Care and Protection of Children) Rules, 2016² and/or to ensure admission of the child in school?

(B) Whether the JJB/Children's Court is under an obligation of law imposed by the JJ Act, 2015 read with JJ Rules, 2016 to dispense rehabilitative justice by examining the need and if required initiate the R & R program and create an individual child care plan and/or to get the child admitted in school while granting bail to a child in conflict with law?

(C) If answers are in affirmative which institutions and persons under JJ Act, 2015 read with JJ Rules, 2016 can be respectively charged with

¹ hereinafter referred to as "JJ Act, 2015"

² hereinafter referred to as "JJ Rules, 2016"

the duty to implement the R & R programme/individual child care plan and/or admit the child in school and entrusted with the oversight of the same?

III. Submissions of learned counsels at the Bar

6. Shri Yashaswin Venugopal Bajpai, learned counsel; Ms. Vishakha Pande Bajpai, learned counsel; Shri Manu Srivastava, learned counsel and Shri Tarun Jha, learned counsel on behalf of the respective appellant, and Ms. Vijeta Singh, learned amicus curiae made the following submissions:

I. The appellants are juveniles who are entitled to the protection under the JJ Act, 2015 and also the benefits of the R & R programme.

II. The R & R programme and school education are the mainstay of rehabilitative justice which has to be framed by the JJBs/Children's Court while deciding the bail application of the juveniles who have allegedly committed the offence.

III. The R & R programme and its educational components are most critical aspects of concept of rehabilitative justice under the JJ Act, 2015 read with JJ Rules, 2016.

7. Shri Anoop Trivedi, learned Additional Advocate General assisted by Shri Paritosh Kumar Malviya, learned AGA-I on behalf of the State submits as under:

I. The State is conscious of its role as the guardian of all children in the State and its statutory duty to implement the provisions of the JJ Act, 2015.

II. The State does not view the proposition to implement the R &R programme along with its educational components as an adversarial litigation.

III. The State is committed to its obligation to implement the provisions of JJ Act, 2015 read with JJ Rules, 2016 and in particular the R & R programme and educational contents therein for the benefit of the children.

ज़े-हाल-ए-मिस्कीं मकुन तगाफुल

Do not overlook my misery

~ अमीर ख़ुसरो

~ Amir Khusro

IV. Children and the Laws

A. Children and the Constitution

8. The constitution makers envisaged a distinct place for children under the Constitution of India. Relevant provisions devoted to the welfare of children in the Constitution include Article 15(3), Article 45 and Article 47, Article 21-A, Article 39(e) and Article 39(f) and Article 24 of the Constitution of India.

B. Children and International Law

9. International instruments and conventions including the Declaration of Rights of Child, 1959, United Nations Convention on the Rights of the Child (UNCRC) place rights of children at highest pedestal in the comity of nations. India has ratified the aforesaid conventions and is party to the same.

10. The condition of children in conflict with law engaged the concerns of the world community. The concerns were put in the consciousness of the international community by adoption of the

Beijing Rules in 1985 and the UN Standard Minimum Rules for Administration of Juvenile Justice.

11. The United Nations Standard Minimum Rules For The Administration of Juvenile Justice is a document which reflects the consensus of international opinion and convergence of human values amongst all nations on child rights.

C. Children in conflict with law and in need of care and protection: International Law, JJ Act, 2015 and Constitutional Law

12. The child rights jurisprudence reached the next stage of evolution, with the UN Convention on Rights of Child, 1989 and UN Juvenile Protection Rule, 1990. By means of the said instruments the state of children in conflict with law was elevated from international consciousness to the collective conscience of the comity of nations, and raised from a conception of philosophy to an agenda for action. India honoured its international obligations and cemented its international standing by promulgating Juvenile Justice(Care and Protection of Children) Act, 2000 and later Juvenile Justice (Care and Protection of Children) Act, 2015.

13. The said enactments are a consequence of and in consonance with the international covenants on child rights in general and children in conflict with law in particular to which India is a signatory.

14. Domestic courts in India have consistently enforced the obligations depicted in various child related international instruments and treaty agreements, and have incorporated them into the corpus of our case law jurisprudence.

15. The applicability of international law to juvenile justice legislation was affirmed by the Supreme Court in **Pratap Singh vs. State of Jharkhand**³ by holding:

“63. The legislation relating to juvenile justice should be construed as a step for resolution of the problem of juvenile justice which was one of tragic human interest which cuts across national boundaries. The said Act has not only to be read in terms of the Rules but also the Universal Declaration of Human Rights and the United Nations Standard Minimum Rules for the Protection of Juveniles.

International law

64. The Juvenile Justice Act specially refers to international law. The relevant provisions of the Rules are incorporated therein. The international treaties, covenants and conventions although may not be a part of our municipal law, the same can be referred to and followed by the courts having regard to the fact that India is a party to the said treaties. A right to a speedy trial is not a new right. It is embedded in our Constitution in terms of Articles 14 and 21 thereof. The international treaties recognise the same. It is now trite that any violation of human rights would be looked down upon. Some provisions of the international law although may not be a part of our municipal law but the courts are not hesitant in referring thereto so as to find new rights in the context of the Constitution. Constitution of India and other ongoing statutes have been read consistently with the rules of international law. Constitution is a source of, and not an exercise of, legislative power. The principles of international law whenever applicable operate as a statutory implication but the legislature in the instant case held itself bound thereby and, thus, did not legislate in disregard of the constitutional provisions or the international law as also in the context of Articles 20 and 21 of the Constitution. The law has to be understood, therefore, in accordance with the international law. Part III of our Constitution protects substantive as well as procedural rights. Implications which arise therefrom must effectively be protected by the judiciary. A contextual meaning to the statute is required to be assigned having regard to the constitutional as well as international law operating in the field. (See *Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I* [(2004) 9 SCC 512] .)

66. Constitution of India and the juvenile justice legislations must necessarily be understood in the context of the present-day scenario and having regard to the international treaties and conventions. Our

Constitution takes note of the institutions of the world community which had been created.

V. Rehabilitative justice under the Juvenile Justice (Care and Protection of Children) Act, 2015 read with Juvenile Justice (Care and Protection of Children) Rules, 2016

16. JJ Act, 2015 read with JJ Rules, 2016 is the culmination of international consensus, legislative intent and constitutional vision which addresses the plight of children in conflict with law and those in need of care and protection. The enactment fuses a child friendly approach in judicial processes, and the object of reintegration of children in conflict with law. The statutory scheme protects the best interests and promotes the welfare of children in conflict with law. The judicial procedure under the JJ Act, 2015 read with JJ Rules, 2016 recognises the vulnerability of a child in conflict with law and fragility of childhood. The reintegration mandate of the JJ Act, 2015 read with JJ Rules, 2016 invokes the potentiality of a child in conflict with law and realises the promise of childhood.

17. The Supreme Court in **Jitendra Singh v. State of U.P.**⁴ iterated rehabilitation and restoration of the child in conflict with law as the defining purpose of juvenile justice legislations and jurisprudence:

“41. The Rules, particularly Rule 3, provide, inter alia, that in all decisions taken within the context of administration of justice, the principle of best interests of a juvenile shall be the primary consideration. What this means is that “the traditional objectives of criminal justice, that is retribution and repression, must give way to rehabilitative and restorative objectives of juvenile justice”.

43. It is quite clear from the above that the purpose of the Act is to rehabilitate a juvenile in conflict with law with a view to reintegrate him into society. This is by no means an easy task and it is worth researching how successful the implementation of the Act has been in its avowed purpose in this respect.”

4 (2013) 11 SCC 193

18. In **Bachpan Bachao Andolan vs. Union of India**⁵, while stating the need to protect the dignity of children and reintegration of juveniles in conflict with law, the Supreme Court directed as follows:

“38. The following directions are necessary: (n)Courts must protect the dignity of children. The children's best interest should be the priority.

41. It is further submitted that rehabilitation will be the measure of success of the Juvenile Justice (Care and Protection of Children) Act, 2000 Reintegration into society by means of confident and assertive occupations leading to a sense of self-worth will have to be devised. This requires innovative strategies and not any high flown claims to social development.”

A. Juvenile Justice(Care and Protection of Children) Act, 2015- Statement of Objects and Reasons

19. Statement of Objects and Reasons and the Preamble of the Juvenile Justice (Care and Protection of Children) Act, 2015 references various constitutional provisions and international instruments and aligns them with the legislative intent of securing the following goals:

“Statement of Objects and Reasons- 5. Numerous changes are required in the existing Juvenile Justice (Care and Protection of Children) Act, 2000 to address the abovementioned issues and therefore, it is proposed to repeal existing Juvenile Justice (Care and Protection of Children) Act, 2000 and re-enact a comprehensive legislation inter alia to provide for general principles of care and protection of children, procedures in case of children in need of care and protection and children in conflict with law, rehabilitation and social reintegration measures for such children, adoption of orphan, abandoned and surrendered children, and offences committed against children. This legislation would thus ensure proper care, protection, development, treatment and social reintegration of children in difficult circumstance by adopting a child friendly approach keeping in view the best interest of the child in mind.”

20. The Preamble of the Juvenile Justice (Care and Protection of Children) Act, 2015 states thus:

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

⁵ (2011) 5 SCC 1

WHEREAS, the provisions of the Constitution confer powers and impose duties, under clause (3) of article 15, clauses (e) and (f) of article 39, article 45 and article 47, on the State to ensure that all the needs of children are met and that their basic human rights are fully protected;

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

AND WHEREAS, it is expedient to re-enact the Juvenile Justice (Care and Protection of Children) Act, 2000 (56 of 2000) to make comprehensive provisions for children alleged and found to be in conflict with law and children in need of care and protection, taking into consideration the standards prescribed in the Convention on the Rights of the Child, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, 1985 (the Beijing Rules), the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (1990), the Hague Convention on Protection of Children and Co-operation in Respect of Inter-country Adoption (1993), and other related international instruments.”

21. Through the JJ Act, 2015 the legislature seeks to address and ameliorate the deprivations of categorises of disadvantaged children who are in conflict with law or in need of care and protection.

B. Provisions relating to administration and reach of the enactment

22. Section 1(4) of the JJ Act, 2015 describes the comprehensive reach of the enactment:

“Section 1(4): Notwithstanding anything contained in any other law for the time being in force, the provisions of this Act shall apply to all matters concerning children in need of care and protection and children in conflict with law, including —

- (i) apprehension, detention, prosecution, penalty or imprisonment, rehabilitation and social re-integration of children in conflict with law;
- (ii) procedures and decisions or orders relating to rehabilitation, adoption, re-integration, and restoration of children in need of care and protection.”

23. Some cardinal principles for administration of the enactment set out in Section 3 of the JJ Act, 2015 which will guide the discussion are extracted below:

“Section 3. General Principles to be followed in the administration of the Act- The Central Government, the State Governments, the Board, and other agencies, as the case may be, while implementing the provisions of this Act shall be guided by the following fundamental principles, namely:—

(iv) Principle of best interest: All decisions regarding the child shall be based on the primary consideration that they are in the best interest of the child and to help the child to develop full potential.

(emphasis supplied)

(vii) Positive measures: All resources are to be mobilised including those of family and community, for promoting the well-being, facilitating development of identity and providing an inclusive and enabling environment, to reduce vulnerabilities of children and the need for intervention under this Act.

(emphasis supplied)

(xii) Principle of institutionalisation as a measure of last resort: A child shall be placed in institutional care as a step of last resort after making a reasonable inquiry.

(emphasis supplied)

(xv) Principle of diversion: Measures for dealing with children in conflict with law without resorting to judicial proceedings shall be promoted unless it is in the best interest of the child or the society as a whole.

(emphasis supplied)

VI. Duties of Juvenile Justice Boards/Children's Court to discharge adjudicatory functions and serve rehabilitative justice:

A. JJ Act : Duty of JJB/CC to serve rehabilitative justice: General

24. Chapter IV of the JJ Act, 2015 read with JJ Rules, 2016 which contains the powers and duties of the Juvenile Justice Boards⁶ and Children's Courts in relation to children in conflict with law is a legislative recognition of therapeutic jurisprudence.

25. The JJ Act, 2015 read with JJ Rules, 2016 entwines the adjudicatory process with the rehabilitation and reintegration programme. The legislative scheme depicts a conceptual shift from a strict retributive law to benign rehabilitative justice. The enactment is a turning away of the law from exclusion by penalizing to rehabilitation by empowerment and assimilation by reintegration.

6 hereinafter referred to as "JJB"

26. The duties of JJBs/Children's Court in the JJ Act, 2015 and JJ Rules, 2016 embody the jurisprudential principle of courts being the “parens patriae” of a child in conflict with law:

“The law protects their persons, preserves their rights and estates, excuseth their laches and assists them in their pleadings, the judges are their counsellors, the jury are their servants and law is their guardian”

27. Section 2 of the JJ Act 2015 and Rule 2 of the JJ Rules, 2016 contain the definition clauses. The definitions applicable to the controversy at hand are reproduced below:

Section 2. Definitions. — In this Act, unless the context otherwise requires,—

2(12). “child” means a person who has not completed eighteen years of age;

2(13). “child in conflict with law” means a child who is alleged or found to have committed an offence and who has not completed eighteen years of age on the date of commission of such offence;

2(14). “child in need of care and protection” means a child—
(i) who is found without any home or settled place of abode and without any ostensible means of subsistence; or

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

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

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

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

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

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

- (v) who has a parent or guardian and such parent or guardian is found to be unfit or incapacitated, by the Committee or the Board, to care for and protect the safety and well-being of the child; or
- (vi) who is missing or run away child, or whose parents cannot be found after making reasonable inquiry in such manner as may be prescribed; or
- (vii) who has been or is being or is likely to be abused, tortured or exploited for the purpose of sexual abuse or illegal acts; or
- (viii) who is found vulnerable and has been or is being or is likely to be inducted into drug abuse or trafficking; or
- (ix) who is being or is likely to be abused for unconscionable gains; or
- (x) who is victim of or affected by any armed conflict, civil unrest or natural calamity; or
- (xi) who is at imminent risk of marriage before attaining the age of marriage and whose parents, family members, guardian and any other persons are likely to be responsible for solemnisation of such marriage;

28. JJ Act, 2015 read with JJ Rules, 2016 imposes twin obligations of rendering adjudicatory orders and dispensing restorative justice upon the Children's Court/JJB in various legal processes on foot before them.

