

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

106/107/108

Reserved on: 14/03/2022
Pronounced on: 28/03/2022

CRWP-2139-2022(O&M)

P..... MINOR THROUGH VIKRAM

....Petitioner

Versus

STATE OF HARYANA AND OTHERS

...Respondents

CRWP-2140-2022(O&M)

SATVIR SINGH AND ANR

....Petitioners

Versus

STATE OF HARYANA AND OTHERS

...Respondents

CRWP-2250-2022(O&M)

P..... KAUR

....Petitioner

Versus

STATE OF PUNJAB AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present : Mr. Rampal Kaushik, Advocate
for the petitioner in CRWP-2139-2022.

Mr. Rajan Singh Dadwal, Advocate
for the petitioners in CRWP-2140-2022.

Mr. Deepak Arora, Advocate
for the petitioner in CRWP-2140-2022.

Mr. Ashish Yadav, Additional AG Haryana.

Ms. A.K. Khurana, DAG, Punjab.

VINOD S. BHARDWAJ. J.

1. The question which arises for consideration in the instant batch of petitions relates to striking a balance between the Constitutional right to life as enshrined under Article 21 as well as statutory obligation cast under the Juvenile Justice (Care and Protection of Children) Act 2015, in a case where a minor claims to have abandoned her guardian and approaches the Court through a self-proclaimed next friend/guardian.

2. The instant batch of petitions deals with such issues where this Court has been approached by invoking its writ jurisdiction to seek protection of life and liberty apprehending threat to the same and where it is alleged that the natural guardians are wanting to impose their own will over the will of the minor.

3. Before advertng to the merits of the controversy, the facts of each case are being referred to in brief:

CRWP-2139-2022, P.... Minor Through Vikram Vs. State of Haryana & Ors:

3.1 The petitioner, who is aged 16 years and 5 months, has filed the above said writ petition through one Vikram aged 28 years, seeking a writ in the nature of *Mandamus* to protect her life and liberty as also that of her friend Vikram, wherein, it has been categorically pleaded that the minor is staying with her friend namely Vikram and that even though she wishes to stay further, however, parents of the minor want to marry her with an older boy without her consent. It is alleged that her friend Vikram was also given beatings by her family members and that she is in a live-in-relationship with her next friend Vikram. Protection has been claimed by the petitioners invoking Article 21 of the Constitution of India.

CRWP-2140-2022 Satvir Singh & Anr Vs. State of Haryana & Ors:

3.2 The instant petition has been filed by Satvir Singh, who is a major aged 21 years and one minor L..... Kaur aged 17 years through Satvir Singh. The petitioners have prayed for issuance of directions to protect their lives and liberties, which is alleged to be in danger at the hands of respondent Nos. 4 to 9, as the petitioners want to marry with each other, despite stiff opposition from the family members of the minor. It is alleged that the intimacy between the petitioners was not appreciated and was to the dislike of the parents of the minor and they had started making efforts to marry her elsewhere in a hasty manner, with a person of their own choice, who is much older in age than the minor. As the minor has not attained the marriageable age, she claims to have come to live with petitioner No.1 and thus claim to be in a hiding to save their lives.

CRWP-2250-2022, P.... Kaur Vs. State of Punjab & Ors:

3.3 The instant petition had been filed by minor through her friend Reeta for seeking protection as she claims to be residing with Reeta, who is mother of Robin Masih and that the minor claims to have a liking for Robin Masih, the son of Reeta, the self-proclaimed guardian. Eventually, the parents of the minor got registered a case bearing FIR No.55 dated 06.05.2021 under Section 366 IPC registered at Police Station Sadar Gurdaspur against Robin Masih. Prayer was thus made for seeking protection of life and liberty of the petitioner as also that of her guardian invoking Article 21 of the Constitution of India.

4. Respondent-State(s) had already been served with an advance copy of the petition(s). Hence, it was averred by the counsel(s) representing the State that

the factual aspects not being controvertible and the issue being legal, no formal notice is required and hence advanced arguments.

