

SHIVANGI GANGWAR Vs STATE OF UTTARAKHAND AND OTHERS

Court: Uttarakhand High Court

Date of Decision: May 23, 2018

Acts Referred: Mental Healthcare Act, 2017 â€” Section 104

Right to Information Act, 2005 â€” Section 17

Juvenile Justice (Care and Protection of Children) Act, 2015 â€” Section 2(1), 2(5), 2(9), 2(12), 2(14), 2(15), 2(19), 2(21), 2(27), 2(29), 2(40), 2(41), 2(42), 27, 31, 32, 33, 36, 37, 39(4), 40, 41, 41(1), 42, 43, 46, 47, 48, 49, 50, 51, 53, 54, 75, 78, 81, 92, 93, 95, 97, 106, 108, 109, 110

Right of Children to Free and Compulsory Education Act, 2009 â€” Section

Commission for Protection of Child Rights Act, 2005 â€” Section 84

Law Reform (Miscellaneous Provisions) Act, 1934 â€” Section 1(2)(a)

Reserve and Auxiliary Forces (Protection of Civil Interests) Act, 1953 &mdash Section 13(2)

Indian Evidence Act, 1872 â€” Section 106

Code of Criminal Procedure, 1973 â€” Section 161, 313

National Commission for Protection of Child Rights â€” Section 3, 17

Indian Penal Code, 1860 â€” Section 330, 331

Constitution of India, 1950 â€” Article 15(3), 21, 22, 24, 32, 39, 39A, 39(e), 39(f), 47, 51A, 226

Juvenile Justice (Care and Protection of Children) Model Rules, 2016 â€” Rule 15, 15(1), 22, 22(5), 23, 24, 25, 26, 27, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 43, 55, 56, 57, 59, 60, 61, 63, 64, 66, 74, 75, 76, 79, 81, 82, 84, 87, 92, 93

Hon'ble Judges: RAJIV SHARMA, J, SHARAD KUMAR SHARMA, J

Bench: Division Bench

Advocate: Shakti Singh, Prabha Naithani

Final Decision: Disposed Of

Judgement

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Rajiv Sharma, JÃ„," ,,,

1. On the oral prayer of learned counsel for the petitioner, Ministry of Social Justice and Empowerment, through its Secretary is added/arrayed as" ,,,

respondent no.8, in view of the letter addressed to one of us (Rajiv Sharma, J.) by the father of the inmate. Mr. Rakesh Thapliyal, learned Asst." ,,,

Solicitor General appearing for Union of India has waived service of notice on behalf of newly arrayed respondent." ,,,

2. A question of grave public importance has been raised in the present petition (PIL) highlighting the molestation, rape, harassment and victimization" ,,,

of Nari Niketans inmates in the State of Uttarakhand, more particularly, in Nari Niketan, Kedrapuram, Dehradun." ,,,

3. It is averred in the petition that in the State, two inmates of Nari Niketan, Kedarpuram, Dehradun have died under mysterious circumstances. One" ,,,

deaf and dumb inmate has been subjected to rape/sexual harassment and forcible abortion. The death of two inmates is suspicious. The State has not,,,

taken any appropriate action to ascertain the cause of death of two inmates. One sweeper was arrested in sexual harassment of the deaf and dumb,,,

inmate of Nari Niketan, Kedarpuram, Dehradun. His DNA matched with the victim.Ã,,,

4. Petitioner has sought information under the Right to Information Act, 2005. Petitioner was informed that in the State of Uttarakhand, there are only",,,

three Nari Niketans i.e. Nari Niketan, Naugaon, District Uttarkashi, Nari Niketa, Narendra Nagar, Tehri Garhwal and Nari Niketan, Kedarpuram,",,,

District Dehradun. These three Nari Niketans are situated in Garhwal Division. There is no Nari Niketan in Kumaon Division.,,,

5. Petitioner has sought information about the monthly allowance sanctioned to the inmates for their meals and other expenses. It was informed that,,,

the State Government has sanctioned Rs. 1,600/- per month for meal and other expenses.",,,

6. A startling revelation has been made when 14 inmates of Nari Niketan, Kedarpuram, Dehradun were admitted in Doon Hospital. According to the",,,

news items which have appeared in the daily edition of vernacular newspaper, the inmates are living in inhuman conditions. The inmates of Nari",,,

Niketans are not allowed to go outside the Nari Niketans except to attend the Court proceedings and for medical treatment to hospital. The conditions,,,

of shelter homes are also very pathetic.,,,

7. The mentally ill/retarded inmates are also kept in the Nari Niketans. There is no adequate facility of psychiatrists for these mentally ill/retarded,,,

inmates. The mentally ill inmates are residing in the Nari Niketans since 1999-2000, as per the information received under the Right to Information,",,,

Act.,,,

8. The different Non-Governmental Organizations (NGOsÃ¢â€â€) are also running Nari Niketans/shelter homes.,,,

However, the conditions of these Nari Niketans/shelter homes/children homes are also deplorable. No arrangements have been made for return of",,,

inmates to their homes. It is the duty of the State Government to make policies in furtherance of Articles 39, 39-A and 47 of the Constitution of India.",,,

Ã,,,

9. There is overcrowding in the Nari Niketans. In Nari Niketan, Kedarpuram, Dehradun, there are 111 inmates, as per the information supplied under",,,

the Right to Information.,,,

10. Petitioner has prayed that prompt and effective steps be taken for providing required nutrition, medical facilities, adequate living standards and",,,

protection from sexual harassment to the inmates residing at Government Nari Niketans and shelter homes run by the Government as well as by,,,

NGOs. An Inquiry Committee be constituted under the supervision of this Court to find out the culprits who were committing rape and forcible,,,

abortion of inmates of Nari Niketan, Kedarpuram, Dehradun. The inmates be made self-dependant. A mandamus be issued directing the respondents",,,

to take effective steps for increasing the number of Nari Niketans in the State in each district.,,,

11. It has come in the counter affidavit of respondent no.4 that the Government is running two other centers i.e. Government Protection Home," ,,,

Almora and District Shelter Home, Haldwani. The inmates were provided the diet as per the Menu Chart. The CCTV cameras have been installed." ,,,

There is proper medical aid. It is also admitted in the counter affidavit that the mentally ill/retarded inmates are also housed in the Nari Niketan. It is,,,

also admitted that one inmate who is deaf and dumb was sexually exploited by the employees of the Nari Niketan, Dehradun. Nine employees were" ,,,

arrested by the police. They were sent to jail. The DNA sample of one sweeper matched with the victim. The trial bearing Sessions Trial No.59 of,,,

2016 is pending before the Sessions Judge, Dehradun. They have been put under suspension and the services of the contractual employees have been" ,,,

terminated.Ã,,,

12. The State Government vide order dated 02.01.2016 has increased the monthly allowance of the inmates to Rs.3,050/-Ã," ,,,

13. It is also averred in the counter affidavit that 14 inmates were taken ill. They were taken to Doon Hospital and after treatment, they were" ,,,

discharged. The District Magistrate, Nainital has taken the cognizance of the news items and visited the shelter home at Haldwani on 09.03.2015. The" ,,,

Nari Niketan was inspected by the Secretary, District Legal Service Authority, Nainital and learned Senior Magistrate, Juvenile Justice Board." ,,,

Vocational training was provided to the inmates of Nari Niketan/District Shelter Home. National Institute for Entrepreneurship and Small Business,,,

Development (NIESBID) imparting training of knitting and weaving to the normal inmates. Sewing/tailoring training was also imparted to the inmates,,,

of the Yuva Kalyan Vibhag, Almora. The Home Guards and the Women Constables were deployed to protect the inmates. It has come in the news" ,,,

item that one 35 years old inmate has died on 17th December and another has died on 25th December. The four inmates on 28th December and,,,

three inmates on 29th December were admitted in hospital. There are two foreigners staying in the Nari Niketan.,,,

14. A startling revelation has been made in the affidavit that in Nari Niketan, Kedarpuram, Dehradun, there are 3 inmates, who are physically fit." ,,,

There are 14 inmates who are mentally ill/ retarded in Nari Niketan, Kedarpuram. In Haridwar, there are 48 mentally ill/retarded inmates. In" ,,,

Haldwani, there are 19 inmates, who are mentally ill/retarded." ,,,

15. What emerges from the facts enumerated hereinabove is that the State Government is running three Nari Niketans and two shelter homes at,,,

Haldwani and Almora. The conditions of these Nari Niketans are deplorable. The mentally ill/retarded inmates are also kept with their children in Nari,,,

Niketan, which is not permissible under the Law. The inmates were initially paid monthly allowance Rs.1,600/- which was revised later on to",,,

Rs.3,050/- vide Government Order dated 02.01.2016. Two inmates have died in mysterious circumstances and no inquiry was held to fix the",,,

responsibility. One deaf and dumb girl was sexually exploited by the staff of the Nari Niketan, Kedarpuram, Dehradun. The DNA of the sweeper",,,

matched with the victim. They are facing trial before the Sessions Court, Dehradun. The contractual employees have been terminated. The regularly",,,

appointed employees of Nari Niketan have been put under suspension. 14 children were suffering from malnutrition. They have been taken to hospital.,,,

The District Magistrate has also visited the shelter home at Haldwani. He noticed deplorable conditions prevailing in the shelter home. There are no,,,

recreational facilities provided to them. They are not permitted to come out to Nari Niketan except to go to the Courts of Law and hospital for,,,

treatment. The State Government has not taken any steps to restore the inmates of Nari Niketan to their parents/guardian.Ã,,,,

16. The Parliament has enacted the Act called the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to as the Act," ,,,

2015), 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 integration, by adopting a childfriendly 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.Ã," ,,,

17. Section 2(1) of the Act, 2015 defines Ã¢â¬Åabandoned child.Ã¢â¬Å,,,

18. Section 2(5) defines Ã¢â¬Åaftercare.Ã¢â¬Å,,,

19. Section 2(9) defines Ã¢â¬Åbest interest of child.Ã¢â¬Å,,,

20. Section 2(12) defines Ã¢â¬Åchild.Ã¢â¬Å,,,

21. Section 2(14) defines Ã¢â¬Åchild in need of care and protectionÃ¢â¬Å as under:-,,,

Ã¢â¬Å(i) who is found without any home or settled place of abode and without any ostensible means of subsistence; or,,,

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

(iii) who resides with a person (whether a guardian of the child or not) and such personÃ¢â¬Å,,,

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

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

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

abused, exploited or neglected by that person; or (iv) who is mentally ill or mentally or physically challenged or suffering from terminal or incurable",,,

disease, having no one to support or look after or having parents or guardians unfit to take care, if found so by the Board or the Committee; or",,,

(v) who has a parent or guardian and such parent or guardian is found to be unfit or incapacitated, by the Committee or the Board, to care for and",,,

protect the safety and well-being of the child; or",,,

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

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

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

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

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

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

(xii) who is at imminent risk of marriage before attaining the age of marriage and whose parents, family members, guardian and any other persons are",,,

likely to be",,,

responsible for solemnisation of such marriage.Ã¢â¬â",,,

22. Section 2(15) defines Ã¢â¬âchild friendly.Ã¢â¬â",,,

23. Section 2(19) defines Ã¢â¬âChildrenÃ¢â¬âs Home.Ã¢â¬â",,,

24. Section 2(21) defines Ã¢â¬âchild care institution.Ã¢â¬â",,,

25. Section 2(27) defines Ã¢â¬âfit facility.Ã¢â¬â",,,

26. Section 2(29) defines Ã¢â¬âfoster care.Ã¢â¬â",,,

27. Section 2(40) defines Ã¢â¬âobservation home.Ã¢â¬â",,,

28. Section 2(41) defines Ã¢â¬âopen shelter.Ã¢â¬â",,,

29. Section 2(42) defines Ã¢â¬âorphan.Ã¢â¬â",,,

30. Section 3 provides for General Principles to be followed in administration of Act",,,

31. Section 4 provides for Juvenile Justice Board",,,

32. Chapter V deals with Child Welfare Committee",,,

33. Section 27 provides for constitution of Child Welfare Committee",,,

34. Functions and responsibilities of Committee are provided under Section 30.Ã,,,

35. Chapter VI provides for procedure in relation to Children in need of Care and Protection.,,,

36. Section 31 provides that any child in need of care and protection may be produced before the Committee by the persons mentioned therein.,,,

37. Section 32 provides for mandatory reporting regarding a child found separated from guardian, any organization or a nursing home or hospital or",,,

maternity home etc.,,,

38. Section 33 provides that non-reporting of child found separated from guardian is an offence, which can lead to six monthsÃ¢â¬â¢ imprisonment." ,,,

39. The procedure of Inquiry is provided under Section 36.,,,

40. Section 37 deals with orders passed regarding a child in need of care and protection.,,,

41. Section 40 provides that the restoration and protection of a child shall be the prime objective of any ChildrenÃ¢â¬â¢s Home, Specialised Adoption" ,,,

Agency or open shelter.,,,

42. Section 41 provides for registration of Child Care Institutions.,,,

43. Section 43 provides for open shelter.,,,

44. Section 44 provides for foster care.,,,

45. Section 47 provides for observation homes.,,,

46. Section 48 provides for special homes.,,,

47. Section 49 provides for place of safety.,,,

48. Section 53 deals with rehabilitation and re-integration services in institutions registered under the Act and management thereof as under:-,,,

Ã¢â¬â¢(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 (35 of 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, deaddiction, 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.Ã¢â¬â",,,

49. Section 54 provides for inspection of institutions registered under the Act as under:-,,,

Ã¢â¬â(1) The State Government shall appoint inspection committees for the State and district, as the case may be, for all institutions registered or",,,

recognised to be fit under this Act for such period and for such purposes, as may be prescribed.",,,

(2) Such inspection committees shall mandatorily conduct visits to all facilities housing children in the area allocated, at least once in three months in a",,,

team of not less than three members, of whom at least one shall be a woman and one shall be a medical officer, and submit reports of the findings of",,,

such visits within a week of their visit, to the District Child Protection Units or State Government, as the case may be, for further action.",,,

