

2025 LiveLaw (SC) 855

IN THE SUPREME COURT OF INDIA
B.V. NAGARATHNA; J., K.V. VISWANATHAN; J.
WRIT PETITION(S)(CIVIL) NO(S).503/2018; 06-08-2025
POULOMI PAVINI SHUKLA *versus* UNION OF INDIA & ORS.

Right of Children to free and Compulsory Education Act, 2009 (RTE Act) - Section 12(c) - *Parens patriae* - Supreme Court directed States/Union Territories are directed to conduct a survey to identify orphans who have been admitted under the RTE Act, as well as those who have been deprived of their right to educations and the reasons for their deprivation - During the survey, a concurrent effort must be made to admit deserving orphaned children into neighbourhood schools if they have not already been admitted - Granted 4 weeks to complete the survey, collect data, and file an affidavit regarding compliance - Other states that have not yet done so are directed to consider issuing a notification to include orphans in the 25% quota and take steps to ensure compliance - ‘Child’ includes ‘orphan child’ - If a state or union territory fails to issue such a notification, the Secretary of the Department of Education must file an affidavit explaining the reasons - Matter is scheduled to be listed on 9th September, 2025. [Paras 5-10]

For Petitioner(s): Petitioner-in-person

For Respondent(s): Mr. Vikramjit Banerjee, A.S.G. Mr. Chinmayee Chandra, Adv. Mr. Parthiv Goswami, Adv. Mr. Vvv Pattabhiram, Adv. Dr. N. Visakamurthy, AOR Mr. Sahil Bhalaik, AOR Mr. Tushar Giri, Adv. Mr. Siddharth Anil Khanna, Adv. Mr. Ritik Arora, Adv. Mr. Shivam Mishra, Adv. Mr. Gouttam Polanki, Adv. Mr. Murshlin Ansari, Adv. Ms. Eliza Barr, Adv. Ms. Disha Singh, AOR Mr. Manish Kumar, AOR Mr. Divyansh Mishra, Adv. Ms. Ankita Sharma, AOR Mr. Arjun D Singh, Adv. Ms. Ishika Neogi, Adv. Mr. Surjendu Sankar Das, AOR Ms. Aarushi Singh, Adv. Mr. P K Bajaj, Adv. Ms. Deepanwita Priyanka, AOR Mr. Satyalipsu Ray, Adv. Ms. Priyal Sheth, Adv. Mr. Shekhar Raj Sharma, A.A.G. Mr. Samar Vijay Singh, AOR Ms. Nidhi Narwal, Adv. Ms. Sabarni Som, Adv. Mr. Aman Dev Sharma, Adv. Mr. Gaj Singh, Adv. Mr. Ramendra Nath Makhal, Adv. Mr. T. V. Surendranath, Adv. Mr. Vaibhav Vikram Singh, Adv. Mr. Shantanu Sagar, AOR Mr. Anil Kumar, Adv. Mrs. Divya Mishra, Adv. Mr. Manoneet Dwivedi, Adv. Mr. Prakash Kumarmangalam, Adv. Mr. Abhishek Kumar Gupta, Adv. Ms. Niharika Rai, Adv. Mr. Prateek Chadha, A.A.G. Mr. Sanchit Garga, AOR Mr. Nishe Rajen Shonker, AOR Mrs. Anu K Joy, Adv. Mr. Alim Anvar, Adv. Mr. Santhosh K, Adv. Mrs. Devika A.I., Adv. Ms. Mrinal Gopal Elker, AOR Mr. Sarthak Raizada- G.a., Adv. Mr. Amit Sharma, Adv. Ms. Chhavi Khandelwal, Adv. Mr. Shrirang B. Varma, Adv. Mr. Siddharth Dharmadhikari, Adv. Mr. Aaditya Aniruddha Pande, AOR Mr. Pukhrambam Ramesh Kumar, AOR Mr. Karun Sharma, Adv. Ms. Anupama Ngangom,,, Adv. Ms. Rajkumari Divyasana, Adv. Mr. Ranjan Mukherjee, AOR Mr. Anando Mukherjee, AOR Ms. K. Enatoli Sema, AOR Mr. Amit Kumar Singh, Adv. Ms. Chubalemla Chang, Adv. Mr. Prang Newmai, Adv. Mr. Som Raj Choudhury, AOR Ms. Shrutee Aradhana, Adv. Mr. Prashant Kumar, Adv. Mr. Karan Sharma, AOR Mr. Milind Kumar, AOR Mr. Sameer Abhyankar, AOR Ms. Ripul Swati Kumari, Adv. Mr. Krishna Rastogi, Adv. Ms. G. Indira, AOR Mr. P Gandepan, Adv. Ms. Amrita Kumari, Adv. Ms. Anjali Singh, Adv. Ms. Raniba Pangnila, Adv. Mr. Sravan Kumar Karanam, AOR Ms. M. Harshini, Adv. Mr. Kumar Abhishek, Adv. Mr. Shuvodeep Roy, AOR Mr. Deepayan Dutta, Adv. Mr. Saurabh Tripathi, Adv. Mr. Rohit K. Singh, AOR Mr. Divyanshu Sahay, Adv. Mr. Pritam Bishwas, Adv. Mr. Akshat Kumar, AOR Ms. Anubha Dhulia, Adv. Mr. Kunal Vajani, Adv. Mr. Kunal Mimani, AOR Mr. Abhinav Rana, Adv. Mr. Mukesh Kumar Verma, Adv. Mr. Krishnakant Dubey, Adv. Mr. Tadimalla Bhaskar Gowtham, Adv. Mr. Shreekant Neelappa Terdal, AOR Ms. Jyoti Mendiratta, AOR Mr. Aravindh S., AOR Ms. Jyoti P, Adv. Mr. Avijit Mani Tripathi, AOR Mr. T.K.Nayak, Adv. Mr. Shiv Mangal Sharma, Adv. Mr. Nidhi Jaswal, AOR Mr. Shalini Singh, Adv.

