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16.4.25

IN THE HIGH COURT OF DELHI AT NEW DELHI

Final Draft

No. _____ DHC/WRITS/D-4/2025
Dated _____ NDOH –D/o

4935/W
15/4/25

From

The Registrar General
Delhi High Court
New Delhi

Office of District & Sessions Judge (HQs)
(Delhi High Court Seat)
Diary No. 3247
15 APR 2025

To

1. The Pr. District & Sessions Judge (HQs), Tis Hazari Courts Complex, Delhi.
2. The Pr. District & Sessions Judge (West District), Tis Hazari Courts Complex, Delhi.
3. The Pr. District & Sessions Judge (New Delhi District), Patiala House Courts Complex, New Delhi.
4. The Pr. District & Sessions Judge (South District), Saket Courts Complex, Press Enclave Road, Saket, New Delhi.
5. The Pr. District & Sessions Judge (South-East District), Saket Courts Complex, Press Enclave Road, Saket, New Delhi.
6. The Pr. District & Sessions Judge (East District), Karkardooma Courts Complex, Karkardooma, Shahdara, Delhi-110032.
7. The Pr. District & Sessions Judge (North-East District), Karkardooma Courts Complex, Karkardooma, Shahdara, Delhi-110032.
8. The Pr. District & Sessions Judge (Shahdara District), Karkardooma Courts Complex, Karkardooma, Shahdara, Delhi-110032.
9. The Pr. District & Sessions Judge (North-West District), Rohini Courts Complex, Rohini, Delhi.
10. The Pr. District & Sessions Judge (North District), Rohini Courts Complex, Rohini, Delhi.
11. The Pr. District & Sessions Judge (South-West District), Dwarka Courts Complex, Sector- 10, Dwarka, New Delhi.
12. The Pr. District & Sessions Judge-cum-Special Judge (PC Act), CBI, Rouse Avenue Courts Complex, Deen Dayal Upadhyay (DDU) Marg, New Delhi.
13. The Principal Judge (HQs), Family Courts, Dwarka Courts Complex, Sector-10, Dwarka, New Delhi.
14. The State (NCT OF DELHI) Home Department, Principal Secretary Through Standing Counsel, Govt. of NCT of Delhi, 5th Level, C- Wing, Delhi Secretariat, New Delhi- 110002, Email: standingcounselgnctd@gmail.com; pshome@nic.in, Phone No.: 011-23392061.
15. OFFICE OF DISTRICT MAGISTRATE DISTRICT EAST, DELHI L.M. Bund, Shastri Nagar, Delhi- 110031, Email: dceast@nic.in, Phone No.: 011-22021656.
16. CHILD WELFARE COMMITTEE-IV Through its Chairperson/Members, NPS Building, Near Police Apartment, Mayur Vihar Phase-I, Delhi- 110091, Email- childwelfarecommitteemv@gmail.com, Ph- 011-22755527

OFFICE OF THE PRINCIPAL DISTRICT & SESSIONS JUDGE: ROHINI COURTS, DELHI

No. 115.66-[redacted]/1165/Genl.I/F. 3(A)/N-W & N/RC/2025 Dated 25/04/25

Copy forwarded, alongwith its enclosures **(through electronic mode)** for information & necessary action, to :-

1. All Ld. Judicial Officers posted at **North-West & North District**, Rohini Courts, Delhi.
2. The Secretary, DLSA, **North-West & North** District, Rohini Courts, Delhi.
3. The Dealing Official, Computer Branch, Rohini Courts for uploading the same on WEBSITE.
4. The Dealing Official, R & I Branch, Rohini Courts, Delhi for uploading the same on LAYERS.

(VINOD YADAV)
Officer In-Charge, General Branch-I
North-West & North District
Rohini Court Complex, Delhi

17. DELHI POLICE, Through its Commissioner of Delhi Police, PS- Hauz Khas, District South, Delhi, Email: dhcprosecutiondelhipolice@gmail.com

W.P.(C) 14361/2023 & CM APPLs. 56841/2023, 13826/2024 with W.P.(C) 14393/2023 & CM APPL. 57058/2023

MASTER G THROUGH LEGAL GUARDIAN & ANR. ....Petitioner/S

Vs.

STATE (NCT OF DELHI), HOME DEPARTMENT & ANR. ....Respondent/S

Sir/Madam,

I am directed to forward herewith a copy of order dated **02.04.2025** passed by **Hon'ble Single Bench** of this Court in the above noted case along with a copy of memo of parties for information and immediate compliance/necessary action.

Please acknowledge receipt.

Yours faithfully,

Enclosed: As above

07.04.2025

09-04-2025
Admn. Officer Judicial (Writ)
for Registrar General

9.4.25

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 2nd APRIL, 2025

IN THE MATTER OF:

\+ **W.P.(C) 14361/2023 & CM APPLs. 56841/2023, 13826/2024**

MASTER G THROUGH LEGAL GUARDIAN & ANR.

..... Petitioners

Through: Ms. Tara Narula, Mr. Harshvardhan Jain, Ms. Priya Sahil, Ms. Ankita Talukdar, Ms. Shivangi Sharma, Mr. Anirudh and Ms. Priya Watwani, Advocates.

versus

STATE (NCT OF DELHI), HOME DEPARTMENT & ANR.

..... Respondents

Through: Ms. Mehak Nakra, ASC with Ms. Aditi Kapoor, Mr. Devansh Solanki and Mr. Karan Dalal, Advocates.
Mr. Dayan Krishnan, Senior Advocate with Mr. Sanjeevi Seshadri, Mr. Sukrit Sethi, Mr. Shreedhar Kale and Mr. Manan Agarwal, Advocates (Amicus Curiae).
Mr. Hemant Gupta, Legal-cum-Probation Officer, Department of Women and Child Development, GNCTD.