(3) On the submission of the report by the inspection committee within a week of the inspection, appropriate action shall be taken within a month by",,,

the District Child Protection Unit or the State Government and a compliance report shall be submitted to the State GovernmentÃ¢â¬â",,,

50. Section 92 deals with placement of a child suffering from disease requiring prolonged medical treatment in an approved place.,,,

51. Section 93 provides for transfer of a child who is mentally ill or addicted to alcohol or other drugs.,,,

52. Section 95 provides for transfer of a child to place of residence.,,,

53. Section 97 provides for release of a child from an institution.,,,

54. Section 108 provides for public awareness on provisions of Act.Ã¢â¬â,,,

55. Section 109 provides that the National Commission for Protection of Child Rights constituted under Section 3 and the State Commission for",,,

Protection of Child Rights constituted under Section 17, in addition to the functions assigned to them under the Act, also monitor the implementation of" ,,,

the provisions of the Act.,,,

56. Section 110 empowers the State Government, by notification in the Official Gazette, to make rules to carry out the purposes of the Act. The" ,,,

Central Government has also been permitted to make the Rules in respect of all or any of the matters with respect to which the State Government is,,,

required to make rules and where any such model rules have been framed in respect of any such matter, they shall apply to the State mutatis mutandis" ,,,

until the rules in respect of that matter are made by the State Government. The rules made by the State Government are supposed to conform to such,,,

model rules.,,,

57. The Central Government has framed the Rules called "Juvenile Justice (Care and Protection of Children) Model Rules, 2016 (hereinafter" ,,,

referred to the Model Rules, 2016). These have been notified in the Gazette of India, Extraordinary on 21.09.2016." ,,,

58. Chapter IV of the Model Rules, 2016 provides for Composition and Qualifications of Members of the Child Welfare Committee." ,,,

59. The procedure in relation to Children in need of Care and Protection is provided under Chapter 5.,,,

60. The Rehabilitation and Social Re-integration is provided under Chapter VI.,,,

61. Rule 26 provides for management and monitoring of Child Care Institutions.,,,

62. Rule 27 provides for Fit facility.,,,

63. Rule 29 provides for physical infrastructure.,,,

64. Rule 30 provides for clothing, bedding, toiletries and other articles." ,,,

65. Rule 31 provides for sanitation and hygiene.,,,

66. Rule 32 provides for daily routine.,,,

67. Rule 33 provides for nutrition and diet scale." ,,,

68. Rule 34 provides for medical care.,,,

69. Rule 35 provides for mental health.,,,

70. Rule 36 provides for education.,,,

71. Rule 37 provides for vocational training.,,,

72. Rule 38 provides for recreational facilities.,,,

73. Rule 39 provides for management committee.,,,

74. Rule 40 provides for Children's Committees.,,,

75. Duties and the Persons-in-charge of a Child Care Institution are provided under Rule 61.,,,

76. Duties of the House Mother or House Father are provided under Rule 63.,,,

77. Duties of Probation Officer are provided under Rule 64.,,,

78. Rule 66 provides for staff discipline.,,,

79. Types of stay at the Child Care Institution:,,,

Ã, In case of at the children in need of care and protection, there are two types of stay of children at the Child Care Institution:-",,,

(i)Ã, Overnight protective stay; Ã, (ii) Ã, Ã, Ã, Ã, Ã, Ã, Rehabilitation stay.,,,

80. Rule 74 provides for visits to and communication with children.,,,

81. Rule 75 provides for death of a child. It reads as under:-,,,

Ã¢âÃ“(1) The institution must ensure that an inquest and post-mortem examination is held at the earliest. (ii) In case of natural death or death due to,,,

illness of a child, the Person-in-charge shall obtain a report of the Medical Officer stating the cause of death and a written intimation about the death",,,

shall be given immediately to the nearest Police Station, Board or Committee and the parents or guardians or relatives of the child.",,,

(iii) Immediate information shall be given by the caseworker or Probation Officer or Child Welfare Officer to the Person-in-charge and the Medical,,,

Officer and the Personin-charge shall immediately inform the nearest police station, Board or Committee and parents or guardians or relatives of the",,,

deceased child.,,,

(iv) If a child dies within twenty-four hours of his admission to the Child Care Institution, the Personincharge of the Child Care Institution shall report",,,

the matter to the police and the District Medical Officer or the nearest Government hospital and the parents or guardians or relatives of such child,,,

without delay. (v) The Person-in-charge and the Medical Officer of the Child Care Institution shall record the circumstances of the death of the child,,,

and send a report to the concerned Magistrate, the police, the Board or the Committee or the ChildrenÃ¢âÃ¢,s Court and the District Medical Officer or",,,

the nearest Government hospital where the dead body of the child is sent for examination and determination of the cause of death and the person-in,,,

charge and the Medical Officer shall also record in writing their views on the cause of death, if any, and submit it to the concerned Magistrate and to",,,

the police.,,,

(vi) The Person-in-charge and the Medical Officer at the Child Care Institution shall make themselves available for any inquiry initiated by the police,,,

or the Magistrate regarding the cause of death and other details regarding such child.,,,

(vii) As soon as the inquest is over, the body of the child shall be handed over to the parent or guardian or relatives or, in the absence of any claimant,",,

the last rites shall be performed under the supervision of the Personin-charge of the Child Care Institution in accordance with the known religion of the,,,

child after retaining a photograph of the child for future reference.

82. Rule 76 deals with abuse and exploitation of the Child. It reads as under:-

(1) Every institution shall evolve a system of ensuring that there is no abuse, neglect and maltreatment and shall include the staff who is aware of

what constitutes abuse, neglect and maltreatment, and their early indication and how to respond to these abuses.

(2) In the event of any physical, sexual or emotional abuse, including neglect of children in an institution by those responsible for care and protection,

the following action shall be taken namely:

(i) the incidents of abuse and exploitation shall be reported by any staff member of the institution immediately to the Person-in-charge on receiving,

such information;

(ii) when an allegation of physical, sexual or emotional abuse comes to the knowledge of the Person-incharge, a report shall be placed before the

Board or Committee, who in turn shall, order for special investigation;

(iii) the Board or Committee shall direct the local police station or Special Juvenile Police Unit to register a case, take due cognizance of such incidents

and conduct necessary investigation;

(iv) the Board or Committee shall take necessary steps to ensure completion of inquiry and provide legal aid as well as counselling to the child victim;

(v) the Board or Committee shall transfer such a child to another institution or place of safety or fit person, as the case may be;

(vi) the Person-in-charge of the institution shall also inform the Chairperson of the Management Committee and place a copy of the report of the

incident and subsequent action taken in its next meeting;

(vii) in the event of any other crime committed in respect of children in institutions, the Board or Committee shall take cognizance and arrange for

necessary investigation to be carried out by the local police or Special Juvenile Police Unit;

(viii) the Board or Committee may consult Children's Committee setup in each institution to enquire into the fact of abuse and exploitation as well,

as seek assistance from voluntary organisations, child rights experts, mental health experts or crisis intervention centres in dealing with matters of

abuse and exploitation of children in an institution.

83. Rule 81 provides for transfer of child.

84. Rule 82 provides for restoration and follow-up of child. It reads as under:-

(1) The Board or the Committee or the Children's Court may make an order in Form 44 for the release of the child placed in a Child Care

Institution after hearing the child and his parents or guardian, and after satisfying itself as to the identity of the persons claiming to be the parents or

the guardian.,,,

(2) While passing an order for restoration of the child, the Board or the Committee or the Children's Court shall take into account the reports of",,,

the Probation Officer, social worker or Child Welfare Officer or Case Worker or non-governmental organisation, including report of a home study",,,

prepared on the direction of the Board or the Committee or the Children's Court in appropriate cases, and any other relevant document or report",,,

brought before the Board or the Committee or the Children's Court.,,,

(3) The order of restoration shall include an individual care plan prepared by the Probation Officer or the social worker or the Child Welfare Officer,,,

or Case Worker or non-governmental organisation.,,,

(4) The Board or the Committee or the Children's Court, while directing restoration of the child, may pass order for an escort in Form 45, where",,,

necessary.,,,

(5) Besides police, the Board or the Committee may seek collaboration with non-governmental organisations to accompany the child back to the family",,,

for restoration.,,,

(6) In case of girls, the child shall necessarily be accompanied by female escorts.".,,,

(7) The copy of the restoration order along with a copy of the order for escort shall be forwarded by the Board or the Committee or the,,,

Children's Court to the District Child Protection Unit which shall provide funds for the restoration of the child, including travel and other incidental",,,

expenses.,,,

(8) When a child expresses his unwillingness to be restored back to the family, the Board or the Committee or the Children's Court shall interact",,,

with the child to find out the reasons for the same and record the same and the child shall not be coerced or persuaded to go back to the family. The,,,

child may also not be restored back to the family where the social investigation report prepared by the Child Welfare Officer or the social worker or,,,

the Case Worker or the non-governmental organisation establishes that restoration to family may not be in the interest of the child. The child would,,,

also not be restored back to the family where the parents or guardians refuse to accept the child back. In all such cases, the Board or the Committee",,,

or the Children's Court may provide alternative means for rehabilitation.,,,

(9) A follow-up plan shall be prepared as part of the individual care plan by the Probation Officer or the Child Welfare Officer or the Case Worker or,,,

the social worker or the nongovernmental organisation.,,,

(10) The follow-up report shall state the situation of the child post restoration and the measures necessary in order to reduce further vulnerability of,,,

the child.Ã¢â¬â€œ,,,

85. Rule 84 provides for the duties to be performed by the State Child Protection Society as under:-,,,

Ã¢â¬â€œ(i) overseeing the implementation of the Act and the rules framed thereunder in the State and supervision and monitoring of agencies and,,,

institutions under the Act;Ã¢â¬â€œ (ii) addressing road-blocks, issues, complaints received regarding care and protection of children;Ã¢â¬â€œ,,,

(iii) ensure that all institutions set up under the Act and the rules are in place and performing their assigned duties; (iv) reviewing reports received from,,,

various District Child Protection Units on the functioning of institutions in various districts and take action to facilitate the protection of children,,,

wherever necessary and monitoring the functioning of the District Child Protection Units;Ã¢â¬â€œ,,,

(v) develop programmes for foster care, sponsorship and aftercare;Ã¢â¬â€œ,,,

(vi) inquire into, seek reports and make recommendations in cases of death or suicide in Child Care Institutions and under other institutional care;Ã¢â¬â€œ,,,

(vii) ensure inter-department coordination and liaising with the relevant departments of the State and Central Governments and State Child Protection,,,

Societies of other States or Union Territories;Ã¢â¬â€œ,,,

(viii) networking and coordinating with civil society organisations working for the effective implementation of the Act and the rules;Ã¢â¬â€œ,,,

(ix) maintaining a state level database of all children in institutional care and family based noninstitutional care and updating it on a quarterly basis;,,,

(x) maintaining a database of Child Care Institutions, Specialised Adoption Agencies, open shelters, fit persons and fit facilities, registered foster",,,,

parents, sponsors, after care organisations and other institutions at the State level;"",,,,

(xi) maintaining a database of medical and counselling centres, de-addiction centres, hospitals, open schools, education facilities, apprenticeship and""",,,,

vocational training programmes and centres, recreational facilities such as performing arts, fine arts and facilities for children with special needs and""",,,,

other such facilities at the State level;Ã¢â¬â€œ,,,

(xii) monitoring and administering the Juvenile Justice Fund set up by the State Government including disbursal of funds to the District Child Protection,,,

Units, Special Juvenile Police Units and police stations, as the case may be;"",,,,

(xiii) maintaining separate accounts for all funds received by the State Child Protection Society such as the Juvenile Justice Fund, funds under""",,,,

Schemes of Central and State Government and getting the same audited;Ã¢â¬â€œ,,,

(xiv) generate awareness among public on various aspects of the Act and the rules made thereunder specifically the existing institutional framework,"",,,,

rehabilitation measures, penalties, procedures for better protection of children;"",,,,

(xv) organise and conduct programmes for the implementation of the Act including training and capacity building of stakeholders;,,,

(xvi) commission research programmes on child protection;,,,

(xvii) co-ordinate with State Legal Services Authority and law schools; andÃ,,,

(xviii) any other function for the effective implementation of the Act and the rules made thereunder.Ã,,,

(3) The Member- Secretary of the State Child Protection Society shall be the Nodal Officer in the State for the implementation of the Act and the,,,

rules.Ãçâ,¬â€Ã,,,

86. Rule 92 provides for Inquiry in case of a Missing Child.,,,

87. Rule 93 empowers the State Government to take action against the Non-Compliance of the Act and the Rules framed therein.,,,

88. The Government of India has adopted Ãçâ,¬â€“National Charter for Children, 2003.Ãçâ,¬â€ Its salient features are as under:-" ,,,

Ãçâ,¬â€“1. Survival, Life and Liberty.- (a.) The State and community shall undertake all possible measures to ensure and protect the survival, life and" ,,,

liberty of all children.,,,

(b.) In particular, the State and community will undertake all appropriate measures to address the problems of infanticide and foeticide, especially of" ,,,

female child and all other emerging manifestations that deprive the girl child of her right to survive with dignity.,,,

(2) Promoting High Standards of Health and Nutrition.- (a.) The State shall take measures to ensure that all children enjoy the highest attainable,,,

standards of health, and provide for preventive and curative facilities at all levels especially immunisation and prevention of micronutrient deficiencies" ,,,

for all children.,,,

(b.) The State shall take measures to cover, under primary health facilities and specialised care and treatment, all children of families below the" ,,,

poverty line.,,,

(c.) The State shall take measures to provide adequate prenatal and post-natal care for mothers along with immunization against preventable diseases.,,,

(d.) The State shall undertake measures to provide for a national plan that will ensure that the mental health of all children is protected.,,,

(e.) The State shall take steps to ensure protection of children from all practices that are likely to harm the childÃçâ,¬â€s physical and mental health.,,,

3. The State shall take steps to provide all children from families below the poverty line with adequate supplementary nutrition and undertake adequate,,,

measures for ensuring access to safe drinking water and environmental sanitation and hygiene.,,,