ORDER

We have heard Ms.Poulomi Pavini Shukla-petitioner, who has appeared in-person, and learned counsel for the respondent(s) including the respondent(s)-States.

2. The petitioner, who is a practising Advocate, has filed this Writ Petition invoking Article 32 of the Constitution of India as a Public Interest Litigation in order to bring to the

notice of this Court the vulnerable sections of the children namely the 'orphans', who have no parents and who are in need of care and protection.

3. The petitioner submitted that although there may be several schemes and programmes envisaged by the Central and the State Governments for the protection and care of the orphans, nevertheless the same are inadequate. Thus the emphasis and focus on this petition is to ensure that ultimately the orphan children are not left in the lurch in this Country.

4. The petitioner has sought the following reliefs in this Writ Petition:

“(a) Issue a writ of Mandamus or any other appropriate writ, order or direction of this Hon’ble Court directing:

1. Government of India to provide ‘orphans’ who have no family support or linkages in society of any kind with the right to reservation in Government jobs and educational institutions.

2. Government of India to provide for orphans and children in Need for Care and Protection all such benefits besides reservation in educational institutions and in jobs, like scholarships, tuition support, coaching for competitive examinations, fellowships, hostels/stay facilities for post matriculate/intermediate studies, bank loans, cash incentives for setting up businesses and other benefits being currently given by the Ministry of Social Justice to children of SC/ST and OBC parents.

3. Government of India to have a policy for assigning religion to orphans and ensure that orphan children are given the right to choose their religion upon attaining majority and are not under duress of any kind to choose a specific religion.

4. Government of India to have a policy for assigning caste to orphans and ensure that orphan children are given the right to choose their caste after their choice of religion and also an appropriate name in consonance with the religion and caste which they have chosen.

5. Government of India conduct a comprehensive census or sample survey of Children in Need of Care and Protection which is essential to fix the numbers and targets and outlays in Government schemes as well as outline the extent of the problem.

6. Government of India to constitute an expert group of NITI Aayog or a Committee or Commission like the Mandal Commission for OBCs with public participation to examine all aspects of the ‘Orphan and Children in Need of Care and Protection’ problem and suggest solutions.

7. Government of India and the NITI Aayog to act on the thinking expressed in the Government of India National Health Policy – that the finances of the State are inelastic – so Child Protection for which the Centre has placed primary financial responsibility on the States and because of which there has been a serious paucity of resources and support mechanisms, has to be taken up for Central funding on a primary responsibility basis. Government should transfer ‘Child Protection’ back as a Central item with primary responsibility of the Centre for funding schemes for ‘Orphans’ and Child Protection.