\+ **W.P.(C) 14393/2023 & CM APPL. 57058/2023**

MASTER S AND ANR ..... Petitioners

Through: Ms. Tara Narula, Mr. Harshvardhan Jain, Ms. Priya Sahil, Ms. Ankita Talukdar, Ms. Shivangi Sharma, Mr. Anirudh and Ms. Priya Watwani, Advocates.

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versus

STATE OF NCT DELHI AND ORS. ..... Respondents

Through: Ms. Mehak Nakra, ASC with Ms. Aditi Kapoor, Mr. Devansh Solanki and Mr. Karan Dalal, Advocates.
Mr. Dayan Krishnan, Senior Advocate with Mr. Sanjeevi Seshadri, Mr. Sukrit Sethi, Mr. Shreedhar Kale and Mr. Manan Agarwal, Advocates (Amicus Curiae).
Mr. Hemant Gupta, Legal-cum-Probation Officer, Department of Women and Child Development, GNCTD.

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. W.P.(C) 14361/2023 has been filed by the Petitioners, who are minors and have lost their parents, through Udhyan Ghar Boys Home II and Home VIII stating that the properties belonging to the parents of the Petitioners in the writ petition are being frittered away and that the Petitioners have no other alternative but to approach this Court and invoke *parens partriae* jurisdiction to secure their interest.

2. Similarly, W.P.(C) 14393/2023 has been filed by the Petitioners, who are minors and have lost their parents, through Village Cottage Home, Lajpat Nagar- II stating that the properties belonging to the parents of the Petitioners herein are being frittered away and that the children have no other alternative but to approach this Court and invoke *parens partriae* jurisdiction to secure their interest.

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3. Shorn of unnecessary details, the facts, leading to W.P.(C) 14361/2023 are that on 06.09.2022, the Petitioners came back from the market along with their mother. It is stated that Petitioner No.1 went to the kitchen to drink some water and while he was drinking water, his father, Neeraj, who was fully intoxicated, barged into the house with a knife in his hand and suddenly stabbed Petitioner No.1 on his forearm. It is stated that upon hearing Petitioner No.1's scream, Petitioner No.2 and their mother rushed into the kitchen. It is stated that seeing all this, the father of the Petitioners lunged towards the mother and stabbed her in the stomach with a knife. It is stated that the Petitioners ran out of the house. The mother of the Petitioners died and their father committed suicide thereafter. It is stated that both the Petitioners were placed in Udhyan Ghar Boys Home VIII by the Order of the Child Welfare Committee (CWC). It is stated that the CWC also gave directions to the Investigating Officer in FIR No.503/2022 dated 07.09.2022, registered at Police Station Laxmi Nagar for offences punishable under Sections 302 & 324 IPC, which had been lodged for murder of the mother of the Petitioners, to make a list of the properties, cash, jewellery and bank accounts etc. belonging to the parents and file a status report. It is stated that the paternal uncle and aunts of the Petitioners wanted to meet the Petitioners and a meeting was set up for the same on 21.12.2022. It is stated that after the meeting both the Petitioners resisted and refused to be re-united with their family as they believed that their relatives had made no efforts whatsoever to resolve the differences between their parents or help them during the traumatic incident. It is stated that the incidents of violence have left the Petitioners extremely disturbed and they have been affected both mentally and physically. It is also stated that the Petitioners are

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not in possession of any of the assets left behind by their deceased parents and the same are being frittered away. The Petitioners herein, therefore, have approached this Court for a direction to the Respondents to secure information relating to the movable and immovable assets of the deceased parents. The Petitioners have also prayed for a direction to the Respondents to secure the Property bearing H. No. 400, 3rd Floor (Upper Third Floor), Gali No. 2, West Guru Anand Nagar, Laxmi Nagar, Delhi – 110092 and prevent its use by or for anyone apart from the Petitioners.

4. Similarly, the facts leading to the filing of W.P.(C) 14393/2023 are that the father of the Petitioners used to beat them mercilessly under the influence of alcohol. It is further stated that he did not provide food to the Petitioners leading to their physical, emotional abuse. It is stated that on one day in June, 2020 when the father of the Petitioners was beating them under the influence of alcohol, one of their cousins called the PCR and made a complaint. It is stated that when the police reached the spot, they found the father of the Petitioners, under the influence of alcohol, beating the Petitioners and blood was coming out from the right eyebrow of the Petitioner No.2 herein. It is stated that an FIR bearing No.291/2020 dated 29.06.2020 was registered against the Petitioner's father at Police Station Hauz Khas for offences under Section 323/506 IPC and Section 75 of the Juvenile Justice Care and Protection of Children Act, 2015. It is stated that the Petitioners were sent to the Hospital for their medical examination and their statements under Section 164 Cr.P.C were recorded before the learned Duty Metropolitan Magistrate, Saket Courts on 30.06.2020. It is stated that both the Petitioners were produced before the CWC on 02.07.2020 and vide Order dated 02.07.2020, the CWC observed that the Petitioners are in a

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vulnerable condition and their father is in judicial custody and, therefore, the in-charge/Welfare Officer, Village Cottage Home, Lajpat Nagar-II was directed to take the custody of the Petitioners. It is stated that the father of the Petitioners herein passed away on 06.09.2022 and the mother of the Petitioners left the family a few years ago and is not interested in their welfare. It is stated that CWC directed the Welfare Officer to conduct a home visit of the Petitioners herein and submit a Report with respect to the parental home and relatives of the Petitioners. The Welfare Officer submitted the home visit report dated 26.08.2020 to the CWC. It is stated in the report that the Petitioner's home was an ancestral property and the said property had already been divided among their deceased father and his brothers. It was further stated in the report that the Petitioner's father owned two floors (around 80 sq. yds.) out of four floors and most of the rooms were on rent. It is also stated that the Welfare Officer requested the CWC to take action to secure the Petitioners' property in their interest.