4. Assuring Basic Minimum Needs and Security.- (a.) The State recognizes that the basic minimum needs of every child must be met, that foster full" ,,,

development of the child's faculties.,,,

(b.) In order to ensure this, the State shall in partnership with the community provide social security for children, especially for abandoned children and",,,

street children.,,,

(c.) State and community shall try and remove the fundamental causes which result in abandoned children and children living on streets, and provide",,,

infrastructural and material support by way of shelter, education, nutrition and recreation.Ã",,,

5. Play and Leisure.-Ã The State and community shall recognise that all children require adequate play and leisure for their healthy development and,,,

must ensure means to provide for recreational facilities and services for children of all ages and social groups.,,,

6. Early Childhood Care for Survival, Growth and Development.-Ã (a.) The State shall in partnership with the community provide early childhood",,,

care for all children and encourage programmes which will stimulate and develop their physical and cognitive capacities.,,,

(b.) The State shall in partnership with the community aim at providing a child care centre in every village where infants and children of working,,,

mothers can be adequately cared for. c. The State will make special efforts to provide these facilities to children from SCs/STs and marginalised,,,

sections of society. 8. Protection from Economic Exploitation and All Forms of Abuse.- (a.) The State shall provide protection to children from,,,

economic exploitation and from performing tasks that are hazardous to their well-being.,,,

(b.) The State shall ensure that there is appropriate regulation of conditions of work in occupations and processes where children perform work of a,,,

non-hazardous nature and that their rights are protected.Ã,,,

(c.) The State shall move towards a total ban of all forms of child labour.,,,

11. Protection of the Girl Child.- (a.) The State and community shall ensure that crimes and atrocities committed against the girl child, including child",,,

marriage, discriminatory practices, forcing girls into prostitution and trafficking are speedily eradicated.",,,

(b.) The State shall in partnership with the community undertake measures, including social, educational and legal, to ensure that there is greater",,,

respect for the girl child in the family and society.,,,

(c.) The State shall take serious measures to ensure that the practice of child marriage is speedily abolished.,,,

19. Protection of Children with Disabilities.- (a.) The State and community recognise that all children with disabilities must be helped to lead a full life,,,

with dignity and respect. All measures would be undertaken to ensure that children with disabilities are encouraged to be integrated into the,,,

mainstream society and actively participate in all walks of life. (b.) State and community shall also provide for their education, training, health care",,,

rehabilitation, recreation in a manner that will contribute to their overall growth and development. (c.) State and community shall launch preventive",,,

programmes against disabilities and early detection of disabilities so as to ensure that the families with disabled children receive adequate support and,,,

assistance in bringing up their children.,,,

(d.) The State shall encourage research and development in the field of prevention, treatment and rehabilitation of various forms of disabilities.Ã¢â¬â¢",,,

89. We have received a letter on 09.05.2018 written by one of the inmates to one of us (Rajiv Sharma, J.), whereby the guardian has highlighted the",,,

sexual assault of his 11 years old blind son at National Institute for the Visually Handicapped, 116, Rajpur Road, Dehradun. The matter was also taken",,,

up by the guardian with the Uttarakhand Commission for Protection of Child Rights. The Secretary, Uttarakhand Commission for Protection of Child",,,

Rights has written a letter to Senior Superintendent of Police, Dehradun on 05.05.2018 to inquire the matter but till date, no action has been taken",,,

against the teacher, who has sexually assaulted the son of the complainant. The name of the student is withheld. The documents were permitted to be",,,

placed on record along with envelop.Ã¢â¬â¢",,,

90. The parliament has enacted the Act called Ã¢â¬â¢The Commission for Protection of Child Rights Act, 2005.Ã¢â¬â¢ The State Government has constituted",,,

the State Commissions for Protection of Child Rights under Section 17 of the Act, 2005.",,,

91. According to the Section 27 of the Act, 2015, there is a provision for appointment of Child Welfare Committee. The procedure has been laid down",,,

under Rule 15 of the Model Rules, 2016 for the constitution of Child Welfare Committee. The Chairpersons and members of the Committee are to be",,,

appointed as per Rule 15(2) by the State Government on the recommendation of the Selection Committee constituted under rule 87 of the rules. Rule",,,

87 reads as under:-,,,

Ã¢â¬â¢87. Selection Committee and its composition.- (1) The State Government shall constitute a Selection Committee for a period of three years by,,,

notification in the Official Gazette consisting of the following members, namely:",,,

(i) a retired judge of High Court as the Chairperson to be appointed in consultation with the Chief Justice of the High Court concerned;,,,

(ii) one representative from the Department implementing the Act not below the rank of Director as the ex-officio Member Secretary;,,,

(iii) two representatives from two different reputed nongovernmental organisations respectively working in the area of child development or child,,,

protection for a minimum period of seven years but not running or managing any childrenÃ¢â¬â¢s institution;,,,

(iv) two representatives from academic bodies or Universities preferably from the faculty of social work, psychology, sociology, child development," ,,,

health, education, law, and with special knowledge or experience of working on children's issues for a minimum period of seven years; and",,,

(v) a representative of the State Commission for,,,

Protection of Child Rights.Ã¢â€,,,

(2) The Committee shall continue for a maximum period of three months after the completion of its tenure by which time new Committee shall be,,,

constituted.,,,

(3) If a vacancy arises in the Selection Committee, the Member Secretary shall intimate the Secretary of the Department implementing the Act who",,,

shall take steps to fill the vacancy for the remaining period at the earliest.,,,

(4) The quorum for the meeting of the Selection Committee shall be not less than four Members, including the Chairperson and the Member",,,

Secretary.,,,

(5) The Member Secretary of the Selection Committee shall convene the meetings of the Selection Committee at such times as may be necessary for,,,

facilitating and carrying out the functions of the Selection Committee.,,,

(6) The Member Secretary shall maintain the minutes of the selection process and all other meetings of the Selection Committee.,,,

(7) The Chairperson and non-official members of the Selection Committee shall be paid such sitting fees and travel allowances as may be fixed by the,,,

State Government from time to time.,,,

(8) All communications relating to the working and discharge of the functions of the Selection Committee shall be addressed to the Office of the,,,

Member Secretary, who shall place the same before the Selection Committee.",,,

(9) All records relating to selection shall be placed on the website of the State Government Department concerned.Ã¢â€, Ã¢â€,,,

92. The State Government, till date, has not constituted the Child Welfare Committee, as per Section 27 read with Rule 15 and Rule 87.",,,

93. Section 41, as enumerated hereinabove, provides for Registration of child care institutions for housing children in need of care and protection or",,,

children in conflict with law, as prescribed under the Rules. Rule 21 prescribes the procedure in manner, in which the Child Care Institutions are to be",,,

registered.,,,

94. Section 43 read with Rule 22 provides for Open Shelter. Sub-rule 5 of Rule 22 provides that the services provided in the open shelters may include,,,

day care and night residential facilities including food, washing facilities and toilets. The capacity of an open shelter should be such as to accommodate",,,

twenty-five to fifty children at one time and should include a kitchen, dining facilities, bathrooms and toilets, lockers and recreational facilities.",,,

95. Section 44 provides that the children in need of care and protection may be placed in foster care. Rule 23 provides that the State Government may,,,

place children in need of care and protection in foster care including group foster care through order of the Committee for a short or extended period,,,

of time.,,,

96. Section 45 deals with sponsorship. Rule 24 provides the manner, in which, the State Government shall prepare sponsorship programmes, which" ,,,

may include:,,,

Ã¢â¬âi. individual to individual sponsorship.Ã¢â¬â, ,,,

ii. group sponsorship; iii. community sponsorship; iv. support to families through sponsorship; andÃ¢â¬â, ,,,

v. support to Children Homes and Special Homes.Ã¢â¬â, ,,,

97. Section 46 provides for after care of children leaving child care institution. Rule 25 obligates the State government to prepare a programme for,,,

children who have to leave Child Care Institutions on attaining eighteen years of age by providing for their education, giving them employment skills" ,,,

and placement as well as providing them places for stay to facilitate their re-integration into the mainstream of society.,,,

98. Section 50 provides for ChildrenÃ¢â¬âs Home.Ã¢â¬â The Management and Monitoring of Child Care Institutions are provided under Rule 26.,,,

99. Section 51 provides for fit facility. The manner, in which, the Board or the Committee shall on an application from any institution or organization" ,,,

run by Government or non-governmental organization, recognize the facility is laid down under Rule 27. " ,,,

100. Section 75 lays down the punishment for cruelty to child, corresponding with Rule 55. " ,,,

101. Section 77 provides for imposing of penalty for giving intoxicating liquor or narcotic drug or psychotropic substance to a child. The procedure is,,,

laid down under Rule 56.,,,

102. The using of child for vending, peddling, carrying, supplying or smuggling any intoxicating liquor, narcotic drug or psychotropic substance is" ,,,

provided under Section 78. The procedure for dealing with the same is provided under Rule 57.,,,

103. Section 81 lays down the punishment for sale and procurement of children for any purpose. The procedure for dealing with same is provided,,,

under Rule 59.,,,

104. Section 82 provides for that any person incharge of or employed in a child care institution, who subjects to a child to corporal punishment with the" ,,,

aim of disciplining the child, shall be liable for punishment. Corresponding procedure is provided under Rule 60." ,,,

105. Section 106 provides for constituting of State Child Protection Society and District Child Protection Unit. The functions of State Child Protection,,,

Society are provided under Rule 84 and the functions of District Child Protection Unit are provided under Rule 85.,,,

106. It is the duty of the State to make special provisions for children under Article 15(3) of the Constitution of India. Article 24 prohibits employment,,,

of children below the age of fourteen years in any factory or mine or in any other hazardous employment. Article 39(e) provides that the tender age of,,,

children is not abused and the children are forced to enter avocations unsuited to their age or strength. Article 39(f) provides that the children are,,,

given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected,,,

against exploitation and against moral and material abandonment.,,,

107. It is the fundamental duty of every parent and guardian to provide educational facilities between the age of 6-14 years under Article 51A (k). It is,,,

the duty cast upon the State Government to protect life, dignity and liberty of all children. It should promote high standard of health and nutrition. The",,,,

State should provide healthy environment to the children. They should be protected from economic exploitation. The focus should be to protect girl,,,

child. All the children should be treated equally within discrimination on the ground only of religion, race, caste or class etc. Every child has a right to",,,,

family and in case of separation, the State should make endeavor to reunify the child with its parents. The children with disability should be given",,,,

utmost attention. The procedure adopted should be child friendly, as per National Charter for Children, 2003.",,,

108. It is shocking that a deaf and dumb child was subjected to sexual exploitation regularly. She became pregnant. She was made to undergo,,,

abortion. Fetus was found in the forest. This action has destroyed her soul. The perpetuosity of this heinous crime is required to be dealt with seriously.,,,

The deaf and dumb inmate (name withheld) is entitled to adequate compensation/pension to enable her to meet both ends meet after leaving the Child,,,

Care Institution. It is the systematic failure of the system which led to her sexual exploitation. She has a right to live with dignity and honour. The,,,

supervisory staff of the institutions where she was housed was remiss in discharge of their duties. No amount of money can bring her honour and,,,

dignity back. We while exercising our parens patriae jurisdiction are under obligation to duly compensate her.Ã,,,,

109. In the present case, the inmate was infact staying in Government owned/run Child Care Institution. The State has vicarious liability to pay",,,,

compensation for the acts of its employees. The doctrine of sovereign power is not applicable in welfare State where the functions of the State now,,,

extend to various fields. The inmate was battered and shattered due to acts of the employees of Child Care Institution.,,,

110. The House of Lords in 1964 (1) of All England Law Reports have held that English Law recognized the awarding of exemplary damages, that is,",,,

damages whose object was to punish or deter and which were distinct from aggravated damages (whereby the motives and conduct of the defendant,,,

aggravating the injury to the plaintiff would be taken into account in assessing compensatory damages); and there were two categories of cases in,,,

which an award of exemplary damages could serve a useful purpose, viz., in the case of oppressive, arbitrary or unconstitutional action by the servants",,,

of the government, and in the case where the defendant's conduct had been calculated by him to make a profit for himself, which might well",,,

exceed the compensation payable to the plaintiff. Their Lordships have held as under:~,,,

~"In my opinion, therefore, the appeal should succeed and the judgment of SACHS, J. (129) on liability should be restored. Counsel for the",,,

respondents has submitted that it ought not be restored in its entirety. He asks for a new trial on damages on the ground that the learned judge,,,

misdirected the jury on this issue. The cardinal feature of the summing-up on this part of the case was a direction to the jury that they might (counsel,,,

for the respondents submits that it amounted almost to ~"must~ award exemplary damages and your lordships have therefore listened to a very,,,

penetrating discussion about the nature of exemplary damages and the circumstances in which an award is appropriate. The Court of Appeal, having",,,

found for the respondents on liability, did not consider this issue, so your lordships must begin at the beginning. Exemplary damages are essentially",,,

different from ordinary damages. The object of damages in the usual sense of the term is to compensate. The object of exemplary damages is to,,,

punish and deter. It may well be thought that this confuses the civil and criminal functions of the law; and indeed, so far as I know, the idea of",,,

exemplary damages is peculiar to English law. There is not any decision of this House approving an award of exemplary damages and your lordships,,,

therefore have to consider whether it is open to the House to remove an anomaly from the law of England.,,,

In *Benson v. Frederick* (136) the plaintiff a common soldier, obtained damages of £150 against his colonel who had ordered him to be flogged so as to",,,

vex a fellow officer. LORD MANSFIELD, C.J., said (137) that the damages ~"were very great, and beyond the proportion of what the man had",,,

suffered~. But the sum awarded was upheld as damages in respect of an arbitrary and unjustifiable action and not more than the defendant was able,,,

to pay. These authorities clearly justified the use of the exemplary principle; and for my part I should not wish, even if I felt at liberty to do so, to",,,

diminish its use in this type of case where it serves a valuable purpose in restraining the arbitrary and outrageous use of executive power.,,,

My lords, I express no view on whether the Copyright Act, 1956, authorizes an award of exemplary, as distinct from aggravated damages. But there",,,

are certainly two other Acts of Parliament which mention exemplary damages by name. The Law Reform (Miscellaneous Provisions) Act, 1934, S. ",,,