8. Government of India to ensure a uniformity in schemes and in implementation of schemes for Child Protection across the country because all ‘Children in Need of Care and Protection’ in India wherever they are found have equal rights on the State as ‘*parens patriae*’ and there cannot be a difference on locational basis in the facilities and opportunities being given by the Republic of India to this category of its citizens. The responsibility of implementation of schemes for Child Protection can remain with the States but uniform welfare measures have to be enunciated and ensured by the Centre.

9. Government of India to consider the repeal of The Orphanages and Other Charitable Homes (Supervision and Control) Act, 1960 because of the dichotomy of instructions between this Act and the JJ Act 2015 regarding registration of orphanages, creating undue confusion.

10. Government of India to consider amending and bifurcating the JJ Act 2015 so that legislation for Children in need of Care and Protection should not be an add-on to the legislation for Juvenile Justice because the parameters are significantly different. Indian society has to own up its responsibility to Children in Need of Care and Protection as a separate stand-alone enactment.

11. Government of India to substantially enhance the budgetary allocation for Integrated Child Protection Scheme (ICPS), National Institute of Public Cooperation and Child Development (NIPCCD), National Commission for Protection of Child Rights (NCPCR) and Child line with objectives and targets clearly specified to ensure a comprehensive coverage of all 'Children in Need of Care and Protection' within a specified timeline.

12. Government of India to instruct National Institute of Public Cooperation and Child Development (NIPCCD) to immediately create a cell for Children in Need of Care and Protection and initiate studies in (among others);

- a. Suicide rates among orphans leaving Children Homes.
- b. Percentage of children ending up in jail within 5 years of leaving Children Homes.
- c. Higher education possibilities and programs for orphans leaving Children Homes.
- d. Numbers of children in Children Homes completing various levels of primary and secondary education.
- e. Numbers completing Graduation and numbers completing any professional degree (B.Tech., M.B.B.S etc).
- f. Nature of jobs/professions being taken up by orphans.

13. Government of India to ensure that there should be at least one orphanage or Children Home for each, boys and girls, in every district directly under the District Collector and to put in place systems for participation of Public Representatives in the local administrative decisions of Government Orphanages and also for accepting donations from civil society. Ideally, there should be at least 5 orphanages or Children Homes in each district;

- a. For children of the age 0 to 10 years
- b. For boys of the age 11 to 17 years
- c. For girls of the age 11 to 17 years
- d. For boys of the age 18 to 22 years
- e. for girls of the age 18 to 22 years

14. Government of India to ensure that the provisions of education in good, private schools included in the Right to Children to Free and Compulsory Education Act, 2009 (RTE Act) currently being made available for children of below-poverty line parents, are extended to orphans of registered institutions.

15. Government of India to modify the 18 year age cut-off in State support to 'orphans' and, as the Government of India provides support and schemes extensively for children of OBC and SC/ST parents beyond 18 years of age, namely tuition, fellowships, coaching, bank loans, micro finance and seed capital, Government of India should strengthen provisions in a similar manner for support to children aging out of Children Homes to provide them similar support for higher education and earning opportunities, till they attain an age of self-sufficiency (of say, 22 years).

16. Government of India to address the issue of stigmatization and discrimination of 'orphan' and children in the streets through public sensitization.

17. Government of India to associate Public Representatives and Civil Society and with existing Orphanages and Children Care Houses in a structured manner.

18. Government of India to earmark 1% to the total funds under MPLADS and MLALADS Discretionary Allotments for Members of Parliament and Members of State Legislatures for 'orphans' and 'Children in need of Care and Protection'. This will make Public Representatives interact with this class of citizens in routine and this attention should emerge as a paradigm changing focus.

19. Government of India be directed to announce an orphan Day (suggestion January 1 – New Year's Day) and press the United National for it to be recognized as the International Orphan Day to focus the attention of civil society, business houses in CSR, educational institutions etcetera on 'orphans'."

