

**EMPOWERING VULNERABLE JUVENILES AND STRATEGIES FOR  
ENHANCING CHILDCARE INSTITUTIONS**

*A Dissertation submitted to the National University of Advanced Legal Studies, Kochi in partial  
fulfilment of the requirements for the award of Degree of Master of Laws in Constitutional and  
Administrative Law*



**THE NATIONAL UNIVERSITY OF ADVANCED LEGAL  
STUDIES**

Kalamassery, Kochi – 683 503, Kerala, India

**2023-2024**

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I declare that this dissertation titled ‘**EMPOWERING VULNERABLE JUVENILES AND STRATEGIES FOR ENHANCING CHILDCARE INSTITUTIONS**’ researched and submitted by me to The National University of Advanced Legal Studies in partial fulfilment of the requirement for the award of the Degree of Master of Laws in Constitutional and Administrative Law, under the guidance and supervision of **Dr. Balakrishnan K**, is an original, bonafide and legitimate work. It has been pursued academic interest. This work or any type thereof has not been submitted by me or anyone else for the award of another degree of either this University or any other university.

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## **ACKNOWLEDGEMENT**

I take this opportunity to express my profound respect and deep sense of gratitude to **Dr Balakrishnan K**, my guide and supervisor, for his support, guidance and encouragement throughout the course of my research work. He was always approachable, respected my ideas and gave me clear, cogent and meaningful suggestions, which has aided me profusely in completing this dissertation. I thank him for the effort he took to help me throughout my research, particularly to organize my thoughts in a logical manner. He helped me disintegrate ideas into the most basic form and then rebuild them in an organized fashion. I also thank him for all the encouragement and support which helped me through this pursuit.

I would also express my deep gratitude to **Prof. (Dr.) Mini S, Director, Centre for Post Graduate Legal Studies**, for her efforts to groom me into Post Graduate Research Scholars. I thank her for making me feel confident enough to put forward our academic opinions.

I would also like to express my sincere thanks to the Vice-Chancellor, Hon'ble Justice Mr. S Siri Jagan, for his constant support. I would also like to acknowledge the support of the other Professors at NUALS. I would like to thank all persons who have helped me through my empirical research in accordance with my work. The collaborative and intellectually stimulating environment fostered by the faculty, staff, and my fellow graduate students has been invaluable to my academic journey.

Finally, I owe an immeasurable debt of gratitude to my family. To my parents, [Gulzar S & Yasmibeegam S K], for their unconditional love, sacrifices, and belief in me. To my brother Akash Gulzar, who has unwavering support, patience, and encouragement through the ups and downs of this challenging process.

This achievement would not have been possible without the support of all these individuals and institutions. Any errors or shortcomings in this dissertation are entirely my own.

VARSHA GULZAR

## **LIST OF ABBREVIATIONS**

@ - at

& - and

v. – versus

U.S. – United States

CCI/CCIs - Child Care Institutions

CCL - Children in Conflict with Law

CNCP - Child in Need of Care and Protection

CRC - Convention on Rights of the Child

CW - Case Worker

CWC - Child Welfare Committee

CWO - Child Welfare Officer

DCPU - District Child Protection Unit

SJPU – Special Juvenile Police Unit

ICP - Individual Care Plan

ICDS - Integrated Child Development Scheme

ICPS - Integrated Child Protection Scheme

POSCO – Protection of Children from Sexual Offences Act, 2012

IPC – Indian Penal Code

CBI - Central Bureau of Investigation

CrPC- Criminal Procedure Code

CIF - Childline India Foundation

SC – Supreme Court

SCC – Supreme Court Cases

WPC – Writ Petition (Civil)

JJ Act - Juvenile Justice (Care and Protection of Children) Act, 2000

JJ Act - Juvenile Justice (Care and Protection of Children) Act, 2015

JJB - Juvenile Justice Board

JJ Rules - Juvenile Justice (Care and Protection of Children) Model Rules, 2016

NGOs - Non-Governmental Organizations

NCPCR - National Commission for Protection of Child Rights

NIPCCD- National Institute of Public Cooperation and Child Development

UNICEF - United Nations Children’s Fund

UN - United Nations

UNCRC - United Nations Convention on the Rights of the Child

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1. RE:EXPLOI.OF CHILN.INJ ORPH.IN ... VS. UNION OF INDIA & ORS
2. NIVEDITA JHA VS. THE STATE OF BIHAR ON 12 FEBRUARY, 2019
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4. UNNI KRISHNAN, J.P. & ORS. VS. STATE OF ANDHRA PRADESH & ORS
5. LEELA VS. STATE OF KERALA
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# **CHAPTER 1**