5. Vide Order dated 03.11.2023 CWC was impleaded as Respondent No.3 in the present Petitions and Notice was issued. This Court also appointed Mr. Dayan Krishnan, learned Senior Counsel, as *Amicus Curiae* to assist the Court in laying down a policy in matters of such nature.

6. Vide Order dated 06.12.2023, this Court directed the concerned District Magistrates to immediately move an application under Section 10 of the Guardians and Wards Act, 1890 within three days from the date of the said Order. The District Magistrates were also directed to make a proper inventory of the movable and immovable assets of the Petitioners herein before filing applications before the concerned Courts. This Court also directed the CWC to file a Status Report stating as to how many applications

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have been received in respect of such children and what all steps have been taken. Status Reports were filed in both the cases stating that the concerned District Magistrate have filed applications under Section 10 of the Guardians and Wards Act.

7. It was noted by this Court that in W.P.(C) 14361/2023 the case was first listed in the trial Court on 03.01.2024 but was adjourned for 03.04.2024. This Court vide Order dated 05.01.2024 was of the view that such long adjournments in matters like this which pertain to frittering away of the property of abandoned/orphaned children cannot be countenanced and such long adjournments defeat the whole purpose of Section 10 of the Guardians and Wards Act which is for taking immediate action to safeguard the properties of such persons lest it is frittered away.

8. The CWC also informed this Court that for the issue regarding framing guidelines on the action to be taken by the District Magistrate in matters of such nature, a Committee has been formed. This Court then directed the Committee to frame its guidelines within a period of three weeks from the date of this Order and place them on record. The Counsel for the Petitioners and the learned Amicus Curiae were also requested to give their suggestions to the Court regarding the same.

9. Learned Counsel appearing for the Petitioners in both the Petitions states that the Petitioners are not in possession of the assets left behind by their deceased parents and have been forced to lead a traumatized and destitute life because of the crimes committed by their parents in the state of intoxication. It is further stated that to ensure that no prejudice is caused to the Petitioners' properties and to secure the future of the Petitioners and to assist their rehabilitation, directions may be issued to secure their moveable

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and immovable assets.

10. Mr. Dayan Krishnan, learned *Amicus Curiae*, states that the State organizations are acting in a callous manner in a number of cases where the children have either become orphans or their parents are missing due to cruel fate and their assets are being frittered away by relatives or strangers. Mr. Krishnan, thereafter, draws the attention of this Court to Section 8 of the Guardians and Wards Act, 1890 which mandates the Collector of the concerned District to take steps to move to the Court for being appointed as a guardian of such children. He further states that when a duty is cast upon the Government officials to act as parents of such children then the officers have to take it seriously and should also take necessary steps to secure the assets of such children. He further states that there is an urgent need for a robust mechanism which lays down stringent time-line for the purposes of securing the property rights of the orphan children.

11. At this juncture, this Court deems it fit to extract relevant provisions of the Guardians and Wards Act, 1890; the Juvenile Justice (Care and Protection of Children) Act, 2015 & the Family Courts Act, 1984, which protects the rights of such orphaned children. The relevant provisions of the Guardians and Wards Act, 1890 reads as under:

> "***Section 9.*** *Court having jurisdiction to entertain application.*
>
> *(1) If the application is with respect to the guardianship of the person of the minor, it shall be made to the District Court having jurisdiction in the place where the minor ordinarily resides.*
>
> *(2) If the application is with respect to the guardianship of the property of the minor, it may be*

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made either to the District Court having jurisdiction in the place where the minor ordinarily resides or to a District Court having jurisdiction in a place where he has property.

(3) If an application with respect to the guardianship of the property of a minor is made to a District Court other than that having jurisdiction in the place where the minor ordinarily resides, the Court may return the application if in its opinion the application would be disposed of more justly or conveniently by any other District Court having jurisdiction.

***Section 10**. Form of application.*

(1) If the application is not made by the Collector, it shall be by petition signed and verified in manner prescribed by the 1Code ,of Civil Procedure (14 of 1882) for the signing and verification of a plaint, and stating, so far as can be ascertained--

(a) the name, sex, religion, date of birth and ordinary residence of the minor;

(b) where the minor is a female, whether she is married, and, if so, the name and age of her husband;

(c) the nature, situation and approximate value of the property, if any, of the minor;

(d) the name and residence of the person having the custody or possession of the person or property of the minor;

(e) what near relations the minor has, and where

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they reside;

(f) whether a guardian of the person or property, or both, of the minor has been appointed by any person entitled or claiming to be entitled by the law to which the minor is subject to make such an appointment;

(g) whether an application has at any time been made to the Court or to any other Court with respect to the guardianship of the person or property, or both, of the minor, and, if so, when, to what Court and with what result;

(h) whether the application is for the appointment or declaration of a guardian of the person of the minor, or of his property, or of both;

(i) where the application is to appoint a guardian, the qualifications of the proposed guardian;

(j) where the application is to declare a person to be a guardian, the grounds on which that person claims;

(k) the causes which have led to the making of the applications; and

(l) such other particulars, if any, as may be prescribed or as the nature of the application renders it necessary to state.

(2) If the application is made by the Collector, it shall be by letter addressed to the Court and forwarded by post or in such other manner as may be found convenient, and shall state as far as possible the particulars mentioned in sub-section (1).

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(3) The application must be accompanied by a declaration of the willingness of the proposed guardian to act and the declaration must be signed by him and attested by at least two witnesses.

*****

Section 12. *Power to make interlocutory order for production of minor and interim protection of person and property.*

(1) The Court may direct that the person, if any, having the custody of the minor shall produce him or cause him to be produced at such place and time and before such person as it appoints, and may make such order for the temporary custody and protection of the person or property of the minor as it thinks proper.