29. Section 8 of the JJ Act, 2015 vests the powers, functions and responsibilities in the JJB, Children's Courts and the High Court and emphasizes the imperative of rehabilitative justice in all proceedings before the JJB/Children's Court and enjoins the courts to ensure the rehabilitation of the child. Relevant parts of Section 8 are quoted below:

“Section 8- Powers, functions and responsibilities of the Board.: (1) Notwithstanding anything contained in any other law for the time being in force but save as otherwise expressly provided in this Act, the Board constituted for any district shall have the power to deal exclusively with all the proceedings under this Act, relating to children in conflict with law, in the area of jurisdiction of such Board.

(2) **The powers conferred on the Board by or under this Act may also be exercised by the High Court and the Children's Court, when the proceedings come before them under section 19 or in appeal, revision or otherwise.**

(3) The functions and responsibilities of the Board shall include’—

(a) ensuring the informed participation of the child and the parent or guardian, in every step of the process;

(b) ensuring that the child’s rights are protected throughout the process of apprehending the child, inquiry, aftercare and rehabilitation;

(emphasis supplied)

(g) transferring to the Committee, matters concerning the child alleged to be in conflict with law, stated to be in need of care and protection at any stage, thereby recognising that a child in conflict with law can also be a child in need of care simultaneously and there is a need for the Committee and the Board to be both involved;

(i) conducting inquiry for declaring fit persons regarding care of children in conflict with law;

30. Rule 7 of JJ Rules, 2016 depicts the functions and rehabilitative duties of the JJB which include unbroken monitoring of the child’s development, and ensuring continuation of school education. The relevant part of Rule 7 of JJ Rules, 2016 is extracted below:

“Rule 7. Functions of the Board.- (1) The Board shall perform the following additional functions, namely:

(ii) wherever required issue rehabilitation card in Form 14 to the child in conflict with law to monitor the progress made by the child;

(iii) wherever required, pass appropriate orders for re-admission or continuation of the child in school where the child has been disallowed from continuing his education in a school on account of the pendency of the inquiry or the child having stayed in a Child Care Institution for any length of time”

31. Rule 10 of the JJ Rules, 2016 which deals with post production processes by the Children’s Courts/JJB extends the protective duties of the JJB to a child in need of care and protection. Relevant parts of Rule 10 of JJ Rules, 2016 are quoted below:

“RULE 10 Post-production processes by the Board. (1) On production of the child before the Board, the report containing the social background of the child, circumstances of apprehending the child and offence alleged to have been committed by the child as provided by the officers, individuals, agencies producing the child shall be reviewed by the Board and **the Board may pass such orders in relation to the child as it deems fit, including orders under sections 17 and 18 of the Act, namely:**

(i) disposing of the case, if on the consideration of the documents and record submitted at the time of his first appearance, his being in conflict with law appears to be unfounded or where the child is alleged to be involved in petty offences;

(ii) referring the child to the Committee where it appears to the Board that the child is in need of care and protection;

(iii) releasing the child in the supervision or custody of fit persons or fit institutions or Probation Officers as the case may be, through an order in Form 3, with a direction to appear or present a child for an inquiry on the next date; and

(iv) directing the child to be kept in the Child Care Institution, as appropriate, if necessary, pending inquiry as per order in Form 4.

(emphasis supplied)

32. Form 3 which is relatable to Rule 10 contemplates various educational and welfare measures for the child during the pendency of the enquiry and even thereafter. Infact the said measures are encompassed in the R & R programme/individual child care plan. The relevant part of FORM 3 is reproduced below:

FORM 3

[Rule 10 (1)(iii)]

4. That the person under whose care the child is placed shall arrange for the proper care, education and welfare of the child.

(emphasis supplied)

33. Rule 10 of the JJ Rules, 2016 thus activates the supervision of JJB over the rehabilitation and reintegration programme after the child is released. The said functions under Rule 7 and Rule 10 are also applicable to the Children's Courts by virtue of Section 8(2) of the JJ Act, 2015 read with JJ Rules, 2016.

34. Section 14 the JJ Act, 2015 contemplates that the JJB/Children's Court will adopt a child friendly atmosphere during the proceedings:

“S.14 (5) The Board shall take the following steps to ensure fair and speedy inquiry, namely:—

(b) in all cases under the Act, the proceedings shall be conducted in simple manner as possible and care shall be taken to ensure that the child, against whom the proceedings have been instituted, is given child-friendly atmosphere during the proceedings;”

35. Requirement to frame R & R programme/individual child care plan in Form 7 has been made necessary in all dispositional orders passed by the Board by Rule 11 of the JJ Rules, 2016:

“RULE 11 Completion of Inquiry.-

(2) Before passing an order, the Board shall obtain a social investigation report in Form 6 prepared by the Probation Officer or Child Welfare Officer or social worker as ordered, and take the findings of the report into account.

(3) All dispositional orders passed by the Board shall necessarily include an individual care plan in Form 7 for the child in conflict with law concerned, prepared by a Probation Officer or Child Welfare Officer or a recognised voluntary organisation on the basis of interaction with the child and his family, where possible.

(5) Where the Board decides to release the child after advice or admonition or after participation in group counselling or orders him to perform community service, necessary direction may also be issued by the Board to the District Child Protection Unit for arranging such counselling and community service.

(6) Where the Board decides to release the child in conflict with law on probation and place him under the care of the parent or the guardian or fit person, the person in whose custody the child is released may be required to submit a written undertaking in Form 8 for good behaviour and well-being of the child for a maximum period of three years.

(7) The Board may order the release of a child in conflict with law on execution of a personal bond without surety in Form 9.

(8) In the event of placement of the child in a fit facility or special home, the Board shall consider that the fit facility or special home is located nearest to the place of residence of the child's parent or guardian, except where it is not in the best interest of the child to do so.

(9) The Board, where it releases a child on probation and places him under the care of parent or guardian or fit person or where the child is released on probation and placed under the care of fit facility, it may also order that the child be placed under the supervision of a Probation Officer who shall submit periodic reports in Form 10 and the period of such supervision shall be maximum of three years.

(10) Where it appears to the Board that the child has not complied with the probation conditions, it may order the child to be produced before it and may send the child to a special home or place of safety for the remaining period of supervision.

(11) In no case, the period of stay in the special home or the place of safety shall exceed the maximum period provided in clause (g) of sub-section (1) of section 18 of the Act.”

36. When a child is found to be in conflict with law, the JJB/Children's Court has to pass various orders which also cater for

reform, education and behavioural modification. School admission is integral to the process of reintegration of the child and finds a prominent place in Section 18 of the JJ Act, 2015. The provision states thus:

“Section 18 Orders regarding child found to be in conflict with law-(1) Where a Board is satisfied on inquiry that a child irrespective of age has committed a petty offence, or a serious offence, or a child below the age of sixteen years has committed a heinous offence, then, notwithstanding anything contrary contained in any other law for the time being in force, and based on the nature of offence, specific need for supervision or intervention, circumstances as brought out in the social investigation report and past conduct of the child, the Board may, if it so thinks fit,—

- (a) allow the child to go home after advice or admonition by following appropriate inquiry and counselling to such child and to his parents or the guardian;
- (b) direct the child to participate in group counselling and similar activities;
- (c) order the child to perform community service under the supervision of an organisation or institution, or a specified person, persons or group of persons identified by the Board;
- (d) order the child or parents or the guardian of the child to pay fine: Provided that, in case the child is working, it may be ensured that the provisions of any labour law for the time being in force are not violated;
- (e) direct the child to be released on probation of good conduct and placed under the care of any parent, guardian or fit person, on such parent, guardian or fit person executing a bond, with or without surety, as the Board may require, for the good behaviour and child’s well-being for any period not exceeding three years;
- (f) direct the child to be released on probation of good conduct and placed under the care and supervision of any fit facility for ensuring the good behaviour and child’s well-being for any period not exceeding three years;
- (g) direct the child to be sent to a special home, for such period, not exceeding three years, as it thinks fit, for providing reformatory services including education, skill development, counselling, behaviour modification therapy, and psychiatric support during the period of stay in the special home:

Provided that if the conduct and behaviour of the child has been such that, it would not be in the child’s interest, or in the interest of other children housed in a special home, the Board may send such child to the place of safety.

(2) If an order is passed under clauses (a) to (g) of sub-section (1), the Board may, in addition pass orders to—

(i) attend school; or

(ii) attend a vocational training centre; or

(iii) attend a therapeutic centre; or

(iv) prohibit the child from visiting, frequenting or appearing at a specified place; or

(v) undergo a de-addiction programme.

(3) Where the Board after preliminary assessment under section 15 pass an order that there is a need for trial of the said child as an adult, then the Board may order transfer of the trial of the case to the Children's Court having jurisdiction to try such offences."

(emphasis supplied)

37. The obligation of the Children's Court to ensure education, reform and rehabilitation of the child while passing adjudicatory orders are additionally enumerated in Sections 19 and 20 of the JJ Act, 2015. The provisions are extracted hereunder:

"Section 19- Powers of Children's Court. (1) After the receipt of preliminary assessment from the Board under section 15, the Children's Court may decide that---

(i) there is a need for trial of the child as an adult as per the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) and pass appropriate orders after trial subject to the provisions of this section and section 21, considering the special needs of the child, the tenets of fair trial and maintaining a child friendly atmosphere;

(ii) there is no need for trial of the child as an adult and may conduct an inquiry as a Board and pass appropriate orders in accordance with the provisions of section 18.

(2) The Children's Court shall ensure that the final order, with regard to a child in conflict with law, shall include an individual care plan for the rehabilitation of child, including follow up by the probation officer or the District Child Protection Unit or a social worker.

(3) The Children's Court shall ensure that the child who is found to be in conflict with law is sent to a place of safety till he attains the age of twenty-one years and thereafter, the person shall be transferred to a jail:

Provided that the reformatory services including educational services, skill development, alternative therapy such as counselling, behaviour modification therapy, and psychiatric support shall be provided to the child during the period of his stay in the place of safety.

(4) The Children's Court shall ensure that there is a periodic follow up report every year by the probation officer or the District Child Protection Unit or a social worker, as required, to evaluate the progress of the child in the place of safety and to ensure that there is no ill-treatment to the child in any form.

(5) The reports under sub-section (4) shall be forwarded to the Children's Court for record and follow up, as may be required.

(emphasis supplied)

38. JJ Act, 2015 read with JJ Rules, 2016 thus pairs the adjudicatory powers with restorative duties in all processes before the JJB/Children's Court.

B. Bail jurisdiction and rehabilitative justice under the JJ Act, 2015 and JJ Rules, 2016

39. The right of child in conflict with law to bail is derived from Section 12 of the JJ Act, 2015:

“S 12 . Bail to a person who is apparently a child alleged to be in conflict with law. (1) When any person, who is apparently a child and is alleged to have committed a bailable or non-bailable offence, is apprehended or detained by the police or appears or brought before a Board, such person shall, notwithstanding anything contained in the Code of Criminal Procedure, 1973 or in any other law for the time being in force, be released on bail with or without surety or placed under the supervision of a probation officer or under the care of any fit person: Provided that such person shall not be so released if there appears reasonable grounds for believing that the release is likely to bring that person into association with any known criminal or expose the said person to moral, physical or psychological danger or the person’s release would defeat the ends of justice, and the Board shall record the reasons for denying the bail and circumstances that led to such a decision.

(2) When such person having been apprehended is not released on bail under subsection (1) by the officer-in-charge of the police station, such officer shall cause the person to be kept only in an observation home in such manner as may be prescribed until the person can be brought before a Board.

(3) When such person is not released on bail under sub-section (1) by the Board, it shall make an order sending him to an observation home or a place of safety, as the case may be, for such period during the pendency of the inquiry regarding the person, as may be specified in the order.

(4) When a child in conflict with law is unable to fulfil the conditions of bail order within seven days of the bail order, such child shall be produced before the Board for modification of the conditions of bail.”

40. Bail proceedings under Section 12 of the JJ Act, 2015 being part of the judicial process have to be informed by the adjudicatory role and reformatory mandate of the Children’s Court/JJB respectively. While exercising bail jurisdiction under Section 12 of the JJ Act, 2015, JJBs/Children’s Courts discharge their adjudicatory function by deciding bail application on merits, and dispense restorative justice by framing and implementing R & R programme/individual child care plan and ensuring admission of a child in school in the facts and circumstances of each case. The JJB/Children’s Court

while deciding the bail application has to be alert to the fact that R & R programme/individual child care plan and/or school education underpin the scheme of restorative justice under the JJ Act, 2015 read with JJ Rules, 2016.

41. Section 12 of the JJ Act, 2015 while providing for bail envisages that the child may be placed under the supervision of a probation officer or under the care of any fit person. The power to place the child under the supervision of the aforesaid persons while granting bail implicitly includes other directions for rehabilitation and reintegration of the child whenever required in the facts of a case.

42. As seen earlier Section 8 of JJ Act, 2015 enjoins the JJB/Children's Court to keep a constant watch on the best interests of the child and to dispense rehabilitative justice in all proceedings before it. JJBs/Children's Courts are not exempted from the aforesaid responsibilities while processing bail applications under Section 12 of the JJ Act, 2015.

43. The obligation of ensuring the rehabilitation and reintegration of the child cast on JJB/Children's Court cannot be relaxed at the stage of bail. On the contrary the said duty of the JJB/ Children's Court to examine the need for creating an R & R programme/individual child care plan is heightened when the child is released on bail.

44. R & R programme/individual child care plan which is to be drawn up for the child at the conclusion of the enquiry, is also liable to be created at the stage of grant of bail.

45. The scheme of the JJ Act, 2015 read with JJ Rules, 2016 clearly discloses that the child cannot be abandoned to their⁷ own devices after release on bail.

46. Even after release on bail a child may be at risk or could be otherwise in need of care and protection. The JJB/Children's Court will have to ascertain whether risks and vulnerabilities will assail the child after release on bail and whether such child is in need of care and protection and lastly determine how the R & R programme/individual child care plan will ameliorate the condition of the child.

47. Grant of bail does not ipso facto obviate the need for an R & R programme/individual child care plan and/or to attend school. Failure of the JJB/Children's Court to assess the need for R & R/individual child care plan and/or for admission in school at the stage of grant of bail would amount to abdication of the statutory responsibility to dispense restorative justice to the child. Further denial of R&R programme/individual child care plan to a child who requires such support and/or failure to cater to school education will have adverse consequences for the welfare and rehabilitation of the said child.