## **INTRODUCTION**

### **1.1 INTRODUCTION**

In this chapter, the researcher will delve into the concept of childhood, examining the various laws and legislations designed to protect the rights and well-being of children. The chapter will also address the problem statement of the dissertation, outline the research objectives, and formulate the research questions that will steer the entire investigation. Furthermore, a comprehensive review of the literature relating to children and childcare institutions will be presented, drawing insights from a wide range of sources, including books, scholarly articles, and newspaper publications, all of which will contribute to informing the research.

### **1.2 THE CONCEPT OF CHILD**

The concept of a "child" typically brings to mind a miniature version of an adult. Previously, there was little legal distinction between children and adults in criminal law. However, modern understanding acknowledges that children not only differ from adults in physical size but also in cognitive and behavioral aspects. Due to their mental development, children may not fully grasp the consequences of their actions. Additionally, children rely heavily on adults for care, displaying characteristics of physical and mental immaturity and dependence. Exploitation and abuse of children often arise from their physical and mental immaturity. While physical maturity generally occurs at puberty, the timing varies among individuals. Mental maturity has no universally agreed upon measure and is usually achieved in the early 20s, although it may occur later in some cases. A child's family and social environment play significant roles in shaping their mental maturity. Protective parenting may delay a child's independence, while lack of protection can accelerate it. Both physical and mental maturity are closely linked to social, cultural, and contextual factors. Childhood experiences have lasting effects on a person's life, highlighting the importance of a nurturing environment for their complete development and well-being.<sup>1</sup>

India has been a significant contributor in shaping international dialogues and frameworks related to child rights. The country's engagement in this arena reflects its commitment to upholding and promoting the rights and well-being of children, who constitute a significant

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<sup>1</sup> Unit-9.pdf, <https://egyankosh.ac.in/bitstream/123456789/8491/1/Unit-9.pdf> (last visited Jun 7, 2024).

portion of its population. India actively participated in the deliberation process that spanned over eleven years, leading to the formulation of the Convention on the Rights of the Child (CRC) in 1989. India ratified the CRC in 1992, reaffirming its previous commitment to the Universal Declaration of the Rights of the Child, as established by the United Nations General Assembly in 1959. The CRC is an extensive human rights treaty that outlines the civil, political, economic, social, and cultural rights of children.<sup>2</sup>

The Indian Constitution, which serves as the foundational legal framework of the country, contains specific provisions to safeguard the survival, development, and protection of children. Part III of the Constitution addresses the topic of Fundamental Rights,, and Part IV, which outlines the Directive Principles of State Policy and it not only provides the concept of welfare state but also while carrying the state administration, child protection should be borne in the mid of the people who make the legislation, are aligned with the ten principles laid out in the Universal Declaration of the Rights of the Child. The Indian Constitution, in Article 14, promises equality and places special emphasis on safeguarding the well-being of women and children. This provision underscores the importance of protecting and promoting the rights of children, who are often among the most vulnerable sections of society. This provision underscores the importance of protecting and promoting the rights of children, who are often among the most vulnerable sections of society. Article 15(3) also empowers the state to make special provisions for children, recognizing their unique needs and vulnerabilities. The government is directed to follow the constitutional provisions for the welfare of the children. Children are the principal assets of any country in the world, and children are the future of tomorrow.<sup>3</sup>

India has implemented various legislative measures and policies to address specific concerns related to child rights. These include the Juvenile Justice (Care and Protection of Children) Act, the Prohibition of Child Marriage Act, the Child Labor (Prohibition and Regulation) Act, and the Right to Education Act. These legal instruments aim to protect children from exploitation, abuse, and discrimination while also ensuring their access to education and other essential services.<sup>4</sup> Despite these efforts, challenges persist in ensuring the full realization of child rights in India. The persistence of poverty, inadequate access to quality education and healthcare, child labor, child trafficking, and the enduring nature of deep-seated social and cultural practices poses ongoing and considerable challenges. Addressing these challenges requires sustained efforts from the government, civil society organizations, and the broader community to create

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<sup>2</sup> Dr Savita Bhakhry, *Children in India and Their Rights*, 26–29.