(2) If the minor is a female who ought not to be compelled to appear in public, the direction under sub-section (1) for her production shall require her to be produced in accordance with the customs and manners of the country.

(3) Nothing in this section shall authorise—

(a) the Court to place a female minor in the temporary custody of a person claiming to be her guardian on the ground of his being her husband, unless she is already in his custody with the consent of her parents, if any, or

(b) any person to whom the temporary custody and protection of the property of a minor is entrusted to dispossess otherwise than by due course of law any person in possession of any of the property."

12. Relevant provisions of Juvenile Justice (Care and Protection of

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Children) Act, 2015 reads as under:

" ***Chapter VI***

PROCEDURE IN RELATION TO CHILDREN IN NEED OF CARE AND PROTECTION

31. Production before Committee.—(1) Any child in need of care and protection may be produced before the Committee by any of the following persons, namely—

(i) any police officer or special juvenile police unit or a designated Child Welfare Police Officer or any officer of District Child Protection Unit or inspector appointed under any labour law for the time being in force;

(ii) any public servant;

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

(iv) Child Welfare Officer or probation officer;

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

(vi) by the child himself; or

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

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

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

32. Mandatory reporting regarding a child found separated from guardian.—(1) Any individual or a police officer or any functionary of any organisation or a nursing home or hospital or maternity home, who or which finds and takes charge, or is handed over a child who appears or claims to be abandoned or lost, or a child who appears or claims to be an orphan without family support, shall within twenty-four hours (excluding the time necessary for the journey), give information to the Childline Services or the nearest police station or to a Child Welfare Committee or to the District Child Protection Unit, or hand over the child to a child care institution registered under this Act, as the case may be.

(2) The information regarding a child referred to in sub-section (1) shall be uploaded by the Committee or the District Child Protection Unit or the child care institution, as the case may be, on a portal as may be specified by the Central Government in this behalf.]

33. Offence of non-reporting.—If information regarding a child as required under Section 32 is not given within the period specified in the said section, then, such act shall be regarded as an offence.

34. Penalty for non-reporting.—Any person who has committed an offence under Section 33 shall be liable to imprisonment up to six months or fine of ten thousand rupees or both.

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35. Surrender of children.—(1) A parent or guardian, who for physical, emotional and social factors beyond their control, wishes to surrender a child, shall produce the child before the Committee.

(2) If, after prescribed process of inquiry and counselling, the Committee is satisfied, a surrender deed shall be executed by the parent or guardian, as the case may be, before the Committee.

(3) The parents or guardian who surrendered the child, shall be given two months time to reconsider their decision and in the intervening period the Committee shall either allow, after due inquiry, the child to be with the parents or guardian under supervision, or place the child in a Specialised Adoption Agency, if he or she is below six years of age, or a children's home if he is above six years.

36. Inquiry.—(1) On production of a child or receipt of a report under Section 31, the Committee shall hold an inquiry in such manner as may be prescribed and the Committee, on its own or on the report from any person or agency as specified in sub-section (2) of Section 31, may pass an order to send the child to the children's home or shelter home or a fit facility or fit person, and for speedy social investigation by a social worker or Child Welfare Officer or Child Welfare Police Officer:

Provided that all children below six years of age, who are orphan, surrendered or appear to be abandoned shall be placed in a Specialised Adoption Agency, where available.

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(2) The social investigation shall be completed within fifteen days so as to enable the Committee to pass final order within four months of first production of the child:

Provided that for orphan, abandoned or surrendered children, the time for completion of inquiry shall be as specified in Section 38.

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

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

(4) The Committee shall submit a quarterly report on the nature of disposal of cases and pendency of cases to the District Magistrate in the manner as may be prescribed, for review of pendency of cases.

(5) After review under sub-section (4), the District Magistrate shall direct the Committee to take necessary remedial measures to address the pendency, if necessary and send a report of such reviews to the State Government, who may cause the constitution of additional Committees, if required:

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Provided that if the pendency of cases continues to be unaddressed by the Committee even after three months of receiving such directions, the State Government shall terminate the said Committee and shall constitute a new Committee.

(6) In anticipation of termination of the Committee and in order that no time is lost in constituting a new Committee, the State Government shall maintain a standing panel of eligible persons to be appointed as members of the Committee.

(7) In case of any delay in the constitution of a new Committee under sub-section (5), the Child Welfare Committee of a nearby district shall assume responsibility in the intervening period.

37. Orders passed regarding a child in need of care and protection.—(1) The Committee on being satisfied through the inquiry that the child before the Committee is a child in need of care and protection, may, on consideration of Social Investigation Report 24[* *] and taking into account the child's wishes in case the child is sufficiently mature to take a view, pass one or more of the following orders, namely—*

(a) declaration that a child is in need of care and protection;

(b) restoration of the child to parents or guardian or family with or without supervision of Child Welfare Officer or designated social worker;

(c) placement of the child in Children's Home or fit facility or Specialised Adoption Agency for the purpose of adoption for long-term or temporary

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care, keeping in mind the capacity of the institution for housing such children, either after reaching the conclusion that the family of the child cannot be traced or even if traced, restoration of the child to the family is not in the best interest of the child;

(d) placement of the child with fit person for long-term or temporary care;

(e) foster care orders under Section 44;

(f) sponsorship orders under Section 45;

(g) directions to persons or institutions or facilities in whose care the child is placed, regarding care, protection and rehabilitation of the child, including directions relating to immediate shelter and services such as medical attention, psychiatric and psychological support including need-based counselling, occupational therapy or behaviour modification therapy, skill training, legal aid, educational services, and other developmental activities, as required, as well as follow-up and coordination with the District Child Protection Unit or State Government and other agencies;

(h) declaration that the child is legally free for adoption under Section 38.