ARGUMENTS OF PETITIONERS:

5. While reiterating the averments contained in the petitions, counsel appearing on behalf of respective petitioners submitted that solemnization of marriage is not a pre-requisite for seeking protection of life and liberty once such an apprehension exists, a person would be entitled to claim protection of her rights guaranteed under Article 21 of the Constitution of India. The said right cannot be confined or denied on the touchstone of Hindu Marriage Act or the Juvenile Justice (Care and Protection of Children) Act, 2015.

6. Reliance was placed upon certain orders/judgements of this Court passed in CRWP-2238-2021 titled as Priyanka & Another Vs. State of Haryana & Ors decided on 05.03.2021, wherein the minor who was in a live-in-relationship was extended an indulgence; a similar order had been passed in CRWP-6660-2020 titled as Jyoti Vs. State of Haryana & Ors decided on 01.09.2020; CRWP-3990-2020 titled as Roopa Vs. State of Haryana & Ors decided on 22.06.2020; CRWP-1525-2020 titled as Sarabjeet Kaur & Another Vs. State of Punjab & Ors decided on 12.02.2020; CRWP-29048-2019 titled as Navpreet Kaur & Another Vs. State of Punjab & Ors decided on 04.10.2019. A reference was also made to the judgement of this Court reported as 2019(4) RCR (Civil) 183 titled as Jashanpreet Kaur & Another Vs. State of Punjab & Ors.

7. The gist of the aforesaid orders/judgements was to the effect that merely because the petitioners are not of marriageable age, it would not deprive

them of their fundamental right to seek protection of their lives and liberties. The Court examined the issue in the context of the Hindu Marriage Act, 1955 and held that merely because the petitioners are not of the marriageable age and the marriage performed, if any, would be hit by Section 5(iii) of the Hindu Marriage Act 1955, the same being only a civil consequence qua the validity of the marriage, their rights under Article 21 of the Constitution of India cannot be denied as they stand on a much higher pedestal. Life and liberty of the persons is sacrosanct being integral to their being, it ought to be protected regardless of solemnization of invalid or void marriage or even in the absence of any marriage amongst the parties. In all the said matters, the respective SSPs/SPs were directed to verify the threat perception and to take necessary steps to provide protection to the life and liberty of the petitioners, if deemed fit and necessary.

8. *Per contra*, counsel appearing on behalf of the State have submitted that there is no dispute to the proposition that Article 21 of the Constitution of India is sacrosanct and it is imperative upon the State to take adequate measures to protect the life and liberty of each person, however, there are statutory safeguards required under the statutory scheme to protect the interest of a minor and that once such a fact comes to the notice of the Court, it becomes incumbent upon the Court in its capacity as *parens patriae* to examine what is in the best interest of the minor. It is contended that a minor is not perceived in law to be able to comprehend consequences of his/her acts what is in his/her best interest and it is for the said reason that a minor is to be re-presented through guardian, who is recognized by the statute or by the Court. Such a choice or right is not conferred

upon the minor to self-proclaim a guardian/next friend and in the present circumstances, the possibility of the petition having been instituted under the influence of such guardian (given the nature of relationship of the minor with the next friend) cannot be ruled out. As such, adequate measures under the statutory scheme ought to be taken by the Court to determine as to what would be in the best interest of the minor.

9. I have had learned counsel for the parties and have gone through the documents appended by them with the respective petitions and the judgements referred to by the respective counsel in support of their arguments. The documents are in the nature of documents related to date of birth and a representation submitted to the concerned SSP/SP.

DISCUSSION:

10. Law recognizes the guardians of following types:-

- (a) Natural guardian;
- (b) Testamentary Guardian;
- (c) Guardians appointed/declared by the Court;
- (d) a person empowered to act as such by or under any enactment relating to any Court of Wards.