48. Absence of school education and/or R & R programme/individual child care plan even where the need of same exists will render the bail proceeding into a purely adjudicatory process which is devoid of rehabilitative content. A reductionist judicial approach in the bail process will defeat the beneficent intent of the JJ Act, 2015 read with JJ Rules, 2016.

⁷ "their" is being used as a gender inclusive Pronoun in place of "his" or "her". "Their" is used as a singular in such situations. [see : Time (Everything You Ever Wanted to Know About Gender-Neutral Pronouns)]

49. The duties of the JJB/Children's Court to ensure the reintegration of the children within the rehabilitative framework of the JJ Act, 2015 read with JJ Rules, 2016 include implementation of the R & R programme/individual child care plan and/or admission of the child in school.

50. Adjudicatory functions and restorative duties together compose the judicial processes under the JJ Act, 2015 read with JJ Rules, 2016.

51. In summation at the stage of grant of bail the need for R & R programme/individual child care plan and/or admitting the child in school shall be assessed by the Children's Court/JJB in light of the best interests of the child. The Children's Court/JJB is liable to initiate the R & R programme/individual child care plan and/or cause the admission of the child in school in case best interests of the said child so require.

C. Scope of Section 101(5) of JJ Act, 2015

52. By virtue of Section 101 (5) of the JJ Act, 2015 the High Court is vested with the powers of court of appeal. Section 101 (5) of the JJ Act reads as under:

“Section 101 (5)-Appeals.

(5) Any person aggrieved by an order of the Children's Court may file an appeal before the High Court in accordance with the procedure specified in the Code of Criminal Procedure, 1973 (2 of 1974).”

53. The High Court continues to be the *parens patriae* of the child in conflict with law while exercising its appeal jurisdiction under the JJ Act, 2015 read with JJ Rules, 2016.

54. The bail regime under the JJ Act, 2015 is a liberal one which envisages rejection on bail on a very limited grounds. The liberal bail

regime contemplates that juveniles are liable to be released on bail unless they are covered under the excepting clause. Release of a juvenile on bail without addressing the issue of juvenile delinquency and providing for smooth assimilation of child in the society will not achieve the beneficent intent of the JJ Act, 2015.

55. In appeal the High Court discharges adjudicatory functions when the bail application is decided on merits; and dispenses restorative justice when it assesses the needs of the child. While undertaking the latter exercise the High Court frames the R & R programme / individual care plan and ensures its implementation through appropriate authorities under the JJ Act, 2015 read with JJ Rules, 2016, and/or admission of the child in school.

56. The High Court in exercise of appeal powers can issue appropriate orders and also direct authorities under the JJ Act, 2015 read with JJ Rules, 2016 to faithfully implement the R & R programme/individual child care plan in consonance with the JJ Act, 2015 read with JJ Rules, 2016 and/or to ensure admission of the child in school.

VII. Framework of rehabilitative justice for children in conflict with law under the JJ Act, 2015 read with JJ Rules, 2016: Statutory Scheme

A. JJ Act read with JJ Rules: School education and R & R as primary measures of rehabilitative justice

57. Children come into conflict with law mostly for causes which are not of their making and environments over which they exercise no influence. Various factors that push children to commit criminal acts include deprivations imposed by adverse circumstances, alienation caused by socioeconomic marginalization, dysfunctional families,

deficient education, traumas inflicted by knocks of lives, deviancies caused by misguided energies, or just plain one off follies/ aberrational acts of youth. Criminal offences often result from an inability of the juvenile to understand the consequences of such acts. Vulnerability of juveniles to commit crimes under the malevolent influence of circumstances is compounded with the inability of children to deal with the challenges posed by their environment without proper support systems.

58. Rehabilitation and Reintegration Programme contemplated under the JJ Act, 2015 is premised on the understanding that the causes which drive a juvenile into acts of crime are externalities over which a child has no control. Simultaneously, the JJ Act, 2015 also acknowledges that the child cannot be defined by the environment of deprivation nor can their⁸ future be stigmatized by errors or deviant conduct in early life.

59. R & R programme/individual child care plan of a child in conflict with law (including the children in conflict with law having intersectional disabilities/multiple disadvantages) and/or ensuring admission of a child in school undergird the scheme of restorative justice under the JJ Act, 2015 read with JJ Rules, 2016.

60. The JJ Act, 2015 read with JJ Rules, 2016 cast the duty of creation and oversight of R & R plan on the JJB/CC. Simultaneously the obligation of admitting the child in school and continuity of school education is also vested in the JJB/Children's Court. Both the aforesaid rehabilitative processes are not mutually exclusive and may even overlap at times. JJB/Children's Court will determine which of

⁸ their" is being used as a gender inclusive Pronoun in place of "his" or "her". "Their" is used as a singular in such situations. [see : Time (Everything You Ever Wanted to Know About Gender-Neutral Pronouns)]

the aforesaid two modes of rehabilitation or a mix of both is liable to be adopted in the best interests of a child in the facts and circumstances of each case.

61. The phrase ‘rehabilitation and reintegration’ is not defined in the JJ Act, 2015. The scope and attributes of the rehabilitation and social reintegration plan can be distilled from a composite reading of the enactment. Provisions of JJ Act, 2015 read with JJ Rules, 2016 pertaining to individual child care plan, child care institutions, functions of different entities created under the enactment disclose various ingredients of the R & R programme.

62. The individual child care plan is referenced in Section 39 of JJ Act, 2015, and its elements are discussed in detail in Rule 2(ix) of the JJ Rules of 2016. The provisions are reproduced hereunder for ease of reference:

“Section 39. Process of Rehabilitation and Social Re-integration- 39. (1) The process of rehabilitation and social integration of children under this Act shall be undertaken, based on the individual care plan of the child, preferably through family based care such as by restoration to family or guardian with or without supervision or sponsorship, or adoption or foster care: Provided that all efforts shall be made to keep siblings placed in institutional or non- institutional care, together, unless it is in their best interest not to be kept together.

(2) For children in conflict with law the process of rehabilitation and social integration shall be undertaken in the observation homes, if the child is not released on bail or in special homes or place of safety or fit facility or with a fit person, if placed there by the order of the Board.

(3) The children in need of care and protection who are not placed in families for any reason may be placed in an institution registered for such children under this Act or with a fit person or a fit facility, on a temporary or long-term basis, and the process of rehabilitation and social integration shall be undertaken wherever the child is so placed.

(4) The Children in need of care and protection who are leaving institutional care or children in conflict with law leaving special homes or place of safety on attaining eighteen years of age, may be provided financial support as specified in section 46, to help them to re-integrate into the mainstream of the society.”

“Rule 2(ix) “individual care plan” is a comprehensive development plan for a child based on age and gender specific needs and case history of the child, prepared in consultation with the child, in order to restore the child’s self-esteem, dignity and self-worth and nurture him into a responsible citizen and accordingly the plan shall address the following, including but not limited to, needs of a child, namely:-

- (a) health and nutrition needs, including any special needs;
- (b) emotional and psychological needs;
- (c) educational and training needs;
- (d) leisure, creativity and play;
- (e) protection from all kinds of abuse, neglect and maltreatment;
- (f) restoration and follow up;
- (g) social mainstreaming;
- (h) life skill training.”

B. Framing of an R & R programme/individual child care plan

63. The concept of an individual child care plan contemplated for each child under the JJ Act, 2015, shows that the legislature has eschewed the temptation of treating children in conflict with law as units in a crowd, but bestows care to regard each child as a special individual with unique potentialities.

64. While framing an R & R programme/individual child care plan various considerations have to be factored, and documents require a look in. These include a “child study report”, “home study report,” “social background report” & “social investigation report” under Rule 2(v), Rule 2(viii), Rule 2 (xvi) and Rule 2(xvii) respectively. The provisions are extracted below for ease reference:

“RULE 2(v) Child Study Report

(v) “Child Study Report” means the report which contains details about the child, such as his date of birth and social background;

Rule 2 (viii) Home Study Report

“Home Study Report” means a report containing details of prospective adoptive parents or foster parents, and shall include social and economic status, family background, description of home and atmosphere, and health status;

Rule 2 (xvi) Social background report

“social background report” means the report of a child in conflict with law containing the background of the child prepared by the Child Welfare Police Officer;

Rule 2 (xvii) Social Investigation Report

“social investigation report” means the report of a child containing detailed information pertaining to the circumstances of the child, the situation of the child on economic, social, psycho-social and other relevant factors, and the recommendation thereon.”

65. The creation of R & R/individual child care plan entails a searching scrutiny of various relevant aspects pertaining to the child and engagement with the relevant stakeholders and statutory bodies.

66. The JJB/Children’s Court is liable to call for various reports including social investigation report, child study report, home study report, social background report envisaged under the JJ Act, 2015 read with JJ Rules, 2016 of the child. In this process the JJB/Children’s Court will also examine the child’s educational level besides other parameters of the child’s personality including physical health, mental well being and psychological issues. The JJB/Children’s Court may accordingly consult other experts in the field including educationists, psychologists, health specialists, identified fit institutions and fit persons. The JJB/Children’s Court may also confer other stakeholders and government authorities, statutory authorities like CWC while drawing up an R & R programme/individual child care plan.

67. The JJB/Children’s Court will necessarily have a face to face interaction with the child and his family in an informal atmosphere to evaluate the requirements of the R & R programme/ individual child care plan post release on bail.

68. The R & R programme/individual child care plan will be framed through the aforesaid consultative process by the JJB/Children’s Court while granting bail to the juvenile and at the conclusion of the enquiry.

69. The Children's Court/JJB is also required to keep a constant oversight on the implementation of R & R programme/individual child care plan after release of the child on bail till the conclusion of the enquiry.

C. Authorities in aid of JJB/Children's Court

70. Various statutory bodies are liable to assist the JJB in creation and implementation of the rehabilitation programme/ individual child care plan or a child in conflict with law and if required assist in the oversight of the same.

71. The provisions regarding the creation and duties of Child Welfare Committee, District Child Protection Unit, and Special Juvenile Police Unit, Social Worker, Case Worker, District Probation Officer are contained in Sections 27 to 30 of the JJ Act, 2015 read with Rules 15 to 20 of JJ Rules, 2016, Section 106 read with Rules 11 and 85, Section 107 read with Rule 8 respectively.

72. Local administration /District Magistrate, State Government in particular the Education Department are liable to play the supportive role in implementing the R & R programme as it is implemented in statute.

D. R & R Programme : A learning process and an educational programme

73. R & R programme which is also implemented through the individual child care programme is predominantly an educational process. In fact the R & R programme contemplated under JJ Act, 2015 read with JJ Rules, 2016 whether depicted in an individual

child care plan created for children post release or implemented through daily routines and support systems in CCI/Observation Homes for children residing therein is education in the broadest sense.

74. The constituent element of education in the R & R programme/individual child care plan under JJ Act, 2015 read with JJ Rules, 2016 gives full weight to academic growth and vocational training of a child, but also goes far beyond textbook learning. The importance of sports and yoga ensuring good health in fostering mental clam and strengthening the character of children are recognised by the legislature. Yoga is an ancient wellness system which is a catalyst in effecting a complete lifestyle change and personal transformation. Psychological health by way of counselling and support systems enable the child to address mental issues and overcome traumas. Creativity induced through arts and crafts also channelize youthful energies in a positive manner. Theatre is a strong educational tool of imbibing strong ethical and humanitarian values. Similarly music, dance, story telling and gardening are good mediums of honing a balanced and empathetic personality and releasing stress and monotony. Group based activities and other skills imparted to children under the individual child care plan, and through the activities in CCIs inculcate self reliance, develop humanitarian values, sharpen emotional intelligence and strengthen social and leadership skills.

75. The R & R programme/individual child care plan in the JJ Act, 2015 abjures a pedantic view of education and envisages a composite approach to learning. R & R programme/individual child

care plan adopts a creative process of learning and embraces a multifaceted vision of education. By factoring socioeconomic background, health needs, educational requirements, psychological aspects the individual child care plan is curated to the specific needs of each child. The R & R programme/individual child plan paves the way for assimilation of the child in the society.

76. After going through the R & R programme/individual child care plan, children in conflict with law will develop an understanding of a healthy and balanced lifestyle. A child will be fully alerted to the importance of both physical health and mental well being. Good eating habits, exercise and meditation will become part of their daily routine. The emotional/psychological issues and other adverse circumstances which impelled the child to commit the crimes would be adequately addressed. The conduct of the child will be founded in strong ethical values and stellar character traits. The child will learn the importance of life skills which makes them⁹ self-reliant, and social skills which turn them¹⁰ in a dutiful citizen. Academic grounding and vocational skills imparted during the R & R programme/individual child care plan prepare children for future careers, and give them¹¹ a new direction in life.

77. The R & R programme/individual child care plan under the JJ Act, 2015 ameliorates deprivations of the child's environment, and addresses the deviancies in their¹² conduct. The healing processes of

9 “them” is being used as a gender inclusive Pronoun in place of “him” or “her”. “Them” is used as a singular in such situations. [see : Time (Everything You Ever Wanted to Know About Gender-Neutral Pronouns)]

10 “them” is being used as a gender inclusive Pronoun in place of “him” or “her”. “Them” is used as a singular in such situations. [see : Time (Everything You Ever Wanted to Know About Gender-Neutral Pronouns)]

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12 their” is being used as a gender inclusive Pronoun in place of “his” or “her”. “Their” is used as a singular in such situations. [see : Time (Everything You Ever Wanted to Know About Gender-Neutral Pronouns)]

R & R programme/ individual child care enables a child to transcend aberrations of the past, while its learning content works the possibilities in the child. The multifarious goals of an R & R programme/ individual child care are achieved by creating a supportive ecosystem under the JJ Act, 2015 read with JJ Rules, 2016.

78. R & R programme/individual child care plan which is in fact a comprehensive education scheme envisages learning outcomes that primarily aim at holistic growth, and positive transformation of a child in conflict with law. The constituent element of education in the R & R programme/individual child care plan anchors the child in sterling values and empowers them to reclaim their¹³ future in the national mainstream.

VIII. School education and education as constituent element of R & R programme under the JJ Act, 2015: Interface of multiple statutes

(A). Interplay of JJ Act, 2015 & RTE Act, 2009

79. Learning and education are defining values of the ancient Indian civilization. The right to education is irretrievably embedded as a fundamental right of children under Article 21A of the Constitution of the modern Indian republic. The right to education is also a statutory right vested in children by the Right of Children to Free and Compulsory Education Act, 2009 (hereinafter referred to as “RTE Act, 2009”).