(2) The Committee may also pass orders for—

(i) declaration of fit persons for foster care;

(ii) getting after care support under Section 46 of the Act; or

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(iii) any other order related to any other function as may be prescribed.

38. Procedure for declaring a child legally free for adoption.—(1) In case of orphan and abandoned child, the Committee shall make all efforts for tracing the parents or guardians of the child and on completion of such inquiry, if it is established that the child is either an orphan having no one to take care, or abandoned, the Committee shall declare the child legally free for adoption:

Provided that such declaration shall be made within a period of two months from the date of production of the child, for children who are up to two years of age and within four months for children above two years of age:

Provided further that notwithstanding anything contained in this regard in any other law for the time being in force, no first information report shall be registered against any biological parent in the process of inquiry relating to an abandoned or surrendered child under this Act.

(2) In case of surrendered child, the institution where the child has been placed by the Committee on an application for surrender, shall bring the case before the Committee immediately on completion of the period specified in Section 35, for declaring the child legally free for adoption.

(3) Notwithstanding anything contained in any other law for the time being in force, a child of a mentally retarded parents or a unwanted child of victim of sexual assault, such child may be declared free for adoption by the Committee, by following the procedure under this Act.

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(4) The decision to declare an orphan, abandoned or surrendered child as legally free for adoption shall be taken by at least three members of the Committee.

(5) The Committee shall inform 25[the District Magistrate,] the State Agency and the Authority regarding the number of children declared as legally free for adoption and number of cases pending for decision in the manner as may be prescribed, every month."

13. Relevant provision of the Family Courts Act, 1984 reads as under:

"5. Association of social welfare agencies, etc.—The State Government may, in consultation with the High Court, provide, by rules, for the association, in such manner and for such purposes and subject to such conditions as may be specified in the rules, with a Family Court of—

(a) institutions or organisations engaged in social welfare or the representatives thereof;

(b) persons professionally engaged in promoting the welfare of the family;

(c) persons working in the field of social welfare; and

(d) any other person whose association with a Family Court would enable it to exercise its jurisdiction more effectively in accordance with the purpose of this Act.

6. Counsellors, officers and other employees of Family

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Courts.—(1) The State Government shall, in consultation with the High Court, determine the number and categories of counsellors, officers and other employees required to assist a Family Court in the discharge of its functions and provide the Family Court with such counsellors, officers and other employees as it may think fit.

(2) The terms and conditions of association of the counsellors and the terms and conditions of service of the officers and other employees, referred to in sub-section (1), shall be such as may be specified by rules made by the State Government.

7. Jurisdiction.—(1) Subject to the other provisions of this Act, a Family Court shall—

(a) have and exercise all the jurisdiction exercisable by any district court or any subordinate civil court under any law for the time being in force in respect of suits and proceedings of the nature referred to in the Explanation; and

(b) be deemed, for the purposes of exercising such jurisdiction under such law, to be a district court, as the case may be, such subordinate civil court for the area to which the jurisdiction of the Family Court extends.

Explanation.—The suits and proceedings referred to in this sub-section are suits and proceedings of the following nature, namely:—

(a) a suit or proceeding between the parties to a marriage for a decree of nullity of marriage (declaring the marriage to be null and void or, as the case may be, annulling the marriage) or

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restitution of conjugal rights or judicial separation or dissolution of marriage;

(b) a suit or proceeding for a declaration as to the validity of a marriage or as to the matrimonial status of any person;

(c) a suit or proceeding between the parties to a marriage with respect to the property of the parties or of either of them;

(d) a suit of proceeding for an order or injunction in circumstances arising out of a marital relationship;

(e) a suit of proceeding for a declaration as to the legitimacy of any person;

(f) a suit or proceeding for maintenance;

(g) a suit of proceeding in relation to the guardianship of the person or the custody of, or access to, any minor.

(2) Subject to the other provisions of this Act, a Family Court shall also have and exercise—

(a) the Jurisdiction exercisable by a Magistrate of the first class under Chapter IX (relating to order for maintenance of wife, children and parents) of the Code of Criminal Procedure, 1973 (2 of 1974); and

(b) such other jurisdiction as may be conferred on it by any other enactment."

14. However it is brought to the attention of this court that there are various lacunae in the legislature because of which there is a lack of

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coordination between various organs of the State, be it Courts or the Executive. To fill up such gaps and to avoid delay, this Court directed the State to frame and implement guidelines to ensure timely action of all the organs of the state to protect the rights and for the welfare of such children. This Court suggested learned Counsel appearing for CWC to frame guidelines for safeguarding the property rights of orphaned children in Delhi. The draft guidelines were prepared. The learned *Amicus Curiae* - Mr. Dayan Krishnan gave suggestions for fixing the timelines and most of the suggestions have been accepted by CWC and the guidelines dated 09.04.2024 have been framed and produced in the Court. The draft guidelines reads as under:

> *"GUIDELINES TO SAFEGUARD PROPERTY RIGHTS OF ORPHANED CHILDREN IN DELHI*
>
> *Orphaned children are among the most vulnerable members of society, facing numerous challenges and uncertainties, including the loss of parental care and the absence of legal protection for their property rights. In many cases, these children are left without any formal documentation or legal guardianship, leaving their property susceptible to exploitation, neglect or unlawful appropriation.*
>
> *Recognising an urgent need to safeguard the rights and interests of these vulnerable children, these comprehensive guidelines have been ·formulated to ensure the protection and security of their property rights. These guidelines aim to provide a framework for legal and administrative procedures to identify, protect and manage the assets and properties of orphaned children, thereby promoting their welfare, stability, and future prospects.*

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I. Defining 'orphan child'-

According to Section 2 (42) of the Juvenile Justice (Care & Protection of Children) Act, 2015, orphan means a child -

i. who is without biological or adoptive parent or legal guardian or

ii. whose legal guardian is not willing to take or capable of taking care of the child.