11. However, in the pre-1956 Hindu law, there also existed a guardian by affinity, who happened to be the guardian of a minor widow. As per the position in law as it existed, then the husband's relation, if there existed any, within the degree of sapinda were the guardians of a minor widow in preference to her father and his relations. There is yet another concept of de-facto Guardian, who happens to be a

person who take continuous interest in the welfare of a minor's person or in the management of administration of his property without any authority of law. Hindu jurisprudence has all along recognized the above principle even though such term is not mentioned in any of the texts. However, such a situation always came with a caveat, where the person acting as de-facto Guardian had to display continuous interest in the welfare of a minor's person or in the management and administration of his property. A mere intermeddler is not a de-facto Guardian. An isolated act of a person with regard to child's property also does not make him a guardian. There must be continuous course of contact. However, with the enunciation of legislation, the codified law assumes significance and co-exists with un-codified law.

12. Before proceeding further in the matter, it is essential to submit that the Hindu Minority and Guardianship Act, 1956, deals with law relating to minority and guardianship amongst Hindus. As the parties in the instant batch of petitions are Hindus as per the law, the aforesaid Act relating to minority and guardianship is applicable. The relevant provisions of this Act are reproduced hereinafter below:-

Section 4. Definitions.—In this Act,—

(a) “minor” means a person who has not completed the age of eighteen years;

(b) “guardian” means a person having the care of the person of a minor or of his property or of both his person and property, and includes—

(i) a natural guardian,

(ii) a guardian appointed by the will of the minor’s father or

mother,

(iii) a guardian appointed or declared by a court, and

(iv) a person empowered to act as such by or under any enactment relating to any Court of wards.

(c) “natural guardian” means any of the guardians mentioned in section 6.

Section 6. Natural guardians of a Hindu minor-

The natural guardians of a Hindu minor; in respect of the minor's person as well as in respect of the minor's property (excluding his or her undivided interest in joint family property), are--

(a) in the case of a boy or an unmarried girl--the father, and after him, the mother: provided that the custody of a minor who has not completed the age of five years shall ordinarily be with the mother;

(b) in the case of an illegitimate boy or an illegitimate unmarried girl--the mother, and after her, the father;

(c) in the case of a married girl the husband:

Provided that no person shall be entitled to act as the natural guardian of a minor under the provisions of this section--

(a) if he has ceased to be a Hindu, or

(b) if he has completely and finally renounced the world by becoming a hermit (vanaprastha) or an ascetic (yati or sanyasi).

Explanation.--In this section, the expressions "father" and "mother" do not include a step-father and a step-mother.

Section 13. Welfare of minor to be paramount consideration-

(1) In the appointment of declaration of any person as guardian of a Hindu minor by a court, the welfare of the minor shall be the paramount consideration.

(2) No person shall be entitled to the guardianship by virtue of the provisions of this Act or of any law relating to guardianship in marriage among Hindus, if the court is of opinion that his or her guardianship will not be for the welfare of the minor.

13. Section 11 of the Hindu Minority and Guardianship Act 1956 prohibits a de-facto guardian from dealing with the property of a minor. The said Section thus, by inference, acknowledges existence of a de-facto guardian and imposes a restriction upon such guardian to dispose off or deal with the property of a Hindu minor.

14. Apart from the Hindu Minority and Guardianship Act 1956, The Guardians and Wards Act 1890 deal with the law of guardian and wards and procedure relating to appointment of a guardian and defines the rights, duties and obligation of the guardian as well as a ward. Certain essential provisions of the said Act are extracted as under:-

Section 4. Definitions--In this Act, unless there is something repugnant in the subject or context,--

(1) "minor" means a person who, under the provisions of the Indian Majority Act, 1875, (9 of 1875) is to be deemed not to have attained his majority:

(2) "guardian" means a person having the care of the person of a minor or of his property, or of both is person and property:

(3) "ward" means a minor for whose person or property, or both, there is a guardian:

