

(2015) 07 KL CK 0206

In the High Court Of Kerala

Case No : Writ Petition (C) Nos. 14259, 14604, 23875 of 2014 and 15844 of 2015

Rajendra Prasad and Others

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 06-07-2015

Acts Referred:

Constitution of India, 1950 — Article 15, 21, 21A, 226, 32
Juvenile Justice (Care and Protection of Children) Act, 2000 — Section 13, 14, 19, 2, 2(d)
Orphanages And Other Charitable Homes (supervision And Control) Act, 1960 — Section 13, 14, 2(d), 28, 28(1)
Penal Code, 1860 (IPC) — Section 370
Womens and Childrens Institutions (Licensing) Act, 1956 — Section 2(c), 3, 4

Citation : (2015) 3 KHC 905

Hon'ble Judges : Ashok Bhushan, C.J;A.M. Shaffique, J

Bench : Division Bench

Advocate : T.A. Shaji, Senior Advocate, Sandhya Raju, B.H. Mansoor and K. Paul Kuriakose, for the Appellant; N. Nagaresh, P. Parameswaran Nair, Assistant Solicitor Generals, K.P. Dandapani, Advocate General, K.A. Jaleel, Additional Advocate General, N. Nandakumara M

Final Decision : Dismissed

Judgement

Ashok Bhushan, C.J—These writ petitions raise concern for young children who are future of our country. A society shapes as its children are shaped. The obligation to bring up children is not only the obligation of the parents alone, but the society and State has also to play an affirmative role in bringing right environment for all round development of children which is also the constitutional philosophy. Important issues relating to child's rights, children who are in need of care and protection and child trafficking have arisen in these group of writ petitions. We shall consider the facts and pleadings separately as emerged from the pleading of the parties.

WP(C) No. 14259 of 2014

This Public Interest Litigation has been filed by two registered organizations working for the advancement of right of children. Petitioners have approached this Court alleging illegal transfer of children to Kerala amounting to child trafficking. Petitioners have referred to newspaper reports; Ext. P1 dated 25/05/2014, a news item published in the New Sunday Express with heading "Cops Rescue 456 Kids from Train", another report with heading "Alleged Child Trafficking: 183 kids to be sent to CWC" dated 26/05/2014, report dated 27/05/2015 with heading "8 Held in connection with trafficking of Kids" which were published by the New Indian Express and lastly the newspaper report dated 28/05/2013 with heading "Orphanages Traffic Children to Extract Govt. Funds, Says Report". Petitioners contend that as per the newspaper reports, the illegal transfer of children to Kerala are from the States of Bihar, Jharkhand and West Bengal and they have conducted a fact finding of the incident. Petitioners submit that these children belonging to extremely impoverished communities were brought to the orphanages in Kerala under the guise of giving them free education. The children, aged from 5 to 12, were not even aware of their location, address. It is stated that the children reached Palakkad through Patna - Ernakulam Express. About 458 children arrived from Bihar and Jharkhand. Approximately 232 girl children were there and among them 68 children were sent to Mukkam orphanage and rest of 164 girls were accommodated in the local orphanages. The next day another batch of children were found to be transferred from West Bengal. These children had documents, but it is seen forged. Further it is stated that money was collected from the parents to bring them to the orphanages in Kerala. It was found that most of the children trafficked from Bihar are belonging to Villages like Koukhaya, Gouda. It was found that around 183 children were brought to Calicut District Child Welfare Committee and were sent to Government Home. Petitioners referred to the United Nations Protocol to prevent, suppress and punish trafficking in persons, especially women and children adopted in November, 2000. It is pleaded that children belonging to extremely poor families were brought promising free food and shelter and parents were coerced to send their children to these orphanages which are not fit institutions as per the Juvenile Justice (Care and Protection of Children) Act, 2000. It is pleaded that children in orphanages imply that children those who do not have parents, consequently they become children in need of care and protection. As per the Juvenile Justice (Care and Protection of Children) Act, 2000, Children in need of care and protection are to be presented before the Child Welfare Committee. It is pleaded that the institutions like orphanages are running without being properly monitored under the provisions of Juvenile Justice (Care and Protection of Children) Act, 2000 and thousands of children were brought from outside States. It is submitted that children have a right to live in their own community and culture. Being plucked from their natural habitat, culture and language to an alien culture, habitat and languages would cause immense psychological strain on the tender minds and violation of their right to life. Petitioners in the writ petition claim for the following reliefs:

"A. To issue a Writ in the nature of mandamus, declaration, Order or direction, directing the immediate Repatriation of the Children to their home States as per Section 38.

B. To issue a Writ in the nature of mandamus, declaration, order directing the provision of Psychosocial trauma Counseling to the rescued children of trafficking during the process of repatriation;

C. To issue a writ of mandamus, declaration, order directing the orphanages within the State of Kerala to come within the ambit of the Juvenile Justice (Care and Protection of Children) Act, 2000.

D. To issue a writ of mandamus, declaration, order or direction, for the immediate implementation of the State Rules of Juvenile Justice Care and Protection of Children Act, 2000."

2. A Division Bench of this Court passed an order on 05/06/2014 admitting the writ petition. Before the Court the Additional Advocate General stated that out of 588 children, 46 children are already sent to their respective States and 31 children are sent back with their parents. The Court directed that there should be a serious investigation in the matter to know the real cause or reason why such huge number of children from outside the State came to Calicut and Palakkad. The 2nd respondent was directed to place on record the investigation being undertaken by Crime Branch in that regard. On the basis of the incidents two crimes were registered being Crime No. 48/2014 under Section 370 IPC and Crime No. 49/2014 which were subsequently transferred to CBCID by order dated 02/06/2014, and renumbered as Crime No. 90/Cr/OCWHI/Pkd/14 and Crime No. 91/Cr/OCWIH/Pkd/14.

3. An affidavit has been filed, on behalf of the 2nd respondent-State, by the Deputy Secretary to Government, Social Justice Department giving the details of the children who were intercepted at Palakkad Junction on 24/05/2014 and 25/05/2014. The details of proceedings of Child Welfare Committee, Palakkad and Child Welfare Committee, Kozhikode was also mentioned. Registration of crimes and arrest of certain persons in both the crimes were stated in the affidavit. It was mentioned that the investigation is handed over to the Crime Branch. It was stated that 125 boys and 82 girls were handed over to the Mukkam Muslim Orphanage. 64 boys were handed over to Anwarul Huda Complex Orphanage, Vettathur and 47 children were restored to their parents, 46 were repatriated to Jharkhand, 7 were repatriated to Bihar and 57 to Bengal. The names of children and other details were also produced. Learned Government Pleader also placed before the Court the proceedings of Child Welfare Committees in the context of above two incidents dated 24/05/2014 and 25/05/2014.

4. In the writ petition an application was submitted by Mukkom Muslim Orphanage for being impleaded as respondent. The applicant in the affidavit pleaded that the applicant is an Orphanage established way back in the year

1956 and has been registered under the provisions of the "Orphanages and other Charitable Homes (Supervision and Control) Act, 1960" (hereinafter referred to as "the 1960 Act"). It is pleaded that from the year 2007 onwards the Orphanage is admitting students from other States. The applicant was impleaded as additional 10th respondent. Another application for impleadment had been filed, being IA No. 8110 of 2014, by two persons namely Rev. Father Mathew K. John, President of Association of Orphanages and Charitable Institutions, Kerala and One T.K. Pareekutty Haji, Secretary of the Association. The application was allowed and they were impleaded as additional respondents 8 and 9. The additional respondents 8 and 9 have stated in the affidavit that the applicants are office bearers, i.e., President and Secretary of a registered Association and it was stated that the Association has 1800 member institutions consisting of Orphanages and rescue homes.

5. On the direction of the Court, the Central Bureau of Investigation (CBI) has also filed an affidavit dated 22/08/2014 wherein it was stated that CBI is willing to take investigation of the cases as it is in large scale and spread over four States. The State by an affidavit has also referred to the proceedings pending before the Apex Court in WP (Crl) No. 102/2007 in the case of Re-exploitation of Children in Orphanages in State of Tamil Nadu v. Union of India and Others. The report filed by Amicus Curiae was also brought on record. IA No. 7403 of 2015 was filed by the petitioner mentioning about the influx of children from outside States. Another batch of 16 children from Arunachal Pradesh ranging ages from 5 to 12 years were produced on 25/05/2015 before the Child Welfare Committee (for short "CWC"), Ernakulam. The Child Welfare Committee directed the Janaseva Sisu Bhavan, Aluva to house the above children for the time being. The CWC, Ernakulam submitted a report dated 17/06/2015 where it took a decision that 16 children should be repatriated in their home District in Arunachal Pradesh. By an order passed on 18/06/2015, the Janaseva Sisu Bhavan, Aluva has also been impleaded as additional 11th respondent. The 11th respondent appeared and filed a counter-affidavit wherein it is stated that the Janaseva Sisu Bhavan is a charitable home for boys and girls which has been registered under the Juvenile Justice (Care and Protection of Children) Act, 2000 as well as under the Orphanages and other Charitable Homes (Supervision and Control) Act, 1960. It is pleaded that Jena Seva Sishubhavan is competent to cater to the needs of destitute children who are given education at the expense of Jena Seva Sishubhavan and no Government grant is received by the Jena Seva Sishubhavan. It was stated that one Probir Kumar Chakma came to Jena Seva Sishubhavan from Arunachal Pradesh bringing children between the age group of 8 and 11 years along with a certificate from CWC, Lohid District of Arunachal Pradesh dated 14/05/2015 and the children were produced before the CWC, Ernakulam by the Sisu Bhavan. The Jena Seva Sishubhavan pleads that the children be allowed to continue at Jena Seva Sishubhavan itself.

6. The petitioner has filed IA No. 6523 of 2015 in which the following prayers were made:

"a. Issue necessary directions for an emergent enquiry into the incident of rescue of the 29 children under the direction of the Superintendent of Police and action be taken against the errant officials.

b. Issue urgent directions for the mandatory following of protocol regarding enquiry and prosecution as envisaged under the Juvenile Justice care and Protection Act 2000 under the supervision of the Juvenile Justice Committee of the Hon"ble High Court."

7. In the affidavit filed in support of the application reference has been made to a batch of 29 children who were brought from the States of Bihar, Bengal, Rajasthan and Delhi to Kerala. It was stated that on enquiry it is revealed that 9 young children of various ages ranging from 8 to 15 were freshly brought to Kadheejathul Kubra Islamic Complex, Nettoor. It is stated that the said children were brought to Kerala on 20/05/2015 which was reported in a newspaper, Times of India dated 21/05/2015 with the heading "29 Kids brought to State with no proper papers". About 20 kids were staying in the abovementioned orphanage since last 2 years. The police had informed the Childline officials and children were taken to NGO's Office. Thereafter they were brought before the CWC.

8. In the writ petition an application has been filed by the Kadheejathul Kubra Islamic Complex, Nettoor for impleadment. In the affidavit it has been claimed that the applicant is a Society registered under the 1956 Act as well as 1960 Act. It is stated that the 20 children who were intercepted by Railway Police on 20/05/2015 are the children who were earlier staying in the orphanage and 9 new children were also there who are the close relatives or siblings of the 20 children already staying. It is stated that the Society produced documents before the CWC, however, CWC directed the said children to be housed at children's home.