<sup>3</sup> Constitution of India, HAQ : CENTRE FOR CHILD RIGHTS, <https://www.haqcrc.org/child-rights/constitution-of-india/> (last visited Jun 7, 2024).

<sup>4</sup> Child Protection | UNICEF India, <https://www.unicef.org/india/what-we-do/child-protection> (last visited Jun 6, 2024).

an environment that prioritizes children's best interests and holistic development. Collaborative efforts involving various stakeholders, including policymakers, law enforcement agencies, educational institutions, and grassroots organizations, are crucial to bridging the policy and implementation gap.

Awareness campaigns, capacity-building initiatives, and effective monitoring and reporting mechanisms play a vital role in promoting and protecting child rights in India. India's engagement with international frameworks on child rights and its domestic legal provisions demonstrate its commitment to upholding and advancing the rights of children. However, continued efforts, resources, and collective action are necessary to ensure that every child in India can enjoy their fundamental rights and reach their full potential.

## **STATEMENT OF PROBLEM**

The Indian constitution recognizes the vulnerabilities faced by children, and it provides provisions to safeguard their rights through the constitutional provisions. The constitution guarantees children's rights through provisions such as Article 15(3), which empowers the state to make special provisions for children. Article 24 stipulates the prohibition of employing children under the age of 14 years in hazardous occupations. Article 39(f) stipulates that the state must ensure that children are afforded opportunities and resources to develop in a healthy environment, with freedom and dignity.<sup>5</sup> Despite the above-mentioned constitutional provisions, there are many children in India who lack a proper and stable home and family environment, which adversely affects their well-being of their life and the proper upbringing of their lives, which is due to various socio-economic factors such as poverty, illiteracy, child labor, and exploitation. These children often find themselves in vulnerable situations, such as being exposed to abuse, neglect, and exploitation. Many children around the world lack a stable home and family environment due to various reasons such as poverty, conflict, parental abandonment, or death of parents. These children may experience homelessness, live in orphanages or foster care, or be raised by extended family members. The lack of a permanent, nurturing home and consistent parental guidance can have severe consequences on a child's development, mental health, education, and future prospects. Without a stable family structure, these children are at higher risk of abuse, exploitation, malnutrition, and lack of access to basic needs. Support systems, social services, and opportunities for adoption or fostering can assist in alleviating the challenges faced by these vulnerable children. According to a study conducted

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<sup>5</sup> Children Rights according to the Indian Constitution - Makkala Hakku, <https://www.makkalahakku.com/childrens-rights-according-to-the-indian-constitution.html> (last visited Jun 7, 2024).



by the Ministry of Women and Child Development, there are over 9,500 institutions providing care for more than 370,000 children in the country.<sup>6</sup>

In 2016-17, a staggering 3.7 lakh children were lodged in care homes across India, intended to provide shelter and care for those in vulnerable circumstances. This alarming figure highlights the vast number of minors lacking a stable family environment, potentially exposing them to numerous risks and challenges. Without a nurturing home and consistent parental guidance, these children face increased susceptibility to neglect, emotional trauma, disrupted education, and exploitation. The absence of a secure family structure can profoundly impact their overall development, mental well-being, and future prospects. Addressing this issue requires concerted efforts from authorities, social organizations, and society to prioritize the welfare and rights of these vulnerable children.<sup>7</sup>

The report by the Jena Committee on Child Care Institutions examines the Juvenile Justice Act's provisions regarding children deemed in need of care and protection. According to the Act, if a child's parents or guardians are found unfit or incapacitated to properly care for and ensure the child's safety and well-being by the designated committee or board, the child is classified as requiring care and protection. This acknowledges that some children may not have a stable, nurturing home environment essential for healthy development due to factors like abuse, neglect, or parental issues. In such cases, the Act allows interventions and alternative care arrangements to prioritize the child's best interests and rights, such as placement in foster care or children's homes, ensuring their basic needs and well-being are met when primary caregivers are unable to provide adequate care. "Upon examination, it was determined that there are 5,291 children within the age bracket of 0-6 years and 178,885 children within the age bracket of 7-18 years residing in Child Care Institutions and homes within this classification. It was observed that boys outnumbered girls by 17.2 percent. Notably, the states of Andhra Pradesh, Karnataka, Kerala, Maharashtra, and Tamil Nadu housed the largest number of such children." the report noted.<sup>8</sup>