(4) "District Court" has the meaning assigned to that expression in the ¹Code of Civil Procedure (14 of 1882), and includes a High Court in the exercise of its ordinary original

civil jurisdiction:

[(5) "the Court" means--

(a) the District Court having jurisdiction to entertain an application under this Act for an order appointing or declaring a person to be a guardian; or

(b) where a guardian has been appointed or declared in pursuance of any such application--

(i) the Court which, or the Court of the officer who, appointed or declared the guardian or is under this Act deemed to have appointed or declared the guardian; or

(ii) in any matter relating to the person of the ward the District Court having jurisdiction in the place where the ward for the time being ordinarily resides; or

(c) in respect of any proceeding transferred under section 4A, the Court of the officer to whom such proceeding has been transferred:]

(6) "Collector" means the chief officer in charge of the revenue administration of a district, and includes any officer whom the State Government, by notification in the Official Gazette, may, by name or in virtue of his office, appoint to be a Collector in any local area, or with respect to any class of persons, for all or any of the purposes of this Act:

(8) "prescribed" means prescribed by rules made by the High Court under this Act.

Section 7. Power of the Court to make order as to guardianship.

(1) where the Court is satisfied that it is for the welfare of a minor that an order should be made--

(a) appointing a guardian of his person or property, or both, or

(b) declaring a person to be such a guardian,

the Court may make an order accordingly.

(2) An order under this section shall imply the removal of any guardian who has not been appointed by will or other instrument or appointed or declared by the Court.

(3) Where a guardian has been appointed by will or other instrument or appointed or declared by the Court, an order under this section appointing or declaring another person to be guardian in his stead shall not be made until the powers of the guardian appointed or declared as aforesaid have ceased under the provisions of this Act.

Section 8. Persons entitled to apply for order--

An order shall not be made under the last foregoing section except on the application of—

- (a) the person desirous of being, or claiming to be, the guardian of the minor, or*
- (b) any relative or friend of the minor, or*
- (c) the Collector of the district or other local area within which the minor ordinarily resides or in which he has property, or*
- (d) the Collector having authority with respect to the class to which the minor belongs.*

15. Further, Section 3(1) of the Indian Majority Act 1875 provides that every person domiciled in India shall attain the age of majority on completing the age of 18 years and not before. Further, Section 2(a) of the Indian Majority Act 1875 provides that nothing in the said Act shall affect the capacity of any person to act in the matters namely marriage, dower, divorce and adoption hence, by a conjoint reading of the aforesaid provisions a girl below age of 18 years is treated as minor under the Indian Majority Act for all purposes except for marriage, dower, divorce and adoption.

16. In addition to the from above legislations dealing with minor, it would also be pertinent to refer to the relevant provision under the Juvenile Justice (Care and Protection of Children) Act, 2015. The aforesaid Act had been promulgated to consolidate the law relating to children alleged and found to be in conflict with law and/or in need of care and protection by catering to their basic needs through proper care, protection, development, treatment and social reintegration in the adjudication and disposal of matters, in the best interest of children.

17. Section 2(14)(vii)(xii) of the Juvenile Justice (Care and Protection of Children) Act 2015 are reproduced hereinbelow:-

Section 2(14)--"child in need of care and protection" means a child—

(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

(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;

18. The Parliament also enacted the Protection of Children from Sexual Offences Act 2012 with an object to secure children from the sexual assault/sexual harassment or pornography, which defines child under Section 2(d) to mean any person below the age of 18 years.

19. The Court is thus required to ensure protection of a minor/child as per the different statutes while also ensuring the safety and security of such person. The aim and object of the provisions enshrined under the Juvenile Justice (Care

and Protection of Children) Act 2015 and Protection of Children from Sexual Offences Act 2012 is intended to protect the person of a minor from being subjected to any such act, which is deemed penal by law. The Hindu Minority and Guardianship Act, 1956 declares the guardian of a minor Hindu and their duties, obligations *viz-a-viz* the minor. The provisions of Guardians and Wards Act stipulates the procedure for appointment of a guardian in the case of a ward (minor).