1(2)(a), provides that where a cause of action survives for the benefit of the estate of a deceased person, the damages recoverable shall not include",,,

any exemplary damages.Ã, The Reserve and Auxiliary Forces (Protection of Civil Interests) Act, 1953, s. 13(2), provides that in any action for",,,

damages for conversion in respect of goods falling within the statute the court may take into account the defendantÃ¢â¬âs conduct and award",,,

exemplary repugnant about a big man bullying a small man and very likely the bullying will be a source of humiliation that makes the case one for",,,

aggravated damages, but it is not in my opinion punishable by damages. These authorities convince me of two things. First, that your lordships could",,,

not without a complete disregard of precedent, and indeed of statute, now arrive at a determination that refused altogether to recognize the exemplary",,,

principle. Secondly, that there are certain categories of cases in which an award of exemplary damages can serve a useful purpose in vindicating the",,,

strength of the law, and thus affording a practical justification for admitting into the civil law a principle which ought logically to belong to the criminal."",,,

I propose to state what these two categories are; and I propose also to state three general considerations which, in my opinion, should always be borne",,,

in mind when awards of exemplary damages are being made. I am well aware that what I am about to say will, if accepted, impose limits not hitherto",,,

expressed on such awards and that there is powerful, though not compelling, authority for allowing them a wider range. I shall not therefore conclude",,,

what I have to say on the general principles of law without returning to the authorities and making it clear to what extent I have rejected the guidance",,,

which they may be said to afford",,,

The first category is oppressive, arbitrary or unconstitutional action by the servants of the government. I should not extend this category, -I say this",,,

with particular reference to the facts of this case, -to oppressive action by private corporations or individuals. Where one man is more powerful than",,,

another, it is inevitable that he will try to use his power to gain his ends; and if his power is much greater than the otherÃ¢â¬âs, he must of course pay",,,

for his illegality in the ordinary way; but he is not to be punished simply because he is the more powerful. In the case of the government it is different,"",,,

for the servants of the government are also the servants of the people and the use of their power must always be subordinate to their duty of service",,,

It is true that there is something repugnant about a big man bullying a small man and very likely the bullying will be a source of humiliation that makes",,,

the case one for aggravated damages, but it is not in my opinion punishable by damages."",,,

“2. We are deeply disturbed by the diabolical recurrence of police torture resulting in a terrible scare in the minds of common citizens that their,,

lives and liberty are under a new peril when the guardians of the law gore human rights to death. The vulnerability of human rights assumes a,,,

traumatic, torture some poignancy (when) the violent violation is perpetrated by the police arm of the State whose function is to protect the citizen and" ,,,

not to commit gruesome offences against them as has happened in this case. Police lock-up if reports in newspapers have a streak of credence, are" ,,,

becoming more and more awesome cells. This development is disastrous to our human rights awareness and humanist constitutional order.,,,

3. The State, at the highest administrative and political levels, we hope, will organise special strategies to prevent and punish brutality by police" ,,,

methodology. Otherwise, the credibility of the rule of law in our Republic vis-a-vis the people of the country will deteriorate. "" ,,,

113. Their Lordships of the Hon'ble Supreme Court in *Rudul Sah Vs. State of Bihar* and another (1983) 4 Supreme Court Cases 141 have" ,,,

further held that compensation for illegal detention can be granted under Article 32 without affecting his right to sue for damages. Their Lordships,,

have held as under:,,

"9. It is true that Article 32 cannot be used as a substitute for the enforcement of rights and obligations which can be enforced efficaciously,,

through the ordinary processes of Courts, Civil and Criminal. A money claim has therefore to be agitated in and adjudicated upon in a suit instituted in" ,,,

a court of lowest grade competent to try it. But the important question for our consideration is whether in the exercise of its jurisdiction under Article,,

32, this Court can pass an order for the payment of money if such an order is in the nature of compensation consequential upon the deprivation of a" ,,,

fundamental right. The instant case is illustrative of such, cases. The petitioner was detained illegally in the prison for over fourteen years after his" ,,,

acquittal in a full-dressed trial. He filed a Habeas Corpus petition in this Court for his release from illegal detention. He obtained that relief, our finding" ,,,

being that his detention in the prison after his acquittal was wholly unjustified. He contends that he is entitled to be compensated for his illegal,,

detention and that we ought to pass an appropriate order for the payment of compensation in this Habeas Corpus petition itself.,,,

10. We cannot resist this argument. We see no effective answer to it save the stale, and sterile objection that the petitioner may, if so advised, file a" ,,,

suit to recover damages from the State Government. Happily, the State's counsel has not raised that objection. The petitioner could have been" ,,,

relegated to the ordinary remedy of a suit if his claim to compensation was factually controversial, in the sense that a civil court may or may not have" ,,,

upheld his claim. But we have no doubt that if the petitioner files a suit to recover damages for his illegal detention, a decree for damages would have" ,,,

to be passed in that suit, though it is not possible to predicate in the absence of evidence, the precise amount which would be decreed in his favour. In",,,

these circumstances, the refusal of this Court to pass an order of compensation in favour of the petitioner will be doing mere lip-service to his",,,

fundamental right to liberty which the State Government has so grossly violated. Article 21 which guarantees the right to life and liberty will be",,,

denuded of its significant content if the power of this Court were limited to passing orders of release from illegal detention. One of the telling ways in",,,

which the violation of that right can reasonably be prevented and due compliance with the mandate of Article 21 secured, is to mulct its violaters in the",,,

payment of monetary compensation. Administrative sclerosis leading to flagrant infringements of fundamental rights cannot be corrected by any other",,,

method open to the judiciary to adopt. The right to compensation is some palliative for the unlawful acts of instrumentalities which act in the name of",,,

public interest and which present for their protection the powers of the State as a shield. If civilisation is not to perish in this country as it has perished",,,

in some others too well-known to suffer mention, it is necessary to educate ourselves into accepting that, respect for the rights of individuals is the true",,,

bastion of democracy. Therefore, the State must repair the damage done by its officers to the petitioner's rights. It may have recourse against those",,,

officers.,,,

114. In a case of police atrocities, their Lordships of the Supreme Court in *Peoples Union for Democratic Rights through its Secretary and*",,,

another *Vs. Police Commissioner, Delhi Police Headquarters and another* (1989) 4 Supreme Court Cases 730 have awarded a sum of Rs. 50,000/-",,,

in case of the petitioner and a sum of Rs. 500/- to the lady who was stripped of her clothes at the Police Station. Their Lordships have held as under:",,,

"4. Under the above circumstances we direct that the family of Ram Swaroop who is dead will be paid Rs. 50,000.00 as compensation, which will",,,

be invested in some scheme under the Life Insurance Corporation, so that the destitute family may get some amount monthly and the money may also",,,

be kept secured. It is also directed that petitioner 2 Patasi who was stripped of her clothes at the police station, shall be paid Rs. 500.00 as",,,

compensation and the 8 other persons namely (1 Dandwa (2 Ram Prasad (3 Jaipal (4 Mahavir (5 Kannu (6 Munsjia (7 Hukka and (8 Pratap, who",,,

were taken in the police station without being paid for their work will be paid Rs. 25.00 each. It is directed that after investigation and inquiry officers,,

who are found guilty, the amount paid as compensation or part thereof may be recovered from these persons out of their salaries after giving them",,,

opportunity to show cause.,,,

115. Their Lordships of the Hon'ble Supreme Court in "Saheli, A women's Resources Centre, through Ms. Nalini Bhanot and others Vs.",

Commissioner of Police, Delhi Police Headquarters and others" (1990) 1 Supreme Court Cases 422 have held that State is liable for tortious act,

committed by its agency. In this case, the child was done away to death on account of beating and assault by the police acting in violation and excess,

of power vested in them. Their Lordships have held that mother of the child was entitled to exemplary compensation of Rs. 75,000/- from State for

death of the child. Their Lordships have held asunder:

"11. An action for damages lies for bodily harm which includes battery, assault, false imprisonment, physical injuries and death. In cases of assault,

battery and false imprisonment the damages are at large and represent a solatium for the mental pain, distress, indignity, loss of liberty and death. As

we have held hereinbefore that the son of Kamlesh Kumari aged 9 years died due to beating and assault by the S.H.O., Lal Singh and as such she is

entitled to get the damages for the death of her son. It is well settled now that the State is responsible for the tortious acts of its employees. The

respondent No. 2, Delhi Administration is liable for payment of compensation to Smt. Kamlesh Kumari for the death of her son due to beating by the

S.H. O. of Anand Parbat Police Station, Shri Lal Singh."

15. On a conspectus of these decisions we deem it just and proper to direct the Delhi Administration, respondent No. 2 to pay compensation to

Kamlesh Kumari, mother of the deceased, Naresh a sum of Rs. 75,000/- within a period of four weeks from the date of this Judgment. The Delhi

Administration may take appropriate steps for recovery of the amount paid as compensation or part thereof from the officers who will be found

responsible, if they are so advised. As the Police Officers are not parties before us, we state that any observation made by us in justification of this

order shall not have any bearing in any proceedings specially criminal prosecution pending against the police officials in connection with the death of

Naresh. The writ petitions are disposed of accordingly."

116. Their Lordships of the Hon'ble Supreme Court in "State of M.P. Vs. Shyamsunder Trivedi and others" (1995) 4 Supreme Court Cases

262 in a case of custodial death by police torture have held that generally when ocular and other evidence is not available, it would be police officials

alone who can only explain the circumstances in which a person in their custody had died. Their Lordships have further held that the exaggerated

adherence to and insistence upon the establishment of proof beyond every reasonable doubt, by the prosecution, ignoring the ground realities, the fact-

situations and the peculiar circumstances of a given case, as in the present case, often results in miscarriage of justice and makes the justice delivery",,,

system suspect. Their Lordships have further held that the Court must adopt a realistic rather than a narrow technical approach. Their Lordships have,,,

held as under:,,,

“17. From our independent analysis of the materials on the record, we are satisfied that Respondents 1 and 3 to 5 were definitely present at the”,,,

police station and were directly or indirectly involved in the torture of Nathu Banjara and his subsequent death while in the police custody as also in,,,

making attempts to screen the offence to enable the guilty to escape punishment. The trial court and the High court, if we may say so with respect, ”,,,

exhibited a total lack of sensitivity and a “could not care less” attitude in appreciating the evidence on the record and thereby condoning the barbarous”,,,

third degree methods which are still being used at some police stations, despite being illegal. The exaggerated adherence to and insistence upon the”,,,

establishment of proof beyond every reasonable doubt, by the prosecution, ignoring the ground realities, the fact situations and the peculiar”,,,

circumstances of a given case, as in the present case, often results in miscarriage of justice and makes the justice delivery system a suspect. In the”,,,

ultimate analysis the society suffers and a criminal gets encouraged. Tortures in police custody, which of late are on the increase, receive”,,,

encouragement by this type of an unrealistic approach of the courts because it reinforces the belief in the mind of the police that no harm would come,,,

to them, if an odd prisoner dies in the lock-up, because there would hardly be any evidence available to the prosecution to directly implicate them with”,,,

the torture. The courts must not lose sight of the fact that death in police custody is perhaps one of the worst kind of crimes in a civilised society, ”,,,

governed by the rule of law and poses a serious threat to an orderly civilised society. Torture in custody flouts the basic rights of the citizens,,,

recognised by the Indian Constitution and is an affront to human dignity. Police excesses and the maltreatment of detainees/ under trial prisoners or,,,

suspects tarnishes the image of any civilised nation and encourages the men in 'Khaki' to consider themselves to be above the law and sometimes,,,

even to become law unto themselves. Unless stern measures are taken to check the malady, the foundations of the criminal justice delivery system”,,,

would be shaken and the civilization itself would risk the consequence of heading towards perishing. The courts must, therefore, deal with such cases”,,,

in a realistic manner and with the sensitivity which they deserve, otherwise the common man may lose faith in the judiciary itself, which will be a sad”,,,

day.,,,

18. In its 4th Report of June 1980, The National Police Commission noticed the prevalence of custodial torture etc. and observed that nothing is so",,,

dehumanising as the conduct of police in practising torture of any kind on a person in their custody. The Commission noticed with regret that the police,,,

image in the estimation of the public has badly suffered on account of the prevalence of this practice in varying degrees over the past several years,,,

and noted with concern the inclination of even some of the supervisory ranks in the police hierarchy to countenance this practice in a bid to achieve,,,

quick results by short-cut methods. Though S. 330 and 331 of the Indian Penal Code make punishable those persons who cause hurt for the purpose of,,,

extorting the confession, by making the offence punishable with sentence up to 10 years of imprisonment, but the convictions, as experience shows us,",,

have been very few because the atrocities within the precincts of the police station are often left without any ocular or other direct evidence to prove,,,

who the offenders are. Disturbed by this situation, the Law Commission in its 113th Report recommended amendments to the Indian Evidence Act so",,,

as to provide that in the prosecution of a police officer for an alleged offence of having caused bodily injuries to a person while in police custody, if",,,

there is evidence that the injury was caused during the period when the person was in the police custody, the court may presume that the injury was",,,

caused by the police officer having the custody of that person during that period unless, the police officer proves to the contrary. The onus to prove",,,

the contrary must be discharged by the police official concerned. The recommendation, however, we notice with concern, appears to have gone",,,

unnoticed and the crime of custodial torture etc. flourishes unabated. Keeping in view the dehumanising aspect of the crime, the flagrant violation of",,,

the fundamental rights of the victim of the crime and the growing rise in the crimes of this type, where only a few come to light and others don't, we",,,

hope that the government and Legislature would give serious thought to there commendation of the Law Commission (supra) and bring about,,

appropriate changes in the law not only to curb the custodial crime but also to see that the custodial crime does not go unpunished. The courts are also,,,

required to have a change in their outlook and attitude, particularly in cases involving custodial crimes and they should exhibit more sensitivity and",,,

adopt a realistic rather than a narrow technical approach, while dealing with the cases of custodial crime so that as far as possible within their powers,",,

the guilty should not escape so that the victim of the crime has the satisfaction that ultimately the majesty of law has prevailed.,,,