The study is focused on assessing the extent to which childcare institutions have adhered to the directives established by the Supreme Court regarding their operations and the standards set forth by said institutions. This dissertation examines the pertinent legislation and directives

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<sup>6</sup> Devanshi Vaid, *Childcare Institutions: The Need for a New Approach*, INDIA DEVELOPMENT REVIEW (May 1, 2019), <https://idronline.org/childcare-institutions-the-need-for-a-new-approach/> (last visited Jun 6, 2024).

<sup>7</sup> 32% kids at shelter homes left there by single parents, THE TIMES OF INDIA, Jan. 21, 2019, <https://timesofindia.indiatimes.com/india/32-kids-at-shelter-homes-left-there-by-single-parents/articleshow/67617017.cms> (last visited Jun 7, 2024).

<sup>8</sup> 1.8 Lakh Children Living In Child Care Institutions, Parents Found Unfit:Report, <https://www.ndtv.com/india-news/1-8-lakh-children-living-in-child-care-institutions-parents-found-unfit-report-1981181> (last visited Jun 6, 2024).

under the Juvenile Justice Act, as well as the rules and guidelines governing childcare institutions.

## **HYPOTHESIS**

The existing legislation, legal, and structural framework do not combine with childcare institutions in India and especially in the State of Kerala. Compliances needed to run childcare institutions in India has been made very strict and stringent by the enactment of JJ act 2015. H

## **RESEARCH OBJECTIVES**

- I. To investigate the structural composition and current condition of child care institutions and juvenile homes in Kerala within the current framework in India.
- II. Critically assess the implementation of laws and policies, including judicial decisions and existing legislations, regarding the care institutions for children in Kerala.
- III. To address the challenges and issues encountered by children in Child Care Institutions (CCIs) and Juvenile Homes.
- IV. To examine in detail the important matter of closing down CCIs and how it impacts children residing there.
- V. To propose progressive socio-legal measures for better administration of these institutions and provide safeguards for children living in these homes.

## **RESEARCH QUESTIONS**

- I. Under the present legal system, what is the existing legal and structural framework that governs child care institutions?
- II. What is the existing legal, judicial and international conventions framework in the state of Kerala, and what is the status of its implementation?
- III. What are the major administrative or statutory reasons behind the shutting down of Child Care Institutions and children fleeing from Juvenile Homes in the state of Kerala?
- IV. What are the outcomes and effects on the children's access to healthcare, schooling, as well as their overall growth and advancement?
- V. What role does civil society play in addressing the closure of Child Care Institutions in Kerala?

## **RESEARCH METHODOLOGY**

The research methodology adopted in this research is both doctrinal and non-doctrinal method. The researcher has used secondary data like interviewing the children in childcare homes. The researcher used primary data from books, newspaper articles, blogs, and journals.

## **CHAPTERISATION**

### **I. INTRODUCTION**

This chapter gives an account of the need and significance of the study. This chapter also sets out the problem, objectives, hypothesis, and research questions.

### **II. CONSTITUTIONAL PROVISIONS**

This chapter gives an outline of the constitutional provisions for the enlightenment of children and the well-being of children in society by protecting and implementing laws. It is also guaranteed by the Juvenile Justice Act 2015, which states the particular provisions and laws for children.

### **III. CHILDCARE INSTITUTIONS AND JUDICIAL DEVELOPMENT ON JUVENILE JUSTICE**

This chapter outlines the need and purpose of childcare institutions and how they have been formed under the JJ Act; it also talks about the registration of childcare institutions and the working of the institutions, along with the help of judicial development on this matter.

### **IV. EMPIRICAL STUDY ON THE WORKING OF CHILDCARE INSTITUTIONS**

This chapter gives you an idea about how the laws and implementing and strengthening of the laws help the children in their real life rather than what is there in their laws and books and how they are implementing in the statute and the working of childcare institutions in the state of Kerala

### **V. CONCLUSION AND SUGGESTIONS**

This chapter outlines the conclusion and suggestions that need to do for the improvement of childcare institutions, it contains various recommendations or suggestions for the various authorities, it will help to improve the life of the child and work for the best interest of the child.