20. The provisions relating to the effect of minority on the validity of the marriage does not apply to the facts of the instant case as the petitioners have nowhere claimed themselves to have solemnized any marriage and have rather set up a case that they are living with the person through whom the petitions have been filed claiming such person as their guardian.

21. It is also not disputed that the persons through whom the present petitions have been filed do not fall in any of the categories of the guardians recognized under the Hindu Minority and Guardianship Act 1956 or having been appointed under the Guardian and Wards Act, 1890. There is nothing on record even to infer that the persons can be termed as de-facto guardians as there is no long-standing relationship on the basis whereof the person, through whom the minor approaches the Court, may be termed as a de-facto guardian. Continuity of interest is an essential pre-requisite to be satisfied before a person can be deemed or be termed as a de-facto guardian.

22. The common thread which runs through all these petitions is that minors intend to live with the petitioner and eventually to solemnize marriage on

her attaining the age of majority. The relationship in question is portrayed as live-in-relationship in the nature of marriage.

23. In the matter of **Ravneet Kaur & Another Vs. State of Punjab & Ors, 2021(4) RCR (Criminal) 140**, this Court has held as under:-

62. In Indra Sarma Vs. V.K.V. Sarma : (2013) 15 SCC 755 Hon'ble Supreme Court culled out some guidelines for testing under what circumstances, a live-in relationship will fall within the expression "live-in-relationship in the nature of marriage" under Section 2(f) of the PWDV Act as under:-

"55. We may, on the basis of above discussion cull out some guidelines for testing under what circumstances, a live-in relationship will fall within the expression "relationship in the nature of marriage" under Section 2(f) of the DV Act. The guidelines, of course, are not exhaustive, but will definitely give some insight to such relationships.

(1) Duration of period of relationship

Section 2(f) of the DV Act has used the expression "at any point of time", which means a reasonable period of time to maintain and continue a relationship which may vary from case to case, depending upon the fact situation.

(2) Shared household

The expression has been defined under Section 2(s) of the DV Act and, hence, need no further elaboration.

(3) Pooling of Resources and Financial Arrangements

Supporting each other, or any one of them, financially, sharing bank accounts, acquiring immovable properties in joint names or in the name of the woman, long term investments in business, shares in separate and joint names, so as to have a long standing relationship, may be a guiding factor.

(4) Domestic Arrangements

Entrusting the responsibility, especially on the woman to run the home, do the household activities like cleaning, cooking, maintaining or upkeeping the house, etc. is an indication of a relationship in the nature of marriage.

(5) Sexual Relationship

Marriage like relationship refers to sexual relationship, not just for pleasure, but for emotional and intimate relationship, for procreation of children, so as to give emotional support, companionship and also material affection, caring etc.

(6) Children

Having children is a strong indication of a relationship in the nature of marriage. Parties, therefore, intend to have a long standing relationship. Sharing the responsibility for bringing up and supporting them is also a strong indication.

(7) Socialization in Public

Holding out to the public and socializing with friends, relations and others, as if they are husband and wife is a strong circumstance to hold the relationship is in the nature of marriage.

(8) Intention and conduct of the parties

Common intention of parties as to what their relationship is to be and to involve, and as to their respective roles and responsibilities, primarily determines the nature of that relationship.”

63. Since sexual relationship forms an essential part of live-inrelationship in the nature of marriage and there cannot be any sexual relationship with a girl child less than 18 years of age by any person even with her consent, a girl child less than 18 years of age will not be entitled to live in live-in-relationship in the nature of marriage with a person of her choice.

