2024 INSC 614

REPORTABLE

IN THE SUPREME COURT OF INDIA
ORIGINAL/APPELLATE JURISDICTION

SUO MOTU WRIT PETITION (C) NO. 3 OF 2023

IN RE: RIGHT TO PRIVACY OF ADOLESCENTS

with

CRIMINAL APPEAL NO.1451 OF 2024

J U D G M E N T

ABHAY S. OKA, J.

FACTUAL ASPECTS

1. Criminal Appeal no.1451 of 2024 has been preferred by the State of West Bengal, aggrieved by the judgment and order dated 18th October 2023, passed by a Division Bench of the High Court of Judicature at Calcutta. The learned Special Judge appointed under the Protection of Children from Sexual Offences Act, 2012 (for short, 'the POCSO Act'), Baruipur, South 24 Parganas, convicted the accused for the offences punishable under Section 6 of the POCSO Act and Sections 363 and 366 of the Indian Penal Code, 1860 (for short, 'the IPC'). For the offence punishable under Section 6 of the POCSO Act, the accused was sentenced to undergo rigorous imprisonment for twenty years and pay a fine of Rs.10,000/-. He was sentenced to rigorous imprisonment for four and five years, respectively, for the offences punishable under Sections

363 and 366 of the IPC. Though the learned Special Judge under the POCSO Act concluded that the accused was guilty of the offences punishable under clause (n) of sub-section (2) and sub-section (3) of Section 376 of the IPC, in view of the sentence imposed for the offence punishable under Section 6 of the POCSO Act, no separate punishment was imposed.

2. The victim girl was fourteen years old at the time of the incident. The victim's mother lodged a First Information Report (FIR) on 29th May 2018. The victim's mother stated in her complaint that the victim, who was her minor daughter, escaped from her home at 5:30 p.m. on 20th May 2018 without informing anyone. On inquiry, it was found that the accused enticed her to leave her house. The accused did so with the help of his two sisters. The victim's mother repeatedly visited the house of the accused and requested him to facilitate the return of her daughter. However, the victim did not come back. A female child was born to the victim. Admittedly, the accused is the biological father of the child. There was a gross delay in the investigation, and the accused was arrested on 19th December 2021. The chargesheet was filed on 27th January 2022 against the accused for the offences for which he was convicted. In addition, the accused was charged with the offence punishable under Section 9 of the Prohibition of Child Marriage Act, 2006. The prosecution examined seven witnesses. We may note here that as the learned Special Judge under the POCSO Act found that there was no evidence

of marriage between the victim and the accused, the charge under Section 9 of the 2006 Act was held as not substantiated.

3. By the impugned judgment, the High Court held that the offences punishable under Sections 363 and 366 of the IPC were not made out, and therefore, the High Court acquitted the accused for the said two offences. Considering the factual scenario that the High Court noticed, it purported to exercise its jurisdiction under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 (for short, 'the Cr. PC') to set aside the conviction of the accused for the offences punishable under Section 6 of the POCSO Act and sub-sections 2(n) and (3) of Section 376 of the IPC. The High Court noted that the mother of the victim had disowned her and therefore, the victim was continuously residing with the accused along with their minor child.

4. The Suo Motu writ petition was initiated based on the directions issued by the Hon'ble Chief Justice of India for challenging the impugned judgment. The State Government has preferred the criminal appeal to challenge the order of acquittal.

5. Considering the nature of the observations made by the High Court and the findings recorded by it, this Court appointed Ms. Madhavi Divan and Ms. Liz Mathew, the learned senior counsel, as *amicus curiae* to assist the Court. Both of them have rendered valuable assistance to the Court. Along with them, Ms. Nidhi Khanna, Advocate-on-Record, has

also assisted the Court. We have heard Mr.Huzefa Ahmadi, the learned senior counsel appearing for the State Government and the learned counsel representing the accused and the victim. The learned senior counsel for the State Government has taken a fair stand. The accused and the victim are on the same page and want to continue their cohabitation.

ANALYSIS OF EVIDENCE

6. We have perused the evidence of the prosecution witnesses and the statement of the accused under Section 313 of the Cr. PC. From the statement and the evidence on record, it becomes an admitted position that the age of the victim on the date of the incident was fourteen years, and the age of the accused was about twenty-five years. When the statement of the accused was recorded, the age of the victim's daughter was about ten months. Though it is the case of the prosecution that the marriage between the accused and the victim was solemnised on 20th May 2018 in a temple, there is no evidence adduced by the prosecution on this aspect.

7. The evidence of the victim reveals that she also claimed that she married the accused. She stated that her daughter was ten months old. She stated in the cross-examination that she left her house of her own will and married the accused. She stated that since the year 2019, she has been residing in the house of the accused. She stated in the cross-examination that she would like to stay in the house of the accused.

8. The first informant, the victim's mother, deposed that on 20th May 2018, the victim was fourteen years and three months old. She produced the victim's birth certificate in the evidence. She stated that her daughter was kept in Narendrapur Sanlaap home, from where she was brought to her house. After staying in the house for a few months, she again went to the house of the accused.

9. We are not referring to the medical evidence as it is an admitted position that the accused kept physical relations with the victim, and the victim has given birth to a female child. There is no dispute that the accused is the biological father of the child. There is no explanation for the gross delay in investigation and the delay in arresting the accused. As stated earlier, the accused was arrested on 19th December 2021. Later on, he was enlarged on bail.

GUILT OF THE ACCUSED

10. Section 6 of the POCSO Act reads thus:

> **"6. Punishment for aggravated penetrative sexual assault.—** Whoever, commits aggravated penetrative sexual assault, shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life and shall also be liable to fine.**"**

'Penetrative sexual assault' is defined under Section 3 of the POCSO Act. In this case, there is no dispute about the fact that the accused committed penetrative sexual assault on the victim. As the victim became pregnant as a consequence of

the sexual assault, in view of sub-clause (ii) of clause (j) of Section 5 of the POCSO Act, it became a case of aggravated penetrative sexual assault. On facts, there cannot be any dispute that the commission of the offence punishable under Section 6 of the POCSO Act by the accused was duly proved.