80. At this stage it will not be out of context to invoke the United Nations Standard Minimum Rules for the Administration of Juvenile

¹³ “Their” is being used as a gender inclusive Pronoun in place of “his” or “her”. “Them” is used as a singular in such situations. [see : Time (Everything You Ever Wanted to Know About Gender-Neutral Pronouns)]

Justice (The Beijing Rules), 1985 in light of **Pratap Singh (supra)**. The Beijing Rules, 1985 also emphasise the paramount importance of education in the process of rehabilitation and reintegration of a child in conflict with law. The relevant part of the Beijing Rules, 1985 are extracted hereunder:

“Rule 24.1- Efforts shall be made to provide juveniles, at all stages of the proceedings, with necessary assistance such as lodging, education or vocational training, employment or any other assistance, helpful and practical, in order to facilitate the rehabilitative process.”

81. The Statement of Objects and Reasons of Right of Children to Free and Compulsory Education Act, 2009 embedded the goal of universal elementary education in the constitutional promise of equality, social justice and democracy for all citizens. In particular the enactment seeks to address the issue of denial of education to children “from disadvantaged groups and weaker sections”. The Statement of Objects and Reasons of RTE Act, 2009 is extracted below:

“Statement of Object and Reasons.—The crucial role of universal elementary education for strengthening the social fabric of democracy through provision of equal opportunities to all has been accepted since inception of our Republic. The Directive Principles of State Policy enumerated in our Constitution lays down that the State shall provide free and compulsory education to all children up to the age of fourteen years. Over the years there has been significant spatial and numerical expansion of elementary schools in the country, yet the goal of universal elementary education continues to elude us. **The number of children, particularly children from disadvantaged groups and weaker sections, who drop out of school before completing elementary education, remains very large. Moreover, the quality of learning achievement is not always entirely satisfactory even in the case of children who complete elementary education.**

(emphasis supplied)

2. Article 21-A, as inserted by the Constitution (Eighty-sixth Amendment) Act, 2002, provides for free and compulsory education of all children in the age group of six to fourteen years as a Fundamental Right in such manner as the State may, by law, determine.

3. Consequently, the Right of Children to Free and Compulsory Education Bill, 2008, is proposed to be enacted which seeks to provide,—

- (a) that every child has a right to be provided full time elementary education of satisfactory and equitable quality in a formal school which satisfies certain essential norms and standards;
 - (b) ‘compulsory education’ casts an obligation on the appropriate Government to provide and ensure admission, attendance and completion of elementary education;
 - (c) ‘free education’ means that no child, other than a child who has been admitted by his or her parents to a school which is not supported by the appropriate Government, shall be liable to pay any kind of fee or charges or expenses which may prevent him or her from pursuing and completing elementary education;
 - (d) the duties and responsibilities of the appropriate Governments, local authorities, parents, schools and teachers in providing free and compulsory education; and
 - (e) a system for protection of the right of children and a decentralized grievance redressal mechanism.
4. The proposed legislation is anchored in the belief that the values of equality, social justice and democracy and the creation of a just and humane society can be achieved only through provision of inclusive elementary education to all. Provision of free and compulsory education of satisfactory quality to children from disadvantaged and weaker sections is, therefore, not merely the responsibility of schools run or supported by the appropriate Governments, but also of schools which are not dependent on Government funds.
5. It is, therefore, expedient and necessary to enact a suitable legislation as envisaged in Article 21-A of the Constitution.
6. The Bill seeks to achieve this objective.”

82. The RTE Act, 2009 and JJ Act, 2015 strive to ensure that the right to education is not denied to any category of disadvantaged children specially children in conflict with law and in need of care and protection. There is concordance in the Statement of Objects and Reasons of the RTE Act, 2009 and JJ Act, 2015 in respect of the legislative will to provide inclusive learning to disadvantaged children and effect their rehabilitation and reintegration in the social mainstream through education.

83. The concord of legislative intendments of RTE Act, 2009 and JJ Act, 2015 is matched by the accord in the relevant statutory schemes of the said enactments.

84. Chapter II of the Right of Children to Free and Compulsory Education Act, 2009 (hereinafter referred to as “RTE Act, 2009”) vests the right of free and compulsory education in all children between the ages of 6 to 14 years. Sections 3 and 4 create the entitlement to free and compulsory education. Section 29 defines the scope of education under the RTE Act, 2009. The provisions are reproduced below:

“Section 29. Curriculum and evaluation procedure.—

(1) ...

(2) The academic authority, while laying down the curriculum and the evaluation procedure under sub-section (1), shall take into consideration the following, namely:—

- (a) conformity with the values enshrined in the Constitution;
- (b) all round development of the child;
- (c) building up child's knowledge, potentiality and talent;
- (d) development of physical and mental abilities to the fullest extent;
- (e) learning through activities, discovery and exploration in a child friendly and child-centered manner;
- (f) medium of instructions shall, as far as practicable, be in child's mother tongue;
- (g) making the child free of fear, trauma and anxiety and helping the child to express views freely;
- (h) comprehensive and continuous evaluation of child's understanding of knowledge and his or her ability to apply the same.”

85. The breadth of Section 29 of the RTE Act, 2009 does not limit education to the confines of scholastic achievement. Education under section 29 of the RTE Act, 2009 encompasses diverse activities and learnings to ensure holistic and well rounded development of a child's personality to meet the challenges and seize the opportunities of the real world.

86. Education contemplated in Section 29 of the RTE Act, 2009 is of an inclusive nature which shuns isolation and privilege.

Education under the RTE Act, 2009 imparts educational skills and knowledge to gain employment, inculcates a culture of rational thinking and enquiry, strengthens the body and mind, and cultivates of humanitarian and constitutional values.

87. The scope of education has exercised the minds of Indian thinkers since the dawn of civilization, and has been expounded in Indian constitutional law since the advent of the Republic. The Supreme Court in **Society For Unaided Private Schools of Rajasthan Vs. Union of India**¹⁴ embedded the right to education of a child in his right to live with dignity and other fundamental freedoms by holding:

“32. Article 21 says that “no person shall be *deprived* of his life ... except according to the procedure established by law” whereas Article 19(1)(g) under the chapter “Right to freedom” says that all citizens have the right to practise any profession, or to carry on any occupation, trade or business which freedom is not absolute but which could be subjected to social control under Article 19(6) in the interest of general public. By judicial decisions, right to education has been read into right to life in Article 21. A child who is denied right to access education is not only *deprived* of his right to live with dignity, he is also deprived of his right to freedom of speech and expression enshrined in Article 19(1)(a). The 2009 Act seeks to remove all those barriers including financial and psychological barriers which a child belonging to the weaker section and disadvantaged group has to face while seeking admission.”

88. After invoking the importance of education in Indian culture, and sacrosanct character of the right of education the Supreme Court propounded that education was essential to the very survival of the Republic in **Avinash Mehrotra Vs. Union of India**¹⁵ the Supreme Court held:

“28. Education occupies a sacred place within our Constitution and culture. Article 21-A of the Constitution, adopted in 2002, codified this Court's holding in *Unni Krishnan, J.P. v. State of A.P.* [(1993) 1 SCC 645] in which we established a right to education. Parliament did not merely affirm that

14 (2012) 6 SCC 1

15 (2009) 6 SCC 398

right; the amending Act placed the right to education within the Constitution's set of fundamental rights, the most cherished principles of our society. As the Court observed in *Unni Krishnan*¹: (SCC p. 664, para 8)

“8. The immortal poet Valluvar whose *Tirukkural* will surpass all ages and transcend all religions said of education:

‘Learning is excellence of wealth that none destroy; To man nought else affords reality of joy.’

29. Education today remains liberation—a tool for the betterment of our civil institutions, the protection of our civil liberties, and the path to an informed and questioning citizenry. Then as now, we recognise education's “transcendental importance” in the lives of individuals and in the very survival of our Constitution and Republic.

30. In the years since the inclusion of Article 21-A, we have clarified that the right to education attaches to the individual as an inalienable human right. We have traced the broad scope of this right in *R.D. Upadhyay v. State of A.P.* [(2007) 15 SCC 337 : AIR 2006 SC 1946] holding that the State must provide education to all children in all places, even in prisons, to the children of prisoners. We have also affirmed the inviolability of the right to education.

34. This Court has routinely held that another fundamental right to life encompasses more than a breath and a heartbeat. In reflecting on the meaning of “personal liberty” in Articles 19 and 21, we have held that

“that ‘personal liberty’ is used in the article as a compendious term to include within itself all the varieties of rights which go to make up the ‘personal liberties’ of man....” (*Kharak Singh v. State of U.P.* [AIR 1963 SC 1295] , AIR p. 1302, para 17.)

Similarly, we must hold that educating a child requires more than a teacher and a blackboard, or a classroom and a book. The right to education requires that a child study in a quality school, and a quality school certainly should pose no threat to a child's safety. We reached a similar conclusion, on the comprehensive guarantees implicit in the right to education, only recently in our opinion in *Ashoka Kumar Thakur v. Union of India* [(2008) 6 SCC 1] .”

89. The importance of creating an inclusive education system was pithily stated in **Maharishi Mahesh Yogi Vedic Vishwavidyalaya Vs. State of M.P.**¹⁶:

“37. The right to education will be meaningful only and only if all the levels of education reach to all sections of people, otherwise it will fail to achieve the target set out by our Founding Fathers, who intended to make the Indian society an egalitarian society.”

90. Constitutional law holdings and Indian thought leaders have independently affirmed that the most significant attributes of a successful educational system is its ability to embrace all sections of the society and to bind them in the common quest for betterment of human lives.

91. Alerting his countrymen to the dangers of exclusionary practices in education S. Radhakrishnan said “An education that brings up a young man in entire indifference to the misery and poverty surrounding him, to the general stringency of life, to the dumb pangs of tortured bodies and the lives submerged in the shadows is essentially a failure¹⁷.”

92. The cautionary words of S. Radhakrishnan have been formed a consistent theme of constitutional law discourse on inclusivity in the educational system.

93. Education under the Indian Constitution and laws is an aggregate of wide-ranging human pursuits which strengthen the human mind and body. Human faculties honed by education on the lines of excellence fulfil the purpose of life through values that are cognisant of the dignity of human lives, and conscious of the responsibility to assuage human suffering. Education also builds knowledge and skills for employability, career progress,

¹⁶ (2013) 15 SCC 677

¹⁷ The Foundation of Civilisation Ideas & Ideals ~ S. Radhakrishnan

technological achievements and economic advancement. The core ideals that animate education policy in India are the unquenchable faith in the power of human effort and the limitless possibilities of deliverance from human errors. Capacity for reform and hope of redemption go hand in hand in Indian educational thought. According to the constitutional law discourse inclusive education provides the rock-solid foundation for advancing individual rights, promoting collective wellbeing and strengthening constitutional values. Inclusive education forms the basis of civilisational progress and economic advancement.

94. The scope of education under Section 29 of the RTE Act, 2009 is thus not confined to cramming of facts or storing of information. Under the enactment educational endeavours extend to development of physical abilities, cultivating the mind and nurturing humanitarian and constitutional values. Addressing emotional issues or traumas faced by children is part of the educational scheme under the RTE Act, 2009.

95. RTE Act, 2009 envisages education as the panacea for holistic development of all children. The JJ Act, 2015 contemplates that continuity of school education and the constituent elements of education in the R & R programme are the driving forces to facilitate the reintegration of children in conflict with law or children in need of care and protection.

96. The right to education under the RTE Act, 2009 and Article 21 A of the Constitution of India is vested in all children without any distinction or discrimination. The RTE Act, 2009 and Article 21A of Constitution of India apply in equal measure to children in

conflict with law and children in conflict with law who are also in need of care and protection.

97. Admission of the child in school is the responsibility of the JJB/Children's Court since inclusive school education is a most significant part of the process of reintegration and rehabilitation which empowers a child in conflict with law/child in need of care and protection to find their place in the social mainstream. Rehabilitation and reintegration of a child in conflict with law is the foremost aim of an R & R programme/individual child care plan and education is the golden road to that goal.

98. Education imparted to children through an R & R programme / individual child care plan under Section 39 of the JJ Act, 2015 read with JJ Rules, 2016 is a facet of education for children contemplated in Section 3 read with Section 29 of the RTE Act, 2009. The constituent element of education of an R & R programme/individual child care plan under Section 39 of JJ Act, 2015 read with Rule 2 (ix) JJ Rules, 2016 are fully comprised in Section 3 read with Section 29 of RTE Act, 2009.

99. Many of the institutions, agencies and individuals charged with a responsibility of implementing the R & R programme are also instrumental in realisation of the right to education of the said child vested under Section 3 read with Section 29 of RTE Act, 2009.

100. The right to education of a child in conflict with law (including a child in conflict with law and in need of care and protection) vested by virtue of Section 3 read with Section 29 of the RTE Act, 2009 and Article 21A of the Constitution of India can be realised only when the R & R programme/individual child care

plan framed for the said child under Section 39 of JJ Act, 2015 read with JJ Rules, 2016 is successfully accomplished. Infact in absence of an R & R programme /individual child care plan under the JJ Act, 2015 read with JJ Rules, 2016, education under the RTE Act, 2009 will be bereft of meaning for a child in conflict with law (including a child in conflict with law and in need of care and protection).

101. Children in conflict with law cannot be excluded from the purview of the RTE Act, 2009, and deprivation of their right to education under Article 21A of the Constitution of India cannot be countenanced.

102. An education system that segregates the disadvantaged cannot coexist with a Constitution that espouses equality. An education system that shuns those who need care and protection is not compatible with a Constitution that promotes fraternity. One has to yield to the other.

(B). Multiple statutes with common aim for benefit of children : Interplay of JJ Act, RTE Act, PwD Act, MH Act

I. R & R : Children in conflict with law having intersectional disabilities/Multiple enactments : Multiple enactments

(i) Juvenile Justice (Care and Protection of Children) Act, 2015

(ii). Right of Children to Free and Compulsory Education Act, 2009

(iii) The Rights of Persons with Disabilities Act, 2016

(iv) Mental Healthcare Act, 2017

103. A child in conflict with law may also face intersectional disabilities or multiple disadvantages. For example a child in conflict with law can also be a child who is in need of care and protection. Similarly a child in conflict with law can also be a child with disability or mental illness. Children with such intersectional

disabilities or multiple disadvantages are protected by multiple statutory regimes, composed of JJ Act, 2015, RTE Act, 2009, PwD Act, 2016 and MH Act, 2017.