WP(C) No. 23875 of 2014

9. This is a suo motu proceedings initiated on a newspaper report dated 25/05/2014 published in the newspaper "The Hindu" with heading "Suspected Child Trafficking: over 450 children detained". In the writ petition, State of Kerala through Chief Secretary and State of Kerala through Secretary, Social Welfare Department and Secretary, Kerala State Commission for Protection of Child Rights, Thiruvananthapuram were impleaded as parties. The writ petition was directed to be listed along with WP(C) No. 14259 of 2014. Learned Advocate General was allowed time to file a detailed counter-affidavit. He was directed to give the details of each orphanage and details regarding the children who live in the respective orphanage with all relevant details. In the writ petition an affidavit has been filed by the 2nd respondent. In the counter-affidavit a stand has been taken by the State that the Orphanages which are registered under the 1960 Act, need not be registered under the 2000 Act. Reference of Government Order, GO (MS) No. 12/2010/SJD dated 11/02/2010 of the State Government is mentioned. Reference of the judgment of High Court in Crl (MC) No. 4804/2008 dated

15/02/2012 reported in N. Balachandran Vs. State of Kerala and Others, (2012) 2 KLJ 262 has also been made. Another judgment relied is the judgment of the High Court in Crl (RP) No. 4423 of 2006 dated 13/04/2007. It is further pleaded that there is a clear differentiation between 1960 Act and 2000 Act. Admission of children from the other States is made with prior approval of the Orphanages" Control Board based on the recommendations made from the State Government concerned. Details of cases registered on the basis of incident dated 24/05/2014, progress of investigation was also mentioned in the counter-affidavit. A counter-affidavit has also been filed by the 3rd respondent i.e. Kerala State Commission for Protection of Child rights, Thiruvananthapuram. In the counter-affidavit of 3rd respondent it is mentioned about its order dated 29/08/2014 where it has recommended the State Government to revoke the Government Order dated 11/02/2010 by which Government granted exemption to the Orphanages from registering under the 2000 Act. The 3rd respondent pleads that all children homes including the orphanages have to be registered under the 2000 Act. The 3rd respondent also referred to its order dated 02/06/2014 which was the proceedings initiated suo motu by the 3rd respondent on the media reports regarding 456 children brought from other States to Kerala without proper records.

WP(C) No. 14604 of 2014

10. The petitioner herein claims to be an organisation formed for the purpose of fighting against corruption and protection of human rights in the society. The petitioner pleaded that though crime No. 48/2014 has been registered, the State Police is maintaining lethargy in the investigation and the investigation of the Crime is going on in a snail's pace manner. No investigation was conducted about the involvement of orphanage authorities allegedly involved in the child trafficking. Petitioner claims that an interstate racket appears to be functioning in the child trafficking. It was pleaded that the instant case is having interstate and international ramifications warranting an investigation by CBI. The children from Jharkhand, West Bengal and Orissa were involved in the trafficking. Petitioner has prayed for following relief:

"a. Issue a writ of mandamus or any other writ, order or direction directing the 1st respondent to entrust the investigation of Crime No. 48/2014 of Palakkad Railway Police Station to Central Bureau of Investigation."

11. A statement has been filed by the 2nd respondent. The 5th respondent CBI also filed an affidavit wherein it is stated that the CBI is willing to take up the investigation of the cases. A memo has also been filed by the Special Government Pleader bringing on record the application filed in WP (Crl) No. 102/07 by amicus curiae before the Apex Court.

WP(C) No. 15844 of 2015

12. The petitioner in this writ petition claims to be a charitable society registered under the Travancore-Cochin Literary, Scientific and Charitable Societies

Registration Act, 1955. The petitioners claim to be a Society established with the object of working with the upliftment of the orphans, destitutes and poor among the Muslim Community. Petitioner also claims to have registration under the Orphanage Control Board of Kerala under the 1960 Act. Petitioner's case is that 23 children who were the inmates of the institution went to their native place on 25/03/2015 along with the teachers and expenses were met by the petitioner's institution. The 20 children out of the above 23 and 9 new children came to Ernakulam on 20/05/2015. The children were asked documents to be shown by the Railway Police Constable, who informed the Childline and the childline officials arrived at the Railway Station and thereafter a member of CWC also reached the spot. Thereafter the children were taken to Sneha Bhavan at Ernakulam South. Petitioner appeared before the CWC on 22/05/2015 and submitted documents. CWC directed the petitioner to bring the letters from CWC/ Department of Social Justice from the respective home Districts of the boys regarding the care and protection of the boys in their jurisdiction. The petitioner in the writ petition has prayed for the following reliefs:

"A. Issue a writ of mandamus or any other appropriate writ, order or direction directing the respondents to release the 29 children taken custody by the 2nd respondent, to the petitioner forthwith.

B. Issue a writ of mandamus or any other appropriate writ, order or direction directing the 2nd respondent to return all the original documents pertaining to the said children taken possession of by it from the petitioner to the petitioner forthwith."

13. The CWC has filed a counter-affidavit in the writ petition. It is pleaded that the recognition of the petitioner Society has come to an end by 01/05/2015.

The documents submitted by the petitioners require verification. An application, IA No. 8139 of 2015 has been filed by the petitioner to receive certain documents. Reply affidavit has also been filed by the petitioner.

14. In WP(C) No. 14259 of 2014 the pleadings are complete and all the parties are represented. It is being treated as the leading writ petition and it shall be sufficient to refer to the pleadings in that writ petition for deciding all the writ petitions.

15. We have heard Smt. Sandhya Raju for the petitioner in WP (C) No. 14259 of 2014, Sri. T.A. Shaji (Sr.) assisted by Sri. B.H. Mansoor, learned counsel appearing for the petitioner in WP(C) No. 14604 of 2014, Sri. T. Krishnanunni (Sr.) assisted by Sri. Paul Kuriakose for the petitioner in WP(C) No. 15844 of 2015, Sri. N. Nandakumara Menon (Sr.) appearing for the Association of Orphanages and Charitable Institutions, Kerala, Sri. P. Chandrasekhara Pillai, learned Standing Counsel appearing for CBI, Sri. B.S. Swathy Kumar for 11th respondent in WP(C) No. 14259 of 2014, Sri. Subhash Chand appearing for the Child Welfare Committee, Ernakulam, Sri. K.P. Dandapani, learned Advocate General and Sri. T.T. Muhamood, learned Special Government Pleader. We have

also heard Sri. Devan Ramachandran, Amicus Curiae.

16. Learned counsel for the petitioner in WP(C) No. 14259 of 2014 Smt. Sandhya Raju in support of the Public Interest Litigation submits that the incidents dated 24/05/2014 and 25/05/2014 where 578 children were brought from the States of Bihar, Jharkhand and West Bengal is a case of child trafficking. Children are brought into the State of Kerala without there being any valid documents who need to be repatriated to the respective State and united with their family which is in the interest of the children. It is submitted that children of tender age who are brought by certain interested persons/agents to different orphanages in the State of Kerala have no idea as to what is happening with them and they are the victim of the trafficking. It is submitted that the orphanages which claim that children were brought to be housed in the orphanages have no jurisdiction or authority to take the children from outside the State. The orphanages which are registered only under the 1960 Act have no right to admit any child who is in need of care and protection, the orphanages being not registered under the 2000 Act. All orphanages and other institutions of child care are required to be registered under the 2000 Act and without registration under 2000 Act, no orphanages or any children home can claim housing any child. The orphanage are unfit to take custody or take care of children in need of care and protection. The CWCs are required to repatriate the children to their respective homes. One of the principles enshrined under the 2000 Act and the rules is to restore the child to his family so that it may grow in the family which can provide proper care and comfort. It is submitted that family responsibility is one of the fundamental principles provided in the rules. The orphanages cannot claim that they can admit children in their home. The fact that orphanages are claiming that children's parents have sent them to the orphanage itself proves that the children who are being sent to the orphanages are children in need of care and protection and they clearly fall under Section 2(d) of the 2000 Act. Referring to the incident of 29 children brought from different States to Ernakulam on 20th May, 2015 and 16 children brought from Arunachal Pradesh on 20/05/2015, it is submitted that these are all cases of child trafficking. Children are brought by certain agents by practicing fraud on the parents. It is submitted that the State has committed error in granting exemption to the orphanages not to get registered under the 2000 Act. Government Order dated 11/02/2010 granting such exemption is beyond the power of the State. It is further submitted that in view of the regulations framed under the 1960 Act as amended in 2013 no child can be admitted by an orphanage without prior approval of the Orphanage Control Board and in the cases in hand there is no such permission of Orphanage Control Board with regard to any child nor any such permission has been claimed. It is submitted that 29 children who were brought on 20/05/2015, cannot be handed over the Kadheejathul Kubra Islamic Complex, Nettoor, as the said Society is not registered under the 2000 Act and it's registration under the 1960 Act has also expired.

17. Learned counsel appearing for the Orphanages Association, Sri. N.

Nandakumara Menon, submits that the State Government has constituted a Board for controlling the institutions coming under the 1960 Act. The allegations made by the petitioner against Orphanages and Charitable Homes are based on the newspaper reports and are unsustainable. It is submitted that on the basis of certain stray incidents as mentioned by the petitioner in the writ petition a cloud of suspicion cannot be created on the functioning of the large number of orphanages and other Juvenile Homes in the State. The officers of Social Justice Department are regularly monitoring and controlling the functions of orphanages and other charitable homes in Kerala. It is submitted that parents who come from very poor families entrust their children to the Institutions to look after their children by providing Shelter, Food, Education and Care. The Orphanages in the State are receiving only paltry sum of Rs. 700/- per child as grant whereas an average of minimum Rs. 3,500/- is being spent for the welfare of every child by collecting donations and other voluntary contributions from the public. The provisions of Juvenile Justice (Care and Protection of Children) Act, 2000 and Rules framed thereunder are not applicable to the functioning of the Orphanages in the State. It is submitted that the bringing of children in the Orphanages with the consent of parents of the children cannot be said to be trafficking and there is no occasion for directing any CBI enquiry in the matter.

18. Learned counsel appearing for the Kadheejathul Kubra Islamic Complex, Nettoor, submits that 29 children who were intercepted at the Ernakulam Railway Station in May, 2015 are required to be handed over to the Complex since 20 of the students were inmates of the complex. It is submitted that the decision of CWC not to hand over the 29 children is not correct which has already been challenged separately by filing WP(C) No. 15844 of 2015. It is submitted that the children who are admitted in the Complex/Orphanage cannot be said to be child in need of care and protection. It is submitted that the definition of child in care and protection is contained in Section 2(d) of the 2000 Act, which is not applicable to the children who are admitted in the Complex or the Orphanages. The children who are admitted in the orphanages are children sent to the Orphanages with the consent of parents, hence provisions of the 2000 Act are not applicable. It is submitted that the functions of the Complex and other orphanages are governed by the 1960 Act under which they are registered. It is submitted that in so far as the Complex is concerned, it has time of one year from 01/05/2015 to remove the deficiencies as contained in the regulation and get it registered. It is submitted that there is no requirement of child homes/orphanages to be registered under the 2000 Act since they are already registered under the 1960 Act and governed by regulations therein. The bringing of children in the orphanages cannot be held to be trafficking and there is no necessity to direct any CBI enquiry in the matter.