117. Their Lordships of the Hon'ble Supreme Court in *Chairman, Railway Board and others Vs. Chandrima Das (Mrs) and others* (2000)",,,

2 Supreme Court Cases 465 have held that the State has vicarious liability to pay compensation for tortious acts of its employees. Their Lordships,,,

have further held that the doctrine of sovereign power not applicable in welfare State where functions of the State now extend to various fields which,,,

cannot be strictly related to sovereign power. Their Lordships have held asunder:,,,

“9. Various aspects of the Public Law field were considered. It was found that though initially a petition under Article 226 of the Constitution,,,

relating to contractual matters was held not to lie, the law underwent a change by subsequent decisions and it was noticed that even though the",,,

petition may relate essentially to a contractual matter, it would still be amenable to the writ jurisdiction of the High Court under Article 226. The Public",,,

Law remedies have also been extended to the realm of tort. This Court, in its various decisions, has entertained petitions under Article 32 of the",,,

Constitution on a number of occasions and has awarded compensation to the petitioners who had suffered personal injuries at the hands of the officers,,,

of the Govt. The causing of injuries, which amounted to tortious act, was compensated by this Court in many of its decisions beginning from Rudul Sah",,,

v. State of Bihar,(1983) 3 SCR 508 : (1983) 4 SCC 141 : AIR 1983 SC 1086.[See also Bhim Singh v. State of Jammu and Kashmir,(1985) 4 SCC 577",,,

: AIR 1986 SC 494; People's Union for Democratic Rights v. State of Bihar, (1987) 1 SCR 631 :(1987) 1 SCC 265 : AIR 1987 SC 355; People's",,,

Union for Democratic Rights Thru. Its Secy. v. Police Commissioner, Delhi Police Headquarters, (1989) 4 SCC 730 : 1989 (1)SCALE 598; Saheli, A",,,

Women's Resources Centre v. Commissioner of Police, Delhi, (1990) 1 SCC 422 : 1989Supp (2) SCR 488 : AIR 1990 SC 513; Arvinder Singh Bagga",,,

v. State of U. P., (1994) 6 SCC 565 : AIR 1995 SC117 : (1994 AIR SCW 4148); P. Rathinam v. Union of India, 1989 Supp (2) SCC 716; In Re:",,,

Death of Sawinder Singh Grower, (1995) Supp (4) SCC 450 : (1992) 6 JT (SC)271 : 1992 (3) SCALE 34 (2); Inder Singh v. State of Punjab, (1995) 3",,,

SCC 702 : AIR 1995 SC 1949 : (1995 AIRSCW 3037); D. K. Basu v. State of West Bengal, (1997) 1SCC 416 : AIR 1997 SC 610 : (1997 AIR SCW",,,

233)],,,,

11. Having regard to what has been stated above, the contention that Smt. Hanuffa Khatoon should have approached the Civil Court for damages and",,,

the matter should not have been considered in a petition under Article 226 of the Constitution, cannot be accepted. Where public functionaries are",,,

involved and the matter relates to the violation of Fundamental Rights or the enforcement of public duties, the remedy would still be available under the",,,

Public Law notwithstanding that a suit could be filed for damages under Private Law.,,,

12. In the instant case, it is not a mere matter of violation of an ordinary right of a person but the violation of Fundamental Rights which is involved." ,,,

Smt. Hanuffa Khatoon was a victim of rape. This Court in Bodhisattwav. Ms. Subhra Chakraborty, (1996) 1 SCC 490 : (1996 AIRSCW 325 : AIR" ,,,

1996 SC 922) has held ""rape"" as an offence which is violative of the Fundamental Right of a person guaranteed under Article 21 of the Constitution." ,,,

The Court observed as under (Para 10 of AIR): ,,,

Rape is a crime not only against the person of a woman, it is a crime against the entire society. It destroys the entire psychology of a woman and" ,,,

pushes her into deep emotional crisis. Rape is therefore the most hated crime. It is a crime against basic human rights and is violative of the victims ,,,

most cherished right, namely, right to life which includes right to live with human dignity contained in Article 21." ,,,

14. The main contention of the learned counsel for the appellants is that Mrs. Chandrima Das was only a practising advocate of the Calcutta High" ,,,

Court and was, in no way, connected or related to the victim, Smt. Hanuffa Khatoon and, therefore, she could not have filed a petition under Article" ,,,

226 for damages or compensation being awarded to Smt. Hanuffa Khatoon on account of the rape committed on her. This contention is based on a ,,,

misconception. Learned counsel for the appellants is under the impression that the petition filed before the Calcutta High Court was only a petition for ,,,

damages or compensation for Smt. Hanuffa Khatoon. As a matter of fact, the reliefs which were claimed in the petition included the relief for" ,,,

compensation. But many other reliefs as, for example, relief for eradicating anti-social and criminal activities of various kinds at Howrah Railway" ,,,

Station were also claimed. The true nature of the petition, therefore, was that of a petition filed in public interest." ,,,

15. The existence of a legal right, no doubt, is the foundation for a petition under Article 226 and a bare interest, may be of a minimum nature, may" ,,,

give locus standi to a person to file a Writ Petition, but the concept of ""Locus Standi"" has undergone a sea change, as we shall presently notice. In Dr." ,,,

Satyanarayana Sinha v. S. Lal and Co. Pvt. Ltd., AIR 1973 SC 2720 : (1973) 2 SCC 696, it was held that the foundation for exercising jurisdiction" ,,,

under Article 32 or Article 226 is ordinarily the personal or individual right of the petitioner himself. In writs like Habeas Corpus and Quo Warranto," ,,,

the rule has been relaxed and modified. ,,,

17. In the context of Public Interest Litigation, however, the Court in its various judgments has given widest amplitude and meaning to the concept of" ,,,

locus standi. In People's Union for Democratic Rights v. Union of India, AIR 1982 SC 1473 : (1982) 3 SCC 235, it was laid down that Public Interest" ,,,

Litigation could be initiated not only by filing formal petitions in the High Court but even by sending letters and telegrams so as to provide easy access ,,,

to Court. (See also *Bandhua Mukti Morcha v. Union of India*, AIR 1984 SC 802 : 1984 (2) SCR 87 : (1984) 3 SCC 161 and *State of Himachal Pradesh* ,,,

v. Student's Parent Medical College, Shimla, AIR 1985 SC 910 : (1985) 3 SCC 169 on the right to approach the Court in the realm of Public Interest" ,,,

Litigation). In *Bangalore Medical Trust v. B. S. Muddappa*, AIR 1991 SC 1902 : 1991 (3) SCR 102 : (1991) 4 SCC 54 : (1991 AIR SCW 2082), the" ,,,

Court held that the restricted meaning of aggrieved person and narrow outlook of specific injury has yielded in favour of a broad and wide construction ,,,

in the wake of Public Interest Litigation. The Court further observed that public-spirited citizens having faith in the rule of law are rendering great ,,,

social and legal service by espousing causes of public nature. They cannot be ignored or overlooked on technical or conservative yardstick of the rule ,,,

of locus standi or absence of personal loss or injury. There has, thus, been a spectacular expansion of the concept of locus standi. The concept is" ,,,

much wider and it takes in its stride anyone who is not a mere "busy-body" .", ,,,

18. Having regard to the nature of the petition filed by respondent Mrs. Chandrima Das and the relief claimed therein it cannot be doubted that this ,,,

petition was filed in public interest which could legally be filed by the respondent and the argument that she; could not file that petition as there was ,,,

nothing personal to her involved in that petition must be rejected. " ,,,

118. In *R.D. Upadhyay Vs. State of A.P. and others* (2001) 1 Supreme Court Cases 437, their Lordships of the Hon'ble Supreme Court" ,,,

have held that money award cannot, however, renew a physical frame that has been battered and shattered due to the callous attitude of others. All" ,,,

that the courts can do in such cases is to award such sums of money, which may appear to be giving of some reasonable compensation, assessed with" ,,,

moderation, to express the court's condemnation of the tortuous act committed by the State. Their Lordships have held as under:" ,,,

"5. We could have directed some interim compensation to be paid to Ajoy Ghosh but considering his present state of mental and physical health," ,,,

that would not be of any avail. He has no known relatives either. We are conscious of the fact that money award can be calculated only to make good ,,,

financial loss. It is not an award for the sufferings already undergone which are incapable of calculation in terms of money. Money compensation may ,,,

be awarded so that something tangible may be procured to replace something of the like nature which has been destroyed or lost. Money award ,,,

cannot, however, renew a physical frame that has been battered and shattered due to callous attitude of others. All that the courts can do in such" ,,,

cases is to award such sums of money, which may appear to be giving of some reasonable compensation, assessed with moderation, to express" ,,,

court's condemnation of the tortious act committed by the State.Āĉâ,~â€{,,

119. Their Lordships of the HonĀĉâ,~â„ĉble Supreme Court in Āĉâ,~Ā“Smt. Shakila Abdul Gafar Khan Vs. Vasant Raghunath Dhoble and anotherĀĉâ,~Ā, 2003”,,

Cr. L.J. 4548 have held that the torture and custodial violence by men in Āĉâ,~ĒœKhakiĀĉâ,~â„ĉ/State/or its functionaries cannot be permitted to defy,,

constitutional right and in case direct evidence is rarely available, brotherhoodties permit other police witnesses to feign ignorance about the whole”,,

matter. Their Lordships have further held that insistence of establishment of proof beyond reasonable doubt results in miscarriage of justice. Their,,

Lordships have further held that the custodial crime mostly goes unpunished. Their Lordships have further held that the Courts are also required to,,

have a change in their outlook, approach, appreciation and attitude, particularly in cases involving custodial crimes and they should exhibit more”,,

sensitivity and adopt a realistic rather than a narrow technical approach, while dealing with the cases of custodial crime so that as far as possible”,,

within their powers, the truth is found and guilty should not escape so that the victim of the crime has the satisfaction that ultimately the majesty of law”,,

has prevailed. Their Lordships have held as under:,,

Āĉâ,~Ā“6. Rarely in cases of police torture or custodial death, direct ocular evidence of the complicity of the police personnel alone who can only explain”,,

the circumstances in which a person in their custody had died. Bound as they are by the ties of brotherhood, it is not unknown that the police personnel”,,

prefer to remain silent and more often than not even pervert the truth to save their colleagues -and the present case is an apt illustration - as to how,,

one after the other police witnesses feigned ignorance about the whole matter.,,,

7. The exaggerated adherence to and insistence upon the establishment of proof beyond every reasonable doubt by the prosecution, at times even”,,

when the prosecuting agencies are themselves fixed in the dock, ignoring the ground realities, the fact situation and the peculiar circumstances of a”,,

given case, as in the present case, often results in miscarriage of justice and makes the justice delivery system suspect and vulnerable. In the ultimate”,,

analysis the society suffers and a criminal gets encouraged. Tortures in police custody, which of late are on the increase, receive encouragement by”,,

this type of an unrealistic approach at times of the Courts as well because it reinforces the belief in the mind of the police that no harm would come to,,

them if one prisoner dies in the lock-up because there would hardly be any evidence available to the prosecution to directly implicate them with the,,

torture. The Courts must not lose sight of the fact that death in police custody is perhaps one of the worst kind of crimes in a civilized society,”,,

governed by the rule of law and poses a serious threat to an orderly civilized society. Torture in custody flouts the basic rights of the citizens,,,

recognised by the Indian Constitution and is an affront to human dignity. Police excesses and the maltreatment of detainees/under-trial prisoners or,,,

suspects tarnishes the image of any civilised nation and encourages the men in 'Khaki' to consider themselves to be above the law and,,,

sometimes even to become law into themselves. Unless stern measures are taken to check them a lady of the very fence eating the crops, the" ,,,

foundations of the criminal justice delivery system would be shaken and the civilization itself would risk the consequence of heading, towards total" ,,,

decay resulting in anarchy and authoritarianism reminiscent of barbarism. The Courts must, therefore, deal with such cases in a realistic manner and" ,,,

with the sensitivity which they deserve, otherwise the common man may tend to gradually lose faith in the efficacy of the system of judiciary itself," ,,,

which if it happens will be a sad day, for anyone to reckon with." ,,,

8. Though Sections 330 and 331 of the Indian Penal Code, 1860 (for short the ' IPC') make punishable those persons who cause hurt for" ,,,

the purpose of extorting the confession by making the offence punishable with sentence up to 10 years of imprisonment, but the convictions, as" ,,,

experience shows from track record have been very few compared to the considerable increase of such onslaught because the atrocities within the,,,

precincts of the police station are often left without much traces or any ocular or other direct evidence to prove as to who the offenders are.,,,

Disturbed by this situation the Law Commission in its 113th Report recommended amendments to the Indian Evidence Act, 1872 (in short the" ,,,

'Evidence Act') so as to provide that in the prosecution of a police officer for an alleged offence of having caused bodily injuries to a,,,

person while in police custody, if there is evidence that the injury was caused during the period when the person was in the police custody, the Court" ,,,

may presume that the injury was caused by the police officer having the custody of that person during that period unless the police officer proves to,,,

the contrary. The onus to prove the contrary must be discharged by the police official concerned. Keeping in view the dehumanizing aspect of the,,,

crime, the flagrant violation of the fundamental rights of the victim of the crime and the growing rise in the crimes of this type, where only a few come" ,,,

to light and others don 't, the Government and the legislature must give serious thought to the recommendation of the Law Commission and" ,,,

bring about the appropriate changes in the law not only to curb the custodial crime but also to see that the custodial crime does not go unpunished. The,,,

Courts are also required to have a change in their outlook approach, appreciation and attitude, particularly in cases involving custodial crimes and they" ,,,

should exhibit more sensitivity and adopt a realistic rather than a narrow technical approach, while dealing with the cases of custodial crime so that as",,,

far as possible within their powers, the truth is found and guilty should not escape so that the victim of the crime has the satisfaction that ultimately the",,,

majesty of law has prevailed.Ã¢â¬â,,,

120. Their Lordships of the HonÃ¢â¬âble Supreme Court in Ã¢â¬âPrithipal Singh and others Vs. State of Punjab and anotherÃ¢â¬â, (2012) 1 Supreme Court",,,