11. Under Section 375 of the IPC, having penetrative intercourse with a victim who is under 18 years of age with or without her consent becomes an offence of rape. As the offence was repeatedly committed on the victim, clause (n) of sub-section (2) of Section 376 of the IPC is attracted. Therefore, the accused was liable to be punished in accordance with Section 376(2)(n) of the IPC. Sub-section (3) of Section 376 provides for a minimum punishment of twenty years for the offence of rape when the victim is less than sixteen years of age.

12. Section 361 of the IPC defines "Kidnapping from lawful guardianship". The said provision reads thus:

> **"361. Kidnapping from lawful guardianship.—**Whoever takes or entices any minor under sixteen years of age if a male, or under eighteen years of age if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian, is said to kidnap such minor or person from lawful guardianship.**"**

In the facts of the case, there is no evidence to prove that the accused took the victim out of the keeping of the lawful

guardian. Similarly, there is no evidence of enticing the victim. The mother of the victim deposed that the victim left her house on her own. That is also the version of the victim. Hence, the prosecution did not establish kidnapping. Therefore, the offences punishable under Sections 363 and 366 of the IPC are not made out. But, there is no doubt that the offences punishable under Section 6 of the POCSO Act and Sub-sections (2)(n) and (3) of Section 376 of the IPC were made out.

JUDGMENT

13. When a Court deals with an appeal against an order of conviction, the judgment must contain (i) a concise statement of the facts of the case, (ii) the nature of the evidence adduced by the prosecution and the defence, if any, (iii) the submissions made by the parties, (iv) the analysis based on the reappreciation of evidence, and (v) the reasons for either confirming the guilt of the accused or for acquitting the accused. The appellate court must scan through the evidence, both oral and documentary, and reappreciate it. After reappreciating the evidence, the appellate court must record reasons for either accepting the evidence of the prosecution or for disbelieving the evidence of the prosecution. The Court must record reasons for deciding whether the charges against the accused have been proved. In a given case, if the conviction is confirmed, the Court will have to deal with the legality and adequacy of the sentence. In such a case, there must be a finding recorded on the legality and adequacy of the sentence with reasons. The ultimate object of writing a

judgment is to ensure that the parties before the Court know why the case is decided in their favour or against them. Therefore, judgment must be in a simple language. The conclusions recorded by the Court in the judgment on legal or factual issues must be supported by cogent reasons.

14. No doubt, the Court can always comment upon the conduct of the parties. However, the findings regarding the conduct of the parties must be confined only to such conduct which has a bearing on the decision-making. A judgment of the Court cannot contain the Judge's personal opinions on various subjects. Similarly, advisory jurisdiction cannot be exercised by the Court by incorporating advice to the parties or advice in general. The Judge has to decide a case and not preach. The judgment cannot contain irrelevant and unnecessary material. A judgment must be in simple language and should not be verbose. Brevity is the hallmark of quality judgment. We must remember that judgment is neither a thesis nor a piece of literature. However, we find that the impugned judgment contains personal opinion of the Judges advice to the younger generation and advice to the legislature.

OBJECTIONABLE PORTIONS OF THE IMPUGNED JUDGMENT

15. Ms Madhavi Divan, the learned senior counsel appointed as amicus curiae, has culled out the portions of the impugned judgment which, according to her, are highly objectionable. We are reproducing the same:

i. "We feel it prudent to mention here that we noticed a rustic lady with a rumpled saree and unkempt hair, looking more aged than her age standing in a corner of the Court with a baby in her arms." (Para 2)

ii. "[…]**Non-exploitative sexual relationship without any intent is in rise among adolescents in our country.** We may only say that may be for the reason of climatic change, change in food habits etc. girls are attaining puberty now-a-days in a younger age and sexuality develop in them very early may be owing to peer pressure, influence by social media, free availability of porn materials and free mixing with friends of opposite sex in a taboo free atmosphere. This being, however, sociological study by experts, we do not want to comment on these aspects. To top it all we do not want to go to the pathology of the offence(s) statutorily outlined in the POCSO Act." (Para 13)

iii. "**The discussion so far stresses on a "Rights based approach" so far as adolescents are concerned. We may sound narrow in our view, but the practicality of the facts is that a "Rights based approach" as a panacea for all the problems that come is not the solution, and in our view, not the just and correct approach. For conferring the Rights suggested in the aforesaid discussion on the "captioned group" i.e. adolescents between the age fold of 16 to 18 in "romantic**

relationship", some test are to be satisfied first. Those are:

> i) Whether conferment of suggested Rights on the "captioned group" is/are in their best interest?
>
> ii) Whether the captioned group has the discretion and maturity to use that Rights for their best interest?
>
> iii) Whether such rights at such age is conducive for over all development of their personality or it is destructive of their self development?
>
> iv) Who are the persons on whom such Rights are to be conferred, are they disciplined adolescents or a wayward lot, who have no control on their trivial urge to have sex?
>
> v) Whether conferment of such Rights on the captioned group is in the best interest of the society?" (para 29)

iv. "To find answers to these tests opinions of some individuals, Rights activists, or view of so called liberals are not at all sufficient. [...]" (Para 29.1)

v. "Fundamental Rights in the Constitution and various other Rights in different statutes have been given to individuals for a balance in society, to check arbitrariness of the Government and development of best

self of an individual. If we go deep into our old texts, we find that Rights are not conferred but they are earned by action of an individual. If we look at Bentham's theory, it is found that every right has corresponding duty/duties or obligation/ obligations. By performing the obligation, you have to earn the Right/Rights. It is somewhat similar to the old oriental philosophy "Do your duty and earn your Right." (para 30)

vi. "The principal androgenic steroid is testosterone, which is secreted primarily from the testes in men and ovaries in women and in small amounts from the adrenal glands, both in men and women. Hypothalamus and pituitary gland control the amount of testosterone, which is primarily responsible for sex urge and libido (in men). It's existence is there in the body, so when the respective gland becomes active by stimulation, sexual urge is aroused. But activation of the respective responsible gland is not automatic. It needs stimulation by our sights, hearing, reading erotic materials and conversation with opposite sex. **So sexual urge is created by our own action. Sex in adolescents is normal but sexual urge or arousal of such urge is dependent on some action by the individual, may be a man or woman.** Therefore, sexual urge is not at all normal and normative. If we stop some actions), arousal of sexual urge, as advocated

in our discussion supra, ceases to be normal." (Para 30.1)

vii. "Ask any parents of an adolescent, may be a boy or girl, you shall get the answer how difficult it is to give a right upbringing to him/her in view of free flow of negative materials from the web and social media, which hamper their thinking process and living. **We, therefore, propose to take a "Duty/obligation based approach" to the issue in hand."** (Para 30.2)

viii. "It is the duty/obligation of every female adolescent to:

(i) Protect her right to integrity of her body.