19. Learned Special Government Pleader submitted that Orphanages are registered under the 1960 Act and the State Government has granted exemption to them from registration under the 2000 Act by virtue of the Government Order dated 11/02/2010. It is submitted that with regard to the incidents on

24/05/2014 and 25/05/2014 Crime No. 48/2014 and 49/2014 have already been registered which has now been entrusted to the Crime Branch. Persons have been arrested and large number of persons have been questioned by the investigation team. It is submitted that the State is taking all measures as required by the 2000 Act for protection of children who are in need of care and protection. He submitted that out of the children who came to Palakkad on 24/05/2014 and 25/05/2014 several children have been permitted to go along with their parents and several of them were repatriated to the home State at State's expenses. Providing education and food to children alone does not be treated as trafficking. Whether there is any exploitation on the part of Orphanage authorities is to be enquired into by the State Police. The question of applicability of Section 2(d) of the 2000 Act has been interpreted by this Court reported in *Jose Maveli, Director Vs. State of Kerala and Another*, (2007) CriLJ 2709 : (2007) 2 ILR (Ker) 68 wherein it has been declared that mere financial constraints of a family shall not be treated as a criterion for determining the jurisdiction of a child under the Juvenile Justice Act. Children of poor family does not come under the Juvenile Justice Act, only because of their poverty. The State Government has taken a policy decision to the effect that the admission of other State children will be only based on the recommendations of the concerned State Government. Further minimum standard of care and protection of children in orphanages are being revised.

20. Sri. Subhash Chand, learned counsel appearing for CWC in WP(C) No. 15844 of 2015 has submitted that the children staying in institutions which are being claimed as Orphanages/Complex are child in need of care and protection and fell within the jurisdiction of Child Welfare Committee. It is submitted that the 2000 Act is applicable on the child who are admitted in the orphanages. It is submitted that the writ petitioner in WP (C) No. 15844 of 2015, as on date has no registration under the 1960 Act. It is submitted that the children who were intercepted on 20/05/2015 at Ernakulam Railway Station (total 29 numbers) are the children in need of care and protection, with regard to them CWC has already taken decision. The said children are housed in children's home and providing all facilities including education in "Sarva Siksha Abhiyan".

21. Sri. Chandrasekhara Pillai, learned Senior Counsel appearing on behalf of CBI submitted that allegations which are raised in the writ petitions disclose serious matters and the CBI is ready to investigate the crime if High Court so directs. Considering the large scale investigation spread over four States, it is only CBI which can carry out the investigation.

22. Sri. Devan Ramachandran, learned Amicus Curiae submits that the entire field is covered by the 2000 Act. It is submitted that the fundamental principle of Juvenile Justice is a principle of best interest, principle of family responsibility and child is to be restored to his own family at the earliest. It is submitted that under Section 34(3) of the 2000 Act all institutions dealing with children who needs care and protection are required to be registered under the 2000 Act. The

1960 Act stood repealed by the Juvenile Justice Act, 1986. The relevant records and documents do not disclose that the children have been ordered by the CWCs, of their ordinary place of residence in Jharkhand, Bihar or West Bengal, to be children in need of care and protection. When the children have not been found to be in need of care and protection by the CWCs of the place where they ordinarily reside, it would be then impossible to accommodate them in any Children's Home even in their home States much less in Kerala. The stand of the Government of Kerala that the child homes/orphanages in Kerala do not require registration under the 2000 Act if it has a registration under the 1960 Act is illegal and unsustainable. The Apex Court vide its judgment dated 16/12/2013 in WP (Crl) No. 102 of 2007 has also directed all State Governments to answer if all the institutions run by it or by voluntary organisations for children in need of care and protection have been registered under the 2000 Act and also to report if any such unregistered institutions are still being run. The importance of registration of the institutions is seminal since it is only then they can be held accountable and made responsible to their duties and responsibilities under the 2000 Act including maintenance of the standards of infrastructure, nutrition, diet etc. Now the words, "Orphan" and "Orphanage" are not used in the Act. In substitution the usage is "Child in need of care and protection" and "Children's Home". This change is also the need of the hour to foster dignity and worth in the child who no longer is an orphan but a child of the State who is in need of support, encouragement and compassion in addition to the care and protection of the society. The claim of the institution that children have been transferred from other States as per the request of their parents cannot be accepted in view of the statutory scheme that only a child who is certified or ordered by a competent CWC to be a child in need of care and protection can be accommodated in an institution. The transfer of a child in the manner as has been pleaded raise suspicion of exploitation of the child so transferred.

23. We have considered the submissions of learned counsel for the parties and perused the records.

24. The issues which arise for consideration in this group of Writ Petitions are:

I. Whether the children, who were intercepted by the Railway Police on 25th May, 2014 and 26th May, 2014 at Palakkad Railway Station and those (29 in number) intercepted on 20th May, 2015 at Ernakulam Junction Railway Station and 16 children brought before the Jena Seva Sishubhavan, Aluva on 20/05/2015 can be said to be children in need of care and protection within the meaning of Section 2(d) of the 2000 Act?

II. Whether the child who is housed in an orphanage registered under the 1960 Act can be said not be a child in need of care and protection?

III. Whether the institutions/orphanages, which are registered under the Act, 1960 also need registration under the 2000 Act to house a child, who is in need of care and protection within the meaning of Section 2(d) of the 2000 Act?

IV. Whether Section 34(3) of the 2000 Act mandates obtaining registration by all institutions/orphanages run by private organisations, which are housing children, who need care and protection?

V. Whether the decision of the State Government vide its Government Order No. G/G(MS) No. 12/2010/SWD dated 11/02/2010 granting exemption to institutions, which are already registered under the 1960 Act from further registration under the 2000 Act is valid?

VI. Whether the orphanages/institutions registered under the 1960 Act can admit child pertaining to outside the State of Kerala without prior approval of the Orphanage Control Board and without there being recommendation of the State Government concerned?

VII. Whether the petitioners in WP(C) No. 15844 of 2015 are entitled for a direction to the Child Welfare Committee, Ernakulam to release 29 children taken into care and protection of the second respondent?

VIII. Whether the crimes registered on the basis of the incidents dated 24th May, 2014 and 25th May, 2014 being Crime Nos. 48/2014 and 49/2014 (which have subsequently been entrusted to the Crime Branch for investigation) and other similar crimes registered pertaining to trafficking under Section 370 IPC need to be entrusted for investigation to the CBI?

IX. To what reliefs the petitioners in these group of Writ Petitions are entitled?

25. Before we proceed to consider the above issues it is relevant to note certain facts pertaining to child right, some constitutional provisions and history of legislation for fully appreciating the content of the present legislation regulating the field. The Constitution of India contains various provisions, which are measures to promote and protect children. Article 21A inserted by the Constitution (Eighty-sixth Amendment) Act, 2002 with effect from 01/04/2010 is one of the most important fundamental rights given to children between the age of 6 and 14 years. The State is enjoined to provide free and compulsory education to all children of the age of 6 to 14 years in such manner as the State may, by law determine. Article 39(f) enjoins the State to direct its policy towards securing that the children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment. Article 39(f) is quoted as below:

"39. Certain Principles of policy to be followed by the State.-- The State shall, in particular, direct its policy towards securing--

xxxx xxxx xxxx

(f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment."

26. The fundamental duties under Article 51A(k), which has been inserted in the Constitution to facilitate the fundamental rights under Article 21A, is to the following effect:

"51A. Fundamental duties.--It shall be the duty of every citizen of India--(k) who is a parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years."

Thus, it is the constitutional duty of a parent or guardian to provide opportunities for education to his child or ward between the age of 6 and 14 years. The first legislation framed by the Parliament is the Women's and Children's Institutions (Licensing) Act, 1956, which provided that after the commencement of the Act, no person shall establish or maintain an institution, except in accordance with the licence granted under the Act. Section 4 provided that every person shall make an application to the licensing authority in such form and containing such particulars as may be prescribed. Then came the Orphanages and other Charitable Homes (Supervision and Control) Act, 1960, which repeals the above mentioned 1956 Act. Section 2(c) defines "child" and Section 2(d) defines "home". Section 2(d) reads as under:

"2. Definitions.-- In this Act, unless the context otherwise requires,--(d) "home" means an institution, whether called an orphanage, a home for neglected women or children, a widows' home, or by any other name, maintained or intended to be maintained for the reception, care, protection and welfare of women or children;"

27. Section 13 provided that after the commencement of the Act, no person shall maintain or conduct any home except under, and in accordance with the conditions of a certificate of recognition granted under the Act. Section 14 provided for making application. Then came the Juvenile Justice Act, 1986 to provide for the care, protection, treatment, development and rehabilitation of neglected or delinquent juveniles and for the adjudication of certain matters relating to and disposition of delinquent juveniles. The 1986 Act repealed any law corresponding to 1986 Act in force in States. On 20th November, 1989 the General Assembly of the United Nations adopted the Convention on the Rights of the Child wherein a set of standards to be adhered to by all State parties in securing the best interests of the child has been prescribed. The Government of India ratified the convention on 11th December, 1989. The Parliament came up with the legislation, namely, the Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter referred to as "the 2000 Act") bearing in mind the standards prescribed in the Convention on the Rights of the Child, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, 1985 (The Beijing Rules), the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (1990), and all other relevant international instruments. The preamble of the 2000 Act provides as follows:

"To provide for the care, protection, treatment, development and rehabilitation of

neglected or delinquent juveniles and for the adjudication of certain matters relating to, and disposition of, delinquent juveniles the Juvenile Justice Act, 1986 (53 of 1986) was enacted by Parliament. Several provisions of the Constitution including Clause (3) of Article 15, Clauses (e) and (f) of Article 39, Articles 456 and 47 also impose on the State a primary responsibility of ensuring that all the needs of children are met and that their basic human rights are fully protected. On 20th November, 1989 General Assembly of the United Nations adopted the Convention on the Rights of the Child wherein a set of standards to be adhered to by all State parties in securing the best interests of the child has been prescribed. The Convention emphasises social reintegration of child victims, to the extent possible, without resorting to judicial proceedings. The Government of India, having ratified the Convention, has found it expedient to re-enact the existing law relating to juveniles bearing in mind the standards prescribed in the Convention on the rights of the child, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, 1985 (The Beijing Rules), the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (1990), and all other relevant international instruments. To achieve this objective the Juvenile Justice (Care and Protection of Children) Bill was introduced in the Parliament."

28. Issue Nos. I and II being inter connected are being taken together. Section 2(d) of the 2000 Act, which defines "child in need of care and protection" is to the following effect:

"2(d) "child in need of care and protection" means a child--

(i) who is found without any home or settled place or abode and without any ostensible means of subsistence,

(ia) who is found begging, or who is either a street child or a working child,

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

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

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

(iii) who is mentally or physically challenged or ill children or children suffering from terminal diseases or incurable diseases having no one to support or look after,

(iv) who has a parent or guardian and such parent or guardian is unfit or incapacitated to exercise control over the child,

(v) who does not have parent and no one is willing to take care of or whose parents have abandoned or surrendered him or who is missing and run away

child and whose parents cannot be found after reasonable inquiry,

(vi) who is being or is likely to be grossly abused, tortured or exploited for the purpose of sexual abuse or illegal acts,

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

(viii) who is being or is likely to be abused for unconscionable gains,

(ix) who is victim of any armed conflict, civil commotion or natural calamity;"

29. As noted above, the children, who were intercepted on 25th and 26th May, 2014 at Palakkad Railway Station and on 20th May, 2015 at Ernakulam Junction Railway Station were produced before the respective Child Welfare Committee. The Child Welfare Committee proceeded treating the children as children in need of care and protection and has taken different measures including housing them in different Government homes and children homes. Some of the children have also been repatriated to their respective States, as noted above, by the Child Welfare Committee. Some of the children were permitted to go along with their parents by the Child Welfare Committee as noted above. The Child Welfare Committee, thus, treated them children in need of care and protection.

30. Learned counsel appearing for the Mukkom Muslim Orphanage and the Khadeejathul Kubra Islamic Complex submit that those students, who were to be housed in their orphanages and some other orphanages cannot be held to be children in need of care and protection, since none of them are covered by the definition of Section 2(d) of the 2000 Act, hence, the Child Welfare Committee has no jurisdiction to proceed to consider their claims.