(i) The Rights of Persons with Disabilities Act, 2016

104. The Rights of Persons with Disabilities Act, 2016 (hereinafter referred to as the “PwD Act, 2016”) vests persons (including children) with disabilities with various rights and entitlements to support systems and care programmes.

105. The right to education under the RTE Act, 2009 is availed by children with disabilities by virtue of Section 31 of the PwD Act, 2016 which references/incorporates the provisions of RTE Act, 2009:

“ Section 31. Free education for children with benchmark disabilities.

—(1) Notwithstanding anything contained in the Rights of Children to Free and Compulsory Education Act, 2009 (35 of 2009), every child with benchmark disability between the age of six to eighteen years shall have the right to free education in a neighbourhood school, or in a special school, of his choice.

(2) The appropriate Government and local authorities shall ensure that every child with benchmark disability has access to free education in an appropriate environment till he attains the age of eighteen years.”

106. Furthermore, the PwD Act, 2016 also vests the persons with disabilities including children with rights of a supportive ecosystem to provide inclusive education.

107. The PwD Act, 2016 stresses the importance of education for persons (including children with disability), and emphasizes the duties of educational institutions to provide a non discriminatory environment, necessary support systems which make access to education fruitful.

108. The provisions incorporated in the PwD Act, 2016 which ensure inclusion of persons (including children) with disability in welfare measures initiated by appropriate governments are stated below:

Section 27-Rehabilitation

(1) The appropriate Government and the local authorities shall within their economic capacity and development, undertake or cause to be undertaken services and programmes of rehabilitation, particularly in the areas of health, education and employment for all persons with disabilities.

109. Similarly right of education vested in children under Section 20 of the Mental Healthcare Act, 2017 (hereinafter referred to as “MH Act, 2017”) is also complementary to the right of education of the said children under the RTE Act, 2009 read with Article 21A of the Constitution of India and not in derogation thereof. The relevant portions of Sections 20 and 31 of the Mental Healthcare Act, 2017 (MH Act, 2017) are extracted below:

“Section 20. Right to protection from cruel, inhuman and degrading treatment.—(1) Every person with mental illness shall have a right to live with dignity.

(c) to have reasonable facilities for leisure, recreation, education and religious practices;

110. The need for coordination between different departments of Government to effectuate the purpose of the Mental Healthcare Act, 2017 is stipulated in Section 32 of the said enactment:

“Section 32. Co-ordination within appropriate Government-The appropriate Government shall take all measures to ensure effective co-ordination between services provided by concerned Ministries and Departments such as those dealing with health, law, home affairs, human resources, social justice, employment, education, women and child development, medical education to address issues of mental health care.”

II. R & R : Multiple enactments : Statutory linkage of JJ Act,2015, RTE Act, 2009, PwD Act, 2016 and MH Act, 2017

111. For a child with disability or mental health issues and in conflict with law (i.e. having intersectional disabilities/multiple

disadvantages) R & R programme/individual child care plan under Section 39 of JJ Act, 2015 has to be crafted with the aforesaid special needs of the child in mind. R & R programme/individual care plan under Section 39 of the JJ Act, 2015 read with JJ Rules, 2016 for a child with disability will be fruitful only if it addresses the issues of juvenile delinquency alongwith the unique educational needs and disability related support systems to which the child is entitled under the said enactments.

112. Right to education is unconditionally vested in the children with disability or mental health issues and are in conflict with law (i.e. having intersectional disabilities/multiple disadvantages) under the RTE Act, 2009. However, without appropriate support systems to alleviate the disability as contemplated in the PwD Act, 2016, or MH Act, 2017 respectively, and in absence of a specifically tailored R & R programme/individual child care plan under the JJ Act, 2015 read with JJ Rules, 2016; right to education vested under the RTE Act, 2009 of a child in conflict with law having intersectional disabilities/multiple disadvantages will not be brought to fruition.

113. Infact without simultaneous compliance of relevant provisions of RTE Act, 2009, PwD Act, 2016, MH Act, 2017, the R & R programme/individual child care plan under the JJ Act, 2015 read with JJ Rules, 2016 will be devoid of purpose for children with intersectional disabilities/multiple disadvantages who are in conflict with law.

114. Section 53 of the JJ Act, 2015 creates a statutory ecosystem which supports the realization of rights of children in conflict with law & also of children in conflict with law have intersectional

disabilities /multiple disadvantages by linking the JJ Act, 2015 with other sister enactments. Section 53 of the JJ Act, 2015 aligns JJ Act, 2015 with the three sister enactments RTE Act, 2009, PwD Act, 2016 and Mental Healthcare Act, 2017, and melds the legislations into one composite scheme for children in conflict with law. Section 53 of the JJ Act, 2015 is reproduced below:

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

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

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

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

(iv) skill development;

(v) occupational therapy and life skill education;

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

(vii) recreational activities including sports and cultural activities;

(viii) legal aid where required;

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

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

(xi) birth registration;

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

(xiii) any other service that may reasonably be provided in order to ensure the well-being of the child, either directly by the State Government, registered or fit individuals or institutions or through referral services.

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

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

115. The services provided by institutions registered under the JJ Act, 2015 read with JJ Rules, 2016 mostly relate to the education of a child, and are in no manner distinct from the educational pursuits and activities in schools under the RTE Act, 2009.

III. R & R : Blending of Statutes : Principles of Interpretation & Manner of implementation

116. The JJ Act, 2015, and the other sister legislations namely RTE Act, 2009, PwD Act, 2016, Mental Healthcare Act, 2017 form part of a broad based legislative sweep but an integrated legislative vision for various categories of children in conflict with law.

117. The rights of children in conflict with law and children in conflict with law but facing said intersectional disabilities or multiple disadvantages (discussed earlier) are collectively embraced under the JJ Act, 2015 read with JJ Rules, 2016, RTE Act, 2009, PwD Act, 2016, and Mental Healthcare Act, 2017.

118. The diversity of legislative enactments does not mean disparity of legislative intendments. Common legislative aims pervade through all the sister enactments which address different facets of the rehabilitation and reintegration of a child in conflict with law or a child in conflict with law facing multiple disadvantages.

119. This Court faced with a similar situation blended the statutes to realize a common legislative intent threading across multiple enactments in **Junaid Vs. State of UP**¹⁸ held as under:

“58. What then is the task of the Court? The task of the Court is to achieve the overarching and underlying legislative intent by integrating the various statutes into an unified legal framework. This requires corralling up the assortment of statutory bodies under a single legal umbrella, establishing synergy in aims, and ensuring concert in action of said authorities.”

(emphasis supplied)

120. Common legislative aims of JJ Act, 2015 read with JJ Rules, 2016 which also pervade the scheme of sister enactments namely RTE Act, 2009, PwD Act, 2016 and Mental Healthcare Act, 2017 can only be achieved through a coherent reading of the said statutes, concert between various authorities and a coordinated implementation of aforesaid enactments.

121. The JJ Act, 2015 read with JJ Rules, 2016, and other sister enactments namely RTE Act, 2009, PwD Act, 2016, MH Act, 2017 have a symbiotic relationship. The legislative purpose of JJ Act, 2015 can be faithfully realised only through a concurrent implementation of congruous provisions of all sister enactments namely RTE Act, 2009, PwD Act, 2016 and MH Act, 2017.

122. The various enactments namely JJ Act, 2015, RTE Act, 2009, PwD Act, 2016 and MH Act, 2017 respectively and collectively as manifest the progressive realization of the expanding mandate of Article 21 and Article 21A of the Constitution of India.

123. The meaning of life for a child in conflict with law and a child in conflict with law but with intersectional disabilities or multiple disadvantages has been redefined by the aforesaid statutory schemes in consonance with Article 21 and 21A of the Constitution of India. In this wake breach of the statutory provisions of the JJ Act, 2015 read with JJ Rules, 2016, RTE, Act 2009, PwD Act, 2016 and Mental Healthcare Act, 2017, will also entail violation of fundamental rights of aforesaid class of children enshrined under Article 21 and 21A of the Constitution of India.

IX. Implementation of rehabilitative justice framework: Duties of JJBs/Children's Courts and Obligations of the State to serve restorative justice

124. School education and rehabilitation and reintegration programme/individual child care plan are the two pillars of restorative justice under the JJ Act, 2015 read with JJ Rules, 2016. Both processes are independent but may become interdependent in the facts and circumstances of a case.

A. School admission and Continuity of education

125. The JJB/Children's Court after evaluating educational needs of the child shall if required take steps to get the child admitted in school. The JJB/ Children's Court shall keep an oversight on the child's educational progress. The JJB/ Children's Court will ensure continuity of education and prevent disruption of learning. The State authorities shall render necessary assistance to the JJB/ Children's Court to achieve the said goal.

B. Phases of R & R: Pre-release and post-release

126. The process of rehabilitation and reintegration programme/individual child care plan requires a sustained engagement

with the child and extends over a period of time. Two clear phases of rehabilitation and reintegration programme are visualized in the statute i.e. pre-release and post release.

(a) Pre-release rehabilitation and reintegration programme which is conducted when the said child is put in the observation home or CCI on orders of Juvenile Justice Board, or CWC, or otherwise as per law.

(b) Post-release rehabilitation and reintegration programme is initiated after the said child is on bail or after conclusion of the enquiry.

C. R & R : Pre release

127. Pre-release R & R framework is initiated after the child in conflict with law is sent to the observation home by the JJB or any competent authority. R & R programme in Observation Homes is conducted in a sheltered space where the child is insulated from malevolent influences which drove him into acts of crime.

128. Section 47 of the JJ Act, 2015 casts a statutory duty upon the State Government to establish, maintain, and regulate Observation Homes.

129. Many elements of the individual child care as contemplated in Section 39 of the JJ Act, 2015 and Rule 2(ix) of the JJ Rules, 2016 are incorporated in the daily routine in the Observation Homes.

130. The services in the institution as depicted in Section 53 of the JJ Act, 2015 are instructive to understanding the environment in which the child is nurtured in an Observation Home.

131. The infrastructure requirements in the said institutions stated in Rule 29 to 38 of the JJ Rules, 2016 detail the environment to be

provided to a child to prepare him for rehabilitation in the pre release phase.

132. Rules 29, 30, 31 and 32 of the JJ Rules, 2016 cater to physical infrastructure, clothing, bedding, toiletries and other articles and also provide for sanitation and hygiene and daily routine of the children respectively.

133. Nutrition and diet scale of children are provided in Rule 33 of the JJ Rules, 2016.

134. Ample attention given by the legislature to the requirements of medical care including mental health, need for education, vocational training and recreational facilities is evidenced from Rules 34, 35, 36, 37 and 38 of the JJ Rules, 2016. The provisions will also assist in understanding the framework/ecosystem for R & R programme/individual child care plan.

135. Similarly, Rules 69L to 69O of the JJ Rules, 2016 will also assist in the creation of an Individual Child Care Plan or in initiating the R&R process post-release. Rule 69L deals with the Daily Routine in the Child Care Institution, Rule 69M with the Behaviour of the Child, Rule 69N with the Manner of dealing with unacceptable behaviour, and Rule 69O with Exceptional Good Behaviour.

136. The persons in charge of the CCIs are required to discharge the charter of duties stated in Rule 61 of the JJ Rules, 2016.

137. The R & R programme implemented in the Observation Homes for children in conflict with law is essentially an educational programme. The nature of duties of persons incharge of the CCIs is mostly related to education and like activities. Hence persons from academia or with educational background/teachers are best suited to

be incharge of the CCIs depicted in Rule 61 of the JJ Rules, 2016. Other staff on the administrative side can work under them and perform other duties like maintenance of infrastructure and so on.

D. R & R : Continuity & Change Post Release

138. Continuity is the essence of the R & R programme/individual child care plan and essential for its efficacy. The R & R/individual child care plan initiated during stay of the child in an Observation Home cannot be abruptly discontinued after their¹⁹ release on bail without examining post release needs of the juvenile. Post release R&R has to pick up the threads or take inputs from pre-release R&R in order to ensure that the process is fruitful.

139. There are undoubtedly some commonalities between the R & R pre release and post release. However, there are some material distinctions between the two processes which have to be observed while drawing up the R & R programme/ individual child care plan for the respective phases. The institutions and agencies charged with duties to implement the R & R programme in the pre release and post release phases are also distinct.

140. Pre release R & R programme is imparted after apprehension of the child in conflict with law and during their²⁰ stay in the observation home. The said R & R programme/individual child care plan is implemented entirely in observation home with available resources.

141. On the contrary post release R & R programme/ individual child care plan is based around the family of the child, and is to be

19 their” is being used as a gender inclusive Pronoun in place of “his” or “her”. “Their” is used as a singular in such situations. [see : Time (Everything You Ever Wanted to Know About Gender-Neutral Pronouns)]

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conducted in the home and social environment in which the child ordinarily lives. Post release an individual child care plan which is part of the R & R process requires a fresh assessment and material changes which cater to the changed environment of the child. Post release R&R/individual child care plan will be implemented through various statutory institutions, agencies, care workers, nominated under the JJ Act, 2015 read with JJ Rules, 2016 specifically for the said purpose.

E. R & R : Post release- Identification, Recognition and Activation of “fit institutions and “fit persons:”

142. Separate institutions, care workers and methodologies for development and implementation of R & R programme /individual child care plan post release are created in the JJ Act, 2015 and JJ Rules, 2016.

143. Post release R & R programme/individual child care plan has to be implemented through “fit institutions” and “fit persons” under the JJ Act, 2015 read with JJ Rules, 2016. The process and duty of recognizing of “fit facilities/fit institution”, “fit persons”, “group foster care” institutions, “group foster care givers”, “case workers” is cast upon the Board or the Committee under Section 51(1) of the JJ Act, 2015 read with Rule 27 of the JJ Rules, 2016 and Section 52 of the JJ Act, 2015 read with Rule 28 of the JJ Rules, 2016 respectively. The relevant provisions of the JJ Act, 2015 read with JJ Rules, 2016 are extracted below:

“Section 51 Fit Facility: (1) The Board or the Committee shall recognise a facility being run by a Governmental organisation or a voluntary or non-governmental organisation registered under any law for the time being in force to be fit to temporarily take the responsibility of a child for a specific

purpose after due inquiry regarding the suitability of the facility and the organisation to take care of the child in such manner as may be prescribed.