(ii) Protect her dignity and self-worth.

(iii) Thrive for overall development of her self transcending gender barriers.

(iv) **Control sexual urge/urges as in the eyes of the society she is the looser (sic) when she gives in to enjoy the sexual pleasure of hardly two minutes**.

(v) Protect her right to autonomy of her body and her privacy.

It is the duty of a male adolescent to respect the aforesaid duties of a young girl or woman and he should

train his mind to a respect a woman, her self worth, her dignity & privacy, and right to autonomy of her body." (Para 30.3)

ix. "[…] Similarly, parental guidance and education so far as boys are concerned is to include how to respect a woman; how to keep dignity of a woman; how to protect the integrity of body of a woman; and how to befriend a woman without being aroused by sexual urge even if there is advances from the other side till he becomes capable to maintain a family. [.]." (Para 31)

x. "We do not want our adolescents to do anything that shall push them from dark to darker side of life. **It is normal for each adolescent to seek the company of opposite sex but it is not normal for them to engage in sex devoid of any commitment and dedication. We want them to spread their wings high with a view to realise their best selves. Sex shall come automatically to them when they grow self-reliant, economically independent and a person which they dreamt one day to be.** Along with sex in such a stage shall come love with commitment and dedication towards each other as they shall have the discretion and maturity to understand each other, adjust with each other and forgive each other. We beseech our adolescents to follow a salutary legal principle of Mahabharata "Dharmo Rakshyati Rakshyita" (one who protects law is protected by law) and

proceed in their path of self-development without being influenced by bashful urge of urgent sex." (Para 32)

xi. "**So far as the case of criminalisation of romantic relationship between two adolescents of opposite sex is concerned it should better be left to the wisdom of the judiciary.** Each judiciary in the world has the nicety of pluralism. Each individual judge has his/her own opinion. He/She has his/her own unique style of addressing an issue. [..] We are, therefore, of the view that the grey area of adolescent consensual sex about which much commotion is made should be left to the discretion and wisdom of the judiciary. It is also found from decisions of different Hon'ble High Courts that such matters have been dealt with in proper perspective taking into consideration the peculiarity of case placed before the court" (Para 33)

xii. "**Coming to the present case we find that this is a case of non-exploitative consensual sexual relationship between a minor girl and an older adolescent** or may be a young adult. [...]" (Para 38)

xiii. "In the present case things are even on better footing. The girl was 14+ when the occurrence happened. The boy was also an old adolescent or a young adult at that time. [.]" (Para 39)**"**

(emphasis added)

15.1 We need not waste pages dealing with every observation/finding quoted above. The observations are utterly irrelevant for deciding the controversy. To say the least, these observations are shocking, which will *ex-facie* invite a finding of perversity.

REASONS RECORDED BY THE HIGH COURT FOR ACQUITTAL

16. Now, we come to the reasons recorded by the Division Bench. The Division Bench has invited a very peculiar concept of "non-exploitative sexual acts" while dealing with the offences punishable under Section 376(2)(n) of the IPC and Section 6 of the POCSO Act. We fail to understand how a sexual act, which is a heinous offence, can be termed as non-exploitative. When a girl who is fourteen years old is subjected to such a horrific act, how can it be termed as "non-exploitative"? In paragraph 17, the High Court refers to "marital rape". In this case, there is no evidence of marriage. The Bench has also invented a non-existent category of "older adolescents" and lamented about the lack of recognition of the consensual behaviour of older adolescents. We fail to understand this concept of "older adolescents". Further, the Division Bench goes on to observe that sexual behaviour in adolescents, particularly from the onset of puberty, is established as being a natural, normative and integral part of an adolescent's development.

17. We must deal with some of the observations made by the High Court. The High Court concluded that by equating

consensual and non-exploitative sexual acts with rape and aggravated penetrative sexual assault, the law undermines the bodily integrity and dignity of adolescents. The High Court was not called upon to discuss the merits and demerits of the existing laws. What is shocking is the observation made in paragraph 23 of the impugned judgment where the High Court observed that while achieving ostensible objectives to protect all children below 18 years from sexual exploitation, the law's unintended effect has been the deprivation of liberty of young people in consensual relationship. The Court, surprisingly, carved out a non-existing category of romantic cases in the rape cases. While dealing with the offences under the POCSO Act, shockingly, the Court observed that the law undermines the identity of adolescent girls by casting them as victims, thereby rendering them voiceless. The Court says that, on the other hand, adult boys are discriminately treated as children in conflict with the law. Thereafter, in paragraph 25, the Court proceeded to criticise the POCSO Act by observing that it clubs all persons below eighteen years without considering their developing sexuality, evolving capacity and the impact of such criminalisation on their best interests. In paragraph 28, the Court went further. It held that instead of protecting the adolescents from abuse, the law exposes them in factually consensual and non-exploitative relationships to the risk of criminal prosecution. It compromises the mandate of protecting the children. Therefore, the Court observes that an amendment is necessary to decriminalise consensual sexual acts involving adolescents above sixteen years. The High

Court, while dealing with an appeal against the order of conviction, was not called upon to make the observations which we have referred to above. Perhaps these were the subjects on which only the experts could have debated at a different forum. The judges ought to have avoided expressing their personal views even assuming that there was some justification for holding the views. While the High Court observed this, it forgot that in the facts of the case, the Court was not dealing with the sexual acts involving adolescents above sixteen years, as the age of the victim was fourteen years and the accused was twenty-five years at the relevant time.