Cases 10 have held that police atrocities are always violative of the constitutional mandate, particularly, Articles 21 and 22. Such provisions ensure",,,

that arbitrary arrest and detention are not made. Their Lordships have further held that tolerance of police atrocities, would amount to acceptance of",,,

systematic subversion and erosion of the rule of law. Their Lordships have further held that the Court cannot be a silent spectator where the stinking",,,

facts warrant interference in order to serve the interest of justice. Their Lordships have further held that if there is material on record, the Court must",,,

take action against the erring police officials. Their Lordships have also held that in cases of custodial violence or deaths, it is difficult to get evidence",,,

against the policemen responsible for such deaths since police personnel prefer to remain silent and even pervert truth to save colleagues. Their",,,

Lordships have further held that in case abduction by police and illegal detention and torture of deceased is established by witnesses, the reversal of",,,

burden of proof is on the police to explain what happened to deceased. Their Lordships have held as under:",,,

Ã¢â¬â26. The right to life has rightly been characterized as ""supreme' and `basic'; it includes both so-called negative and positive obligations for the",,,

State"". The negative obligation means the overall prohibition on arbitrary deprivation of life. In this context, positive obligation requires that State has",,,

an overriding obligation to protect the right to life of every person within its territorial jurisdiction. The obligation requires the State to take",,,

administrative and all other measures in order to protect life and investigate all suspicious deaths.",,,

27. The State must protect victims of torture, ill treatment as well as the human rights defender fighting for the interest of the victims, giving the issue",,,

serious consideration for the reason that victims of torture suffer enormous consequences psychologically. The problems of acute stress as well as a",,,

posttraumatic stress disorder and many other psychological consequences must be understood in correct perspective. Therefore, the State must",,,

ensure prohibition of torture, cruel, inhuman and degrading treatment to any person, particularly at the hands of any State agency/police force.",,,

28. In addition to the protection provided under the Constitution, the Protection of Human Rights Act,1993, also provide for protection of all rights to",,,

every individual. It inhibits illegal detention. Torture and custodial death have always been condemned by the courts in this country. In its 113th report, "",

the Law Commission of India recommended the amendment to the Indian Evidence Act, 1872 (hereinafter called ""Evidence Act""), to provide that in "",

case of custodial injuries, if there is evidence, the court may presume that injury was caused by the police having the custody of that person during that "",

period.,,,

Onus to prove contrary is on the police authorities. Law requires for adoption of a realistic approach rather than narrow technical approach in cases of,,,

custodial crimes. (Vide: Dilip K. Basu v. State of W.B. & Ors., AIR1997 SC 3017; N.C. Dhoundial v. Union of India & Ors., AIR 2004 SC 1272," "",

and Munshi Singh Gautam (D) & Ors.v. State of M.P., AIR 2005 SC 402)." "",

53. In State of West Bengal v. Mir MohammadOmar & Ors. etc. etc., AIR 2000 SC 2988, this Court held that if fact is especially in the knowledge of "",

any person, then burden of proving that fact is upon him. It is impossible for prosecution to prove certain facts particularly within the knowledge of "",

accused. Section 106is not intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt. But the Section,,,

would apply to cases where the prosecution has succeeded in proving facts from which a reasonable inference can be drawn regarding the existence,,,

of certain other facts, unless the accused by virtue of his special knowledge regarding such facts, failed to offer any explanation which might drive the "",

Court to draw a different inference. Section 106 of the Evidence Act is designed to meet certain exceptional cases, in which, it would be impossible" "",

for the prosecution to establish certain facts which are particularly within the knowledge of the accused. (See also: Shambhu Nath Mehra v. The State,,,

of Ajmer, AIR 1956 SC 404; Sucha Singh v. State of Punjab, AIR 2001 SC 1436; and Sahadevan @ Sagadevan v. State rep. by Inspector of Police," "",

Chennai, AIR 2003 SC 215)." "",

75. In a case where the person is alleged to have died in police custody, it is difficult to get any kind of evidence." "",

Rarely in cases of police torture or custodial death, direct ocular evidence is available of the complicity of the police personnel, who alone can only "",

explain the circumstances in which a person in their custody had died. Bound as they are by the ties of brotherhood, it is not unknown that police" "",

personnel prefer to remain silent and more often than not even pervert the truth to save their colleagues. "" "" "",

79. Both the courts below have found that the accused/appellants have abducted Shri Jaswant Singh Khalra. In such a situation, only the accused" "",

person could explain as what happened to Shri Khalra, and if he had died, in what manner and under what circumstances he had died and why his" "",

corpus delicti could not be recovered. All the accused/appellants failed to explain any inculpatory circumstance even in their respective statements,,,

under Section 313 Cr.P.C. Such a conduct also provides for an additional link in the chain of circumstances. The fact as what had happened to the,,,

victim after his abduction by the accused persons, has been within the special knowledge of the accused persons, therefore, they could have given",,,

some explanation. In such a fact-situation, the Courts below have rightly drawn the presumption that the appellants were responsible for his abduction,",,

illegal detention and murder.,,,

85. After appreciating the evidence on record, and considering the judgments of the courts below, we approve their following conclusions:",,,

(i) Jaswant Singh Khalra, being a human right activist, had taken the task to expose the misdeeds of police in Districts Amritsar and Taran Taran",,,

killing innocent people under the pretext of being terrorists and cremating them without any identification and performing any ritual.,,,

(ii) The Police authorities did not like such activities of Shri Khalra and tried to desist him from the same. Shri Khalra was being threatened over the,,,

telephone by the police officials.,,,

(iii) Jaswant Singh Khalra informed a large number of persons about the threats and being watched by unidentified suspicious persons, who had been",,,

wandering around his house and had been followed by such elements.,,,

(iv) Jaswant Singh Khalra was able to generate public pressure against the police authorities which was a source of anger and pressure upon the,,,

police.,,,

(v) Ajit Singh Sandhu, SSP, hatched a conspiracy with appellants and some other police personnel to abduct Jaswant Singh Khalra and eliminate him",,,

or to put him in danger of being murdered.,,,

(vi) At the time of abduction, the accused did not permit Jaswant Singh Khalra even to change his clothes. One of the witnesses, namely, Rajiv Singh",,,

(PW.15) was pushed away.,,,

(vii) Rajiv Singh (PW.15) immediately informed various persons including Smt. Paramjit Kaur (PW.2) and Justice Ajit Singh Bains (PW.5) about the,,,

incident of kidnapping.,,,

(viii) In spite of the best efforts made by Smt. Paramjit Kaur (PW.2), wife of the deceased and others particularly, Rajiv Singh (PW.15) who went",,,

from pillar to post, whereabouts of Jaswant Singh Khalra were not made known to them.",,,

(ix) The police authorities did not cooperate in helping the complainant, though the witnesses had named the persons involved in the abduction of Shri",,,

Khalra.,,,

(x) Report (Ex.PA) dated 6.9.1995 submitted by Smt. Paramjit Kaur had not properly been recorded by the SHO Police Station, Islamabad. The",,,

version therein had been different from what she had reported. It so happened because of connivance of police officials.,,,

(xi) The accused in the case had been high police officials and there was every possibility that statement of the complainant Smt. Paramjit Kaur,,,

(Ex.PA) had not been recorded as reported by her.,,,

(xii) Before approaching this Court by filing a Habeas Corpus Writ Petition, Smt. Paramjit Kaur(PW.2) had approached the National Human Rights",,,

Commission at New Delhi in respect of the incident. However, she was advised to approach this Court.",,,

(xiii) This Court passed several orders in a writ petition filed by Smt. Paramjit Kaur, wife of the deceased, but whereabouts of Jaswant Singh Khaira",,,

could not be known and in view thereof, investigation of the case was transferred to the CBI.",,,

(xiv) In spite of transfer of the investigation of the case to the CBI, the Punjab police officials did not cooperate with the CBI and were not lending",,,

proper support in conducting the investigation. The police officials of Punjab united in an unholy alliance as their colleagues were involved and the case,,,

was going to tarnish the image of Punjab police. The witnesses named the police officials in their statements before the CBI and they identified the,,,

accused persons in the court.,,,

(xv) In order to find out the whereabouts of Shri Khaira, the CBI made public appeal by putting his photographs in electronic media. A large number",,,

of posters having his photograph had been affixed on the walls of the cities particularly in Taran Taran, Majitha and Amritsar and made a declaration",,,

that person giving information about him, would be rewarded with a sum of Rs.1 lakh.",,,

(xvi) The witnesses were so scared/ terrified of the action of the police atrocities/criminal intimidation that they could not muster the courage to reveal,,,

the truth. The witnesses could not name the accused while filing affidavits in this Court in the writ petition.,,,

(xvii) The appellants and other accused police officials attempted to prevent the testimony of the witnesses by threatening, harassing and involving",,,

them in false criminal cases and physical intimidation. A large number of false documents had been created by one of the witnesses because of police,,,

threats and fear put by the accused.,,,

(xviii) The witnesses had been acquitted by the courts as they had falsely been involved in criminal cases of a very serious nature. This was so done,,,

only to prevent them to support the prosecution. The witnesses suffered with criminal intimidation at the hands of the police officials. Even the,,,

complaints filed by the witnesses against other witnesses had been found to be false.,,,

(xix) The depositions made by the witnesses in the court had been consistent with their statements recorded under Section 161 Cr.P.C.,,,

(xx) The depositions of all the witnesses including Kulwant Singh (PW.14) and Kuldip Singh (PW.16) are worth acceptance in spite of all the,,,

discrepancies pointed out by the accused/appellants.,,,

(xxi) All the accused had taken the plea of alibi to show that none of them was present at the place of occurrence on the relevant date. However," ,,,

none of them could successfully prove the same and the plea of alibi taken by them was found to be false. This points towards their guilt.Ã,,,,

(xxii) Charges had been framed prior to recording the statements of Kuldip Singh (PW.16) and in such a factsituation the trial court ought to have,,,

altered the charges.,,,

(xxiii) Sufficient evidence is available on record in respect of abduction of Shri Jaswant Singh Khalra and the witnesses, particularly, Smt. Paramjit" ,,,

Kaur (PW.2), Rajiv Singh (PW.15) and Kirpal Singh Randhawa (PW.7) have identified the appellants as the persons who have abducted Shri Khalra." ,,,

Kulwant Singh (PW.14) has deposed about his illegal detention in Police Station Jhabal. In such a fact-situation, the burden shifts on the respondents" ,,,

to disclose as what happened to Shri Jaswant Singh Khalra.,,,

(xxiv) Though the dead body of Shri Jaswant Singh Khalra could not be recovered from the canal as the investigation commenced after along time," ,,,

recovery of the dead body is not a condition precedent for conviction of the accused for murder.,,,

86. Police atrocities are always violative of the constitutional mandate, particularly, Article 21 (protection of life and personal liberty) and Article 22" ,,,

(person arrested must be informed the grounds of detention and produced before the Magistrate within 24 hours). Such provisions ensure that,,

arbitrary arrest and detention are not made. Tolerance of police atrocities, as in the instant case, would amount to acceptance of systematic" ,,,

subversion and erosion of the rule of law. Therefore, illegal regime has to be glossed over with impunity, considering such cases of grave magnitude." ,,,

87. In view of the above, we do not find any reason to interfere with the well reasoned judgment and order of the High Court. The facts of the case" ,,,

do not warrant review of the findings recorded by the courts below. The appeals lack merit and are accordingly dismissed.Ãçâ,~â€ç,,

121. In 2017 (3) SCC 115, in the case of Ãçâ,~â€ç"State of Himachal Pradesh & another vs. Naval Kumar @ Rohit KumarÃçâ,~â€ç, their Lordships of the" ,,,

HonÃçâ,~â€çble Supreme Court have reduced the amount from Rs.1,25,00,000/- to" ,,,

Rs.90,00,000/- with 6% interest in a case of boy who was electrocuted and his both arms were amputated. Their Lordships have held as under:-" ,,,

14. The short question that arises for consideration in this appeal is whether the High Court, in the facts and circumstances of the case, was",,,

justified in awarding Rs. 1,25,00,000/- to the Respondent by way of compensation for the injuries sustained by the Respondent in an accident which",,,

occurred on 18.03.2012?,,,

15. The High Court held and, in our view, rightly that the incident in question occurred due to negligence of the State and its authorities and hence the",,,

State was vicariously liable to compensate the Respondent for the losses sustained by the Respondent. It may be mentioned that the State rightly did",,,

not challenge this finding and hence we need not go into its correctness. The High Court further held and, in our view, rightly that having regard to the",,,

family background of the Respondent and further Respondent's excellent performance as a brilliant student in studies, he would have easily earned Rs.",,,

30,000/- per month in his life. We find no good ground to interfere in this finding of fact, which, in our opinion, is based on proper material on record.",,,

16. The High Court, however, further awarded Rs. 10,00,000/- towards loss of companionship, life amenities/pleasures, and happiness, Rs. 10,00,000/-",,,

for pain and suffering, mental distress, trauma and discomfort and inconvenience, Rs. 10,00,000/- towards attendant/nursing expenses, and lastly, Rs.",,,

5,00,000/- for securing artificial/robotic limbs and future medical expenses. In our considered view, the award of compensation under these 4 heads",,,

3.,Haridwar,"Ramraj Gramodhyog Sansthan Govindpuri Haridwar

for Girls & Boys",0 to 18 yrs.

4., "Udhamsingh

Nagar", "Mahila and Bal Vikas Utthan Samitee Khera

Kaloni, Rudrapur for Girls & Boys",0 to 18 yrs.

Observation Home",,,

1.,Almora,"Govt. A, Observation A, A, A, Home A,

Pandaykhola, Almora",7 to 18 yrs.

2.,Dehradun,"Govt. A, Observation A, A, A, Home A,

Kedarpuram Dehradun",7 to 18 yrs.

., "Govt. A, A, A, A, A, Observation A, A, A, A, Hom

A, A, A, A, A, Kedarpuram

Dehradun for Girls",e7 to 18 yrs.