(emphasis added)

(2) The Board or the Committee may withdraw the recognition under sub-section(1)for reasons to be recorded in writing.

Rule 27. Fit Facility.- (1) The Board or the Committee shall on an application from any institution or organisation run by Government or non-governmental organisation, recognise the facility as a fit facility provided the manager of that facility is willing temporarily to receive a child for a specific purpose or for group foster care.

(2) An application in Form 38 for recognition shall be accompanied with a copy each of rules, bye-laws, memorandum of association, list of governing body, office bearers, list of trustees, balance sheet of the preceding three years, statement of past record of social or public service provided by the institution or organisation.

(3) Any facility for recognition as a fit facility shall:

(i) meet the basic standards of care and protection to the child;

(ii) provide basic services to any child placed with it;

(iii) prevent child placed with it to any form of cruelty or exploitation or neglect or abuse of any kind; and

(iv) abide by the orders passed by the Board or the Committee.

(4) The Board or the Committee, after proper inspection and inquiry to ensure that provisions exist in the institution for the care and protection of children with reference to their health, education, boarding and lodging facilities, vocational facilities and rehabilitation as per the rules, and consideration of such other material as may be available, may grant recognition to such institution or organisation as a fit facility in Form 39:

Provided that any person associated with such institution or organisation should not have been convicted of an offence or have been involved in any immoral act or in act of child abuse or employment of child labour or in an offence involving moral turpitude.

(5) A decision on the application for recognition of an institution or organisation shall be taken by the Board or the Committee within a period of fifteen days from the date of receipt of the application.

(6) The recognition to an institution or an organisation as a fit facility shall be initially for a period of three years which may be renewed for a further period of three years in accordance with sub-rule (4) of this rule.

(7) The Board or the Committee may, if dissatisfied with the standard of care and protection provided, or conditions prevailing in the facility, or the management of the institution or the organisation recognised under the Act or on an adverse report made by an inspection committee appointed under section 54 of the Act, or for any other reason, at any time, by a reasoned order, withdraw the recognition of the institution or the organisation as a fit facility and from the date specified in the order of the Board or the Committee, the institution or the organisation shall cease to be a fit facility recognized under the Act and the rules.

(8) Where the recognition of a fit facility is withdrawn by the Board or the Committee, intimation of the same shall be sent to the Children's Court, Special Juvenile Police Unit and District Child Protection Unit and the children placed with such an institution or organisation may be placed by the Board or the Committee or the Children's Court to another fit facility or any other Child Care Institution.

(9) A list of fit facilities approved by the Board or the Committee shall be kept in that office and be sent to the Children's Court, Special Juvenile Police Unit, the District Child Protection Unit and the State Child Protection Society.

(10) An institution or organisation shall be recognised as a fit facility for purposes which may include:

- (i) short term care;
- (ii) medical care treatment and specialised treatment;
- (iii) psychiatric and mental health care;
- (iv) de-addiction and rehabilitation;
- (v) education;**
- (vi) vocational training and skill development;
- (vii) witness protection; and
- (viii) group foster care.**

Section 52 FIT PERSONS -. (1) The Board or the Committee shall, after due verification of credentials, recognise any person fit to temporarily receive a child for care, protection and treatment of such child for a specified period and in the manner as may be prescribed.

(2) The Board or Committee, as the case may be, may withdraw the recognition granted under sub-section (1) for reasons to be recorded in writing.

RULE 28. Fit Person.- (1) Any individual who is fit to temporarily receive a child for care, protection or treatment, for a period as may be necessary, may be recognised by the Board or the Committee as a fit person.

(2) The Board or the Committee may identify a panel of persons on the basis of their credentials, respectability, expertise, professional qualifications, experience of dealing with children and their willingness to receive the child and shall recognise them as fit persons for the purposes of the Act: Provided that such a person should not have been accused of an offence under the Act or have been involved in any immoral act or in act of child abuse or employment of child labour or in an offence involving moral turpitude.

(3) The Board or the Committee may also appoint any person as a fit person on need basis for a child or children after verifying the credentials of such person, and wherever possible, after getting police verification done on such a person .

(4) The Board or the Committee may, if dissatisfied with the standard of care and protection provided or for any other reason, at any time, by a reasoned order withdraw the recognition of the person as a fit person from the date specified in the order of the Board or the Committee.

(5) Where the recognition of a fit person is withdrawn by the Board or the Committee, intimation of the same shall be sent to the Children's Court, Special Juvenile Police Unit and District Child Protection Unit and the child placed with such a fit person may be placed by the Board or the Committee or the Children's Court to another fit person or with a fit facility or any Child Care Institution.

(6) A list of fit persons recognised by the Board or the Committee shall be kept in the office of the Board and the Committee and the Children's Court and be sent to the Special Juvenile Police Unit, the District Child Protection Unit and the State Child Protection Society.

(7) The Board or the Committee or the Children's Court may place the child with a fit person in cases wherever required, including where the child cannot be sent to a Child Care Institution due to distance and/ or odd time.

(8) The fit person shall: i) have the capacity and willingness to receive the child; and ii) provide basic services for care and protection of the child.

(9) The Board or the Committee or the Children's Court, depending on the need of the child and in consultation with the fit person shall determine the period for which a child shall remain with the fit person.

(10) The child shall not be placed with a fit person for a period exceeding thirty days and in such cases where the child requires further care, the Committee may consider the placement of the child in foster care or may consider other rehabilitative alternatives for the child. The Board or the Children's Court in such cases where the period of placement of the child may exceed thirty days, refer the matter to the Committee for further orders in respect of the child.

144. The scheme of the JJ Act, 2015 read with JJ Rules, 2016 envisages that the aforesaid recognition which is accorded by the JJB or the Committee to be "fit facilities/fit institution", "fit persons", "case workers" has to be done in the manner "as may be prescribed." The phrase "as may be prescribed" in Section 51 of the JJ Act, 2015 requires creation of criteria and inquiry into the satisfaction of such criteria before such recognition is accorded. The phrase "as may be prescribed" contemplates Rules which will assist the JJB/ Children's Court to identify and recognise "fit facilities/fit institution", "fit persons".

145. Provisions for another category of institutions for post release care namely Foster Care, Group Foster Care, Foster Care givers have also been made in the enactment. The ecosystem of the said post

release institutions also has to be activated so that fruits of the enactments are not denied to deserving children.

F. Post release R & R: Eco System and Resources

146. One of the distinctive features of post release rehabilitation and reintegration programme is the engagement of diverse stakeholders starting from family and social environment of the child. Families of children in conflict with law may be lacking in resources and deficient in other respects to cater to all the needs of the post release R & R programme /individual child care plan. To fill the gap and strengthen the process of rehabilitation and reintegration of the child, relevant stakeholders under the JJ Act, 2015 read with JJ Rules, 2016 have to be activated. Further the supportive ecosystem created thereunder for facilitating the R & R programme/individual child care plan also has to be energised.

147. The legislature has adopted an all of society and all of government approach to achieve the legislative intent of the JJ Act, 2015. Post release R & R programme/individual child care plan is a highly resourced programme. While enacting the JJ Act, 2015 the legislature has enlisted a variety of stakeholders, eligible institutions and individuals (both private and government), adopted flexible processes and created diverse funding/resourcing avenues for implementation of the R & R programme/individual child care plan.

148. Section 45 of the JJ Act, 2015 and Rule 24 of the JJ Rules, 2016 also authorise the Government to accept sponsorships:

“Section 45. Sponsorship:(1) The State Government shall make rules for the purpose of undertaking various programmes of sponsorship of children, such as

individual to individual sponsorship, group sponsorship or community sponsorship.

(2) The criteria for sponsorship shall include,—

- (i) where mother is a widow or divorced or abandoned by family;
- (ii) where children are orphan and are living with the extended family;
- (iii) where parents are victims of life threatening disease;
- (iv) where parents are incapacitated due to accident and unable to take care of children both financially and physically.

(3) The duration of sponsorship shall be such as may be prescribed.

(4) The sponsorship programme may provide supplementary support to families, to Children's Homes and to special homes to meet medical, nutritional, educational and other needs of the children, with a view to improving their quality of life.

“Rule 24. Sponsorship.- (1) The State Government shall prepare sponsorship programmes, which may include:

- (i) individual to individual sponsorship;
- (ii) group sponsorship;
- (iii) community sponsorship;
- (iv) support to families through sponsorship; and
- (v) support to Children Homes and Special Homes

(2) The sponsorship programme shall be implemented by the District Child Protection Unit which shall provide a panel of persons or families or organisations interested in sponsoring a child.

(3) The panel will list sponsors according to the area of interest such as education, medical support, nutrition, vocational training etc., and the nature of sponsorship.

(4) The District Child Protection Unit shall forward the panel to the Board or the Committee or the Children's Court.

(5) The Board or the Committee or the Children's Court may suomotu, or on an application received in that behalf, consider the placement of a child under sponsorship for which purpose it shall verify from the panel whether a sponsor is available to support such child and pass an order for placement of the child under sponsorship in Form 36.

(6) The District Child Protection Unit, in case of individual sponsorship, shall open an account in the name of the child to be operated preferably by the mother. The money shall be transferred directly from the bank account of the District Child Protection Unit to the bank account of the child.

(7) The duration of the sponsorship shall not ordinarily exceed three years.”

149. The aforesaid provisions encourage private funding, and diversify mobilization of resources for implementation the JJ Act,

2015 read with JJ Rules, 2016 by validating engagement of multiple stakeholders/contributions from different segments of the society.

150. The scheme of sponsorship envisaged in the JJ Act, 2015 read with JJ Rules, 2016 seeks to tap into the noble impulses of the society and developing collaborative partnerships with other institutions. Sponsorship is not restricted to monetary contributions. Sponsorship may be composed of other modes like providing of resource persons, books, other relevant materials and support. Sponsorship programmes are liable to be conducted in a structured manner and with clear guidelines under the watch of the State Government.

G. R & R : Post Release -

(i) Family and social environment of the child: Parents as fit persons and appointment of more than one fit person for implementing post release R & R programme of child

151. Post-release R&R programme/individual child care plan is grounded in the child's family and social environment. Family and social institutions are stakeholders in the rehabilitation and reintegration of the child in society. Parents are natural "fit persons" under the JJ Act, 2015 (unless for reasons to be recorded—they are disqualified or held ineligible to be declared "fit persons" for purposes of R & R programme).

152. The R&R programme/individual child care plan is composed of diverse activities some requiring specialized guidance and expert mentoring. Some of the said activities can only be conducted by experts, and the parents/family will be unable to do so on their own. Families of children in conflict with law are often at the margins of

the society and lack resources to implement the R&R programme/individual child care plan without additional support. The scope of an R & R programme/individual child care plan may require more than one “fit person/fit institution” for the child.

153. The fact that a child is living with their²¹ parents/family after release on bail or otherwise does not preclude the JJB/ Children’s Court to appoint additional “fit persons” or “fit institutions” to ensure the child’s welfare and to implement the R & R programme/individual child care plan.

(ii) Schools, educational institutions, teachers as “fit institutions/fit facilities”, “fit persons” for post release R & R

154. Education lies at the heart of an R & R programme/individual child care plan under the JJ Act, 2015. The R & R programme framed under Section 39 of JJ Act, 2015 and under Rule 2(ix) of JJ Rules 2016 is congruent with scope of education guaranteed to a child under Section 3 read with Section 29 of RTE Act.

155. Since education is the core of an R & R programme/individual child care plan, the suitability of schools and teachers to be nominated as "fit institutions" and “fit persons” respectively will now be examined. Further JJBs/Children’s Courts are obligated to ensure continuity and prevent disruption in the education of a child. Most importantly apart from ensuring education under R & R programme the JJBs/Children’s Courts are also under a legal mandate to pass orders for a child to attend school if the facts and circumstances of a case so require.

21 “their” is being used as a gender inclusive Pronoun in place of “his” or “her”. “Their” is used as a singular in such situations. [see : Time (Everything You Ever Wanted to Know About Gender-Neutral Pronouns)]

156. An educational institution provides an inclusive and enabling environment for children in conflict with law and facilitates their reintegration in the society. Schools possess the infrastructure and experience required to run an R & R programme. Implementation of the educational content of R & R programme/individual child care plans by schools will prevent isolation, stigmatisation and ostracisation of children in conflict with law. Schools/educational institutions have an inherent capacity to conduct a post release R & R programme/individual child care plan.

157. Teachers have most of the requisite qualifications, and experience to implement the educational component of post release R & R programme /individual child care plan as “fit persons”. Teachers perform multiple roles in nation building like educators, counsellors, mentors and guides. Teachers can hand hold the child through the post release R & R programme/individual child care plan. Teachers possess an intrinsic credibility to execute the educational content of a post release R & R programme/individual child care plan.

158. Teachers of educational institutions have the highest standing in the society to mentor a child under the post release R & R programme/individual child care plan. Educational institutions are most eminently suited to host the educational component of the R & R programme post release. Children can be confided with full confidence to undergo the post release R & R programme in schools and under the supervision of their teachers who have been identified and designated as aforesaid. Schools can be nominated as “fit facilities”/“fit institutions”, under the JJ Act, 2015 read with JJ

Rules, 2016 while teachers can be nominated as “fit persons” under the JJ Act, 2015 read with JJ Rules, 2016 after due enquiry and as per law to implement the educational content of an R & R programme/individual child care plan.

159. R & R programme / individual child care plan for a child post release can comprise of multifarious activities. At times one educational institution /fit institution may not possess all the requisite facilities to run the whole programme by itself. Various activities in the R & R programme / individual child care plan may be spread over several educational institutions and teachers as per their respective capacities and expertise.

160. An educational institution may conduct a single activity under the R & R programme/individual child care plan which it can support with its existing resources and be designated as a “fit institutions”/fit facility”, “group foster care centre” for the said activity. Subsequently institutional capacity can be expanded to incorporate more activities. Likewise teachers can also be declared “fit persons” for respective activities according to their expertise.

161. Other hybrid models to implement the R & R programme / individual child care plans may also be examined. The activity under the individual care plan may be conducted after school hours in a school designated as “fit institutions”/fit facility”, by nominated “fit persons” from the pool of retired teachers and other qualified persons.