31. In this context, it is necessary to look into the case set up by the association of orphanages and respective orphanages. A counter-affidavit has been filed by respondents 8 and 9 in WP(C) No. 14259 of 2014. In paragraph 6 of the counter-affidavit the following has been stated:

"6. It is submitted that the admission of children to the various Orphanages in the State are given on a voluntary basis at the instance of very poor and economically backward Parents or Guardians. It may kindly be noted that the poor children so admitted to the Orphanages as inmates are sent to nearby schools and other Educational Institutions. It is pertinent to note that the inmates of the Orphanages are mainly from the Local area and the needs of the children are well taken care of by the Orphanages functioning under the Supervision and Control of the Statutory Board Constituted under Act 10 of 1960. It is submitted that the Parents who come from very poor families entrust their children to the Institutions to look after their children by providing shelter, food, education and care."

32. The case of the respondents is that parents who come from very poor family entrust their children to the institutions to look after their children by providing

shelter, food, education and care. The children, who are admitted in the orphanages are not without parents. IA No. 7016 of 2015 has been filed by the Khadeejathul Kubra Islamic Complex for impleading themselves as additional respondent. A separate Writ Petition being WP(C) No. 15844 of 2015 has also been filed by the Khadeejathul Kubra Islamic Complex. In the Writ Petition it has been stated that the Islamic Complex is a Society registered under the Travancore-Cochin Literary, Scientific and Charitable Societies Registration Act, 1955. It was established in the year 1999 for the upliftment of the orphans, destitutes and poor among the Muslim Community. The petitioner institution has facilities to provide boarding other children also who are in need of support for their educational needs. It is pleaded that "all the children are admitted to the boarding based on application from their respective parents". The case of the orphanage, thus, is that they are admitting orphans, destitutes and poor. It is submitted that the students are taken on the application/request of the parents. Orphanage is a place where an orphan is kept. "Orphan" is defined in Black's Law Dictionary as follows:

"Orphan.--1. A child whose parents are dead. 2. A child with one dead parent and one living parent.--More properly termed half orphan. 3. A child who has been deprived of parental care and has not been legally adopted; a child without a parent or guardian."

33. P. Ramanatha Aiyar's Law Lexicon defines "orphan" and "orphanage" in the following manner:

"Orphan. "ORPHAN" means a person, none of whose parents is alive and is in receipt of monthly widow/widower pension. (Employee's Pension Scheme, 1995, Section 2(xi)

A fatherless child, or an illegitimate child of a deceased mother. According to more general usage a minor who has lost both of his or her parents. (Bouvier) Sometimes the term is applied to a person who has lost only one of his or her parent.

Orphanage. An institution or house for orphans; orphan asylum: an asylum or home for destitute orphan children; and institution for the care of destitute orphans.

The term affords the suggestion of a charity, and was held to have been used with the intent to do so by one who collected money, ostensibly for an alleged "orphanage", the Courts remarking, lexicographers are not unanimous, but lean toward a meaning for "orphanage" or "orphan asylum" suggesting destitution of those relieved, rather than a profit seeking enterprise."

34. The word "orphan" has not been defined in the 1986 Act, 2000 Act or any of the Rules framed thereunder. For the first time the definition of "orphan" has been included in Rule 2(n) of the Kerala Juvenile Justice (Care and Protection of Children) Rules, 2014, which is to the following effect:

"(n) "orphan" means a child who is without parents or not having willing and capable legal or natural guardian."

From the definition of "orphan" as noted above, the general notion of "orphan" is, "a child whose parents are dead". The "orphanage" is an institution or house for orphans. The definition in Rule 2(n) as quoted above indicates that the orphan is one who is without parents or not having willing and capable legal or natural guardian.

35. The case of "orphanage" as noted above is that throughout they are admitting students from outside Kerala on the request of the parents/on application submitted by parents. Thus, even as per the definition given in 2(n) of the Rules, 2014, the students, who are being admitted by orphanages and other institutions from outside Kerala, are children who are in need of care and protection.

36. The fact that a parent is sending his child to an orphanage for education purpose as claimed by the respondents orphanage clearly indicates that the child is in need of care and protection. A child is sent to orphanage when the parents are unable to provide education to the child or to take proper care of the child. As noted above. Article 51A(g) now casts a duty on the parent to provide education to child. When a parent is sending his child to an orphanage, he is abdicating his duty to provide education to the child. Section 2(d)(iv) of the 2000 Act provides as under:

"(iv) who has a parent or guardian and such parent or guardian is unfit or incapacitated to exercise control over the child."

37. There may be other cases, which may be covered by other sub-clauses of Section 2(d) of the 2000 Act, by which a child has to be held to be a child in need of care and protection. For finding out whether a child is covered by the definition of Section 2(d) of the 2000 Act, each case and circumstance by which the child is being sent to the State of Kerala in an orphanage or home has to be looked into. Thus, we are not persuaded to accept the submission of learned counsel for the Association of orphanages as well as learned counsel appearing for the orphanages/institutions in these Writ Petitions that children, who are admitted in the orphanages/institutions are not children, who are in need of care and protection.

38. When a parent abdicates his constitutional duty to provide education to his children, there is no difficulty in presuming that such parent or guardian is unfit to exercise control over the child. As noted above, now every child between the age of 6 and 14 years is required to be provided free education. When a State is providing for education to every child, sending the child to the orphanage is nothing but abdication of duty of a parent. It is relevant to note that both the Juvenile Justice (Care and Protection of Children) Rules, 2007 framed by the Central Government and the Kerala Juvenile Justice (Care and Protection of Children) Rules, 2014 contain fundamental principles of juvenile justice and

protection of children. It is useful to refer to Rule 3 of the Kerala Juvenile Justice (Care and Protection of Children) Rules, 2014.

"3. Fundamental principles to be followed in administration of these rules.--(1) The Government, the Court, the Juvenile Justice Board, the Child Welfare Committee or other competent authorities or agencies, as the case may be, while implementing the provisions of these rules shall abide and be guided by the principles, specified in sub-rule (2).

(1) The following principles shall, inter alia, be fundamental to the application, interpretation and implementation of the Act and the rules made hereunder:

xxxx xxxx xxxx

II. Principle of dignity and worth:

(a) Treatment that is consistent with the child's sense of dignity and worth is a fundamental principle of juvenile justice. This principle reflects the fundamental human right enshrined in Article 1 of the Universal Declaration of Human Rights that all human beings are born free and equal in dignity and rights. Respect of dignity includes not being humiliated, personal identity, boundaries and space being respected, not being labelled and stigmatized, being offered information and choices and not being blamed for their acts. (b) The juvenile's or child's right to dignity and worth has to be respected and protected throughout the entire process of dealing with the child from the first contact with law enforcement agencies to the implementation of all measures for dealing with the child.

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V. Principle of family responsibility:

(a) The primary responsibility of bringing up children, providing care, support and protection shall be with the biological parents. However, in exceptional situations, this responsibility may be bestowed on willing adoptive or foster parents.

(b) All decision making for the child should involve the family of origin unless it is not in the best interest of the child to do so.

(c) The family-biological, adoptive or foster (in that order), must be held responsible and provide necessary care, support and protection to the juvenile or child under their care and custody under the Act, unless the best interest measures of mandates dictate otherwise.

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XIII. Principle of repatriation and restoration:

(a) Every juvenile or child or juvenile in conflict with law has the right to be reunited with his family and restored back to the same socioeconomic and cultural

status that such juvenile or child enjoyed before coming within the purview of the Act or becoming vulnerable to any form of neglect, abuse or exploitation.

(b) Any juvenile or child, who has lost contact with his family, shall be eligible for protection under the Act and shall be repatriated and restored, at the earliest, to his family, unless such repatriation and restoration is likely to be against the best interest of the juvenile or the child."

39. Environment and setting where the child grows plays the most important role in the Fundamental Principles which are recognised under the Act and the Rules. Family is the best place where child's natural growth is possible. The above has also been recognised by the Apex Court in *Sheela Barse Vs. Secretary, Children's Aid Society and others*, AIR 1987 SC 656 : (1987) 1 JT 58 : (1986) 2 SCALE 1234 : (1987) 3 SCC 50 : (1987) 1 SCR 870 : (1987) 1 UJ 516 . Paragraphs 5, 7 and 11 of the judgment are relevant, which reads as under:

"5. Children are the citizens of the future era. On the proper bringing up of children and giving them the proper training to turn out to be good citizens depends the future of the country. In recent years this position has been well realised. In 1959, the Declaration of all the rights of the child adopted by the General Assembly of the United Nations and in Article 24 of the International Covenant on Civil and Political Rights, 1966, the importance of the child has been appropriately recognised. India as a party to these International Charters having rectified the Declarations, it is an obligation of the Government of India as also the State machinery to implement the same in the proper way. The Children Act, 1948 has made elaborate provisions to cover this and if these provisions are properly translated into action and the authorities created under the Act become cognizant of their role, duties and obligation in the performance of the statutory mechanism created under the Act and they are properly motivated to meet the situations that arise in handling the problems, the situation would certainly be very much eased.

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7. Gerontocracy in silence manner indicated that like a young plant a child takes roots in the environment where it is placed. Howsoever good the breed be if the sapling is placed on a wrong setting or an unwarranted place there would not be the desired growth. Same is the situation with the humane child....

xxxx xxxx xxxxx

11. In recent years, children and their problems have been receiving attention both of the Government as also of the society but we must say that the problems are of such enormous magnitude that all that has been done till now is not sufficient. If there be no proper growth of children of today, the future of the country will be dark. It is the obligation of every generation to bring up children who will be citizens of tomorrow in a proper way. Today's children will be the leaders of tomorrow who will hold the country's banner high and maintain the

prestige of the Nation. If a child goes wrong for want of proper attention, training and guidance, it will indeed be a deficiency of the society and of the Government of the day. A problem child is indeed a negative factor. Every society must, therefore, devote full attention to ensure that children are properly cared for and brought up in a proper atmosphere where they could receive adequate training, education and guidance in order that they may be able to have their rightful place in the society when they grow up."

40. In this context it is relevant to note the definition of "home" given in Section 2(d) of the 1960 Act. Section 2(d) of the 1960 Act defines "home" in the following words:

"2(d) "home" means an institution, whether called an orphanage, a home for neglected women or children, a widows' home, or by any other name, maintained or intended to be maintained for the reception, care, protection and welfare of women or children;"

41. The very definition of "home" as above indicates that home is an institution maintained or intended to be maintained for the reception, care, protection and welfare of women or children. Thus, home under the 1960 Act whether called an orphanage, a home for neglected women or children is the home for care and protection. More so, whether a child, who was produced before the Child Welfare Committee, is the child in need of care and protection within the meaning of Section 2(d) of the 2000 Act is the matter for consideration and decision by the Child Welfare Committee, which is the statutory authority to take decision in relation to child in need of care and protection. Section 31 of the Act is relevant, which is quoted as below:

"31. Powers of Committee.--(1) The Committee shall have the final authority to dispose of cases for the care, protection, treatment, development and rehabilitation of the children as well as to provide for their basic needs and protection of human rights.

(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."

42. Under Section 31, the Child Welfare Committee has been given final authority to dispose of cases for the care and protection of the children.

43. The comprehensive legislation, i.e., 2000 Act has been enacted to address all aspects of child care and protection. The 2000 Act has to be given overriding effect with regard to child care and protection. The children intercepted on the dates as noted above were produced before the Child Welfare Committee, which committee proceeded to take measures for care and protection of the children. Hence, the submission of the orphanages that those children are not covered by

the definition of Section 2(d) cannot be accepted.