18. In paragraph 29, the Court went into the question of rights based approach, which was completely unwarranted. In paragraph 30.1, the Court referred to the generation of androgenic steroids and secretion from the pituitary gland. Thereafter, the Court laid down the duties and obligations of every female and adolescent in paragraph 30.3, which we have quoted above. No reasons are required to be recorded for holding that incorporation of the same in the judgment is entirely irrelevant and unwarranted. After that, the Court proceeded to lay emphasis on incorporating the aspects of reproductive health and hygiene into the school curriculum. There are several statements and conclusions in the impugned judgment which, to say the least, are shocking. Perversity is writ large on the face of the judgment, which can be seen in several paragraphs of the impugned judgment.

19. The duty of the High Court was to ascertain on the evidence whether the offences under Section 6 of the POCSO Act and Section 376 of the IPC were made out. In view of "*sixthly*" in Section 375 of the IPC, penetrative intercourse with a woman under eighteen years of age, with or without her consent, constitutes an offence of rape. Therefore, whether such offence arises from a romantic relationship is irrelevant. How can an act that is an offence punishable under the POSCO Act be described as "a romantic relationship"? The High Court went to the extent of observing that the case of criminalisation of a romantic relationship between two adolescents of opposite sex should be best left to the wisdom of the judiciary. The Courts must follow and implement the law. The courts cannot commit violence against the law. The findings and observations in the impugned judgment, except the finding on the applicability of Sections 363 and 366 of the IPC, cannot be sustained.

EXERCISE OF PLENARY POWERS TO QUASH THE ORDER OF CONVICTION

20. Now, coming to the conviction of the offences punishable under Section 6 of the POCSO Act and Section 376(2)(n) of the IPC, the Division Bench proceeds on the footing that the said offences have been established. However, the Court purported to exercise its "plenary powers" under Section 482 of the Cr.PC coupled with Article 226 of the Constitution of India to set aside the conviction of the accused. In short, as we can see

from the last few paragraphs of the impugned judgment, the High Court was swayed away by the following aspects:

(a) There was a "non-exploitative" consensual sexual relationship between the two consenting adolescents;

(b) The ground reality was that after the birth of the child, the accused is taking care of the victim and the infant/small child;

(c) The victim has no support from her parents, and

(d) A humane view is required to be taken to do complete justice.

21. On a plain reading of "*sixthly*" in Section 375 read with Section 376(2)(n) of the IPC, notwithstanding the consensual sexual relationship, the offence punishable under clause (n) of sub-section (2) of Section 376 of the IPC, was made out. One of the objectives of the POSCO Act is to effectively address sexual exploitation and sexual abuse of children, as both offences are very heinous. To give effect to the United Nations Convention on the Rights of Children ratified by India on 11th December 1992, the POCSO Act has been enacted. As noted earlier, in the facts of the case, the accused was not an adolescent, but his age was about twenty-five years on the date of the commission of the offence, and the victim was only fourteen years old. When such offences of rape and aggravated penetrative sexual assault are committed, by

exercising its jurisdiction under Article 226 of the Constitution of India and/or Section 482 of the Cr.PC, the High Court cannot acquit an accused whose guilt has been proved.

22. Perhaps the consideration of sympathy and the so-called welfare of the victim and her child prevailed on the Judges of the High Court. The Court was influenced by the fact that the victim's parents did not support her, and therefore, by sending the accused to jail, she and her child would be miserable as the accused and his family were taking care of them.

23. There are various decisions of this Court holding that the High Court can exercise jurisdiction under Section 482 of the Cr.PC to quash a prosecution on the grounds of settlement or by consent. One such judgment is in the case of ***Gian Singh v. State of Punjab & Anr.***[1]. Paragraph 58 of the said decision reads thus:

> **"58.** Where the High Court quashes a criminal proceeding having regard to the fact that the dispute between the offender and the victim has been settled although the offences are not compoundable, it does so as in its opinion, continuation of criminal proceedings will be an exercise in futility and justice in the case demands that the dispute between the parties is put to an end and peace is restored; securing the ends of justice being the ultimate guiding factor. No doubt, crimes are acts which have

[1] (2012) 10 SCC 303

harmful effect on the public and consist in wrongdoing that seriously endangers and threatens the well-being of the society and it is not safe to leave the crime-doer only because he and the victim have settled the dispute amicably or that the victim has been paid compensation, yet certain crimes have been made compoundable in law, with or without the permission of the court. **In respect of serious offences like murder, rape, dacoity, etc., or other offences of mental depravity under IPC or offences of moral turpitude under special statutes, like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity, the settlement between the offender and the victim can have no legal sanction at all.** However, certain offences which overwhelmingly and predominantly bear civil flavour having arisen out of civil, mercantile, commercial, financial, partnership or such like transactions or the offences arising out of matrimony, particularly relating to dowry, etc. or the family dispute, where the wrong is basically to the victim and the offender and the victim have settled all disputes between them amicably, irrespective of the fact that such offences have not been made compoundable, the High Court may within the framework of its inherent power, quash the criminal proceeding or criminal complaint or FIR if it is satisfied that on the face of such settlement, there is hardly any likelihood of the offender being convicted and by not quashing the

> criminal proceedings, justice shall be casualty and ends of justice shall be defeated. The above list is illustrative and not exhaustive. Each case will depend on its own facts and no hard-and-fast category can be prescribed.**"**
> (emphasis added)

23.1 Therefore, in view of the settled position of law, in the facts of the case, even if the accused and the victim (who has now attained majority) were to come out with a settlement, the High Court could not have quashed the prosecution.

HELPLESS POSITION OF THE VICTIM

24. The situation in which the victim was placed after the commission of the offence needs a bit of elaboration. As noted earlier, the victim left her house on 20th May 2018, and her mother filed a complaint on 29th May 2018. On 1st June 2018, PW-5 (ASI Gopal Chandra Saha) brought the victim from the house of the accused to the police station. After her medical examination was conducted, she was sent for safe custody at Alor Disha Child Line at Champahati. PW-2, mother of the victim, without giving any particulars stated that she got her daughter back from Narendrapur Sanlaap home. She claimed in the cross-examination that the victim remained in her house for one year and, later on, went back to the house of the accused. She admitted that she never went to the home of the accused, not even to see her grandchild. The victim's parents completely abandoned her, at least from the year 2019.