162. Sponsorships not only by monetary means but also by providing other resources including human resources can also be employed as

per the statute for creating requisite infrastructure in educational institutions and other institutions for implementing the post release (or even pre release).

(iii). Schools as “fit institutions” : Precautions

163. However, schools cannot be appointed as “fit institutions” and teachers as “fit persons” in a mechanical fashion. The appointment of schools as “fit institutions” and teachers as “fit persons” to implement the educational component of the R & R programme/individual child care plan has to be preceded with due diligence, relevant enquiries and adoption of necessary precautions. Heinous nature of the offence and mental capacity of the juvenile is an important consideration in any such inquiry. Psychological and other needs of the child shall also be considered in by the JJB/Children’s Court. Overall impact of R & R programme/individual child care plan on the schools, concerns of other stakeholders, securing the interests of all children, available resources and protection of the child’s identity are some of the suggested criteria which may need to be factored in before nominating an educational institution as a “fit institution”. Necessary measures have to be taken to ensure that lives of children and protective environment of the school are not disrupted. Alternative institutions and methods of education can be adopted in case after enquiry it is found that regular school education is not feasible.

164. The State Government has to develop a balanced, composite and equitable policy to implement the right to education under the RTE Act, 2009 which encompasses the educational content in the R&R programme/individual child care plan under the JJ Act, 2015,

for children in conflict with law and also those who are facing enquiries but enlarged on bail. Hence it is imperative that the State Government frames Rules under the JJ Act, 2015 for nominating schools as “fit institution and “fit persons” by incorporating the necessary checks and balances which reconcile various competing demands.

(iv). Other “fit institutions” / “fit facilities”, “group foster care”, “fit persons”, “care workers”

165. Apart from schools and teachers there are other institutions, entities and community groups which can come within the ambit of “fit facilities/fit institutions”, “fit persons” and “group foster care” or “care workers”. These classes of resources available in the society have to be harnessed and channelised for implementation of R&R programme/individual child care plan. These institutions include retired teachers, professors, civil servants, service personnel, professionals, and bodies of aforesaid classes in the society or any other organizations which conform to the provisions of JJ Act, 2015 read with JJ Rules, 2016.

166. The State Government may create the criteria for various social groups and entities and individuals who can qualify as “fit facilities/fit institutions”, “fit persons” and “group foster care” or “foster care giver” under the JJ Act, 2015, and also identify them after due enquiry. The criteria and list of such fit facilities and institutions on a district wise basis may then be sent to the Board or Committee for recognition after a scrutiny of the credentials of such institutions and persons in light of the provisions of the JJ Act, 2015 read with JJ Rules, 2016 and this judgement.

(v). Social Reintegration and duties of schools and community groups and other non-governmental organizations

167. The onus of participating in rehabilitation activities is certainly on the child, but the obligation of reintegration in the society rests with educational institutions and other stakeholders. Reintegration of a child in conflict with law (including children those in conflict with law with intersectional disabilities) cannot be achieved without active contribution and support of various, schools/educational institutions and other social or community institutions/entities. Schools and educational institutions in particular need to be sensitized to the responsibilities they owe to children in conflict with law and even incentivised to discharge these obligations.

168. Participation of schools and educational institutions in the R & R programme/individual child care plans in line with the provisions of the JJ Act, 2015 read with JJ Rules, 2016, RTE Act, 2009 and other sister enactments (as discussed earlier) is the first and most critical step towards reintegration of child in conflict with law. The social attitudes towards reintegration of children in conflict with law will be shaped in the manner in which educational institutions and other social institutions discharge their duties towards this class of children.

169. Schools and teachers can be incentivised to upgrade infrastructure and update skills to effectively perform their functions as “fit institutions” and “fit persons” respectively. The constitutional imperative of Article 21A and the compulsory mandate of the RTE Act, 2009 and JJ Act, 2015 enjoin that the education system has to embrace children in conflict with law and those in need of care and

protection. The State has to take appropriate steps to bring the said children within the fold of the education system. Children in conflict with law and those in need of care and protection cannot be ousted from the educational mainstream if they have to be reintegrated into the national mainstream.

X. Stand of the State Government-Affidavit of the Additional Chief Secretary, Department of Women and Child Development, Government of UP

[Affidavits of State Government on Various Issues]

(A). Stand of State Government on institutions existing in the State for post release R & R

170. While framing the R & R programme/individual child care plan this Court had directed the State Government to file an affidavit disclosing the existing facilities to implement the post release R & R programme/individual child care plan and the eco system of “fit institutions”, “fit persons”, “foster care”, “group foster care” under the JJ Act, 2015 in the State of UP.

171. The affidavit dated 24.03.2026 filed on behalf of the Government of U.P. asserts that in the entire State of U.P., the following fit facilities/fit institutions”, “fit persons” and “group foster care” or “foster care giver” have been identified:

I. Three fit persons- one in Aligarh and two in Lalitpur

II. Three fit facilities – One in Lalitpur, two in Varanasi

III. 14 foster care families – 1-1 in Ghaziabad, Gonda, Gorakhpur, Moradabad, Hardoi, Two in Varanasi and Seven in Lucknow.

172. From the affidavit of the State it is evident that “fit facilities/fit institutions”, “fit persons” and “group foster care” or “foster care

institutions” for implementing post release R & R programme are practically non existent in the State. The State has a far greater requirement of “fit institutions” and “fit facilities” than are currently existing.

173. The affidavit also asserts that no “fit facilities/fit institutions”, “fit persons” and “group foster care” or “foster care giver” are identified in the districts of Kasganj and Mainpuri. However, the department has issued a direction for identifying fit facilities/fit institutions”, “fit persons” and “group foster care” or “foster care giver” in every district of the State of UP. Advertisements in this regard have also been appended in this affidavit. The Government Order dated 01.08.2017 providing the procedure for fit facilities/fit institutions”, “fit persons” and “group foster care” or “foster care giver” in every district of the State has also been brought in the record.

174. By letter dated 10.10.2023 in Mission Vatsalya Scheme, the State Government directed all District Magistrate to take necessary action regarding the identification of fit facilities/fit institutions”, “fit persons” and “group foster care” or “foster care giver” in each district.

175. Actual identification and engagement of “fit facilities/fit institutions” or “group foster care” and of “fit persons”, “group foster care givers” cannot be neglected. Lack of requisite numbers of “fit facilities/fit institutions”, “fit persons”, “group foster care”, “institutions”, “group foster care givers”, “care workers” for post release implementation of R & R /individual child care plan is obstructing implementation of the post release R & R programme

and undermining the beneficent purpose of the JJ Act, 2015 read with JJ Rules, 2016.

(B) Stand of the State Government on nomination of schools/teachers as “fit institutions/fit persons” to implement the education content of R & R programme/individual child care plan

176. Furthermore this Court by orders dated 29.01.2026 and 12.02.2026 had also asked the State Government to clarify its stand on the feasibility of nominating schools as “fit institutions” and teachers therein as “fit persons” after due consideration of relevant factors to implement the educational component of the R & R programme framed by the JJB/CC post release of the child.

177. The affidavit filed on behalf of the State Government does not disclose any opposition to nominating schools as fit institutions and teachers therein as fit persons. However, the State Government in the affidavit has asserted that status of “fit facilities/fit institutions”, and “fit persons” can be granted only to those facilities that are residential in nature as such facilities required 24x7 care for children. The aforesaid stand of the State Government in the affidavit is not in consonance with the scheme of the JJ Act, 2015 read with JJ Rules, 2016 which has been interpreted in the preceding part of the judgement. Post release R & R programme is grounded in the family and social environment of the child. Insistence on exclusive residential facilities as a precondition for “fit institution” will bar access to education for children undergoing post release R & R/individual child care plan. The stand of the State Government in restricting the scope of “fit facilities/fit institutions”, “fit persons” for implementation of post release R & R programme is accordingly rejected.

178. However, the redeeming feature in the affidavit filed by the State Government is the unequivocal assertion that the Basic Education and Secondary Education Departments, which run day schools in the State are willing to play a supportive role in aspects related to the education of the said class of children.

179. In this wake the day schools run by the Basic Education and Secondary Education Departments can be declared as “fit facilities” and the teachers therein can be declared as “fit persons” by the JJB/CC after due consideration of relevant criteria to implement the educational component of the R&R programme post release of the child on bail and after enquiry.

180. It is equally heartening to note the submission made on behalf of the State by Shri Anoop Trivedi, learned Additional Advocate General, that the State considers itself the guardian of all children in the State. The State is equally conscious of its obligations as *parens patriae* to provide education to all children without discrimination or distinction.

181. The learned Additional Advocate General categorically states that the State is committed to the education and holistic development of children who are in conflict with law as well and other children in need of care and protection under the JJ Act, 2015.

182. Learned Additional Advocate General also contends that State will ensure that children in conflict with law and children in need of care and protection are not denied their rights to education comprised under the RTE Act and the R&R programme/individual child care plan framed under the JJ Act, 2015.

(C). Stand of State Government regarding lack of budget allocation

183. The affidavit of the State Government asserts that there is no financial provision for fit persons or fit facilities which are to be identified under the JJ Act, 2015 read with JJ Rules, 2016. The lack of financial allocation is a matter of budgetary detail, and cannot be made the justification for frustrating the enactment itself or denying rights of children vested under the JJ Act, 2015 and the RTE Act, 2009. It is the responsibility of the appropriate Governments to provide the necessary finances or resources to ensure effectuation of the rights of children to education under the R&R programme framed under the JJ Act, 2015, which is concomitant with the right to education conferred upon the aforesaid class of children under the RTE Act, 2009 and the fundamental right entrenched under Article 21A of the Constitution of India.

184. At this stage the Court would like to express its concern or rather distress at the non allocation of financial resources for implementation of of post release R & R programme framed under the JJ Act, 2015. As seen in the earlier part of the narrative post release R& R programme for the child in conflict with law or the child released on bail during the pendency of the enquiry is most critical element of the scheme of the JJ Act, 2015 and the right of education of such child. Faithful implementation of the legislative mandate of any enactment is the cornerstone of rule of law and constitutional order. The State cannot evade its statutory duty and constitutional obligations to effectuate the right of education of a child in conflict with law (or facing an enquiry under the JJ Act), which is embedded in the R&R programme. In any case admitting

children in regular day schools would not entail any additional financial burden upon the State Government. Furthermore the JJ Act, 2015 contemplates diversification of resource pools and funding sources. The legitimacy accorded to sponsorship by the statute requires engagement and even partnerships with non government entities as well. Creation of the ecosystems under the JJ Act, 2015 is an imperative requirement for implementing the post release R & R programme.

185. The Court will be failing in its duty if it does not notice some of the exemplary and innovative measures taken out by the State Government for realizing the rights of children in conflict with law. The State Government has accepted the need for a nuanced approach to the education of children in conflict with law by creating a proper pedagogical framework and also devising specialized curriculum for training of teachers and caregivers to children residing in child care institutions.

(D). Stand of State Government/Affidavit of the State regarding Rules for recognition of “fit institutions/fit persons” to implement the education component of R & R

186. The rule-making power under the JJ Act, 2015 is vested under Section 110 of JJ Act, 2015. The relevant provision is extracted hereunder:

“110. Power to make rules—

(xx) manner in which a quarterly report may be submitted by the Committee to the District Magistrate for review of pendency of cases under sub-section (4) of section 36;

(xxiv) procedure for cancelling or withholding registration of an institution that fails to provide rehabilitation and re-integration services under sub-section (7) of section 41;

(xxxvii) manner in which a Board or the Committee shall recognise, a facility being run by a Governmental organisation or a voluntary or non-governmental organisation registered under any law for the time being in force, fit to temporarily take the responsibility of a child for a specific

purpose after due inquiry regarding the suitability of the facility and the organisation to take care of the child under sub-section (1) of section 51;

(xxxviii) procedure of verification of credentials, for recognising any person fit to temporarily receive a child for care, protection and treatment of such child for a specified period by the Board or the Committee under sub-section (1) of section 52;

(xlii) appointment of inspection committees for all institutions registered or recognised fit, for the State and district under sub-section (1) of section 54;

187. The State Government has brought in record various existing rules framed under the relevant provisions of the JJ Act, 2015. However, the said Rules which are brought in the record do not provide for the criteria for recognition of “fit institutions”, “fit persons”, “foster care”, “group foster care” who will be nominated for implementing the educational component of the R & R programme. The State is liable to frame Rules under the JJ Act, 2015 for recognition of “fit institutions”, “fit persons”, “foster care”, “group foster care” who will bring to fruition the constituent element of education of the R & R programme/individual child care plan and realize the right to education of children in conflict with law and those in need of care and protection.

188. Rights of children under the constituent elements of education of the R & R programme/individual child care plan cannot remain still born in the absence of Rules. In case implementation of the educational component of R & R programme/individual child care plan is stalled on the footing of non existence of rules, a generation of children will be denied their basic right to education which is fundamental to their reintegration into the society. Executive inertia cannot frustrate legislative purpose or cause a constitutional stasis.

189. Till such Rules are framed under the JJ Act, 2015, as a provisional measure the JJBs/CCs can appoint non residential/day schools run by the government and teachers therein as “fit institutions” and “fit persons” respectively for implementing the educational content of the post release R & R programme/individual child care plan. Prior to such nomination the JJBs will examine all relevant criteria and make necessary enquiries as stated in the earlier part of this judgment. The State authorities, local administration and educational authorities are liable to provide necessary assistance and inputs to the JJBs for identifying such “fit institutions” and “fit persons” under the JJ Act, 2015 for the aforesaid purposes.

XI. The Road Ahead

190. The distinctive features of the JJ Act, 2015 read with JJ Rules, 2016 contemplate changes in jurisprudential approaches and transformation of administrative practices.

191. The JJ Act, 2015 contemplates different government departments to work in harmony to achieve the legislative aim. The bane of departments working in silos, or at cross purposes and departmental turf wars will frustrate the mandate of the JJ Act, 2015.

192. Effective implementation of the JJ Act, 2015 (and other sister enactments RTE Act, 2009, PwD Act, 2016, MH Act, 2017) pertaining to provisions of the post release R & R programme/individual child care plan, can be ensured only when the State Government and other statutory stakeholders including private entities, non government voluntary organizations plan in synergy and act in concert. The

scheme of the enactment also requires the State Government to work in synchrony with private stakeholders mentioned in the statute.

193. The objects of the JJ Act, 2015 will be achieved by creation and activation of the statutory ecosystem which supports the implementation of the R & R programme/individual child care plan.