44. A Single Bench judgment of this Court reported in Jose Maveli, Director Vs. State of Kerala and Another, (2007) CriLJ 2709 : (2007) 2 ILR (Ker) 68 has been cited by learned counsel appearing for the Khadeejathul Kubra Islamic Complex. It is submitted that poverty of parents alone is not sufficient to hold a child in need of care and protection. In the above case five minor children were kept in an institution, namely, Jena Seva Sishubhavan. The third respondent claiming to be father of the minor children filed an application before the Magistrate, who was acting as the Child Welfare Committee for handing over the children to the father. The said application was considered by the Magistrate and an order was passed directing the children institution Jena Seva Sishubhavan to release the children to the second respondent (father). The said order was challenged by the Director of the Sishubhavan by means of Criminal Revision. In the above context, the learned Single Judge had occasion to consider Section 2(d) of the 2000 Act. It is useful to quote paragraphs 44, 45, 46 and 51 of the judgment, which read as under:

"44. A close reading of Section 2(d) of the Act shows that a child who is having a parent or guardian cannot, strictly speaking, be said to be a "child in need of care and protection", unless such parent/guardian is possessed for such disqualifications as are specifically laid down in sub-clauses (ii), (iv) or (v) of Section 2(d) of the Act. Sub-clauses (ii), (iv) and (v) specifically refer to a child who has a parent or guardian.

45. As per sub-clause (iv), if the child has a parent, only if such parent is unfit or incapacitated to exercise control over the child that his child becomes a "child in need of care and protection". (May be, the parent is mentally deranged or so). Under sub-clause (v), if the child has parents, they must have abandoned him/her so that such child can be treated as a "child in need of care and protection". If it is a case of a "missing and run away child", the child can be treated as a "child in need of care and protection" under Section 2(d)(v), only if the parent cannot be found, even after a reasonable enquiry.

46. It is also clear from Section 2(d)(v) that a child can be stated to be a "child in need of care and protection", if no one is willing to take care of him/her, though he has no parent. The corollary that follows from the above clause is that even in cases where the child is parentless, he does not become a "child in need of care and protection", unless no one is willing to take care of him/her.

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51. It is also relevant to note that it is not laid down in any of the sub-clauses in Section 2(d) that if a "parent" is without home, settled place or abode or means, a child born to such parent will be a "child in need of care and protection". On the other hand, if the parent is unfit or is having any of the disqualifications as stated in the relevant sub-clauses, his/her child can be stated to be a "child in need of care and protection". But, in none of such sub-clauses, financial

incapacity, poverty and the consequential lack of means of a parent, absence of a house, settled place or abode have been made disqualifications of a parent, so as to bring his/her child within the sweep of Section 2(d) of the Act."

In the above case this Court held that mere financial incapacity/poverty or lack of means of the parents is not disqualification of a parent, so as to bring his/her child within the sweep of Section 2(d) of the Act. The said observations were made by this Court in a case where parent was asking for release of the children from the Jena Seva Sishubhavan and he contended that he is ready to take care of all requirement of the child. In the said case also the importance of parental care was duly highlighted by the learned Single Judge. The following was laid down in paragraph 58 of the judgment:

"58. The parental care and warmth would provide to them, enough strength to stride through the path of thorny poverty. A child would learn a lot in his life from the bed-time fairy tales, under the parental care, whether he or she be, in a hut or a palace. The "sweet-and-sour" family environment may cool down, the heat of his thirst and hunger. Though poverty may taste bitter to him, the parental care and affection may be sweet and soothing. Nothing can substitute it. The silky bed or velvet clothes, sweet bread or honey, a golden bowl or silver spoon at an Institution, may not replace the warmth of a family environment."

The above was not a case where parents have sent their child to orphanage for education as is claimed by the different orphanages in the present case.

45. As noted above, petitioners had filed an application being IA No. 7403 of 2015 in WP(C) No. 14259 of 2014 seeking a direction with regard to 16 children brought from Arunachal Pradesh who were produced before the Jena Seva Sishubhavan, Aluva on 20/05/2015. By the same IA, petitioners have also prayed for a direction to initiate an enquiry by the Central Bureau of Investigation into the large scale trafficking of children from outside to State of Kerala in the guise of education. The Child Welfare Committee has submitted a report on the basis of the direction issued by this Court. In the report dated 17/06/2015, it is stated that the 16 children arrived at the Jena Seva Sishubhavan, Aluva on 20/05/2015 have been produced before the Child Welfare Committee, Ernakulam on 25/05/2015. The Child Welfare Committee conducted its proceeding and asked the Shishubhavan to submit relevant documents. Two Members of the Child Welfare Committee also met the children at the Jena Seva Sishubhavan, Aluva. The Jena Seva Sishubhavan, Aluva has been impleaded as one of the respondents. A counter-affidavit has been filed by the Chairman of the Jena Seva Sishubhavan, Aluva. In the counter-affidavit it is stated that 16 children from Arunachal Pradesh between the age of 7 and 11 years were brought by Probir Kumar Chakma on 20/05/2015 before the Jena Seva Sishubhavan. It is stated that earlier on 23/05/2014 the said Probir Kumar Chakma came to Jena Seva Sishubhavan with 8 children hailing from Arunachal Pradesh. Jena Seva Sishubhavan submitted that documents pertaining to 16 children have been produced before the Child Welfare Committee, Ernakulam.

Jena Seva Shishubhavan claims registration under the 1960 Act for boarding 200 boys and 200 girls. Jenaseva Shishubhavan has also been registered under the 2000 Act by registration dated 23/05/2014. Jena Seva Shishubhavan has also produced a letter dated 14/05/2015 alleged to be issued by the Child Welfare Committee, Lohit District, Arunachal Pradesh.

46. Shri. B.S. Swathi Kumar, learned counsel appearing for the Jenaseva Shishubhavan submitted that Jenaseva Shishubhavan is an institution fighting against the child abuse and child labour which is looking after the need of the children for their care and protection for the last 15 years. It is submitted that although Jena Seva Shishubhavan endorses the view that the best place to brought up a child is with the parents provided the parents are willing and capable of maintaining their child in child friendly atmosphere. It is further submitted that the Child Welfare Committee without proper enquiry are releasing children to person who claims to be parent without proper verification. In the report submitted by the Child Welfare Committee dated 17/06/2015 the following was stated:

"The Child Welfare Committee, Ernakulam District has decided to send the 16 children back to Arunachal Pradesh for the following reasons:

1. 7 of the 16 children have specially stated that they want to return home.
2. There is a clear violation of the rights of the children as none of them is being allowed to speak with their parents.
3. One of the persons responsible for bringing the children (Probir Kumar Chakma) has been reported by the children to be using intoxicants. The CWC, Ernakulam District was subsequently by the Secretary of Jenaseva Shishubhavan, Aluva that Probir Kumar Chakma was admitted to Kusumagiri Mental Health Centre, Kakkanad, Ernakulam.
4. Bringing the children from their home district is in violation of Principles V, XII and XIII of the Fundamental Principles of Juvenile Justice and Protection of Children as laid down in the Juvenile Justice (Care and Protection of Children) Act, 2000.

In addition to the 16 children brought to Ernakulam, a total of 27 children from Arunachal Pradesh are in three different institutions in Ernakulam District. While interacting with the 16 children, it was found that none of the other 27 children has gone home or seen their parents after coming to Kerala. This is in violation of the rights of the children. Hence the CWC, Ernakulam District is of the opinion that these children should also be repatriated and continue their schooling in their home districts in Arunachal Pradesh. Dated this: June 17, 2015

47. Learned counsel Shri Subash Chand for the Child Welfare Committee submitted that report dated 17/06/2015 has already been sent to the Jena Seva Shishubhavan. It is submitted that 16 children from Arunachal Pradesh have been brought to the State of Kerala without following the procedure prescribed by the

Regulations, Government Orders and Circulars issued by the Orphanage Control Board. It is relevant to note the letter dated 14/05/2015 which has been produced by Probir Kumar Chakma before the Jena Seva Shishubhavan filed as R11(h) which reads as follows:

"To The Chairman, Child Welfare Committee Ernakulam District Kerala.

Date 14/05/2015

Sub: Authorisation

Sir,

Whereas one Probir Kumar Chakma, a resident of Diyun Bazar, Changlang District, Arunachal Pradesh has approached the Child Welfare Committee, Tezu, Lohit District, Arunachal Pradesh to allow him to take 16 (sixteen) numbers of children from Chakma Village No. 1 & No. 2 from Chogkham circle under Namsai District, Arunachal Pradesh to Jenaseva Shishubhavan, Ernakulam District, Kerala for education. The names of children are as follows:

1. Shri. Tinku Chakma, age 10 years, S/o Shri. Anjeef Chakma, Village Chakma Village No. 1 PO/PS Chongkham Distt, Namsai, Arunachal Pradesh.

2. xxxx xxxx xxxx

16. Shri. Mangal Jyoti Chakma, aged 10 years S/o Shri. Santhosh Chakma Village Chakma Village No. 2, PO/PS Changkham, Distt. Namsai, Arunachal Pradesh.

This is to authorise and request you to receive the children in your charge and to keep them in the aforesaid institution.

Given my hand and seal of Child Welfare Committee This 14th May, 2015 (Shantanu Kri) Chairperson, Child Welfare Committee Lohit District, Arunachal Pradesh - 792001."

A perusal of the above letter would indicate that the Child Welfare Committee, Lohit District, Arunachal Pradesh has not taken any decision of itself for sending children to the State of Kerala. A reading of the letter would indicate that on a request made by Probir Kumar Chakma that he be allowed to take 16 children, the said letter has been issued. The learned counsel for the Child Welfare Committee submitted that the letter does not even appear to be genuine since no reference or any other details are given.

48. Be that as it may, the letter cannot be treated to be a decision of the Child Welfare Committee, Lohit District, Arunachal Pradesh to send 16 children to the State Government. Regulations framed under the 1960 Act by the State Government has been amended on 22/06/2013. Regulation 9 provides that without there being prior approval of the Board no children from outside the State shall be admitted and that too on the recommendation of the State Government concerned. Thus the bringing of 16 children to Aluva on 20/05/2015

cannot be said to be in accordance with law and the Child Welfare Committee has taken decision to send back the children to Arunachal Pradesh. We direct the State Government/District Administration to take all necessary steps including providing necessary facilities for sending back the 16 children to their respective home District at the earliest. As far as submission of Shri Swathi Kumar is concerned, Jena Seva Sishubhavan is taking proper care of all inmates and giving facility of education, etc. We have no doubt about the said statement. However, Jena Seva Sishubhavan being only children Home, it has to act in accordance with the decision of the Child Welfare Committee which is entrusted under the Act the authority to take care and protection for the child in need. In the present case the Child Welfare Committee after looking to the records Jena Seva Sishubhavan took a decision to rehabilitate the children in which we do not find any error.

49. In view of the above, our answer to Issues I and II are as follows:

I. The children who were intercepted on 25th and 26th May, 2014 at Palakkad Railway Station and the children who were intercepted on 20th May, 2015 at Ernakulam Junction Railway Station as well as 16 children who were produced before the Child Welfare Committee, Ernakulam (29+16 children) are children in need of care and protection within the meaning of Section 2(d) of the 2000 Act.

II. In view of the definition given under Section 2(d) of the 1960 Act, a child, who is maintained or intended to be maintained in an orphanage, is the child in need of care and protection. However, final authority to take a decision whether the child is in need of care and protection within the meaning of Section 2(d) of the 2000 Act lies with the Child Welfare Committee as provided under Section 31 of the 2000 Act.