## **LITERATURE REVIEW**

### **I. Child Rights In India Law Policy And Practice**

### **II. Commentary On the Juvenile Justice Act**

- III. Study on Rehabilitation of children in conflict with law in India
- IV. SOS Children's Villages of India: J N Paul
- V. Centre To Act On Unregistered Child Care Institutions
- VI. 280 Child Care Institutions Closed Down After The Juvenile Justice Act
- VII. 38-Year-Old Priest Held For Sexual Abuse

## **REVIEW OF LITERATURE**

### **INTRODUCTION:**

The comprehensive review of literature on childcare institutions thoroughly examines the legal framework and research discoveries related to establishing, regulating, and managing organizations that offer care and support to children. This review delves into various legal frameworks, court rulings, and academic studies that shape our understanding of the legal environment surrounding childcare institutions. By analyzing these sources, our goal is to gain valuable insights into the legal requirements, best practices, and potential challenges associated with childcare institutions. Ultimately, this will contribute to the formulation of well-informed policies and practices in child welfare.

The legal frameworks and regulations governing child care institutions are essential for ensuring the protection and well-being of children. This comprehensive review will encompass an in-depth analysis of both national and international legislation, including child protection acts, regulations, and guidelines. It will delve into the specific legal responsibilities of these institutions, covering aspects such as licensing requirements, staffing standards, safety protocols, and the fundamental rights of children residing in these facilities. The aim of this review is to provide a detailed examination of the legal frameworks, with a focus on identifying key provisions as well as any potential gaps or areas in need of improvement.

The review will encompass an examination of not only the existing legal frameworks but also a comprehensive analysis of relevant case law and judicial decisions that have had a significant impact on the legal environment governing child care institutions. Through a thorough review of court judgments, we aim to gain valuable insights into how laws and regulations are interpreted and applied, as well as the potential implications for child care institutions. . This analysis will facilitate the identification of significant judicial patterns, the establishment of legal precedents, and the exploration of emerging legal issues within the field of child care institutions.

This comprehensive literature review not only covers the previously mentioned points but also delves into a wide-ranging body of empirical research and studies that specifically focus on

child care institutions. Our analysis includes an extensive array of scholarly articles, reports, and evaluations aimed at gaining profound insights into the numerous factors that have an impact on the quality of care provided in these institutions. These factors encompass staffing ratios, qualifications and training requirements for caregivers, the programs' effectiveness, and the profound effects of institutionalization on the development and overall well-being of the children under care. Our aim is to analyze the findings from these research projects in order to pinpoint the most effective methods backed by evidence. We intend to develop actionable recommendations to enhance the quality of care offered in childcare facilities.

## **BOOK:**

### **Child Rights In India Law Policy And Practice<sup>9</sup>**

This book analyzes the legal framework in India by examining court decisions and policy initiatives. It thoroughly investigates the roles of non-governmental organizations in advocating for legislative reforms to advance children's rights. The extensively revised third edition focuses on recent legal developments in India, including key acts such as the Juvenile Justice (Care and Protection of Children) Act, 2015; the new Central Adoption Resource Agency guidelines; the Right of Children to Free and Compulsory Education Act, 2009; and the National Food Security Act, 2013. The book aims to synthesize legal theory and field practice, emphasizing the pivotal role of legislation in empowering children and reflecting the state's commitment to promoting an ideal and progressive value system. Since 1989, there have been notable changes in law, policy, and practice concerning child rights worldwide, particularly after the implementation of the United Nations Convention on the Rights of the Child. This approach acknowledges children as rights-holders with their own capabilities and dignity, stressing the unity of their civil, political, economic, social, and cultural rights. The book contends that while strong legislation is essential, its effectiveness relies on proper implementation, court interpretations, and the watchfulness of civil society. It emphasizes that legal reforms must be accompanied by societal change to truly empower children.