These children need a place such as a Child Care Institution that helps them to survive as well as nurtures them until they grow enough to take care of themselves.

II. Property rights of orphan child -

When a parent passes away without a will, their self-acquired property becomes an inheritance for their children. However, if these children are minors, though they possess the right to own the property, yet lack the legal capacity to manage it. In such instances, the legal guardian, appointed by the court or designated by the family, files a petition in court and seeks authorization for the management of the property on behalf of the minor child until they reach adulthood. This process aims to protect the interests and property rights of orphaned children during their vulnerable years of dependency.

In most cases, it is not easy to ascertain when children's property(ies) and inheritance rights have been violated because the members of extended families/legal guardians have the right to determine how such property(ies) can be used to provide for the needs of the child, including for clothing, food,

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housing, and education. In some instance the members of extended families/legal guardians confiscate the property(ies) of deceased relatives to use for their own benefit which should have been used for the benefit of the orphaned children. This results in violations of the rights of children.

To protect and secure the property rights of the orphan children, these guidelines specify the role of all major stakeholders in monitoring and protecting property(ics) and inheritance rights of children to prevent any violation. The guidelines aim to prevent ambiguity ensuring that succession and inheritance rights of the children are secured in every possible manner.

III. Role of Major Stakeholders -

3 .1 Role of Child Welfare Committee:

a) Any child who is found to be an orphan shall be produced before the Child Welfare Committee (CWC) within 24 hours under section 31 read with section 32 of the Juvenile Justice (Care & Protection of Children) Act, 2015 (hereinafter to referred as 'JJ Act').

b) The CWC shall ascertain the immediate need of the child and pass appropriate order as prescribed under the Section 37 of the JJ Act as well as the relevant rules under the Juvenile Justice (Care & Protection of Children) Model Rules, 2016 (hereinafter to referred as 'JJ Rules').

c) The CWC shall direct the Child Care Institution (CCI) where child is placed or District Child Protection Unit (DCPU) to prepare Social Investigation Report (SIR) along with information

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regarding all assets, properties and financials of parent(s) of such a child in accordance with JJ Act & rules thereof. The SIR shall be submitted within fifteen days. The report should include details of all movable and immovable property(ies) over which the child may have a succession/inheritance interest/right. It may also include information on the parent's will, insurance policies, benefits, fixed deposits, bank accounts, job compensation, pension, insurance money, cash, jewellery etc. The report shall be submitted to the CWC in accordance to Section 36(2) of the Act.
(Note - Existence of movable and immovable properties in the name of such child should not be an impediment to them being declared as legally fi·ee for adoption as contemplated in Section 38 of the JJ Act. Additionally, it can be ensured that the factum of the assets of the child shall not be disclosed by the ewe or the Specialised Adoption Agency (SAA) to the prospective adoptive parents until adoption is finalised through the District Magistrate 's order)

d) The CWC shall ensure the procurement of legal heir and succession certificate in favour of the child as well as death certificates of parent(s) as early as possible. The process for procurement of such certificate(s) must be initiated within 7 days from receiving of the SIR. The CWC shall also ensure that necessary assistance by the concerned DCPU/Local Police/District Legal Service Authority is provided to the child/guardian in procuring the legal heir certificate, the succession certificate and death certificates (whichever is applicable) from the concerned Authority/Court.

e) The CWC within 7 days of receiving the SIR

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along with information regarding all assets from the DCPU and procuring all relevant and available documents must compile the same and forward it along with an intimation letter to the District Magistrate (OM) within whose jurisdiction the child is residing for the purpose of protecting the property(ies) and assets that the child is entitled to.

f) The CWC shall be at the liberty to take assistance of the Legal Aid Counsel (LAC) deputed in CWC for compiling information and documents as well as drafting the intimation letter to the OM.

3.2 Role of Juvenile Justice Board (JJB)

a) Any child in conflict with law (CCL) when produced before the Juvenile Justice Board (JJB) and found to be an orphan during the inquiry, the JJB shall direct the Probation Officer to prepare Social Investigation Report (SIR). The SIR shall be submitted within fifteen days. The SIR shall include complete information regarding all assets, properties and financials of parent(s) of such a child in accordance with JJ Act & rules thereof. The report should include details of all movable and immovable property(ies) over which the child may have a succession/inheritance interest/right. It may also include information on the parent's will, insurance policies, benefits, fixed deposits, bank accounts, job compensation, pension, insurance money, cash, jewellery etc. The report shall be submitted in accordance with Section 8(3)(e) of JJ Act.

b) The JIB shall ensure the procurement of legal heir and succession certificate in favour of the

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child as well as death certificates of parent(s) as early as possible. The process for procurement of such certificate(s) must be initiated within 7 days from receiving of the SIR.. The JJB shall also ensure that necessary assistance by the concerned Probation nicer/Local Police/District Legal Service Authority is provided to the child/guardian in procuring the legal heir certificate. the succession ce11ificate and death certificates (whichever is applicable) from the concerned Authority/Court.

c) The JJB within 7 days of receiving the SIR along with information regarding all assets from the Probation Officer and procuring all relevant and available documents must compile the same and forward it along with an intimation letter to the District Magistrate (DM) within whose jurisdiction the child is residing for the purpose of protecting the property(ies) and assets that the child is entitled to.

d) The JJB shall be at the liberty to take assistance of the Legal Aid Counsel (LAC) deputed in JJB for compiling information and documents as well as drafting the intimation letter to the DM.