50. ISSUE Nos. III, IV and V being inter connected are being taken together. As noted above, under the 1960 Act, the provision for recognition of homes is contained in Sections 13 and 14. The 1960 Act is a legislation primarily directed for supervision and control of orphanages and other charitable homes. As noted above, there was an Act, namely, the Women's and Children's Institutions (Licensing) Act, 1956, which also provided for licensing under Sections 3 and 4. The 1956 Act was repealed by the 1960 Act. Section 5 of the 1960 Act provided for Board of Control, its reconstitution etc. The functions of the Board were provided under Sections 7 and 8, which are to the following effect:

"7. Functions of the Board.--(1) It shall be the duty of the Board to supervise and control generally all matters relating to the management of homes in accordance with the provisions of this Act; and exercise such other powers and perform such other functions as may be prescribed by or under this Act.

(2) In the performance of its functions under this Act, the Board shall be bound by such directions as the State Government may give to it.

8. Power of the Board to give directions to manager of a recognised home.--

Subject to the directions, if any, given under sub-section (2) of Section 7, the Board may, from time to time, give such general or special directions to the manager of a recognised home as it thinks fit for the efficient management of the home and the manager shall comply with such directions."

51. The scheme of the Act indicates that principal object and aim of the Act was supervision and control of the orphanages/homes. The Act did not contain any other measures pertaining to any separate provision for child care and protection.

52. The 2000 Act was enacted to give effect international treaties and is referable to Entry 14 List 1. Thus, the primary purpose and objects of both the Acts are different.

53. A submission was raised by Advocate Sri. Devan Ramachandran that after the enactment of 1986 Act, the 1960 Act shall stand repealed. He submits that the 1960 Act has been repealed by the 1986 Act, which is no longer operative. He has also placed reliance on a judgment of the Delhi High Court in support of his submission, being *Chhatravas, Chandra Arya Vidya Mandir v. The Director, Deptt of Women and Child Dev and Another* (WP (C) No. 9590 of 2009) decided on 03/03/2014. In the said judgment the Delhi High Court has taken a view that the 1986 Act repealed the Children Act, 1960. The Children Act, 1960 was an Act, which was applicable to Union Territories. The Delhi High Court was not considering the 1960 Act, hence, the said judgment is not an authority to hold that the 1960 Act stands repealed.

54. Moreover, as noted above, the 1960 Act was enacted for supervision and control of the orphanages and charitable homes, whereas the 2000 Act was enacted for consolidating and amending the law relating to juveniles in conflict with law and children in need of care and protection, by providing for proper care, protection and treatment by catering to their development needs and by adopting a child-friendly approach in furtherance of the Central Government ratifying the international convention adopted in the General Assembly of the United Nations on the Rights of the Child on 20th November, 1989. However, the provisions of the 2000 Act shall be applicable in context of a child, who is in need of care and protection. Care and protection of a child being a paramount object of the 2000 Act, all measures provided in the Act are applicable to any home/ children home housing a child. The charitable homes/orphanages in the event they house a child, they are required to obtain registration under the 2000 Act. The purpose and object of obtaining registration is distinct and different from that of obtaining recognition under Sections 13 and 14 of the 1960 Act. Section 34(3) of the 2000 Act gives an overriding effect to anything contained in any other law for the time being. The said provision mandates all institutions whether the State Government run or those run by voluntary organisations for children in need of care and protection shall, within a period of six months from the date of commencement of the Juvenile Justice (Care and Protection of Children) Amendment Act, 2006, be registered under the Act. Section 34(3) has been inserted by Act 33 of 2006. The insertion of the provision has salient purpose and

object. Unless the institutions, which are required to take care and protection of children registered under the 2000 Act, the benefit of beneficial legislation to children shall not be available. The words "without prejudice to anything contained in any other law for the time being in force" further clarify that the registration under Section 34(3) is without prejudice to any other law, i.e., without prejudice to any registration under the 1960 Act for the purpose of the present case. Thus, even though orphanages/charitable homes are registered under the 1960 Act, they require registration under the 2000 Act, since they are receiving the children who need care and protection. The petitioner in WP(C) No. 15844 of 2015 has produced the certificate of recognition where the certificate has been granted for "orphanage for boys with maximum number of inmates as 25". The child housed in an orphanage is a child, who is in need of care and protection, holding that no registration is required under the 2000 Act by an orphanage or charitable home registered under the 1960 Act is denying benefit of beneficial legislation, i.e., 2000 Act to large number of children, who are housed in orphanages and other charitable homes, which shall not be in accordance with the object and purpose of the 2000 Act. The 2000 Act has been enacted in recognition of universal right of child and the benefit of each and every child, who is in need of care and protection is to be given. It is also relevant to note that the Delhi High Court in Chhatravas's case (supra) has also held that all voluntary organisations are required to be registered under Section 34(3) of the 2000 Act. It is useful to quote paragraphs 47, 48 and 49 of the judgment, which read as under:

"47. Wheres the Licensing Act, 1956 was a general law relating to children and women, the JJ Act, 1986 and the JJ Act, 2000 are special legislations pertaining to two categories of children and thus even if it be assumed that the Licensing Act, 1956 continues to hold the field, pertaining to the two categories of children referred to in paragraph 44 above, the JJ Act, 2000 would prevail. The legislative intent could not be made more clear other than the use of the words "Without prejudice to anything contained in any other law for the time being in force" in the opening sentence of sub-section 3 of Section 34 of the JJ Act, 2000.

48. Needless to state the mandate of Section 34(3) of the JJ Act, 2000 is to obtain registration of institutions run by voluntary organizations for children in need of care and protection under the Act. The issue of recognition has got nothing to do with Section 34(3) of the JJ Act, 2000 for the same pertains to Rule 2(m) read with Rule 70 of JJ Rules, 2007 and depending upon the nature of the Home, a recognition from the State Government under Section 8 for an Observation Home, under Section 9 for a Special Home, under sub-section 2 of Section 34 for a Children's Home and under Section 37 for a Shelter Home."

49. The institutions established by the petitioner are for orphaned girls and boys as also for boys and girls who cannot be maintained by their parents. We see no escape from the fact that these children have been surrendered for care and upbringing to the institutions established by the petitioner and thus if not as per

sub-clause (iv) of Para (d) of Section 2 of the JJ Act, 2000, as per sub-clause (v) of Para (d) of Section 2 of the said Act these children would be a child in need of care and protection requiring registration under sub-section 3 of Section 34 apart from a recognition from a State Government."

55. The Apex Court in *Re: Exploitation of Children in Orphanages* in *Exploitation of Children in Orphanages* in *State of T.N. Vs. Union of India (UOI) and Others*, (2013) 2 SCALE 620 : (2014) 2 SCC 193 has issued a direction on 07/02/2013, where it was observed that children homes run by non-Government organisations are also required to be registered under the 2000 Act. A status report was directed to be filed by all the States indicating as to whether any of such institutions are unregistered. The directions were issued in paragraphs 26 and 27, which are quoted as below:

"26. We are informed that in all States, children homes have been set up by the State as also by the non-Government Organisations. We are also informed that some individuals have also been permitted to open such homes. Therefore, it is necessary that each State conducts a detailed survey with regard to Government/NGO/private run and controlled children homes and find out as to how many Children's homes/Fit Institution/Observation homes/Shelter homes/Special homes are working in their respective States.

27. All these institutions are required to be registered under various provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000. Let a status report be submitted by all the States indicating as to whether any of such institutions are unregistered. In case of unregistered institutions, the status report should also indicate as to what protective measures have been taken by the State Government or the local authority within which such institutions are located, to prevent any abuse of the inmates of these institutions. This indeed is a very serious concern. We, therefore, direct all the States to take utmost care in preparation of the status report."

56. Learned Government Pleader Shri. T.T. Muhamood contended that Orphanages and Children Homes which are registered under the 1960 Act need not be registered under the 2000 Act has also been approved by the judgment of this Court in *N. Balachandran Vs. State of Kerala and Others*, (2012) 2 KLJ 262 . The learned Single Judge while deciding a Criminal Miscellaneous Case has observed that proceedings under Section 34(3) of the Juvenile Justice (Care and Protection of Children) Act, 2000 can be initiated against individual Organisation and not against petitioner in its capacity as Secretary. In the above case the Child Welfare Committee issued a notice to the petitioner to register its Organisation under Section 34(3) of the Act. Petitioner filed a detailed explanation. The Child Welfare Committee, Wayand District addressed to the Government to stop disbursement of the grant until they register under Section 34(3) of the said Act. Challenging the recommendations, Writ Petition has been filed which was pending at the time when the learned Single Judge decided the Criminal Miscellaneous Case. Arrest warrant was issued to the 2nd respondent which was challenged in the Criminal Miscellaneous Case. Counter-affidavit was

also filed by the Child Welfare Committee where it was contended that Child Welfare Committee has power to issue warrant. Learned Single Judge in the above context made the following observations in paragraphs 7 and 9:

"7. When the revision petition came up for hearing, the counsel for revision petition produced Annexure-A(4) Government Order dated 11/02/2010, (k.D. (Fw.Fkv)/w. 12/2010/km. th) which says that the institutions registered under Orphanages and other Charitable Homes (Supervision and Control) Act need not again register under Section 34(3) of Juvenile Justices Act. In the light of Annexure-A4 Government Order an orphanage registered under the Orphanages and other Charitable Homes (Supervision and Control) Act need not again register under Section 34(3) of Juvenile Justices (Care and Protection of Children) Act, 2000 as amended by Act 33 of 2006. That being so, the warrant issued by the second respondent is clearly illegal and is liable to be set aside.

9. That apart WP(C) No. 28307/2008(T) filed by the petitioner has been allowed by this Court on September 25, 2009 (as evidenced by a copy of the order produced) finding that if proceedings are to be initiated for compliance of Section 34(3) of Juvenile Justices Act such proceedings shall be initiated against individual organisations and not against petitioner in his capacity as the Secretary. That being so, the entire proceedings initiated against the petitioner by the second respondent under Section 34(3) of the Act will not stand and is liable to be set aside. Consequently the warrant issued against him also to be cancelled."

57. The above judgment does not help the Government Pleader in the present case for two reasons. Firstly, there is no such proposition laid down in the case that an Institution registered under the 1960 Act need not be registered under the 2000 Act. The learned Single Judge has only referred to and relied on the Government Order dated 11/02/2000. There was no challenge to the said Government Order in the said proceeding, hence the said decision clearly is distinguishable and not applicable to the facts of the present case.

58. One of the issues to be considered is as to whether the State Government have any jurisdiction to grant exemption to the orphanages from registration under the 2000 Act. The State in its counter-affidavit has referred to the Government Order dated 11/02/2010 by which it granted exemption to the orphanage from registration under the 2000 Act. It is useful to refer to the Government Order dated 11/02/2010, which was to the following effect:

"The Government has issued order containing guidelines for registration of all establishments for the children in need of care and protection, either run directly by the Government or by the voluntary organisations, under Section 19 of The Juvenile Justice (Care and Protection of Children) Amendment Act, 2006, before the District Social Welfare Officer concerned until amendment is effected to the Kerala Juvenile Justice (Care and Protection of Children) Rules, 2003.

2. A clarification has been sought by the Chairman, Orphanage Control Board

vide reference No. 2 that whether the establishments recognised by the Orphanage Control Board are required to be registered again before the District Social Welfare Officer of the department of Social Welfare.

3. In the circumstances, clarification hereby given that only the establishments fostering the children in need of care and protection under Section 19 of the Juvenile Justice (Care and Protection of Children) Amendment Act, 2006 are required to be registered under this Act. The establishments which protect other children need not be registered again under the Orphanage and other Charitable Home (Supervision and Control) Act 1968."