25. Ms Madhavi Divan, the learned *amicus curiae*, rightly emphasized that no opportunity was made available to a girl

of fourteen or fifteen years of age to make an informed choice to decide whether to stay with the accused. She did not get any support from her parents and the State machinery when she required it the most. As held by us hereafter, the State machinery failed to act according to the law to take care of the victim. The situation in which she was placed at that time was such that she had no opportunity to make an informed choice about her future. She had no option but to seek shelter where it was provided to her i.e. in the house of the accused. In any event, it is doubtful whether she could have made an informed choice at the age of fourteen or fifteen.

THE FAILURE OF THE STATE

26. The question before us is whether the State was under an obligation to take care of the victim of an offence under the POCSO Act, who was fourteen years old. Apart from the State's constitutional obligations, the statutes have enough provisions to address this situation. Though the existing law of the land could have taken adequate care of the poor victim in this case, the machinery created by the law failed. These conclusions need more elaboration.

27. The first relevant statutory provision is Section 19 of the POCSO Act. Section 19 of the POCSO Act reads thus:

> **"19. Reporting of offences.—** (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) any person (including the child), who has apprehension that an offence under this Act is likely to be committed or has knowledge that such

an offence has been committed, he shall provide such information to,—

(a) the Special Juvenile Police Unit; or

(b) the local police.

(2) Every report given under sub-section (1) shall be—

(a) ascribed an entry number and recorded in writing;

(b) be read over to the informant;

(c) shall be entered in a book to be kept by the Police Unit.

(3) Where the report under sub-section (1) is given by a child, the same shall be recorded under sub-section (2) in a simple language so that the child understands contents being recorded.

(4) In case contents are being recorded in the language not understood by the child or wherever it is deemed necessary, a translator or an interpreter, having such qualifications, experience and on payment of such fees as may be prescribed, shall be provided to the child if he fails to understand the same.

(5) Where the Special Juvenile Police Unit or local police is satisfied that the child against whom an offence has been committed is in need of care and protection, then, it shall, after recording the reasons in writing, make immediate arrangement to give him

such care and protection including admitting the child into shelter home or to the nearest hospital within twenty-four hours of the report, as may be prescribed.

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

(7) No person shall incur any liability, whether civil or criminal, for giving the information in good faith for the purpose of sub-section (1).**"**

(emphasis added)

27.1 Thus, under sub-section (6) of Section 19, it was the duty of the police to report the matter to the Child Welfare Committee (for short, 'CWC') and the Special Court within a period of twenty-four hours from the time the police had the knowledge about the commission of the offence. There is nothing placed on record which shows that compliance was made by reporting the case to CWC.

28. Section 27 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (for short, 'the JJ Act') provides for setting up the CWC. The powers of the CWC have been laid down in Section 29 of the JJ Act, which reads thus:

> **"29. Powers of Committee.— (1) The Committee shall have the authority to dispose of cases for the care, protection, treatment, development and rehabilitation of children in need of care and protection, as well as to provide for their basic needs and protection.**
>
> (2) Where a Committee has been constituted for any area, such Committee shall, notwithstanding anything contained in any other law for the time being in force, but save as otherwise expressly provided in this Act, have the power to deal exclusively with all proceedings under this Act relating to children in need of care and protection.**"**
>
> (emphasis added)

28.1 Thus, the authority of the CWC is to dispose of the cases for care, protection, treatment, development and rehabilitation of children in need of care and protection, as well as to provide for their basic needs and protection. The authority conferred on the CWC creates a corresponding obligation. A child in need of care and protection has been defined under sub-section (14) of Section 2 of the JJ Act, which reads thus:

> **"2. Definitions:-**
>
> .. ..
>
> (14) "child in need of care and protection" means a child—
>
> (i) who is found without any home or settled place of abode and without any ostensible means of subsistence; or

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

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

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

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

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

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

(v) who has a parent or guardian and such parent or guardian is found to be unfit or incapacitated, by the Committee or the Board, to care for and protect the safety and well-being of the child; or

(vi) who 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;

(15) .. .."

(emphasis added)

28.2 If a child is residing with a person who has injured, exploited or abused the child or has violated any other law for the time being in force meant for the protection of the child,

the said child becomes a child in need of care and protection. Thus, if a child who is a victim of an offence under the POCSO Act is residing with the accused, the child becomes a child in need of care and protection. Even a child who has a parent or guardian and if such parent or guardian is found to be unfit to take care of the child, in such a case, the child is covered by the definition under sub-section (14) of Section 2 of the JJ Act. Therefore, the CWC has to exercise the power to provide basic needs and protection to such children in need of care and protection.

29. Giving information of the commission of offence under the POCSO Act, as required by Section 19(6) of the POCSO Act, is not an empty formality. The CWC has to immediately step in and take action as provided under Section 30 of the JJ Act, which reads thus:

> **"30. Functions and responsibilities of Committee.—** The functions and responsibilities of the Committee shall include—
>
> (i) taking cognizance of and receiving the children produced before it;
>
> **(ii) conducting inquiry on all issues relating to and affecting the safety and well-being of the children under this Act;**
>
> (iii) directing the Child Welfare Officers or probation officers or District Child Protection Unit or non-governmental organisations to conduct social investigation and submit a report before the Committee;

(iv) conducting inquiry for declaring fit persons for care of children in need of care and protection;

(v) directing placement of a child in foster care;

(vi) ensuring care, protection, appropriate rehabilitation or restoration of children in need of care and protection, based on the child's individual care plan and passing necessary directions to parents or guardians or fit persons or children's homes or fit facility in this regard;

(vii) selecting registered institution for placement of each child requiring institutional support, based on the child's age, gender, disability and needs and keeping in mind the available capacity of the institution;

(viii) conducting at least two inspection visits per month of residential facilities for children in need of care and protection and recommending action for improvement in quality of services to the District Child Protection Unit and the State Government;

(ix) certifying the execution of the surrender deed by the parents and ensuring that they are given time to reconsider their decision as well as making all efforts to keep the family together;

(x) ensuring that all efforts are made for restoration of abandoned or lost

children to their families following due process, as may be prescribed;

(xi) declaration of orphan, abandoned and surrendered child as legally free for adoption after due inquiry;

(xii) taking suo motu cognizance of cases and reaching out to children in need of care and protection, who are not produced before the Committee, provided that such decision is taken by at least three members;