3.,Haridwar,"Govt. A, A, A, A, A, A, Observation A, A, A, A,

Home A, A, A, A, A, Roshnabad

Haridwar", 7 to 18 yrs.

4., Nainital, Govt. Observation Home Nainital, 7 to 18 yrs.

., Govt. Observation Home Nainital for Girls, 7 to 18 yrs.

5., Uttarkashi, "Govt. Observation Home Dunda, Uttarkashi", 7 to 18 yrs.

6., Pauri, Govt. Observation Home Gadoli Pauri Garhwal, 7 to 18 yrs.

., Govt. Observation Home Gadoli Pauri Garhwal, 7 to 18 yrs.

7., "Udhamsingh

Nagar", "Govt. Observation Home Kiccha Road, Bhadaipur,

Rudrapur", 7 to 18 yrs.

NGO Run Homes,,,

1., Dehradun, "Shri Shradhanand Bal Vanita Aashram for Boys &

Girls", 0 to 10 yrs.

2., "Indra Rastiya Chetna Samojouthan Sansthan Tilak

Road Dehradun for Boys &

Girls", 0 to 10 yrs.

3., "Hariom Aashram Balgarh Karwapani Shila Bypass

Dehradun for Boys & Girls", 0 to 10 yrs.

4., "Agneg Kunj Society Hope Project Sihniwala

Dehradun for Boys & Girls", 0 to 10 yrs.

5., "Epic Foundation Nyay Arunoday Bhimwala

Vikasnagar, Dehradun for Boys & Girls", 0 to 10 yrs.

6., "Saheli Trust Village Chadrabadni Sewlakala for

Girls", 0 to 18 yrs.

7., "Aashra Trust Near 119/1 Basant Bihar, Dehradun

for Boys", 0 to 18 yrs.

8., "Shishya Society Khairi Atak Pharm P.O. Selaque

Dehradun for Boys", 0 to 18 yrs.

9., "Indian Huma Welfare Society House No.48 Fes 2

Sakti Vihar Dun for Girls (SP Need)", 0 to 18 yrs.

10., "Apna Ghar Bal evm Mahila Utthan Badli

Dehradu for Boys & Girls", 0 to 10 yrs.

11., "Love Kush Muk Badli Awam Mandbudi

Premvihar Chouk Raiwala, Dun for Boys and Girls",0 to 10 yrs.

12.,,"Mecom Ministry Trust Line No.2 Tarner Road,

Clementown Dun for Girls",6 to 18 yrs.

13.,Ã,,,"Shri Styra Sai Sewa Aashram Samitt Aamwala

Vikasnagar Dun for Boys",7 to 18 yrs.

14.,Ã,,,"Raiz Himalay 51/1 Rajpur Road, Gree

Valley, Dehradun for Girls", "11 to 18

yrs.

15.,Ã,,Dun Sarthi the Sakha Society for Girls,7 to 18 yrs.

16.,Haridwar,Matra Aanchal Kakhal Haridwar for Girls,0 to 18 yrs.

17.,,"Anath Shishupalan Trust of India Shri Ram

Aashram Shyampur Haridwar for Boys &

Girls",0 to 18 yrs.

18.,,Vatsalya Vatika Bahrabad Haridwar for Boys,7 to 18 yrs.

19.,Nainital,S.O.S. Bhimtal Nainital for Boys & Girls,0 to 18 yrs.

20.,,"National Association for the Blind (NAB) Golapa

Haldwani Nainital for Boys & Girls",r0 to 18 yrs.

21.,,"U.S.R. Indu Samitee Village BasaiP irumdar

Ramnagar, Nainital for Boys & Girls",6 to 18 yrs.

22.,,"Vimrash Bisht Niketan Tallital, Nainital for Boys", "11 to 18

yrs.

23.,,"Udhamsingh

Nagar", "Prayag Bal Sammitee Naugawanthaggu

Khatima, U.S. Nagar for Boys", "11 to 18

yrs.

24.,Tehri Garhwal,"Gramin Kshetriya Vikas Samitee Ranichori Tehri

Garhwal for Boys & Girls",0 to 10 yrs.

25.,Bageshwar,"Aakash Ganga Gramin Utthan Samitee

Kapkot Bageshwar for Girls", "11 to 18

yrs.

Govt. Run Children Home,,,

1.,Almora,Govt. Children Home Girls,"11 to 18

yrs.

Ã,,Govt. Children Home,0 to 10 yrs.

2.,Dehradun,Govt. Children Home Girls,"11 to 18

yrs.

Ã,,Govt. Children Home,"11 to 18

yrs.

3.,Haridwar,Govt. Children Home for Boys,"11 to 18

yrs.

S.No.,Personnel/Staff,Number,

1.,Person-in-charge (Superintendent),1,

2., "Probation Officer/Child Welfare Officer/Case Workers (NGOs)

A Child Welfare Officer may be designated as Rehabilitation-

cum-Placement OfficerÃ,,3,

3.,Counselor/ Psychologists/mental health expertÃ,,2,

4.,House Mother/ House Father,4,

5.,Educator/ TutorÃ,,2(Part time),

6.,Medical Officer (Physician)Ã,,1 (on call),

7.,Para-medical staff/ Staff Nurse/Nursing OrderlyÃ,,1,

8.,Store Keeper cum AccountantÃ,,1,

9.,Art & Craft & activity teacherÃ,,1 (Part time),

10.,PT Instructor-cum-Yoga trainerÃ,,1 (Part time),

11.,CookÃ,,2,

12.,HelperÃ,,2,

13.,House keepingÃ,,2,

14.,DriverÃ,,1,

15.,GardenerÃ,,1 (Part time),

(ii),2 Class roomsÃ,,300Sq.ft. for 25 children i.e. 600 Sq. ft.,

(iii),Sickroom/First aid roomÃ,,75 Sq.ft. per children for 10 i.e. 750 Sq.

ft. ",

(iv),KitchenÃ,,250 Sq. ft.,

(v),Dining hallÃ,,800 Sq. ft.,

(vi),StoreÃ,,250 Sq.ft.,

(vii),Recreation room,300 Sq.ft.,

(viii),Library,500 Sq.ft.,

(ix),5 Bathroom,25 Sq.ft. each i.e. 125 Sq. ft.,

(x),8 Toilets,25 Sq. ft. i.e. 200 Sq.ft.,

(xi),Office rooms,"(a) 300 Sq.ft. (b) Person-in-charge room 200 Sq.ft. ",

(xii),"Counselling , andGuidance room",120 Sq.ft.,

(xiii),Workshop,"1125 Sq. ft. for 15 children @ of 75 Sq.ft. per trainee",

(xiv),Residence for Person-in-charge,"(a) 2 rooms of 250 Sq.ft. each (b) Kitchen 75 Sq.ft. (b) bathroom cum toilet 50 Sq ft. ",

(xv),"2 rooms for Juvenile Justice Board or Child Welfare

Committee",300 Sq. ft each i.e. 600 Sq.ft.,

(xvi),Playground,"Sufficient area according to total number of children",

,Total,8495 Sq.ft.,

A. BEDDING,,,

S.No.,Article,Quantity to be provided per child,

1.,Mattress,"1 at the time of admission and subsequently 1 after every 1 year. ",

2.,Cotton,"Durry 2 at the time of admission and subsequently 2 after every 2 years. ",

3.,Cotton bed sheets,"2 at the time of admission and subsequently 1 after every 6 months. ",

4.,Pillow (Cotton stuffed),"1 at the time of admission and subsequently 1 after every 1 year. ",

5.,Pillow covers,"1 at the time of admission and subsequently 1 after every 1 year. ",

6.,Cotton blankets/ Khes,"2 at the time of admission and subsequently 1

after every 2 years.",

7.,Cotton filled quilt,"1 at the time of admission and subsequently

1 after every 2 years (in cold region in

addition to the blankets).",

8.,Mosquito net,"1 at the time of admission and subsequently 1

after every 6 months.",

9.,Cotton towels,"2 at the time of admission and subsequently 1

after every 3 months.",

S. No.,Night clothing and bedding,Scale for supply,

1.,Mattress,One per bed per 3 years.,

2.,Cotton bed sheets,Four per bed per year.,

3.,Pillows,One per bed per two year.,

4.,Pillow covers,Four per bed per year.,

5.,Woollen blankets,One per bed per 2 years.,

6., "Pyjamas and loose shirts (hospital

type for boys)",3 pairs per child per year.,

7., "Skirts and blouses or salwar kameez

for girls",3 pairs per child per year.,

8.,Cotton durry,One per bed per three years,

S. No.,Items,Scale of Supply,

1.,Broom stick,"25 to 40 per month depending on the area

of the institution",

2.,Pesticide spray,"As per the institution doctor's

advice.",

3.,Effective bugs killing agent,As required.",

4.,Phenyl and cleaning acid,"Depending on the area of lavatories to be

(daily) cleaned as per institution

doctor's advice.",

5.,Mosquito repellent machines,2 per room per month with adequate fillets.,

S.No.,Name of the articles of diet,Scale per head per day,

1.,Rice/Wheat/Ragi/Jowar,"600 gms, (700 gms for 16-18 yrs

age) of which atleast 100 gms

to be either Wheat or Ragi or

Jowar or Rice.",

2.,Dal/ Rajma/ Chana,120 gms.,

3.,Edible Oil,25 gms.,

4.,Onion,25 gms.,

5.,Salt,25 gms.,

6.,Turmeric,05 gms.,

7.,Coriander Seed Powder,05 gms.,

8.,Ginger,05 gms.,

9.,Garlic,05 gms.,

10.,Tamarind/ Mango powder,05 gms.,

11.,Milk (at breakfast),150 ml.,

12.,Dry Chillies,05 gms.,

13.,Vegetables Leafy Non " leafy,100 gms. 130gms.,

14.,Curd or Butter Milk,100 gms/ml.,

15.,Chicken once a week or Eggs 4 days,115 gms.,

16.,"Jaggery & Ground Nut Seeds or Paneer

(vegetarian only)", "60 gms each (100 gms for paneer) Once in a week.",

17.,Sugar,40 gms.,

18.,Tea/Coffee,5gm.,

19.,Sooji/Poha,150 gms.,

20.,Ragi,150 gms.,

Ã,,Following items for 50 Children per day,,

21.,Pepper,25 gms.,

22.,Jeera Seeds,25 gms.,

23.,Black Gram dal,50 gms.,

24.,Mustard Seeds,50 gms.,

25.,Ajwain Seeds,50 gms.,

Ã,,On Chicken Day for 10 Kg. of Chicken,,

26.,Garam Masala,10 gms.,

27.,Kopra,150 gms.,

28.,KhasKhas,150 gms.,

29.,Groundnut oil,500 gms.,

Ã,,For Sick Children,,

30.,Bread,500 gms.,

31.,Milk,500 ml.,

32.,Khichadi,300 gms.,

Ã,,Other Items,,

33.,LP Gas for Cooking only.,Ã,,

W. Every Child Care Institution is directed to ensure the following medical care for children as per Rule,,

34:-,,

(i) arrange for medical examination of each child admitted in an institution by the Medical Officer within twenty- four hours of admission and in special,,

cases or medical emergencies immediately;,,,

(ii) arrange for a medical examination of child by the Medical Officer at the time of transfer within twenty four hours before transfer;,,,

(iii) maintain a medical record of each child on the basis of monthly medical check-up and provide necessary medical facilities;,,,

(iv) ensure that the medical record includes weight and height record, any sickness and treatment, and other physical or mental problems;Ã,,",,,,

(v) have facilities for quarterly medical check-ups including dental check-up, eye testing and screening for skin problems and for treatment of children;" ,,,

(vi) every institution to have first aid kit and all staff be trained in handling first aid;Ã,,",,,,

(vii) make necessary arrangements for the immunization of children;Ã,,",,,,

(viii) take preventive measures in the event of out-break of contagious or infectious diseases;Ã,,",,,,

(ix) keep sick children under constant medical supervision;Ã,,",,,,

(x) not carry out any surgical intervention in a hospital on any child without the previous consent of his parent or guardian, unless the parent or" ,,,

guardian cannot be contacted and the condition of the child is such that any delay would, in the opinion of the medical officer, involve unnecessary" ,,,

suffering or injury to the health of the child or danger to life, or without obtaining a written consent to this effect from the Person-in-charge of the" ,,,

institution; (xi) provide or arrange for regular counselling of every child and ensure specific mental health interventions for those in need of such,,

services, including separate rooms for counselling sessions within the premises of the institution and referral to specialised mental health centres," ,,,

where necessary; andÃ,,",,,,

(xii) refer such children who require specialised drug de-,,,

addiction and rehabilitation programme, to an appropriate centre administered by qualified persons where these programmes shall be adopted to the",,,

age, gender and other specifications of the child concerned.Ã, (4) Baseline investigation of Complete Blood Count (CBC), Urine Routine, HIV, ",,,

VDRL, Hepatitis B and Hepatitis C tests and allergy or addiction to drugs shall be conducted for all children at the time of entry into the institution as",,,

suggested by the doctor after examining the child.Ã,,,

(5) Test for pregnancy or diseases for victims of sexual offences shall be conducted, if required by the order of the Board or the Committee or the",,,

ChildrenÃ¢â¬âs Court. In such cases the District Child Protection Unit shall facilitate following of the procedures laid down in the Medical Termination,,,

of Pregnancy Act, 1971, if so needed.Ã, ",,,

(6) The State Government through the District Child Protection Unit shall make provisions for those children diagnosed with special problems such as,,,

hormonal problems, immunocompromised diseases, physical and mental disabilities on the recommendation of the medical officer. The children shall be",,,

kept in special care homes or hospitals and avail necessary medical/ psychiatric and psychological support or treatment.Ã,,,

(7) All girls who have attained puberty shall undergo health assessment to detect iron deficiency. Necessary dietary plan and medicines shall be,,,

prescribed by the nutritionist and appointed doctor, if need be.Ã, ",,,

(8) A psycho- social profile of every child shall be maintained by the Child Care Institution and updated every month. Special observations may be,,,

recorded, when required. Person-incharge of the institution shall ensure that any recommendations made shall be duly complied with. ",,,

X. Every Child Care Institution shall maintain the following norms, as per Rule 35, with regard to mental health of inmates:-",,,