59. In WP(C) No. 23875 of 2014 the Kerala State Commission for Protection of Child Rights has filed a counter-affidavit, wherein it was stated that it has already passed an order dated 29/04/2014 recommending the Government to revoke the Government order dated 11/02/2010. It is useful to quote paragraphs 6 and 7 of the affidavit, which are to the following effect:

"(6) That it is respectfully submitted that the 3rd respondent came to know that many of the orphanages registered under the Orphanages and Other Charitable Homes (Supervision and Control) Act, 1960 were not registered under the Juvenile Justice (Care and Protection of Children) Act, 2000. It was also noticed that GO (MS) No. 12/2010/SWD dated 11/02/2010 issued by the Government granting exemption to institutions which are already registered under the Orphanages and Other Charitable Homes (Supervision and Control) Act from further registration under the JJ Act is in contravention of Section 34(3) of the JJ Act.

(7) That the third respondent had considered the issue in detail and as per Order dated 29/04/2014 in CRMP No. 646/2014/LA2/KeSCPCR, had made the following recommendations to the Government:

(i) To take steps to revoke GO (MS) No. 12/2010/SWD dated 12/02/2010 with immediate effect;

(ii) To recommend to the Government that in accordance with the constitutional provisions, the UNCRC, Section 34(3) of the JJ (Amendment) Act, 2006, rule 71 of the JJ Rules 2007 and ruling of various High Courts, all child care institutions in Kerala, including all orphanages registered under the Orphanages and Other Charitable Homes (Supervision and Control) Act be registered under Section 34(3) of the JJ Act."

60. A perusal of the 1960 Act indicates that the State Government has power under Section 28 to grant exemption to orphanages and homes from the operation of all or any of the provisions of the 1960 Act. Section 28(1) is quoted as below:

"28. Power of State Government to exempt homes.--(1) If, after consultation with the Board, the State Government is satisfied that the circumstances in relation to any class of homes or any home are such that it is necessary or

expedient so to do, it may, by notification in the Official Gazette, and for reasons to be specified therein, exempt, subject to such conditions, restrictions or limitations, if any, as it may think fit to impose, such class of homes or home, as the case may be, from the operation of all or any of the provisions of this Act or of any rule or regulation made thereunder."

61. From the foregoing discussions, it is clear that even though the children institutions/homes and orphanages are registered under the 1960 Act, they are required to be registered under the 2000 Act. They are housing children in orphanages itself indicates that those children are children, who are in need of care and protection. The State Government has no jurisdiction to grant exemption for registration under the 2000 Act to any organisation/homes which is receiving children for care and protection.

62. In view of the aforesaid discussions, our answer to Issues III, IV and V are as follows:

III. The institutions/orphanages, which are registered under the 1960 Act also need compulsory registration under the 2000 Act to house a child, who is in need of care and protection within the meaning of Section 2(d) of the 2000 Act.

IV. Section 34(3) of the 2000 Act mandates obtaining registration by all institutions/orphanages run by private organisations, which are housing children, who need care and protection.

V. The State Government has no jurisdiction to grant any exemption to institutions registered under the 1960 Act from further registration under the 2000 Act.

Issue Nos. VI & VII

63. The issue is as to whether Orphanages and Institutions registered under the 1960 Act can admit child belonging to outside State of Kerala without prior approval of the Orphanage Control Board and without there being recommendation of the concerned State Government. In the counter-affidavit filed by the State, stand has been clearly taken that Institutions can admit outside State child only on the recommendation of the concerned State Government after prior approval of Orphanage Control Board. In the counter-affidavit dated 17/07/2014 by the 2nd respondent this has been specifically pleaded in paragraph 16. State has also in its counter-affidavit relied and referred to in paragraph 4 that children from outside the State can be admitted only with the prior permission of the Orphanage Control Board. The following has been stated in paragraph 4:

"....The State Government have constituted the Board of Control for the supervision and control of the Institutions come under the Act and prescribed criteria for admission vide GO(P) No. 52/3/SJD dated 22/06/2013. Copy of the Government Order is produced herewith and the same may be marked as Ext. R2(a). Accordingly, the admission within the State shall be done based on the

Orphan or non-orphan certificate issued by the Village Officer and in the case of other State children the permission is based on the concurrence of the concerned State Government..."

Ext. R2(a) is the copy of the amendment published in Gazette dated 28/06/2013 in which regulations for the working of the Board of Control constituted under the Orphanage and other Charitable Homes (Supervision and Control) Act, 1960 which was issued by Government Order dated 18/05/1963 has been amended. Amendments made by Clause 1 of the amendment dated 22/06/2013 is as follows:

"I. In the Regulations for the working of the Board of Control constituted under the Orphanages and other Charitable Homes (Supervision and Control) Act, 1960.--

I(i) in the Regulation 9, after the first sentence the following clauses shall be inserted, namely:--

"All admissions to a recognised Home shall be based on a Destitution Certificate for an orphan in Form I or a Destitution Certificate for a non-orphan in Form II from the Village Officer of the Village in which the person permanently resides:

Provided that without such Destitution Certificate persons from outside the State shall be admitted to any of the recognized Homes with the prior approval of the Board.

A recognised Home desiring to provide care and protection to persons from outside the State, shall submit application for the purpose to the Board along with the recommendation letter from the State Government concerned with the list and identification of the persons.

If such persons are admitted, the recognised Homes should bear the entire expenditure for their maintenance and no fund will be provided by the State Government.

Recognised Homes in the State having persons from outside the State shall comply with and complete the above said procedure within six months of this order."

The State having clearly come with the case that child from outside the State can be admitted in the Orphanage or Children Home only with the prior permission of the Orphanage Control Board and with the recommendations of the concerned State Government and such provisions have been inserted in the Regulation it is clear that no Orphanages or Children Homes or any other Institution can admit any child from outside the State without fulfilling the above two conditions. It is clear that the above prohibition is with regard to every child who has not completed 18 years and who is received by a Home maintained or intended to be maintained for the reception, protection, care and welfare of the children.

64. Issue No. VI is answered in the following manner.

Orphanages/Children Homes/Institutions registered under the 1960 Act cannot admit child from outside the State without prior approval of the Orphanage Control Board and without there being recommendation of the State Government concerned.

65. ISSUE No. VII. Now we come to WP(C) No. 15844 of 2015 filed by Khadeejathul Kubra Islamic Complex seeking release of 29 children who has been taken custody by the Child Welfare Committee, Ernakulam on 20/05/2015. Petitioners have filed certain details of 29 children out of which according to the petitioner 20 are old inmates of the Complex and 9 are new children. It is submitted that all the 29 children have been provided admission and 20 children have taken admission in different Institutions St. Marys U.P. School, Maradu and Raman Master Memorial L.P. School, Nettor. Petitioner's case is that children were admitted in Home on application received from parents who were willing to send their children to the Home. It is submitted that applications signed by the parents of the children, birth certificates and copy of ID proof have been placed before the Child Welfare Committee. Child Welfare committee has filed a counter-affidavit in the Writ Petition. As noted above, above 29 children were brought to the Ernakulam junction on 20/05/2015 who were intercepted by the Railway Police. Child Welfare authorities were informed and Member of the Child Welfare Committee also appeared. The Child Welfare Committee having satisfied that there are no valid documents the aforesaid children be housed in K.P. Aboobacker Moulavi Memorial Orphanage, Edappally. A report by the District Child Welfare Officer dated 22/05/2015 has also been produced which mentioned that on 21/5/2015, the District Child Protection Officer inspected the Complex and submitted the report. The Child Welfare Committee has also stated that registration of the Complex under the 1960 Act has expired on 01/05/2015. Learned counsel for the Child Welfare Committee submitted that the Complex should also get itself registered under the 2000 Act. Without registration under the 2000 Act it cannot house any child who is in need of care and protection. Insofar as registration part is concerned, learned counsel for the petitioner, Shri. Krishnanunni submitted that amendment has been made in the Regulation dated 06/04/2015. Regulation framed by the State Government for the working of the orphanages under the 1960 Act where several facilities are required to be now provided Orphanage/Home. He further submitted that under Regulation 15 one year time has been allowed for Orphanage and home to comply with the facilities. It is submitted that there is one year further time for the Complex to get it registered or renew the registration. Paragraph 15 is quoted as follows:

"15. Time limits for implementation.--All existing institutions shall be given a period of one year for providing all the facilities mentioned in this regulations and new recognition shall be given only to those institutions who satisfy the requirements stipulated in this regulation."

The above Regulation would clearly indicate that one year time has been allowed to existing institutions for providing all the facilities mentioned in the Regulation.

Regulation 15 pre-supposes the existing institutions which is already registered. Regulation 15 cannot be read in the manner as contended by learned counsel for the petitioner. Regulation 15 does not extend the registration of petitioner for one year. Thus as on date the Complex has not even registration under the 1960 Act. As observed above, every Orphanages/Children Homes registered under the 1960 Act has to get itself registered under Section 34(3) of the 2000 Act in event it houses any child which needs care and protection. Petitioner's home having maintained or intended to be maintained for the reception, care, protection and welfare of the children as per Section 2(d) of the 1960 Act it has to obtain registration under the 2000 Act. Thus petitioner as on date is not entitled to house any child. Further the Child Welfare Committee has taken custody of 29 children who are housed in different Children Home, Child Welfare Committee is the authority competent to take decision regarding care and protection of a child. We thus are of the view that with regard to 29 children a decision is to be taken by the Child Welfare Committee which is the final authority to take decision regarding care and protection of a child. Thus the prayer of the petitioner to release the 29 children cannot be accepted. In view of the above our answer to the Issue No. VII is:

Petitioners in WP(C) No. 15284 of 2014 are not entitled for the mandamus directing the respondents to release 29 children taken into custody by the second respondent. The said prayer is declined. We, however, observe that the final decision in the matter be taken by the Child Welfare Committee.

66. Now we come to Issue No. VIII. Issue No. VIII pertains to enquiry by Central Bureau of Investigation. As noted above with regard to the incidents on 24/05/2014 and 25/05/2014 at Palakkad Railway Station Crime Nos. 48 and 49 have already been registered under Section 370 of the Indian Penal Code which has now been entrusted for investigation to the Crime Branch of the State. In WP(C) No. 14604 of 2014 a specific prayer has been made for issuing a direction to entrust investigation of Crime No. 48 of 2014 of the Palakkad Railway Station to the CBI. As noted above application has also been filed seeking for a direction to conduct CBI enquiry in WP(C) No. 14259 of 2014. Learned counsel appearing for the Orphanages' Association as well as the petitioner in WP(C) No. 15884 of 2015 submitted that present is not a case in which a CBI enquiry be directed. It is submitted that no offence has been committed by the Orphanage/Homes registered under the 1960 Act so as to direct CBI enquiry. It is further submitted that CBI enquiry can be directed only when the Court is prima facie satisfied that such investigation is needed. Reliance has been placed on the judgment of the Apex Court in *State of West Bengal and Others Vs. The Committee for Protection of Democratic Rights, West Bengal and Others*, AIR 2010 SC 1476 : (2010) 2 JT 352 : (2010) 2 SCALE 467 : (2010) 3 SCC 571 : (2010) 3 SCR 979 : (2010) 2 UJ 1047 . The following was laid down by the Apex Court in paragraphs 69, 70 and 71:

"69. In the final analysis, our answer to the question referred is that a direction

by the High Court, in exercise of its jurisdiction under Article 226 of the Constitution, to the CBI to investigate a cognizable offence alleged to have been committed within the territory of a State without the consent of that State will neither impinge upon the federal structure of the Constitution nor violate the doctrine of separation of power and shall be valid in law. Being the protectors of civil liberties of the citizens, this Court and the High Courts have not only the power and jurisdiction but also an obligation to protect the fundamental rights, guaranteed by Part III in general and under Article 21 of the Constitution in particular, zealously and vigilantly.