(xiii) taking action for rehabilitation of sexually abused children who are reported as children in need of care and protection to the Committee by Special Juvenile Police Unit or local police, as the case may be, under the Protection of Children from Sexual Offences Act, 2012 (32 of 2012);

(xiv) dealing with cases referred by the Board under sub-section (2) of section 17;

(xv) co-ordinate with the police, labour department and other agencies involved in the care and protection of children with support of the District Child Protection Unit or the State Government;

(xvi) in case of a complaint of abuse of a child in any child care institution, the Committee shall conduct an inquiry and give directions to the police or the District Child Protection Unit or labour department or childline services, as the case may be; (xvii)

> accessing appropriate legal services for children; (xviii) such other functions and responsibilities, as may be prescribed.**"**
>
> (emphasis added)

29.1 Under clause (vi) of Section 30, it is the duty of the CWC to ensure care, protection, appropriate rehabilitation or restoration of children in need of care and protection based on the child's individual care plan. The CWC cannot wait till the children in need of care and protection are produced before it. Under clause (xii) of Section 30, the CWC must take *suo motu* cognizance of the cases and reach out to the children in need of care and protection. What is important here is clause (xiii) of Section 30, which mandates that it is the duty of the CWC to take action for the rehabilitation of sexually abused children who are children in need of care and protection.

30. Section 31 of the JJ Act reads thus:

> **"31. Production before Committee.—** (1) Any child in need of care and protection may be produced before the Committee by any of the following persons, namely:—
>
> > **(i) any police officer or special juvenile police unit or a designated Child Welfare Police Officer or any officer of District Child Protection Unit or inspector appointed under any labour law for the time being in force;**
> >
> > (ii) any public servant;

(iii) Childline Services or any voluntary or non-governmental organisation or any agency as may be recognised by the State Government;

(iv) Child Welfare Officer or probation officer;

(v) any social worker or a public spirited citizen;

(vi) by the child himself; or

(vii) any nurse, doctor or management of a nursing home, hospital or maternity home:

Provided that the child shall be produced before the Committee without any loss of time but within a period of twenty-four hours excluding the time necessary for the journey.

(2) The State Government may make rules consistent with this Act, to provide for the manner of submitting the report to the Committee and the manner of sending and entrusting the child to children's home or fit facility or fit person, as the case may be, during the period of the inquiry.**"**

(emphasis added)

30.1 Sub-section (2) of Section 31 confers power on the State Government to provide for the manner of submitting the report to the CWC and the manner of sending and entrusting a child to a children's home or a fit facility. The West Bengal Juvenile Justice (Care and Protection of Children) Rules, 2017 (for short, 'the WB Rules') and in particular Rule 18, deal with

the production of children before the CWC. Section 32 of the JJ Act enjoins an individual or police officer to make a report regarding a child found separated from his/her guardian. Non-reporting is made an offence.

31. Then comes Section 36 of the JJ Act which provides for inquiry to be made by the CWC on production of child or on receipt of a report under Section 31. Sub-section (1) of Section 36 provides that the CWC may pass an order to send the child to a children's home or a fit facility or a fit person. Sub-section (2) of Section 36 contemplates speedy social investigation by social welfare or child welfare officers. The social investigation is required to be completed within fifteen days. This enables the CWC to pass final orders. After completion of the inquiry, the final order is to be passed in accordance with sub-section (3) of Section 36, which reads thus:

> **"36. Inquiry.—**
> .. ..
>
> (3) After the completion of the inquiry, if Committee is of the opinion that the said child has no family or ostensible support or is in continued need of care and protection, it may send the child to a Specialised Adoption Agency if the child is below six years of age, children's home or to a fit facility or person or foster family, till suitable means of rehabilitation are found for the child, as may be prescribed, or till the child attains the age of eighteen years:

Provided that the situation of the child placed in a children's home or with a fit facility or person or a foster family, shall be reviewed by the Committee, as may be prescribed.**"**

32. Then comes the crucial provision of Section 39 incorporated under Chapter VII. Section 39 deals with the process of rehabilitation and social re-integration, which reads thus:

> **"39. Process of rehabilitation and social re-integration.— (1) The process of rehabilitation and social integration of children under this Act shall be undertaken, based on the individual care plan of the child, preferably through family based care such as by restoration to family or guardian with or without supervision or sponsorship, or adoption or foster care:**
>
> **Provided that all efforts shall be made to keep siblings placed in institutional or non-institutional care, together, unless it is in their best interest not to be kept together.**
>
> (2) For children in conflict with law the process of rehabilitation and social integration shall be undertaken in the observation homes, if the child is not released on bail or in special homes or place of safety or fit facility or with a fit person, if placed there by the order of the Board.
>
> **(3) The children in need of care and protection who are not placed in families for any reason may be**

> **placed in an institution registered for such children under this Act or with a fit person or a fit facility, on a temporary or long-term basis, and the process of rehabilitation and social integration shall be undertaken wherever the child is so placed.**
>
> (4) The Children in need of care and protection who are leaving institutional care or children in conflict with law leaving special homes or place of safety on attaining eighteen years of age, may be provided financial support as specified in section 46, to help them to re-integrate into the mainstream of the society.**"**
>
> (emphasis added)

33. There are various provisions, such as foster care, providing a sponsor to the children, etc. Section 46 is another salutary provision that provides that any child leaving child care on completion of eighteen years of age may be provided with financial support to facilitate re-integration into the mainstream of society in the manner as may be prescribed by law. Section 46 of the JJ Act reads thus:

> **"46. After care of children leaving child care institution.—** Any child leaving a child care institution on completion of eighteen years of age may be provided with financial support in order to facilitate child's re-integration into the mainstream of the society in the manner as may be prescribed.**"**

33.1 "After care" has been defined in Section 2(5) of the JJ Act. It is a provision for financial or otherwise support to persons in the age group of 18 to 21 years. Rule 25 of the WB Rules has been enacted to give effect to Section 46. Rule 25 reads thus:

> **"25. After Care of Children Leaving Institutional Care.- (1) The State Government shall 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 employable skills and placement as well as providing them places for stay to facilitate their re-integration into the mainstream of society in consultation with concerned committees on After Care.**
>
> **(2) Any child who leaves a Child Care Institution may be provided after care till the age of twenty-one years on the order of the Committee or the Board or the Children's Court, as the case may be, as per Form 37 and in exceptional circumstances, for two more years on completing twenty-one years of age.**
>
> (3) The District Child Protection Unit shall prepare and maintain a list of organisations, institutions and individuals interested in providing after care as per their area of interest such as education, medical support, nutrition, vocational training etc. and the same shall be forwarded to the

Board or the Committee and all Child Care Institutions for their record.