3.3 Role of Child Care Institution CCCI)

a) The In-charge of the CCI where the child is placed by the order of the CWC/JJB shall ensure child wellbeing including care, protection, rehabilitation etc. in accordance with the JJ Act/Rules.

b) Upon receipt of the directions from the CWC to prepare Social Investigation Report (SIR) the

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same must be submitted within 15 days from the date of order along with on information regarding all assets, properties and financials of parent(s) of such a child in accordance with JJ Act & rules thereof. The report should include details of all movable and immovable property(ies) over which the child may have a succession/inheritance interest/right. It may also include information on the parent's will, insurance policies, benefits, fixed deposits, bank accounts, job compensation, pension, insurance money, cash, jewellery etc.

c) The In-charge of the CCI would provide necessary assistance to the · child/guardian in procuring the legal heir certificate, the succession certificate and death certificates (whichever is applicable) from the concerned Authority/Court. The bank details of the child be supplied to the concerned to ensure that all inflows owed to the child may be directed into this bank account.

d) The In-charge of the CCI would ensure that the order of CWC/JJB must be complied as & when directed to do so.

3.4 Role of District Child Protection Unit

a) Upon receipt of the directions from the CWC to prepare Social Investigation Report (SIR), the same must be submitted within 15 days from the date of order along with on information regarding all assets, properties and financials of parent(s) of such a child in accordance with JJ Act & rules thereof. The report should include details of all movable and immovable property(ies) over which the child may have a succession/inheritance interest/right. It may also include information on the parent's will, insurance policies, benefits,

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fixed deposits, bank accounts, job compensation, pension, insurance money, cash, jewellery etc.

b) The DCPU would ensure that necessary assistance is provided to the child/guardian in procuring the legal heir certificate, the succession certificate and death certificates (whichever is applicable) from the concerned Authority/Court.

3 .5 Role of District Magistrate

a) On receiving intimation from the CWC/JJB, the DM shall conduct an inquiry into the details, identify and demarcate all assets, properties, and financials of such child and his/her parents. This inquiry shall aim to collect details of all movable and immovable property(ies) over which the child may have a right/interest. The inquiry shall also include verification and/or collecting information on the status of guardianship, parent's will, insurance policies, benefits, fixed deposits, bank accounts, job compensations, pension, insurance money, cash, jewellery etc.

b) For an effective inquiry, the DM shall take the assistance of the Police for identifying and demarcating all the movable and immovable property(ies) in which the child may have any right/interest.

c) A copy of the report containing the details of immovable property shall be forwarded to the Registering Authority i.e. Sub Registrar/Registrar etc. within whose jurisdiction the said immovable property falls. The DM shall also move appropriate application before the concerned court to seek the direction from the court to refrain from registering any deed of the said

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property without the written direction received from the Hon'ble Court.

d) The DM shall within 7 days of the receipt of the letter from CWC, complete their inquiry, procure the relevant documents and take appropriate steps under Section 10 read with Section 8 of the Guardians and Wards Act, 1890 before the Concerned Family/District Court seeking to be appointed as a guardian of property(ies) or a minor to secure the child's movable and immovable property(ies).

e) If required, interim orders in terms of Section 12 of the Guardians and Wards Act 1890 may be sought from the Court concerned, to preserve 'Status quo'. The District Magistrate, upon receipt of such orders shall be obliged to direct the concerned authority under whose jurisdiction the immovable property(ies) is located and/or custodian of the movable property(ies) to not create any encumbrance in respect of the said movable/immovable property(ies).

f) The DM may take assistance of its empanelled legal counsel and may also be at the liberty to approach the DLSA for appropriate legal support, if required at any stage.

g) The DM, if needed, shall also liaise with the CWC for any additional information and/or documents required for taking appropriate steps under Section 10 read with Section 8 of Guardians and Wards Act, 1890.

h) The DM shall ensure that a copy of any letter/application made before the concerned Family/District Court and information on the

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court proceedings regarding the guardianship or the properties concerning the child is shared with the ewe.

i) Once appointed as a guardian of property(ies) of the child by the concerned Family/District Court, the DM must discharge their duties and obligations as prescribed under the Guardians and Wards Act, 1890, the Delhi High Court Rules for Guardians and Wards and as per the directions from the concerned Family/District Court.

j) The DM as part of its duties as a guardian of property(ies) of the child shall also actively liaise with the ewe to take necessary steps that are deemed to be in the best interest of the child. Additionally, the DM shall organise quarterly meetings with the CWC and, where applicable, the child (if aged 14 or above) to update them about the status of any property(ies) and of any court proceedings.

k) When the DM's powers as a guardian of property(ies) of a minor cease or there is appointment of another guardian, the office of the DM shall organise a meeting with the child/former child (as the case may be) where the CWC and a legal counsel from the DLSA shall also be present. In this meeting, the child/former child should be explained the status of each property(ies), asset and account to their satisfaction.

l) Any letter/application filed by the OM shall not preclude consideration of a similar application by a relative or friend of the child and the Guardian shall be appointed by the Concerned

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Family/District Court on the settled principles enumerated in respect thereof, including the best interest of the child.

3.6 Role of Local Police

a) For an effective inquiry, the police on rece1vmg directions from the CWC/JJB/DM to take all necessary steps for identifying and demarcating all the movable and immovable property(ies) in which the parent(s) or the child has any interest immediately take the necessary steps accordingly.

(Note- The Police can take steps to access and analyse all assets like seizing documents, checking income tax return, interviewing the appointed guardian (if any), immediate relatives, neighbours and friends of the parent(s) etc., the police shall also be at liberty to seize and preserve the mobile phone/computer/gadgets of the parent(s) and or any credit and debit cards to prevent any misuse, till the same is required to be handed over to the appointed guardian of the child.)

b) For ascertaining the movable or/and immovable properties in which the parents had an interest, the local police shall be at liberty take all steps necessary including but not limited to interviews the immediate relatives, neighbours and friends of the parents, access and analyse the income tax returns of the parents, seize and analyse the documents/papers lying at the residence of the parents etc.

c) The local police shall have the duty to immediately seize and preserve the mobile phone

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of the parents and/or any credit and debit cards and/or any identity cards to prevent any misuse of the same, till the same is required to be handed over to the guardian of the child and/or property(ies) by the Court under the Guardianship Act.

d) The police would provide assistance to CWC/JJB as and when directed to do so.