64. *It follows from the above discussion a minor girl aged above 15 years who has not attained marriageable age of 18 years may solemnize marriage with a person of her choice but such marriage cannot be legally enforced to allow consummation thereof and entrustment of her custody to her husband; that a minor girl is not entitled to reside with a person of her choice in live-in-relationship in the nature of marriage; that a minor girl cannot give consent to any person of her choice for her removal from lawful guardianship and sexual relationship with her for consummation of marriage or live-inrelationship in the nature of marriage and her consent is immaterial, if she was enticed or taken away out of lawful guardianship and that any such person of her choice with whom she wants to live in live-inrelationship cannot purport to act as her guardian and claim her custody without seeking order from Guardian Judge/Family Court under the GW Act or the HMG Act as the case may be.*

65. *The question which next arises is whether the fundamental right to protection of life and liberty extends to protection of the minor girl for residing with her husband or person of her choice in live-inrelationship in the nature of marriage?*

67. *In Pardeep Kumar Singh Vs. State of Haryana : 2008(3) RCR (Criminal) 376 a Single Bench of this Court issued the following directions:-*

“(i) Whenever any intimation is received by the SSP/SP of concerned District regarding the marriage of a young couple with a threat and an apprehension of infringement of the right of life and liberty by the police at the instance of the family members of one of the spouses, the SSP/SP concerned will consider the representation and will himself/herself look into the matter and issue necessary directions to maintain a record

of the said intimation under Chapter 21 of the Punjab Police Rules.

(ii) On receipt of above said intimation of marriage by any police officer, necessary directions will be issued to the concerned Police Station to take necessary steps in accordance with law to enquire into the matter by contracting the parents of both boy and girl. The matter regarding age, consent of the girl and grievance of her family will be determined. In the eventuality of any complaint of kidnapping or abduction having been received from any of the family members of the girl generally the boy (husband) will not be arrested unless and until the prejudicial statement is given by the girl (wife). Arrest should generally be deferred or avoided on the immediate receipt of a complaint by the parents or family members of the girl taking into consideration the law laid down by Hon'ble Supreme Court in Joginder Kumar's case (supra);

(iii) If the girl is major (above 18 years), she should not forcibly be taken away by police to be handed over to her parents against her consent. Criminal force against the boy should also be avoided.

(iv) So far as the threat to the young couple of the criminal force and assault at the hands of the private persons is concerned, it would always be open to the police to initiate action if any substantive offence is found to have been committed against the couple;

(v) In case of any threat to the breach of peace at the hands of the family members of the couple it will always be open to the State authorities to take up the security proceedings in accordance with law;

(vi) It will not be open to the "run away couple" to take law in their hands pursuant to the indulgence shown by the police

on the basis of their representation sent to the SSP/SP of the concerned District;

(vii) If despite the intimation having been sent to the SSP/SP there is an apprehension or threat of violation of right of personal life and liberty or free movement, the remedy of approaching the High court should be the last resort;

(viii) In case there is an authority constituted for issuance of marriage certificate as per the law laid down by Supreme Court in Seema's case (supra) in the concerned districts, the couple of so called 'run away marriage' should get the marriage registered in compliance with the directions of the Supreme Court and a copy of the same should also be forwarded to the police along with the representations or any time subsequent thereto.

(ix) Nothing said here-in-above will prevent the immediate arrest of a person who fraudulently entices a girl with false promises and exploits her sexually as per the statement of the girl."

71. In the very nature of things, these directions for protection of rights of couples will apply in case of marriage by a man or woman who is major with a man or woman who is also major and will not, therefore, apply to cases of child marriages in which the question of protection to the minor girl child will be governed by the provisions of the JJ Act.

72. Section 2(14)(xii) of the JJ Act defines a child "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 solemnization of such marriage" as a child in need of care and protection. A girl child below 18 years of age who is sought to be married by her parents/guardian being a child in need of care and protection

is required to be produced before a Child Welfare Committee constituted under Section 27 of the JJ Act so that she could be cared for, protected and appropriately rehabilitated or restored to society.