### **Commentary On the Juvenile Justice Act<sup>10</sup>**

The content of this book delves into a comprehensive exploration of issues related to children. It specifically examines the Juvenile Justice (Care and Protection of Children) Act, 2015, and the legislative framework governing Kerala's Juvenile Justice (Care and Protection of Children) Rules, 2014. These laws are intended to bring about extensive amendments and consolidation

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<sup>9</sup> ASHA BAJPAI, CHILD RIGHTS IN INDIA: LAW, POLICY, AND PRACTICE (2018).

<sup>10</sup> SUMAN NALWA & HARI DEV KOHLI, COMMENTARY ON THE JUVENILE JUSTICE ACT (second ed.).

of legislation concerning children in conflict with the law and those in need of care and protection. The primary objective is to address their fundamental needs through appropriate care and protection, development, treatment, social reintegration, adoption of child-friendly methods, rehabilitation, and the resolution of matters in the best interests of the children.

## **ARTICLE:**

### **Study on Rehabilitation of children in conflict with law in India<sup>11</sup>**

The article provides an extensive overview of the legal framework and rehabilitation systems for children in conflict with the law in India. It traces the evolution of juvenile justice laws in India, starting from the Apprentices Act of 1850 to the latest Juvenile Justice (Care and Protection of Children) Act, 2015. The article highlights the key provisions of these acts, such as the establishment of observation homes, special homes, and juvenile justice boards, and outlines the roles of various stakeholders like the police, judiciary, social workers, and counselors in the rehabilitation process. It emphasizes the need for a comprehensive and child-friendly approach to address the developmental needs of these children and ensure their ultimate rehabilitation through various institutional mechanisms and individual care plans. However, the article lacks an analysis of the practical implementation and effectiveness of these rehabilitation programs and policies, which could be a potential research gap.

### **SOS Children's Villages of India: J N Paul<sup>12</sup>**

The article "SOS Children's Villages of India" by J N Kaul (1979) discusses the SOS Children's Villages movement in India, which provides family-like environments for orphaned and abandoned children. Started in 1949 by Austrian Dr. Herman Gmeiner for post-World War II destitute children, the movement expanded to India in 1964. Each village comprises about 20 families, with a dedicated 'mother' caring for up to nine children. The mothers, carefully selected and trained, manage their households independently and form genuine bonds with their 'adopted' children. Children attend local or village-run schools and are supported in their education and careers. The villages are managed by a voluntary national organization, funded by donations, sponsorships, and government grants. Despite its impact, the program currently serves only a small fraction of India's destitute children. The article concludes with plans to establish five more villages in 1979, the International Year of the Child. The research gaps the researcher found in this article provide a compelling overview of an innovative approach to child welfare, but it also reveals significant research gaps that demand interdisciplinary

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<sup>11</sup> Panduranga B and Dr. Pavitra R Alur Panduranga B, *Study on Rehabilitation of Children in Conflict with Law in India*, 6 JOURNAL OF EMERGING TECHNOLOGIES AND INNOVATIVE RESEARCH (JETIR) (2019).

<sup>12</sup> J N Kaul, *SOS Children's Villages of India*, 6 INDIA INTERNATIONAL CENTRE QUARTERLY 157 (1979).

investigation. Firstly, the long-term impact of the SOS model remains unquantified; longitudinal studies tracking educational attainment, career success, psychological well-being, and social integration of SOS children into adulthood are crucial for assessing the model's efficacy compared to traditional orphanages, foster care, or adoption. Secondly, while the article emphasizes the strong bonds between SOS mothers and children, it lacks an in-depth psychological analysis of these non-biological mother-child relationships. Studies on attachment styles, parenting methods, and the reciprocal psychological impacts on both children and mothers are needed to understand the nuances of these unique family dynamics. Thirdly, the article's brief mention of SOS children attending local schools hints at but does not explore the critical issue of community integration. Research is needed to understand local perceptions of SOS villages, the potential social stigma faced by the children, and the economic impact of these villages on surrounding communities. These gaps underscore the necessity for a multifaceted research approach involving psychologists to study attachment and well-being, social workers to assess family dynamics and community integration, economists to analyze local economic impacts, gender studies scholars to explore gender-specific challenges, and public policy experts to translate findings into scalable, culturally-sensitive child welfare policies. Such interdisciplinary research is vital not only for optimizing the SOS Children's Villages model in India but also for informing global approaches to providing family-like environments for orphaned and abandoned children.

