

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/WRIT PETITION (PIL) (WRIT PETITION (PIL)) NO. 149 of
2021**=====
BACHPAN BACHAO ANDOLAN & ANR.**Versus****STATE OF GUJARAT & ORS.**
=====**Appearance:****MR PRAGYAN SHARMA, SR. ADVOCATE with MR HARI
BRAHMBHATT with MR DHAVAL M BAROT(2723) for the
Applicant(s) No. 1,2****MR KAMAL TRIVEDI, ADVOCATE GENERAL with MR. VIJAY B.
VISHEN, AGP for the Opponent(s) No. 1,2,5****NOTICE SERVED for the Opponent(s) No. 4**
=====**CORAM: HONOURABLE THE CHIEF JUSTICE MRS. JUSTICE
SUNITA AGARWAL****and****HONOURABLE MR. JUSTICE PRANAV TRIVEDI****Date : 07/02/2025****ORAL ORDER****(PER : HONOURABLE THE CHIEF JUSTICE
MRS. JUSTICE SUNITA AGARWAL)**

1. When the matter was taken up today, Mr. Pragyan Sharma, learned advocate appearing for the petitioner has invited attention of the Court to Section 13 of the Commission for Protection of Child Rights Act, 2005, which lays down the functions to be performed by the State Commission for protection of child rights constituted under Sections 17 and 18 of the Protection of Child Rights Act, 2005.
2. Amongst various functions of the Commission, it is required to examine and review the safeguards provided by or under any law for the time being in force for the

protection of child rights and recommend measures for their effective implementation; inquire into violation of child rights and recommend initiation of proceedings in such cases; examine all factors that inhibit the enjoyment of rights of children affected by various aspects such as terrorism, natural disaster, domestic violence, torture, exploitation, etc. and recommend appropriate remedial measures; look into the matters relating to children in need of special care and protection including children in distress, marginalized and disadvantaged children, children in conflict with law, juveniles, children without family and children of prisoners and recommend appropriate remedial measures; study treaties and other international instruments and undertake periodical review of existing policies, programmes and other activities on child rights; undertake and promote research in the field of child rights; spread child rights literacy among various sections of the society and promote awareness of the safeguards available for protection of these rights through publications;

3. It's function is also to inspect or cause to be inspected any juvenile custodial home, or any other place of residence or institution meant for children under the control of the State Government or any other authority, including any institution run by a social organisation where children are detained or lodged for the purpose of treatment, reformation or protection and take up with these authorities for remedial action, if found necessary;

inquire into complaints and take *suo motu* notice of matters relating to—

- (i) deprivation and violation of child rights;
- (ii) non-implementation of laws providing for protection and development of children;
- (iii) non-compliance of policy decisions, guidelines or instructions aimed at mitigating hardships to and ensuring welfare of the children and to provide relief to such children,

or take up the issues arising out of such matters with appropriate authorities; besides such other functions as it may be necessary for the promotion of child rights and any other matter incidental to the above functions.

4. It is clear that the State Commission has been conferred with important functions aimed at effective implementation of the Juvenile Justice (Care and Protection of Children) Act, 2015 (In short as the "JJ Act") and other Child Protection Acts. The main function of the Commission is to monitor implementation of laws and programmes relating to survival, welfare and development of children. Section 23 of the Commissions for Protection of Child Rights Act, 2005 mandates the State Commission to submit an annual report to the State Government and also submit special reports on any matter of urgency or importance, which cannot be deferred till submission of annual report. The State

Government thereupon shall cause all the reports submitted by the State Commission to be laid before the House of State legislature along with the memorandum explaining the action taken or proposed to be taken on the recommendations relating to the State and the reasons for non-acceptance, if any, of any such recommendation. The annual report shall be prepared in the form, manner and contain such details as may be prescribed by the State Government.