70. Before parting with the case, we deem it necessary to emphasise that despite wide powers conferred by Article 32 and Article 226 of the Constitution, while passing any order, the Courts must bear in mind certain self-imposed limitations on the exercise of these Constitutional powers. The very plenitude of the power under the said Articles requires great caution in its exercise. Insofar as the question of issuing a direction to the CBI to conduct investigation in a case is concerned, although no inflexible guidelines can be laid down to decide whether or not such power should be exercised but time and again it has been reiterated that such an order is not to be passed as a matter of routine or merely because a party has levelled some allegations against the local police. This extraordinary power must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instill confidence in investigations or where the incident may have national and international ramifications or where such an order may be necessary for doing complete justice and enforcing the fundamental rights. Otherwise the CBI would be flooded with a large number of cases and with limited resources, may find it difficult to properly investigate even serious cases and in the process lose its credibility and purpose with unsatisfactory investigations.

71. In *Secretary, Minor Irrigation and Rural Engineering Services, U.P. and Others Vs. Sahngoo Ram Arya and Another*, AIR 2002 SC 2225 : (2002) CriLJ 2942 : (2002) 1 JT 286 Supp : (2002) 4 SCALE 455 : (2002) 5 SCC 521 : (2002) 2 SCT 1090 : (2002) AIRSCW 2333 : (2002) 4 Supreme 91, this Court had said that an order directing an enquiry by the CBI should be passed only when the High Court, after considering the material on record, comes to a conclusion that such material does disclose a prima facie case calling for an investigation by the CBI or any other similar agency. We respectfully concur with these observations."

67. Another judgment relied is *Secretary, Minor Irrigation and Rural Engineering Services, U.P. and Others Vs. Sahngoo Ram Arya and Another*, AIR 2002 SC 2225 : (2002) CriLJ 2942 : (2002) 1 JT 286 Supp : (2002) 4 SCALE 455 : (2002) 5 SCC 521 : (2002) 2 SCT 1090 : (2002) AIRSCW 2333 : (2002) 4 Supreme 91 wherein paragraph 5 the Apex Court laid down the following:

"5. While none can dispute the power of the High Court under Article 226 to direct an inquiry by the CBI, the said power can be exercised only in cases where there is sufficient material to come to a prima facie conclusion that there is a

need for such inquiry. It is not sufficient to have such material in the pleadings. On the contrary, there is a need for the High Court on consideration of such pleadings to come to the conclusion that the material before it is sufficient to direct such an inquiry by the CBI. This is a requirement which is clearly deducible from the judgment of this Court in the case of Common Cause (supra). This Court in the said judgment at Para. 174 of the report has held thus:

"174. The other direction, namely, the direction to CBI to investigate "any other offence" is wholly erroneous and cannot be sustained. Obviously, direction for investigation can be given only if an offence is, prima facie, found to have been committed or a person's involvement is prima facie established, but a direction to CBI to investigate whether any person has committed an offence or not cannot be legally given. Such a direction would be contrary to the concept and philosophy of "LIFE" and "LIBERTY" guaranteed to a person under Article 21 of the Constitution. This direction is in complete negation of various decisions of this Court in which the concept of "LIFE" has been explained in a manner which has infused "LIFE" into the letters of Article 21."

There cannot be any dispute to the proposition laid down by the Apex Court in the above mentioned cases. Question whether the CBI enquiry be directed in a particular case is the question which need to be considered in the facts and circumstances of each case. In the present case from the facts brought on record it is clear that children in large number are being brought to the State of Kerala. Cases of child trafficking has already been registered by the Railway Police of Palakkad. The Crime Branch has also carried on investigation and as has been stated in the counter-affidavit filed by the State dated 18/06/2014. It has been stated that a large number of persons were arrested by the Crime Branch. In paragraphs 18, 19, 20, 21 and 22 of the counter-affidavit, details of the investigation and name of arrested persons were noted. From the aforesaid facts it is clear that agents from outside States including Jharkhand, West Bengal, Bihar have been made accused in the cases who are bringing children to the State of Kerala. Orphanages are also receiving the children from the agents which also indicates their co-operation in the matter.

68. Child trafficking is a menace which has to be combated by all concerned. Child Trafficking has been defined in Section 370 of the IPC which is to the following effect:

"370. Trafficking of person.--(1) whoever, for the purpose of exploitation, (a) recruits (b) transports, (c) harbours, (d) transfers, or (e) receives, a person or persons, by-first.--using threats, or

secondly.-- using force, or any other form of coercion, or

thirdly.--by abduction, or

fourthly.--by practising fraud, or deception, or

fifthly.--by abuse of power, or

sixthly.--by inducement, including the giving or receiving of payments or benefits, in order to achieve the consent of any person having control over the person recruited, transported, harboured, transferred or received, commits the offence of trafficking.

Explanation 1.--The expression "exploitation" shall include any act of physical exploitation or any form of sexual exploitation, slavery or practices similar to slavery, servitude, or the forced removal of organs.

Explanation 2.--The consent of the victim is immaterial in determination of the offence of trafficking.

(2) Whoever commits the offence of trafficking shall be punished with rigorous imprisonment for a term which shall not be less than seven years, but which may extend to ten years, and shall also be liable to fine.

(3) Where the offence involves the trafficking of more than one person, it shall be punishable 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.

(4) Where the offence involves the trafficking of a minor, it shall be punishable 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.

(5) Where the offence involves the trafficking of more than one minor, it shall be punishable with rigorous imprisonment for a term which shall not be less than fourteen years, but which may extend to imprisonment for life, and shall also be liable to fine.

(6) If a person is convicted of the offence of trafficking of minor or more than one occasion, then such person shall be punished with imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine.

(7) When a public servant or a Police Officer is involved in the trafficking of any person then, such public servant or Police Officer shall be punished with imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall be liable to fine."

69. Learned Amicus Curiae has referred to the protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the United Nations. The protocol defines trafficking in the following words:

"(a) "Trafficking in persons" shall mean the recruitment, transportation, transfer harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at the minimum, the

exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;

(b) The consent of a victim of trafficking in persons to the intended exploitation set forth in sub-paragraph a) of this article shall be irrelevant where any of the means set forth in the sub-paragraph (a) have been used;

(c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered "trafficking in persons" even if this does not involve any of the means set forth in sub-paragraph (a) of this article;

(d) "Child" shall mean any persons under eighteen years of age."

Repeated incidents of bringing of large number of children to the State and that too in violation of the Rules and Regulations clearly indicate the necessity of proper investigation in the matter and punishment to the guilty. As noted above, bringing children to the State of Kerala is not confined to one State but spread over to several other States from which certain accused have already been arrested and investigation is in progress.

70. A counter-affidavit has been filed on behalf of the CBI. In the counter-affidavit filed by the CBI it has been stated that Anti Human Trafficking Unit of CBI has been established on 28/02/2012 to develop specialisation in the area of illegal human trafficking especially trafficking of children and women. The counter-affidavit also referred to various successful investigation dealing with child trafficking relating to the State of West Bengal, Bihar, Delhi and neighbouring country. In the counter-affidavit it has been clearly stated that inter State investigation is involved in the cases registered in the State of Kerala and considering the large scale investigation spread over in the four States the State be directed to provide adequate manpower to carry out the investigation. The Following was pleaded in paragraphs 8, 9, 10 and 11:

"8. That, the Hon"ble High Court of Calcutta had entrusted CBI with an enquiry into disappearance of 47 girls. Some of these girls were from Nepal. After sustained enquiry, CBI was able to trace and examine 24 of these girls. A detailed report in this regard was submitted in the Hon"ble High Court, Calcutta.

9. That in a case entrusted by the Hon"ble High Court, Delhi, two minor girls from West Bengal were recovered and after investigation a charge-sheet was filed against four persons. After successful prosecution of this case, the accused have been sentenced to undergo imprisonment upto 10 years by the Trial Court.

10. That the instant Writ Petitions referred to cases in which almost 600 children have been allegedly trafficked to Kerala from the State of West Bengal, Bihar & Jharkhand. Considering the Inter-State investigation involved in these cases, if the Hon"ble Court so desires, CBI is willing to take up the investigation if the cases referred in the aforesaid cases referred in the aforesaid Writ Petitions.

11. That in the event of these cases being transferred to CBI, considering the large scale investigation spread over four States and possibly internationally, it is humbly prayed that the Hon"ble Court may direct the concerned States to provide adequate manpower, logistics and other support to carry out this investigation."

In the facts of the present case, the materials brought on record and the investigation so far carried out, investigation being spread over in different States, we are of the view that investigation by CBI is required in the present case. The CBI has already expressed willingness to carry out the investigation of the large scale child trafficking as noted above. We are of the view that investigation of various crimes registered in the State of Kerala regarding child trafficking including Crime Nos. 48 and 49 of 2014 registered by the Palakkad Railway Police be entrusted to the CBI. The State of Kerala shall provide all help including the logistic and manpower to carry on the investigation. The Director General of Police, Kerala shall ensure that details of such cases including Crime Nos. 48 and 49 of the Palakkad Railway Station and cases involving child trafficking be entrusted to the CBI.

71. In view of what has been stated above, we dispose of Writ Petition Nos. 14259 of 2014, 14604 of 2014 and 23875 of 2014 with the following direction:

1. The respective Child Welfare Committee shall take appropriate measures in accordance with the 2000 Act with regard to children who are still housed in Orphanages/Children Homes out of 578 children who were intercepted on 24/05/2014 and 25/05/2014 at Palakkad Railway Station and who came from Bihar, Jharkhand and West Bengal.

2. IA No. 7403 of 2015 filed by the petitioner in WP(C) No. 14259 of 2014 with regard to 16 children brought from Arunachal Pradesh is allowed. Let the Child Welfare Committee, Ernakulam take appropriate measures as per its decision already brought on record. IA No. 7016 of 2015 filed by the petitioner in WP (C) No. 14259 of 2014 with regard to 29 children who were intercepted on 20/05/2015 at the Ernakulam Junction Railway Station is also allowed. The Child Welfare Committee, Ernakulam is directed to take appropriate measures in accordance with the 2000 Act with regard to the above 29 children.

3. All Orphanages/Homes registered under the 1960 Act shall get registration under the 2000 Act which are intended or to be intended for care, protection and welfare of the children below 18 years.

4. There shall be no exemption to the institutions and Homes Registered under the 1960 Act from registration under the 2000 Act and the Government Order dated 11/02/2010 cannot be relied on for exemption from registration under the 2000 Act.

5. District Administration shall provide all assistance to respective Child Welfare Committees in each District to carry on proper inspection of all Orphanages/Child

Homes for taking appropriate measures as per 2000 Act for children housed therein and it shall be open for respective Child Welfare Committees to take such measures under the 2000 Act as required.

6. No Orphanages/Child Homes shall receive children from outside the State except in accordance with the Regulations (Amended on 22/06/2003) framed by the State Government under Section 30(3) of the 1960 Act, i.e., without prior approval of Orphanage Control Board and without the recommendation of the concerned State Government.

7. The Central Bureau of Investigation shall undertake investigation of Crime Nos. 48 and 49 of 2014 registered by the Palakkad Railway Police under Section 370 IPC (now entrusted to the Crime Branch of the State) including other cases registered under Section 370 IPC for child trafficking from outside the State.

8. WP(C) No. 15844 of 2015 is dismissed.

Before we part, we record our deep appreciation for Shri. Devan Ramachandran for his valuable assistance as Amicus Curiae in this group of Writ Petitions.

Parties shall bear their costs.