## **NEWSPAPER:**

***Centre to act on unregistered child care institutions:*** by The Hindu on 17<sup>th</sup> September 2022.<sup>13</sup>

During the Lok Sabha session on December 16, 2022, the Minister for Women and Child Development, Smriti Irani, delivered a pivotal announcement. This particular directive was implemented to guarantee meticulous oversight and regulation of these facilities, with a main emphasis on ensuring the safety, health, and overall well-being of the children who are under their care. Minister Irani underscored the serious implications of non-compliance, emphasizing that failure to register could lead to the closure of non-compliant institutions. This unwavering approach served as a testament to the government's commitment to both implementing and enforcing this regulation. To prioritize the safety and security of children, it is imperative for district authorities, as well as law enforcement agencies, to conduct comprehensive background checks on organizations seeking to establish a Child Care Institution (CCI). Furthermore, the

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<sup>13</sup> The Hindu Bureau, *Centre to Act on Unregistered Child Care Institutions*, THE HINDU, Dec. 16, 2022, <https://www.thehindu.com/news/national/centre-to-act-on-unregistered-child-care-institutions/article66271090.ece> (last visited Jun 7, 2024).

screening of criminal records of individuals employed at these institutions was underscored by Union Minister for Women and Child Development, Smriti Irani, during her address in the Lok Sabha.

***280 child care institutions closed down after Juvenile Justice Act:*** by Shan A S Express News Service, on 26th September 2018<sup>14</sup>

The text is about the inadequate enforcement of the Juvenile Justice Act or the stricter guidelines and processes for accrediting such facilities prior to December 31st, 2017, and its impact, leading to the closure of 280 Child Care Institutions (CCIs) in Kerala. The state has witnessed the closure of approximately 280 child care institutions (CCIs) following the strict enforcement of the Juvenile Justice (JJ) Act by the Women and Child Development Department. The Supreme Court's directive to shut down all CCIs not registered under the JJ Act before March 31 has led to this extensive closure. The JJ Act mandates that CCIs provide a minimum living space of 40 sq ft for each inmate and a fixed number of wardens (one per every 10 children). The state has been instructed to establish inspection committees consisting of government representatives to conduct regular checks and social audits to ensure compliance. Under the provisions of the RTI Act, documents obtained from the Integrated Child Protection Scheme (ICPS) of the Women and Child Development Department reveal that Ernakulam reported the highest number of CCIs shut down, with 58 institutions ceasing operations. Kottayam followed with 36 closures, while Thiruvananthapuram and Thrissur districts each saw approximately 30 CCIs shut down. Before implementing the JJ Act, the state had approximately 1,200 functioning CCIs, of which only 817 were registered under the new act designed to facilitate better government monitoring of CCI operations.

***38-year-old Priest Held for Sexual Abuse:*** by the new Indian Express on 19<sup>th</sup> February 2016<sup>15</sup>

In recent reports from Kochi, a 38-year-old Christian priest named John Philipose, a native of Naranganam in Pathanamthitta, was arrested on charges of alleged sexual harassment against a resident of a child home located at Valayanchirangara near Perumbavoor. Mr. Philipose had been serving as the manager at the child home, which is under the administration of the Malankara Orthodox Syrian Church at Valayanchirangara. The arrest was based on the statement provided by the victim to Childline officials. Subsequently, the child shared the

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<sup>14</sup> Shan A. S, *280 Child Care Institutions Closed down after Juvenile Justice Act*, THE NEW INDIAN EXPRESS (2018), <https://www.newindianexpress.com/states/kerala/2018/Sep/26/280-child-care-institutions-closed-down-after-juvenile-justice-act-1877188.html> (last visited Jun 7, 2024).

<sup>15</sup> Express News Service, *38-Year-Old Priest Held For Sexual Abuse*, THE NEW INDIAN EXPRESS (2016), <https://www.newindianexpress.com/cities/kochi/2016/Feb/19/38-year-old-priest-held-for-sexual-abuse-894277.html> (last visited Jun 7, 2024).



details of the incident with the headmaster of the school they attend, leading to the involvement of Childline officials and eventual police intervention. The accused was presented before the court and subsequently remanded.