5. It is pointed out by the learned counsel for the petitioner that the Apex Court in the judgment delivered on 05.05.2017 in **Writ Petition (Criminal) No. 102 of 2007** reported in **(2017) 7 SCC 594** has issued directions for the purpose of ensuring implementation of the JJ Act and observed that to ensure that the implementation is proceeding in the right direction, it is necessary that a social audit be conducted every year, which would give reasons for introspection as well as for improvement in the services. The observations in paras '100 to 104' therein are relevant to be extracted hereinunder :-

"Social audit

100. For the purposes of ensuring that the implementation of the JJ Act is proceeding in the right direction, it is necessary that a social audit be conducted every year. Social audits give reasons for introspection as well as for improvement in the services.

101. Social audit has gained relevance as a tool of public accountability. It has been defined as “an assessment of a department's non-financial objectives through systematic and regular monitoring on the basis of the views of its stakeholders.” A social audit is considered novel as it is supposed to serve as a supplement to a conventional government audit, often done in 12-month cycles generating an audit report every time. In fact, in the Report of the Task Group on Social Audit by the Office of the Comptroller and Auditor General, it was opined that social audit be brought into the mainstream of auditing by the Indian Audit and Accounts Department as an essential process and tool in all the performance audits of social sector programmes as they afford an opportunity to strengthen the micro-level scrutiny of the programme planning, implementation and monitoring.

102. The requirement of a social audit is necessary not only for purposes of introspection but also transparency and accountability in the effective implementation of the JJ Act. There cannot be any reason to avoid conducting social audits, more particularly since they have been encouraged by the Mahatma Gandhi National Rural Employment Guarantee Act, 2005 as well as by the Integrated Child Protection Scheme, by the Comptroller and Auditor General of India and the National Food Security Act, 2013. The impression given to us is that for some inexplicable reason the Union Government is shying away from social audits.

103. In the hearing on 17-4-2015, the learned Additional Solicitor General informed us that no social audit was carried out despite the rule being notified in 2007. The Union of India was then directed to finalise a policy for conducting social audits. In the hearing on 30-10-2015 we were informed that the formats for social audit have been more or less finalised. In its affidavit filed sometime in November 2015, the Union of India

has annexed copies of Model Social Audit Formats for Child Welfare Committees, Juvenile Justice Boards, Special Juvenile Police Units, Children Homes, Specialised Adoption Agencies, Open Shelter/Shelter Homes, Observation Homes and Special Homes. It is stated in the affidavit that these formats will be circulated for pilot testing by selected States as mentioned in an earlier affidavit dated 29-10-2015.

104. We have not been informed whether any steps have been taken to conduct social audits in terms of the Model Formats prepared by the Union of India or the result of the pilot testing, if any. It is therefore necessary to ensure that these formats are tested out with urgency so that the implementation of the JJ Act is made more meaningful."

6. Taking note of the above, we may record that the constitution of the State Commission as per the provisions of Sections 17 and 18 of the Commissions for Protection of Child Rights Act, 2005 in the State of Gujarat has been completed only recently by the notifications dated 24.10.2024 and 12.12.2024 issued by the Social Justice and Empowerment Department, State of Gujarat. At present as it is at the initial stage and there has been a long gap in establishment of the State Commission, there is a requirement of monitoring the work of the Commission so as to ensure effective implementation of the Juvenile Justice Act at the ends of the Commission in line with its functions aligned under Section 13 of the Commissions for Protection of Child Rights Act, 2005.

7. We, therefore, direct the State Government to finalise

the policy for conducting social audits taking clue of the directions contained in the above noted paragraph '103' of the judgment of the Apex Court. The formats for social audits in terms of the Model formats prepared by the Union of India as a result of the pilot testing in terms of the abovenoted directions issued by the Apex Court shall have to be finalised and placed before the Court.

8. The report of the first quarter of working of the State Commission in discharging its functions in accordance with the provisions of Section 13 of the Commissions for Protection of Child Rights Act, 2005 is required to be placed before this Court on the next date fixed.

The matter is posted on 21.03.2025.

(SUNITA AGARWAL, CJ)

(PRANAV TRIVEDI,J)

BIJOY B. PILLAI