(4) The Probation Officer or the Child Welfare Officer or Case Worker or social worker, shall prepare a post release plan and submit the same to the Board or the Committee, through the concerned committees on After Care, two months before the child is due to leave the Child Care Institution, recommending after care for such child, as per the needs of the child.

(5) The Board or the Committee or the Children's Court, while monitoring the post release plan will also examine the effectiveness of the aftercare programme, particularly whether it is being utilized for the purpose for which it has been granted and the progress made by the child as a result of such after-care programme.

(6) Children who are placed in aftercare programme, shall be provided funds by the State Government for their essential expenses; such funds shall be transferred directly to their bank accounts.

(7) The services provided under the after-care programme may include:

(i) community group housing on a temporary basis for groups of six to eight persons;
(ii) provision of stipend during the course of vocational training or scholarships for higher education

and support till the person gets employment;
(iii) arrangements for skill training and placement in commercial establishments through coordination with National Skill Development Programme, Indian Institute for Skill Training and other such Central or State Government programmes and Corporates, etc.;
(iv) provision of a counsellor to stay in regular contact with such persons to discuss their rehabilitation plans;
(v) provision of creative outlets for channelising their energy and to tide over the crisis periods in their lives;
(vi) arrangement of loans and subsidies for persons in after-care, aspiring to set up entrepreneurial activities; and
(vii) encouragement to sustain themselves without State or institutional support.

(emphasis added)**"**

33.2 Section 46, read with Rule 25, is one of the most critical provisions that needs to be effectively implemented. Thus, the JJ Act has adequate provisions to ensure the care, protection, treatment, and rehabilitation of the victim of an offence under the POCSO Act. The ultimate object is to

integrate the child in need of care and protection into society to lead a dignified and meaningful life.

34. If sub-section (6) of Section 19 is implemented in relation to the victims of the offences under the POCSO Act and thereafter, the CWC strictly implements the provisions of the JJ Act which we have referred to above, no victim will face the situation which the victim in this case had to face. The JJ Act is a complete code that makes provisions for the care, protection, treatment, and development of children in need of care and protection. The JJ Act provides for making available their basic needs and protection. The Act takes care of all the needs of the victims under the POCSO Act who fall under the category of children in need of care and protection. The object is to undertake the rehabilitation and social re-integration process of such victims based on individual care plans as provided under Section 39 of the JJ Act. Section 46 is a provision that requires the State Governments to frame rules to provide financial support to any child living in a child care institution upon completion of 18 years of age. The financial support has to be very exhaustive as the object of financial support is to facilitate a child's re-integration into mainstream society.

35. However, at the grassroot level, sub-section (6) of Section 19 is not being implemented. Even if the information is provided to the CWC, the children in need of care and protection are not being produced before the CWC. Even if the information is given under sub-section (6) of Section 19 of the

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

36. It is nobody's case that, in the present case, recourse was taken to the provisions starting from sub-section (6) of Section 19 of the POCSO Act. As these statutory provisions were overlooked entirely, a situation was created which did not

allow the victim to make an informed choice about her future. She did not get that opportunity even after attaining majority.

37. It is the responsibility of the State to take care of helpless victims of such heinous offences. Time and again, we have held that the right to live a dignified life is an integral part of the fundamental right guaranteed under Article 21 of the Constitution of India. Article 21 encompasses the right to lead a healthy life. The minor child, who is the victim of the offences under the POCSO Act, is also deprived of the fundamental right to live a dignified and healthy life. The same is the case of the child born to the victim as a result of the offence. All the provisions of the JJ Act regarding taking care of such children and rehabilitating them are consistent with Article 21 of the Constitution of India. Therefore, immediately after the knowledge of the commission of a heinous offence under the POCSO Act, the State, its agencies and instrumentalities must step in and render all possible aid to the victim children, which will enable them to lead a dignified life. The failure to do so will amount to a violation of the fundamental rights guaranteed to the victim children under Article 21. The police must strictly implement sub-section (6) of Section 19 of the POCSO Act. If that is not done, the victim children are deprived of the benefits of the welfare measures under the JJ Act. Compliance with Section 19(6) is of vital importance. Non-compliance thereof will lead to a violation of Article 21.

38. Unfortunately, in our society, due to whatever reasons, we find that there are cases and cases where the parents of the victims of the offences under the POSCO Act abandon the victims. In such a case, it is the duty of the State to provide shelter, food, clothing, education opportunities, etc., to the victim of the offences as provided in law. Even the child born to such a victim needs to be taken care of in a similar manner by the State. After the victim attains the majority, the State will have to ensure that the victim of the offence can stand on his/her legs and, at least, think of leading a dignified life. That is precisely what Section 46 of the JJ Act provides. Sadly, in the present case, there is a complete failure of the State machinery. Nobody came to rescue the victim of the offence, and thus, for her survival, no option was left to her but to seek shelter with the accused.

39. We may note here that the Ministry of Women and Child Development, Government of India, has framed a scheme for care and support to the victims under Sections 4 and 6 of the POSCO Act. The scheme is very exhaustive and even contains a provision for providing accommodation to girl child victims up to the age of eighteen years and aftercare support up to the age of twenty-three years. It provides health services, counselling, and mental health services. It provides for helping the victim to acquire education and vocational skills. Apart from the scheme mentioned above of the Ministry of Women and Child Development, Government of India, the National Legal Services Authority (NALSA) has come out with

a Compensation Scheme for Women Victims and Survivors of Sexual Assault/other Crimes-2018. Extensive benefits are made available to the victims of sexual offences under the said scheme.

WHAT NEXT?