5. In this regard, while drawing our attention to the prayers sought for by her, she pointed out that under Section 2(1)(d) of the Right Of Children to Free And Compulsory Education Act, 2009 (for brevity, "the Act"), the definition of 'Child' ought to also include an orphan child as such a child may be socially, culturally, economically and gender-wise, a disadvantaged child. She submitted that the expression, "Or such other factor" can also include that section of the Children who are orphans and who may not be having any guardian or other person to take care of them. Such orphans may also be in orphanages or even without any other protective institution to take care of them. It was her contention that the first and foremost need of such orphan children is to have free and compulsory education in terms of the Act. In this regard, she drew our attention to Section 3 and also to section 12(1)(C) of the Act.

6. Section 3 envisages free and compulsory education for Children from the age of 6 to 14 years. This is in line with Article 21A of the Constitution of India which has recognized the Right to Education as a Fundamental Right and also Article 51A(k) of the Constitution of India, wherein it has been recognized as a Fundamental Duty of the parents, but in the absence of orphans having parents it becomes the duty of the State to act as '*parens patriae*' to ensure that such children are not denied the Right to Free Education under the provisions of this Act.

7. Therefore, the submission of the petitioner was that under Section 3 read with Section 12 (1)(c) of the Act, the right of the orphans to be admitted to a neighbourhood school within the 25% quota may be recognized. For immediate reference, we extract section 12 as under:

"12. Extent of school's responsibility for free and compulsory education. -

1) For the purposes of this Act, a school,-

(a) specified in sub-clause (i) of clause (n) of section 2 shall provide free and compulsory elementary education to all children admitted therein;

(b) specified in sub-clause (ii) of clause (n) of section 2 shall provide free and compulsory elementary education to such proportion of children admitted therein as its annual recurring aid or grants so received bears to its annual recurring expenses, subject to a minimum of twenty-five per cent.;

(c) specified in sub-clauses (iii) and (iv) of clause (n) of section 2 shall admit in class I, to the extent of at least twenty-five per cent. of the strength of that class, children belonging to weaker section and disadvantaged group in the neighbourhood and provide free and compulsory elementary education till its completion:

Provided further that where a school specified in clause (n) of section 2 imparts pre-school education, the provisions of clauses (a) to (c) shall apply for admission to such pre-school education.

(2) The school specified in sub-clause (iv) of clause (n) of section 2 providing free and compulsory elementary education as specified in clause (c) of sub-section (1) shall be reimbursed expenditure

so incurred by it to the extent of per-child-expenditure incurred by the State, or the actual amount charged from the child, whichever is less, in such manner as may be prescribed:

Provided that such reimbursement shall not exceed per-child-expenditure incurred by a school specified in sub-clause (i) of clause (n) of section 2: Provided further that where such school is already under obligation to provide free education to a specified number of children on account of it having received any land, building, equipment or other facilities, either free of cost or at a concessional rate, such school shall not be entitled for reimbursement to the extent of such obligation.

(3) Every school shall provide such information as may be required by the appropriate Government or the local authority, as the case may be.”

8. We find that the submission of the petitioner, who has appeared in-person, requires consideration and we therefore direct the respondent(s)-States/Union Territories to make a survey of the orphan children who have already been granted admission under the above-mentioned provisions of the Act as well as a survey of the children who have been deprived of such Right to Free And Compulsory Education under the Act and if so, for what reasons and submit an affidavit in that regard.

9. It is needless to observe that while the survey and data collection is being done in the above context, a simultaneous effort shall also be made for ensuring that such deserving children (orphans) are admitted in the neighbourhood schools in case they have not yet been done so owing to the singular fact that such children are orphans and may not have had the opportunity of being admitted in the neighbourhood schools under the provisions of the Act.

10. For ascertaining the aforesaid data and also compliance, we grant four weeks’ time.

11. We also take note of the fact that the Governments of the States of Delhi, Gujarat, Arunachal Pradesh, Meghalaya, Sikkim, Jarkhand, Manipur and Orissa have already issued notifications to include orphan children within the 25% quota to be admitted to neighbourhood schools under the provisions of the Act.

12. The other States to also consider issuing such a notification and take steps to ensure that the aforesaid directions are complied with and file an affidavit in that regard. The said exercise shall be completed within a period of four weeks from today.

13. In case a notification is issued by any State(s) or Union Territories, then the same may be placed on record.

14. We expect that such a notification would be issued by the other States also, failing which an affidavit as to why such a notification has not been issued shall be filed by the Secretary, Department of Education.

15. List on 09.09.2025.