73. In Independent Thought's Case (Supra) Hon'ble Supreme Court observed as under :-

"176.By now it is well settled by a catena of judgments of this Court that the "right to life" envisaged in Article 21 of the Constitution of India is not merely a right to live an animal existence. This Court has repeatedly held that right to life means a right to live with human dignity. Life should be meaningful and worth living. Life has many shades. Good health is the raison d'etre of a good life. Without good health there cannot be a good life. In the case of a minor girl child good health would mean her right to develop as a healthy woman. This not only requires good physical health but also good mental health. The girl child must be encouraged to bloom into a healthy woman. The girl child must not be deprived of her right of choice. The girl child must not be deprived of her right to study further. When the girl child is deprived of her right to study further, she is actually deprived of her right to develop into a mature woman, who can earn independently and live as a self sufficient independent woman. In the modern age, when we talk of gender equality, the girl child must be given equal opportunity to develop like a male child. In fact, in my view, because of the patriarchal nature of our society, some extra benefit must be showered upon the girl child to ensure that she is not deprived of her right to life, which would include her right to grow and develop physically, mentally and economically as an independent self sufficient female adult."

74. *In Independent Thought Case (Supra) Hon'ble Supreme Court further observed as under :-*

"95. A cursory reading of the JJ Act gives a clear indication that a girl child who is in imminent risk of marriage before attaining the age of 18 years of age is a child in need of care and protection (Section 2 (14) (xii) of the JJ Act). In our opinion, it cannot be said with any degree of rationality that such a girl child loses her status as a child in need of care and protection soon after she gets married. The JJ Act provides that efforts must be made to ensure the care, protection, appropriate rehabilitation or restoration of a girl child who is at imminent risk of marriage and therefore a child in need of care and protection. If this provision is ignored or given a go by, it would put the girl child in a worse off situation because after marriage she could be subjected to aggravated penetrative sexual assault for which she might not be physically, mentally or psychologically ready. The intention of the JJ Act is to benefit a child rather than place her in difficult circumstances. A contrary view would not only destroy the purpose and spirit of the JJ Act but would also take away the importance of Article 15(3) of the Constitution. Surely, such an interpretation and understanding cannot be given to the provisions of the JJ Act."

(emphasis added)

75. *In Independent Thought's Case (Supra) Hon'ble Supreme Court emphasised the need of eradicating the social evil of child marriages as under :-*

"Merely because child marriages have been performed in different parts of the country as a part of a tradition or custom does not necessarily mean that the tradition is an acceptable one nor should it be sanctified as such. Times change and what

was acceptable the few decades ago may not necessarily be acceptable today.”

76. In Independent Thought's Case (Supra) Hon'ble Supreme Court also observed as under :-

“104. The Preamble to our Constitution brings out our commitment to social justice, but unfortunately, this petition clearly brings out that social justice laws are not implemented in the spirit in which they are enacted by Parliament. Young girls are married in thousands in the country, and as Section 13 of the PCMA indicates, there is an auspicious day - Akshaya Trutiya - when mass child marriages are performed. Such young girls are subjected to sexual intercourse regardless of their health, their ability to bear children and other adverse social, economic and psychological consequences. Civil society can do just so much for preventing such child marriages but eventually it is for the Government of India and the State Governments to take proactive steps to prevent child marriages so that young girls in our country can aspire to a better and healthier life. We hope the State realizes and appreciates this.”

80. It is now well settled that girl child in need of care and protection under Section 2 (14) (xii) of the JJ Act cannot be kept in a Nari Niketan/Special/Observation Home meant for juveniles in conflict with law established under the JJ Act. For judicial precedents reference may be made to Neetu Singh v. State (Delhi) : 1999(1) P.L.R. 47; Rukshana Vs. Govt. of NCT of Delhi (Delhi) : 2007(3) R.C.R.(Criminal) 542; Balwinder Singh @ Binder Vs. State of Punjab (P&H) : 2008(3) R.C.R.(Criminal) 1 and CRWP-4725-2021 titled as 'Seema Kaur and another Vs. State of Punjab and others' decided on 03.06.2021.