40. At this stage, we may note that on 9th May 2024, the learned counsel appearing for the State has filed a written note which records the State's assurance to support the victim. In paragraph 5 of the note, the State has stated thus:

> **"5.** Such support is enumerated below only by way of illustration-
>
> **a.** That the State Govt is committed to finding a home for the victim (Mother) and the minor child in a safe environment and also provide for all the daily requirements.
>
> **b.** That the State shall further also coordinate with NGOs working in this space to prepare a work-cum-life plan for the victim and the minor child in order to make her independent and ensure that she can make an informed choice about her and her child's future and her stand in the present proceedings.
>
> **c.** Till such time that the victim is financially independent, state will provide for the educational need of the minor child.
>
> **d.** Any other logistical support that this Hon'ble Court may deem fit and appropriate.**"**

40.1 We may note here that Mr. Huzefa Ahmadi, the learned senior counsel representing the appellant-State in Criminal Appeal No.1451 of 2024, without taking instructions from the State, had earlier assured the Court to extend support to the victim in the manner mentioned above. The State Government must support the victim's child. In this case, there is a failure of the machinery under the JJ Act in the State to discharge its obligations to the victim. Therefore, the State Government must go out of its way to help the victim.

41. Now, the question is whether we can force the child to take benefit of the support extended by the State Government. It may be argued that it is too late for the State to come out with this offer. Still, the Court must allow the victim to make an informed choice after being informed the details of the support that the State is willing to extend. We must do so as, at no stage, she was given such an option and an opportunity to make an informed choice about her future. Now, the question is how to enable the victim to exercise her option. This must be left to very qualified professionals/experts to ascertain her views. This can be done by directing the State to constitute a team of two or three experts, including a clinical psychologist and a social scientist, who should meet the victim at a proper place and inform the victim about the offer of the State Government with all its material particulars. The state government can get assistance from expert bodies like the National Institute of Mental Health and Neurosciences (NIMHANS) or the Tata Institute of Social Sciences (TISS) to

constitute the team. The experts will have to meet the child on multiple occasions. While doing so, the experts will have to carefully ascertain the kind of support, if any, the victim and her child are getting from the accused and his family members. For that purpose, the committee can seek the help of the local child welfare officer. We must leave it to the committee of experts to decide how it will do the exercise. The place, the time and the methods must be left to the Committee. The committee will have to perform its duties cautiously and sensitively. The committee must ensure that this exercise does not make the victim more insecure.

CONCLUSIONS

42. Thus, to conclude, we hold that the accused is guilty of the offences punishable under sub-sections (2)(n) and (3) of Section 376 of the IPC and Section 6 of the POCSO Act. The issue regarding sentencing will be considered after the committee's report is received.

43. This extraordinary situation was created because the State machinery did not follow the provisions of law starting from sub-section (6) of Section 19 of the POCSO Act. The importance of rehabilitation of the victims of offences under the POCSO Act, which is a mandatory requirement of law, is being overlooked by all stakeholders. Perhaps, at levels, there is a need for introspection and course correction. We include even the Judiciary in that.

44. Hence, we pass the following order:

(a) The impugned judgment of the High Court is set aside and the judgment of the Special Court is restored to the extent of the conviction of the accused for the offences punishable under sub-sections (2)(n) and (3) of Section 376 of the IPC and Section 6 of the POCSO Act. Accordingly, the accused stands convicted. The acquittal of the accused for the offences punishable under Sections 363 and 366 of the IPC is confirmed. The appeal is partly allowed. The issue regarding sentencing will be considered after receiving the report of the committee in terms of clause (h) below.

(b) We direct the Government of West Bengal to constitute a committee of three experts, including a clinical psychologist and a social scientist. The State Government may take the assistance of NIMHANS or TISS for constituting the committee. A child welfare officer shall be appointed to assist the committee as its coordinator and secretary;

(c) The committee shall be formed within three weeks from today;

(d) Within one week from the date of formation of the committee, the State Government shall provide all the material particulars/details of the benefits which it is willing to extend to the victim as stated in paragraph 5

of the note submitted on 9th May 2024 by the learned senior counsel appearing for the State;

(e) Thereafter, the committee shall meet the victim of the offences at such a place as it desires to communicate what the State Government is offering to her. The Committee must also inform the victim about the availability of the benefits of the scheme of the Government of India. The duty of the committee shall be to help the victim to make an informed choice whether she wants to continue to remain in the company of the accused and his family or wants to avail of the benefits offered by the State Government. This exercise will naturally require meetings with the victim on multiple occasions. In what manner this task should be performed is left to the committee to decide;

(f) The committee members must perform their duties very carefully and sensitively while ensuring that the victim does not develop a feeling of insecurity. While doing the exercise, the committee will endeavour to carefully ascertain the kind of support, if any, the victim and her child are getting from the accused and his family members;

(g) The State Government and its officials shall render all possible facilities and help to the committee members;

(h) The coordinator of the committee shall submit a report in a sealed cover to this Court by 18th October 2024 through the Advocate-on-Record for the State Government. The report can be a preliminary report or a final report. The report should contain the details of the interactions with the victim and the opinion and recommendations of the committee. The committee is free to give its opinion on the action which would be in the best interest of the victim and her child; and

(i) We direct the Registry to forward copies of this judgment to the Secretaries of Law and/or Justice Departments of all the States and Union Territories. The Secretaries shall convene meetings of the Secretaries of the concerned departments and other senior officials. The object of holding such meetings is to ensure that appropriate directions are issued to all concerned to strictly implement the provisions of Section 19(6) of the POCSO Act and the relevant provisions of the JJ Act, which we have elaborated above. The State/Union Territories must create machinery to do so. The State/Union Territories shall also assist the victims in getting the benefits under the scheme of the Government of India and the scheme of NALSA, which we have referred to above. In the meetings, the issue of framing Rules by the States to give effect to the provisions of Section 46 of the JJ Act, shall also be considered. The Secretaries shall forward the compliance reports to the

Secretary of the Ministry of Women and Child Development, Government of India, within a period of two months from today. The Secretary of the Ministry of Women and Child Development shall compile the reports and submit an exhaustive report before this Court within three months from today. A copy of this judgment shall also be forwarded to the Secretary to the Ministry of Women and Child Development, Government of India.

45. To consider the report submitted by the expert committee and for considering the sentencing, list this petition/appeal on 21st October 2024 at 03:00 p.m. before this Bench.

.....J.
(Abhay S. Oka)

.....J.
(Ujjal Bhuyan)

New Delhi;
August 20, 2024.