(1) The environment in an institution shall be free from abuse, allowing children to cope with their situation and regain confidence. ",,,

(2) All persons involved in taking care of the children in an institution shall participate in facilitating an enabling environment and work in collaboration,,,

with the therapists as needed.,,,

(3) Milieu based interventions and individual therapy are must for every child and shall be provided in all institutions. Explanation.â€• For the purpose of,,,

this subrule, Ã¢â¬âmilieu based interventionÃ¢â¬â is a process of recovery, which starts through providing an enabling culture and environment in an",,,

institution so as to ensure that each childÃ¢â¬âs abilities are discovered and they have choices and right to take decisions regarding their life and thus, ",,,

develop and identify beyond their negative experiences, such intervention which has a critical emotional impact on the child." ,,,

(4) Individual therapy is a specialised process and each institution shall make provisions for it as a critical mental health intervention.,,,

(5) Every institution shall have the services of trained counselors or collaboration with external agencies such as child guidance centres, psychology" ,,,

and psychiatric departments or similar Government and nonGovernmental agencies, for specialised and regular individual therapy for the child." ,,,

(6) The recommendations of mental health experts shall be maintained in every case file, as required." ,,,

(7) No child shall be administered medication for mental health problems without a psychological evaluation and diagnosis by trained mental health,,,

professionals.,,,

(8) Medicines should be administered to the children only by trained medical staff and not by any other staff of the Home.,,,

Y. All the Child Care Institutions are directed to provide following vocational training to the inmates, as provided under Rule 37:-" ,,,

(1) Every Child Care Institution shall provide gainful vocational training to children according to their age, aptitude, interest and ability, both inside or" ,,,

outside the Child Care Institution.,,,

(2) Vocational training shall include occupational therapy, skill and interest based training, aimed at suitable placement at the end of the course. The" ,,,

institute, preferably government recognised, providing vocational training shall give a certificate, on the completion of the course." ,,,

(3) Where vocational training is offered outside the premises of the Child Care Institution, children shall be escorted for such programmes with proper" ,,,

security planning and services, particularly for children who are at risk." ,,,

(4) A record shall be maintained for all children attending the programmes and the progress made by each child shall be reviewed. The report in that,,,

regard shall be submitted to the Board or the Committee or the Children's Court, as the case may be, on a quarterly basis." ,,,

Z. Every Child Care Institution is directed to provide following recreational facilities, as provided under" ,,,

Rule 38:-" ,,,

(1) Recreational facilities may include indoor and outdoor games, yoga and meditation, music, television, picnic and outings, cultural programmes," ,,,

gardening and library, etc." ,,,

(2) Sufficient space shall be made available for outdoor sports and games.,,,

(3) Picnic and outings may include education fair or science fair, museum, planetarium, botanical garden, zoological garden, etc." ,,,

(4) Cultural event or sports competition shall be held once in a quarter to showcase talent on festivals or on days of national festivals.,,,

(5) Library shall have child friendly environment. There shall be books in regional language, newspapers, children's magazines, puzzle books, ,,,

picture books, books in braille, audio and video devices, etc. ",,,

(6) Space in the home shall be made available for gardening with technical input being given by a gardener to the children.Ã,,,,

(7) Music, dance and art therapy may be included in the list of recreational activities to enhance the healing process of each child. ",,,

(8) Regularity of the activities shall be maintained with support of institutions and non-governmental organisation, if needed and a report shall be ",,,

submitted on quarterly basis to the Board or the Committee or the Children's Court, as the case may be. ",,,

AA. The State Government is directed to constitute State Child Protection Society and District Child Protection Unit for every district to take up,,,

matters relating to children with a view to ensure the implementation of the Act including the establishment and maintenance of institutions as provided,,,

under Section 106 of the Act.,,,

BB. The State Government is directed to give wide publicity through media including television, radio and print media at regular intervals so as to make ",,,

the general public, children and their parents or guardians aware of the Juvenile Justice (Care and Protection of Children) Act, 2015 and the Rules" ,,,

framed thereunder.,,,

CC. All the persons-in-charge of Child Care Institutions are directed to discharge following duties as per Rule 61:-,,,

Ã“(i) ensure compliance with the provisions of the Act and the rules and orders made thereunder;,,,

(ii) ensure compliance with the orders of the Board or the Committee or the Children's Court;Ã,,,,

(iii) provide homely and enabling atmosphere of love, affection, care and concern for children; ",,,

(iv) strive for the development and welfare of the children; (v) supervise and monitor discipline and well-being of the children and the staff;,,,

(vi) plan, implement and coordinate all activities, programmes and operations, including training and treatment programmes or correctional activities as" ,,,

the case may be;Ã,,,,

(vii) segregate a child suffering from contagious or infectious diseases on the advice of the medical officer of the institution;Ã,,,,

(viii) segregate a child wherever required;,,,

(ix) ensure observance and follow-up of daily routine activities;Ã,,,,

(x) organize local and national festivals in the home;,,,

(xi) organize trips or excursions or picnics for children;,,,

(xii) send a list of children in Form 40 in the Child Care Institution to the Board or the Committee, as the case may be, every week and bring to the",,,

notice of the Board or the Committee, if no date is given for the production of any child before the Board or the Committee;" ,,,

(xiii) allocate duties to personnel;,,,

(xiv) maintain standards of care in the Child Care,,

Institution;Ã,,,

(xv) ensure proper storage and inspection of food stuffs as well as food served;,,,

(xvi) maintain the buildings and premises of the Child,,

Care Institution;,,,

(xvii) maintain proper hygiene in the home;,,,

(xviii) provide accident and fire preventive measures, disaster management within the premises and also keep first aid kit;Ã, " ,,,

(xix) make stand-by arrangements for water storage, " ,,,

power back-up, inverters, generators; (xx) ensure careful handling of equipment;" ,,,

(xxi) employ appropriate security measures;,,,

(xxii) conduct periodical inspections, including daily inspection and rounds of the Child Care Institutions; (xxiii) take prompt action to meet" ,,,

emergencies; (xxiv) ensure prompt, firm and considerate handling of all disciplinary matters;" ,,,

(xxv) ensure proper and timely maintenance of the case files;Ã,,,

(xxvi) maintain all records and registers required under the Act and these rules;,,,

(xxvii) prepare the budget and maintain control over financial matters;,,,

(xxviii) organise the meetings of the Management Committee set up under rule 39 of these rules and provide necessary support;Ã,,,

(xxix) ensure monthly verification of all records and registers by the Management Committee set up under rule 39 of the rules;Ã,,,

(xxx) liaise, co-ordinate and co-operate with the State Child Protection Society and the District Child Protection Unit as and when required;" ,,,

(xxxi) co-ordinate with the legal cum Probation Officer in the District Child Protection Unit or the District or State Legal Services Authority to ensure,,

that every child is legally represented and provided free legal aid and other necessary support.,,,

(xxxii) ensure the production of the child before the Board or the Committee or the ChildrenÃ¢â€â€s Court on the date of such production and to ensure,,

that the dates for the said purpose are recorded.Ã,,,

(4) The Person-in-charge shall inspect the Child Care Institution as often as possible but not less than twice a day. He shall make a record of the,,

timings of his inspection and also note his observations in a separate book maintained for the purpose, especially with regard to:",,,

(i) maintenance of hygiene and sanitation," ,,,

(ii) maintenance of order," ,,,

(iii) quality and quantity of food," ,,,

(iv) hygienic maintenance of food articles and other supplies," ,,,

(v) hygiene in the medical centre and provisions for medical care," ,,,

(vi) behaviour of the children and staff," ,,,

(vii) security arrangements, and" ,,,

(viii) maintenance of files, registers and books." ,,,

(5) Anything irregular that comes to the notice of the Person-in-charge shall be enquired into and resolved and the date, time and nature of the action" ,,,

taken shall be noted in the book.,,,

(6) Where a problem of urgent nature has not been resolved within two working days, the Board or the Committee or the District Child Protection" ,,,

Unit shall be informed.,,,

(7) In case the Person-in-charge is on leave or otherwise not available, the duties of the Person-incharge shall be performed by the Child Welfare" ,,,

Officer as designated by the Person-incharge." ,,,

DD. The persons-in-charge are ordered to stay within the premises to be readily available as and when required by the children or the staff.,,,

EE. The State Government is directed to follow Rule 75, in case of death or suicide of child in a Child Care" ,,,

Institution as under:-" ,,,

(i) The institution must ensure that an inquest and postmortem examination is held at the earliest.,,,

(ii) In case of natural death or death due to illness of a child, the Person-in-charge shall obtain a report of the Medical Officer stating the cause of" ,,,

death and a written intimation about the death shall be given immediately to the nearest Police Station, Board or Committee and the parents or" ,,,

guardians or relatives of the child." (iii) Immediate information shall be given by the caseworker or Probation Officer or Child Welfare Officer to the,,,

Person-in-charge and the Medical Officer and the Person-in-charge shall immediately inform the nearest police station, Board or Committee and" ,,,

parents or guardians or relatives of the deceased child." ,,,

(iv) If a child dies within twenty-four hours of his admission to the Child Care Institution, the Person-in-charge of the Child Care Institution shall report" ,,,

the matter to the police and the District Medical Officer or the nearest Government hospital and the parents or guardians or relatives of such child,,,

without delay.Ã, (v) The Person-in-charge and the Medical Officer of the Child Care Institution shall record the circumstances of the death of the,,,

child and send a report to the concerned Magistrate, the police, the Board or the Committee or the ChildrenÃçâ,-â,,çs Court and the District Medical",,,

Officer or the nearest Government hospital where the dead body of the child is sent for examination and determination of the cause of death and the,,,

person-in charge and the Medical Officer shall also record in writing their views on the cause of death, if any, and submit it to the concerned",,,

Magistrate and to the police.Ã,,,,,

(vi) The Person-in-charge and the Medical Officer at the Child Care Institution shall make themselves available for any inquiry initiated by the police,,,

or the Magistrate regarding the cause of death and other details regarding such child.Ã,,,,,

(vii) As soon as the inquest is over, the body of the child shall be handed over to the parent or guardian or relatives or, in the absence of any claimant," ,,,

the last rites shall be performed under the supervision of the Personin-charge of the Child Care Institution in accordance with the known religion of the,,,

child after retaining a photograph of the child for future reference.,,,

FF. The State Government is directed to follow Rule 76 in case of abuse and exploitation of the child in the Child Care Institution.,,,

GG. The State Government is directed to issue necessary directions to all the Child Care Institutions to follow Section 97 and Rule 79 dealing with,,,

release of a child from Child Care Institution.,,,

HH. The State Government is directed to implement Section 95 of the Act qua transfer of a child to place of residence.Ã,,,,,

II. The child suffering from disease requiring prolonged medical treatment shall be sent to fit facility under Section 51 of the Act.,,,

JJ. The child suffering from mental illness or addicted to alcohol or drugs or any other substance which lead to behavioural changes shall be sent to,,,

Psychiatric Hospital or Psychiatric Nursing Home, in accordance with Medical Health Act, 1987.Ã",,,

KK. The State Government is directed to segregate mentally ill inmates and to send them to Psychiatric Nursing Home and Psychiatric Hospital,,,

forthwith.,,,

LL. The State Government is directed to appoint the inquiry officer not below the rank of Deputy Inspector General of Police, to inquire about the" ,,,

death of inmates of Nari Niketan, Kedarpuram, Dehradun, in the year 2014." ,,,

MM. The State Government is directed to establish at least one after Care Organization in the State for rehabilitation of the children between the age,,,

group of 18-21 years.,,,

NN. The State Government is directed to provide sufficient loans to the inmates of After Care Organization to setup entrepreneurial activities. The,,,

necessary scheme is ordered to be prepared for providing employment to the children leaving the Child Care Institutions. They shall also be provided,,,

vocational training.Ã,,,

OO. The State Government is directed to constitute Inspection Committee for the entire State and districts for all institutions registered or recognized,,,

to be fit under the Act, within six weeks from today. The Inspection Committee shall mandatorily conduct visit to all facilities at least once in three" ,,,

months in a team of not less than three members, of whom at least one shall be a woman and one shall be a medical officer, and submit reports of the" ,,,

findings of such visits within a week of their visit, to the District Child Protection Units or State Government for taking appropriate actions. Ã," ,,,

PP. The State Government is directed to prepare the programme/scheme for children who have to leave Child Care Institution after attaining the age,,,

of 16 years for providing education, giving them employable skills and placement including stay facility till the age of 21 years." ,,,

QQ. The State Government is further directed, as per Model Rules 25 read with Section 46 of the Act, to provide community group housing on a" ,,,

temporary basis for groups of six to eight persons, with stipend of sum of Rs.5,000/- for vocational training, scholarship of Rs. 6,000/- for higher" ,,,

education and support till the person gets employment, arrangements of loans and subsidies for the persons in after care institutions.Ã," ,,,

RR. No person in the State of Uttarakhand shall employ or use any child for the purpose of begging. The Police is directed to register the case against,,,

the persons, who employ the child for the purpose of begging, under Section 76 of the Act. Any person, who, for the purpose of taking amputate or" ,,,

maims the child, be sternly dealt with." ,,,

SS. The State machinery is directed to ensure that no person shall use a child for vending, peddling, carrying, supplying or smuggling any intoxicating" ,,,

liquor, narcotic drug or psychotropic substance.Ã," ,,,

TT. The corporal punishment is banned in all the Child Care Institutions and the persons involved therein be sternly dealt with, under Section 82 of the" ,,,

Act.,,,

UU. The Committee/Board is directed to allow the child on special occasions like examination, marriage of relatives, death of kith or kin or accident or" ,,,

serious illness of parent or any emergency of like nature to grant leave urgently.,,,

VV. The persons incharge of the custodial institution including beggars homes, orphanages, womenÃ¢â¬âs protection homes and children homes are" ,,,

directed to take the inmates of the institutions, suffering from mental illness, to the nearest mental health establishment run or funded by the State",,,

Government as per Section 104 of the Mental Healthcare Act, 2017." ,,,

129. Pending application, if any, also stands disposed of accordingly." ,,,