3. 7 Role of District Legal Service Authority

a) The DLSA shall provide all the necessary legal assistance as required by the DM/CWC/JJB/DCPU/Police at any stage.

b) The DLSA shall provide all the necessary support to the child including counsel for moving an application before the concerned authority for granting compensation to the child under Delhi Victim Compensation Scheme/other relevant scheme, if the child is victim of any offence.

3.8. Role of Department of Women & Child Development, GNCTD -

a) Monitoring and ensuring compliance - In the event that there 1s any noncompliance or delay with regards to the above-mentioned guidelines by any stakeholder, the same shall be brought to the notice of the Department of Women & Child Development who shall take immediate appropriate action to ensure protection of orphaned children's property(ies) rights. Non-compliance of these guidelines on part of officers shall lead to serious action, for instance inclusion in the relevant service record. The Department will also prepare bi-annual reports on the

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compliance with these guidelines, which reports ought to be shared with this Hon' ble Court through its pmver of superintendence under S.46 & 50 of the Guardian & Wards Act.

b) Training and Sensitization - Department of Women & Child Development , GNCTD shall organise periodic trainings for all concerned stakeholders involved in the welfare and protection of orphaned children, including Child Welfare Committees, District Magistrates, Juvenile Justice Boards, District Child Protection Units, Police, District Legal Service Authorities, Child Care Institutions, Probation Officers etc. to enhance their knowledge in respect of the concerned laws, procedures and guidelines. Furthermore, these stakeholders shall be sensitised to their specific roles to ensure the protection of orphaned children's property(ies) rights.

3.9. Role of Guardianship Courts (Proposed Guidelines)

1. Apart from the above guidelines, it is submitted that this Hon'ble Court also ought to lay down guidelines to be followed by the concerned Guardianship Courts to ensure that the attitude of the Court in dealing with such issues reflects the seriousness and gravity of the situation.

2. In this regard, the Court may consider laying down the following guidelines:

A. Upon receipt of an application under S. I 0, Guardians & Wards Act. 1890, the concerned Court must at the first instance direct steps to be taken to secure the

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property in question.

B. Even where there is no application under S. 12, the Court concerned ought to examine whether there is any threat to the property in question.

C. The appointment of guardian must ordinarily be completed within a period or 4 weeks from the date or receipt of' the application under s. 10.

D. The Court should avoid unnecessary adjournments, and in no case shall adjourn matters by more than 1 week at a time.

E. The concerned District Judge should endeavour to prepare a biannual report of the compliance with these guidelines, which ought to be further shared with this Hon'ble Court to compliance. ensure

F. Any non-compliance with the aforesaid guidelines should reflect in the service record of the concerned judicial officer."

15. The guidelines as framed by the CWC have been considered. The State is directed to frame the guidelines to be followed by the concerned authorities.

16. Arguments have also been advanced regarding the manner in which these cases are being dealt with by Courts. The case of children who are helpless victims of circumstances must be dealt with compassion and a sympathetic attitude and approach must be adopted by the Courts. Courts are zealous guardians for the protection of the properties of minors and efforts

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must be made to ensure that the properties are immediately secured so that they are not frittered by unscrupulous relatives who like vultures want to prey on the meagre belongings that have been left behind for them on which only they have the rights. Suggestions have been given by Ms. Tara Narula, learned Counsel for the Petitioners, on this aspect which have been considered by this Court. In the opinion of this Court, the following directions need to be issued to Courts considering the applications for guardianship and for protection of the properties of the children:

a. The Application filed by the District Magistrate for guardianship over a minor child's property should be placed before the Family Court which is already dealing with the application of guardianship of the child to avoid conflicting directions and speedy disposal of application.

b. Interim orders necessary to protect the property of the child be passed expeditiously, preferably within a period of four weeks from the date of application filed in compliance of Section 12 of the GAW Act.

c. The concerned Family Courts should adopt a child-centric approach. A separate counsel on behalf of the child be appointed to ensure that the views of the child are duly considered.

d. The Family Court must keep the case pending till the child attains the age of majority. The guardian should be asked to submit yearly accounts to the concerned family court and the

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family court should also oversee the accounts and statements as filed by the guardian.

e. In case the child is eligible for adoption in accordance with the JJ Act, 2015 and the Adoption Regulation 2022, the pendency of an Application for protecting the child's property may not be in any way be allowed to hinder the process of adoption.

f. Where there are two or more siblings, the State would protect the interest of the minor sibling(s) and defend and institute any and all claims, suits on their behalf. In cases where there are legal heirs other than the orphaned child, the District Magistrate shall duly protect the interest of the child(ren) by contesting and instituting such proceedings as may be applicable under the applicable guardianship laws, personal laws and civil procedure.

17. Courts are directed to ensure that the directions are scrupulously followed. Registry is directed to circulate this Order to all the concerned Courts.

18. This Court records its appreciation for the assistance rendered by Mr. Dayan Krishnan, learned Senior Counsel and Ms. Tara Narula, learned Counsel, who have helped this Court in framing guidelines. This Court also records its appreciation for the efforts taken by Ms. Mehak Nakra, learned ASC for GNCTD who has helped in framing the guidelines and ensuring

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proper co-ordination between the Amicus Curiae and the Departments of State.

19. Let a copy of this Judgment be circulated to all the concerned courts.

20. With these observations, the Petitions are disposed of along with the pending applications, if any.

SUBRAMONIUM PRASAD, J

APRIL 02, 2025
Rahul

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