194. The meaning and content of education and the pedagogical techniques through which education is imparted to children in conflict with law (including children in conflict with law and are in need of care and protection) require deep study and a sensitized approach. The multifarious aims and learning outcomes which are sought to be achieved through R & R posit the need for a specialized pedagogy and curriculum and building capacities through well thought out training programmes of stakeholders to discharge their duties.

195. A comprehensive and well researched pedagogy and curriculum which will form the basis of R & R programme/ individual child care plan is an indispensable requirement for in achieving the common legislative aims of JJ Act, 2015, RTE Act, 2009, Mental Healthcare Act, 2017 and Disabilities Act, 2016. Flexibility in adopting pedagogical methods based on individual needs of a child will be the key to the success of the R & R programme/individual child care plan.

196. Creative crafting, effective implementation and diligent monitoring of the R & R programme /individual child care plan under the JJ Act, 2015 read with JJ Rules, 2016 alone will fruitfully realize the right of a child in conflict with law (or in need of care and protection) to education under the RTE Act, 2009.

XII. Answers to the Questions

197. A. The High Court while granting bail is liable to examine the need of R & R programme/individual child care plan and/or school education post release for the child and is also under the bounden duty of law to initiate the process of R & R programme/individual child care plan and Section 39 of the JJ Act, 2015 and frame the individual child care plan under Rule 2(ix) of the JJ Rules, 2016 and to cater for school education in case such need exists.

B. The JJB/Children's Court is also under a similar obligation of law to examine the need for R & R programme/individual child care plan and/or school education for a child in conflict with law after the release on bail and is also liable to frame R & R programme/individual child care plan if a need for the same exists.

C. The institutions having attributes of "fit institutions"/"group foster care centres" and individuals/persons having necessary attributes in qualification of "fit persons"/foster care givers"/"group foster care givers" are liable to implement the post releases R & R programme/individual child care plan. The institutions have to be identified by the JJB/Children's Court with the assistance of the local administration/State government. The execution of post release R & R programme/individual child care plan will be in the oversight of the JJB/Children's Court. It is open to the JJB/Children's Court to declare schools as "fit institutions" and the concerned teachers as "fit persons" after due enquiry for implementing the educational component of R & R programme/individual child care plan in the manner discussed in the judgement.

XIII. Conclusions

198. In wake of the preceding discussion, the scheme of rehabilitation of children under the JJ Act, 2015 read with JJ Rules, 2016 can be brought to fruition in legal processes before the JJBs/Children's Court by executing the following directions:

I. JJBs/Children's Courts shall assess the need of the child for R & R programme/individual child care plan while releasing a child on bail. After such evaluation in case the need for R & R programme is found, the JJBs/Children's Courts shall frame an R & R programme/individual child care plan as envisaged under the JJ Act, 2015 read with JJ Rules, 2016 and oversee its implementation.

II. The JJBs /Children's Courts shall monitor the implementation of the R&R programme/individual child care plan so framed during the pendency of the inquiry. If required the JJBs/Children's Courts may take the assistance of the school authorities, statutory authorities and local administration and even the child's family in these matters.

III. The JJBs/ Children's Courts shall evaluate the educational status and needs of the child; and if the best interests of the child so require ensure the admission of the said child in school and continuity of education. Appropriate measures shall be taken by the JJB/ Children's Court to prevent disruption of the child's education. The local administration/educational authorities shall assist the JJB/ Children's Court in maintaining oversight on the child's education as part of the rehabilitation and reintegration process.

IV. The JJBs/Children's Courts upon conclusion of the enquiry shall assess the need of the child for R & R programme/individual child care plan and/or for school education. In case the need for R & R

programme is made out after such assessment the JJB/ Children's Court shall frame the R & R programme/individual child care plan and/or ensure admission of the child in school as contemplated under the JJ Act, 2015 read with JJ Rules, 2016. R & R programme/individual child care plan framed after conclusion of enquiry shall be monitored by the competent State/statutory authorities.

V. Due diligence and consideration of relevant facts shall be made prior to the admission of the child in school. In case admission of a child in a regular school is not feasible the JJB/ Children's Court may explore other alternative schemes to ensure continuity of education for the child.

VI. R & R programme shall be framed by the JJB/ Children's Court after due consultation with various statutory stakeholders and experts and consideration of relevant materials as contemplated under the JJ Act and discussed in the preceding part of the judgement.

VII. The R&R programme/individual child care plan framed by the JJB/ Children's Court shall contain the constituent elements of education and other activities as contemplated under the JJ Act, 2015 read with JJ Rules, 2016.

VIII. Day schools which are being run by the Government of U.P. and are under the Basic Education Department and Secondary Education Departments are liable to be considered for recognition as "fit institutions" and the teachers therein as "fit persons" for implementing the constituent educational element of post release R & R programme/individual child care plan.

IX. The JJBs/ Children's Courts shall identify educational institutions/schools as "fit institutions" and teachers as "fit persons" and other statutory institutions and stakeholders after due enquiry and consideration of relevant factors in light of this judgement for implementing the educational content and other aspects of the R&R programme/individual child care plan respectively. The local educational authorities as well as the State educational authorities shall assist the JJBs /Children's Courts in identification of "fit institutions" and nomination of teachers who will mentor the child as "fit persons".

X. Upon proper enquiry the child shall be enrolled in the aforesaid school nominated as "fit institution" under the mentoring of teachers nominated as "fit persons" for undergoing constituent elements of education of the R & R programme which is concomitant with the right of the children to education under the RTE Act.

XI. Other institutions or educational institutions and teachers and professionals volunteering their services should also be considered for recognition as "fit institutions"/fit persons after due inquiry and satisfaction of relevant criteria to be set up by the State Government.

XII. While identifying "fit institutions" and "fit persons", the JJBs/Children's Courts shall take appropriate steps to protect the anonymity of the child and prevent disclosure of their²² identity.

XIII. Post release R & R programme/individual child care plan can be successfully implemented only by activating the statutory ecosystem under the JJ Act, 2015 read with JJ Rules, 2016 of "fit institutions", "fit persons" "foster care", "group foster care" which

22 "their" is being used as a gender inclusive Pronoun in place of "his" or "her". "Their" is used as a singular in such situations. [see : Time (Everything You Ever Wanted to Know About Gender-Neutral Pronouns)]

facilitate reintegration of the child in the social mainstream. State Government shall accordingly take appropriate measures including framing Rules for ensuring the compliance of the provisions under the JJ Act, 2015 read with JJ Rules, 2016 for smooth execution of the post release R & R programme/individual child care plan and integration of the child in the social mainstream.

XIV. The State Government shall take appropriate measures to implement the constituent element of education of the R & R programme under the JJ Act, 2015 read with JJ Rules, 2016 for children in conflict with law and those in need of care and protection as a part of the right to education under the RTE Act, 2009 read with Article 21A of Constitution of India.

XIV. Need for R & R programme for the minor appellants

199. During the pendency of both connected appeals, this Court had directed the respective DPOs of district Kasganj and Mainpuri to submit social investigation report and social background report as contemplated under the JJ Act, 2015. The aforesaid reports enabled the Court to determine the socio-economic and educational status of the child's family and also the social environment of the child.

200. The Court also interacted with the DPOs of district Kasganj and Mainpuri and perused the affidavits filed by them. Based on the aforesaid, the Court was able to assess the needs of the child for R & R programme, and found that both the children needed an R & R programme after release on bail.

201. During the pendency of the appeal, this Court had earlier prima facie determined the need of the children for R & R programme/individual child care plan. As an interim measure the R &

R programme/individual child care plan for both the children were framed. Each child was admitted in a school to undergo the educational component of the aforesaid R & R programme. Further as an interim measure during the pendency of the appeals the said schools were recognized as “fit institutions” while the teachers therein were recognized as “fit persons”. The respective JJBs were directed to oversee the progress of each child in the R & R programme so framed.

202. At the stage of final judgement in appeal, this Court finds that the need for R & R programme still exists and it has to be continued in the best interests of each child. The fact that the children are showing progress in the R & R programme/individual child care plan reinforces the need and efficacy of the same. (This is without prejudice to the merits of the case). Accordingly the following R & R programme is framed for the child which shall be continued/implemented by the school in which he has been admitted:

I. Academics

II. Yoga

III. Sports

IV. Music

V. Arts

VI. Crafts

VII. Theatre and story telling

VIII. Nurturing of trees and plants to develop respect and love for the environment

IX. Group activities with other students.

X. Activities to imbibe good moral values and life skills which also require sustained and fruitful interactions with teacher mentors.

XI. Counselling as and when required

XII. Nutritious food in the mid day meals.

203. The aforesaid programme will be run by the school authorities which are held to be “fit institutions” for the purposes of this case and the teachers of the child shall be deemed to be “fit persons” for the purposes of this case.

204. The reports regarding the progress of the children shall be submitted before the respective JJB/Children’s Court on a regular basis during the pendency of the enquiry. The jurisdictional JJB/Children’s Court shall regularly monitor the progress of the child and take remedial measures as and when necessary. Services of the respective District Probationary Officers and local administration may be taken for the said purpose.

205. During the process of R & R programme/individual child care plan the anonymity of the child will be protected by the school authorities.

XV. Bail on merits

206. This criminal appeal under Section 101(5) of J.J. Act, 2015 has been preferred by the appellant with the prayer to release the minor appellant on bail and also to set aside the bail rejection order dated 03.01.2024 passed by the Children’s Court/Special Judge (POCSO Act), District Kasganj in Sessions Case No. 1133 of 2023 arising out of Case Crime No. 203 of 2023 under Sections 328, 363, 366, 376D

IPC and Section 5/6 of POCSO Act and Section 67A of I.T. Act, Police Station Patiyali, District Kasganj.

207. The appellant is on interim bail granted by this Court on 18.12.2024.

208. Shri Yashaswin Venugopal Bajpai, learned counsel, Ms. Vishakha Pandey Bajpai, learned counsel and Shri Manu Srivastava, learned counsel on behalf of the applicant submits that the following grounds and the material aspects which were neglected from consideration or not properly appreciated by the learned trial court in accordance with law could not be satisfactorily refuted by Shri Paritosh Kumar Malviya, learned AGA-I from the record and entitle the appellant to be enlarged on bail:

I. The victim was wrongly shown as a minor of 15 years in the F.I.R. only to falsely implicate the appellant under the stringent provisions of the POCSO Act and cause his imprisonment.

II. There are material contradictions in the age of the victim as recorded in various prosecution documents. The victim is infact a major.

III. The applicant and the victim resided in the same neighbourhood and bonded together. Both sides had feelings for each other.

IV. The F.I.R. is the result of opposition of the victim's family to the said relationship, and has been lodged to deflect attention from the victim's role in the consensual relationship.

V. As per the prosecution case set out in the F.I.R. the incident occurred on 10.05.2023. The F.I.R. was got lodged on 13.07.2023.

Delay in lodgement of the F.I.R. in the facts of this case is fatal to the prosecution case.

VI. There are several discrepancies in the date of the alleged incident in the F.I.R.. the statement of the first informant under Section 161 Cr.P.C. and the statements of the victim under Sections 161 Cr.P.C. and 164 Cr.P.C.

VII. False and aggravated allegations were made by the victim against the appellant in her statements under Section 161 Cr.P.C. and 164 Cr.P.C. at the behest of her parents only to save the failing prosecution case.

VIII. The victim was never confined or bound down in any manner. The victim was present at public places. She did not raise an alarm nor did she resist the applicant. She got married with the applicant in a temple and the marriage ceremony was videographed. Her conduct shows that she was a consenting party.

IX. No medical evidence/blood report disclosing the presence of noxious substance in the blood or consumption of a sedative drink which would render the victim semiconscious has been produced by the prosecution.

X. Major inconsistencies in the statements of the victim under Sections 161 Cr.P.C. and Section 164 Cr.P.C., as well as the recitals in the F.I.R. discredit the prosecution case.

XI. Medical evidence to corroborate commission of rape by the appellant with the victim has not been produced by the prosecution.

XII. The appellant did not capture or circulate any indecent photographs or video of the victim. No such videos were recovered from the appellant.

XIII. Prosecution evidence does not connect the appellant with the offence.

XIV. The appellant does not have any criminal history apart from the instant case.

XV. The appellant is not a flight risk. The appellant being a law abiding citizen has always cooperated with the investigation and undertakes to join the trial proceedings. There is no possibility of his influencing witnesses, tampering with the evidence or reoffending.

209. In the light of the preceding discussion, facts and circumstances of the case and in view of the nature of the offence and evidence the appellant has made out a case for bail. The trial court erred in rejecting the bail application. The impugned order dated 03.01.2024 passed by the Children's Court/Special Judge (POCSO Act), District Kasganj is liable to be set aside and is set aside.

210. The appeal is allowed.

211. Let the appellant- **X Juvenile — Rehabilitation and Reintegration** be released on bail in S.C. No. 1133 of 2023 arising out of Case Crime No. 203 of 2023 under Sections 328, 363, 366, 376D, 506 IPC and Section 5/6 of POCSO Act and Section 67A of I.T. Act, Police Station Patiyali, District Kasganj on the personal bond and two sureties given earlier before the learned trial court at the time the appellant was released on interim bail. No further sureties will be

demanded from the appellant. The following conditions be imposed in the interest of justice:-

- (i) The appellant will not tamper with the evidence or influence any witness during the trial.
- (ii) The appellant will appear before the trial court on the date fixed, unless personal presence is exempted.

212. The learned trial court is directed to fix the sureties after due application of mind in light of the judgement rendered by this Court in **Arvind Singh v. State of U.P. Thru. Prin. Secy. Home Deptt. (Application U/S 482 No.2613 of 2023)**.

213. The learned trial court shall ensure that the right of bail of the appellant granted by this Court is not frustrated by arbitrary demands of sureties or onerous conditions which are unrelated to the socioeconomic status of the appellant.

214. Copies of this judgement to be served upon:

- I. All Juvenile Justice Boards and Children's Courts throughout the State of U.P.
- II. Additional Chief Secretary, Department of Women and Child Development, Government of U.P.
- III. Additional Chief Secretary, Basic Education, Government of U.P.
- IV. Additional Chief Secretary, Secondary Education, Government of U.P.
- V. Principal Secretary, Vocational Education & Skill Development & Entrepreneurship, Government of U.P.

(Ajay Bhanot, J.)

August 31, 2026
Dhananjai Sharma