24. The enunciation of statutory framework in the nature of Juvenile Justice (Care and Protection of Children) Act 2015 and Protection of Children from Sexual Offences Act does not run contrary to the provisions enshrined under Article 21 of the Constitution of India. Protection of life and liberty guaranteed to a citizen necessarily ensures that the Court of law, when approached, would step into the shoes as a guardian of such minor and take all such steps as are essential to protect the life and liberty of such a minor. It would be incomprehensible to contend or to suggest that the protective scheme and procedure formulated under the Juvenile Justice (Care and Protection of Children) Act 2015 is not in furtherance of protection enshrined under Article 21 of the Constitution of India. The said Acts are intended to ensure advancement of Article 21. The Court of law, while issuing any directions to follow the procedure provided for under the Juvenile Justice (Care and Protection of Children) Act 2015, does so with an object to ensure safety and protection of a minor, who the law does not recognise as having acquired the wisdom and knowledge to take best decisions for himself/herself. The decision so taken by the competent authority with respect to the minor as per the procedure prescribed in law, cannot be deemed as violative of Article 21 of the Constitution of India with on a ground that such a decision will not be in conformity with the interest which such a minor conceives to be in his/her best interest. The Court cannot be oblivious to the duty cast upon it as a repository of the best interest of the minor and there can be no presumption that once a minor conveys his/her desire to stay with any person and that such person claims to be the next friend/de facto guardian, the same would actually and in

reality be in furtherance of the best interest of the minor. Determination of what would be in the best interest of the minor has to be done by the Court as per the procedure known to law.

25. The Court, thus, has to take upon itself the responsibility to ensure that the fundamental right of such a minor to claim protection of his/her life and liberty is made available and also to ensure that in the said process, the protection of the statute is not violated.

CONCLUSION:

26. In view of the above, the petitions are partly allowed with directions as under:-

- I. The minor in all these cases happen to fall within the definition of child in need of care and protection as provided under section 2(14)(vii)(xii) of Juvenile Justice (Care and Protection of Children) Act, 2015. The Senior Superintendent of Police/Superintendent of Police of the respective districts shall depute a Child Welfare Police Officer to produce the minor/child before the Committee constituted under the Juvenile Justice (Care and Protection of Children) Act 2015.
- II. The respective Committee shall conduct enquiry contemplated under Section 36 of the Juvenile Justice (Care and Protection of Children) Act 2015 and pass an appropriate order under section 37 of the said Act, by associating all the stakeholder, and to ensure that the objects of the Juvenile Justice (Care and Protection of Children) Act 2015 are well served.

- III. The Child Welfare Committee shall take appropriate decisions with respect to the boarding and lodging of the minor and also to conduct enquiry on all issues relating to and affecting safety and well-being of the child/minor.
- IV. During the pendency of such adjudication and passing of orders as contemplated under Section 37 of the Juvenile Justice (Care and Protection of Children) Act 2015, the committee shall also take appropriate interim/decisions as regards placement of a child/custody of the child in need of care and protection.
- V. The concerned SSPs/SPs shall also take appropriate steps as warranted by law against the threat perception to the minor as well as to their next friend, through whom the minors have appeared before this Court and to ensure that the respective petitioners are protected from any physical harm at the instance of the respondents in respective cases.
- VI. The petitioners are directed to appear in the office of SSP/SP of the respective Districts within a period of 03 days from today, failing which the concerned SSP/SP shall depute a Child Welfare Police Officer to produce the minor before the Child Welfare Committee within a period of 01 week thereafter.
- VII. The Child Welfare Committee constituted under the Juvenile Justice (Care and Protection of Children) Act 2015, shall send a compliance report to this Court.

Petitions are party allowed in terms as aforesaid.

Registry is directed to send a copy of the order along with petition(s) and annexures to the concerned Senior Superintendent of Police/Superintendent of Police for necessary compliance.

(VINOD S. BHARDWAJ)
JUDGE

28/03/ 2022
S.Sharma(syr)

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No