The news reports and associated articles provided the researcher with invaluable insights, allowing them to comprehend the various facets of the exploitation endured by children. These comprehensive sources shed light on the multidimensional nature of the challenges faced by minors subjected to such abusive practices. Through these materials, the researcher gained an in-depth understanding of the diverse forms of exploitation, ranging from physical and emotional abuse to economic exploitation and the deprivation of fundamental rights. The accounts detailed the profound impact on the victims' well-being, mental health, and overall development. Furthermore, the researcher could grasp the societal, cultural, and economic factors contributing to the perpetuation of these practices. The articles highlighted the complex interplay of poverty, lack of education, and deep-rooted societal norms that enable the exploitation of children. Additionally, the researcher gained insights into the legal and policy frameworks aimed at combating these issues and the efforts of various organizations and stakeholders working towards the protection and rehabilitation of affected children. Equipped with this comprehensive knowledge, the researcher could approach the subject matter with a holistic perspective, recognizing the intricate web of circumstances and challenges that must be addressed to tackle the exploitation of children in all its forms effectively.

## **CONCLUSION**

This comprehensive review delves into the legal aspects and research findings concerning child care institutions. By examining legal frameworks, case studies, and empirical research, the researcher aims to deepen our understanding of the legal landscape surrounding these institutions. This understanding will play a vital role in shaping policies, guiding regulatory efforts, and promoting the well-being and safeguarding of children. In this chapter, the researcher has introduced the main issues and topics to be discussed throughout the work, including references to relevant literature. The upcoming chapter will explore constitutional and other legal provisions aimed at strengthening childcare institutions. It will also discuss the Juvenile Justice Act in Kerala and the formation of child care institutions under this act, along with other relevant legislations pertaining to children and the definitions and meanings of children and children's homes.

## CHAPTER 2

### CONSTITUTIONAL AND OTHER PROVISIONS SECURING RIGHTS OF CHILDREN IN INDIA

#### 1.1 INTRODUCTION

In this chapter, the researcher will be addressing the constitutional provisions related to the rights of children, as well as delving into the interpretation of these provisions. Additionally, the researcher will explore the Juvenile Justice Act in Kerala and the establishment of child care institutions under this act. The discussion will also encompass other pertinent legislations concerning children, the definitions of children and children's homes, as well as the legal and policy instruments governing institutional care in India. Furthermore, the focus will be on the legislation enacted to improve the welfare of children in India.

#### II. CONSTITUTION OF INDIA AND ITS PROVISIONS SECURING RIGHTS OF CHILDREN IN INDIA

In India, the constitution recognizes children as citizens of the country and guarantees their rights. To ensure the welfare and betterment of children, the state has the authority to enact special laws.<sup>16</sup> In response to the need to safeguard and advance children's rights, several Indian states have enacted laws. The country's Constitution, which was established in 1950, incorporates most of the rights outlined in the UN Convention on the Rights of the Child as Fundamental Rights and Directive Principles of State Policy.<sup>17</sup> This demonstrates the country's commitment to protecting children's rights and providing them with a safe and nurturing environment.

The Constitution of India contains several provisions that aim to secure the rights of children in India.<sup>18</sup> Here are some key provisions relating to fundamental rights and directive principle of state policy:

1. Right to Equality (Article 14)<sup>19</sup>:

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<sup>16</sup> NHRC\_Children\_Issues\_27122016.pdf, [https://nhrc.nic.in/sites/default/files/NHRC\\_Children\\_Issues\\_27122016.pdf](https://nhrc.nic.in/sites/default/files/NHRC_Children_Issues_27122016.pdf) (last visited Jun 12, 2024).

<sup>17</sup> Constitution of India, HAQ : CENTRE FOR CHILD RIGHTS, <https://www.haqrc.org/child-rights/constitution-of-india/> (last visited Jun 7, 2024).

<sup>18</sup> Ibid.

<sup>19</sup> Article 14 in Constitution of India, <https://indiankanoon.org/doc/367586/> (last visited Jun 12, 2024).

This fundamental right ensures that all children, irrespective of their caste, creed, or gender, are treated equally before the law.

2. Right to Education (Article 21A)<sup>20</sup>:

This article, introduced by the 86th Constitutional Amendment Act in 2002, provides free and compulsory education to all children between the ages of 6 and 14

3. Prohibition of trafficking of human beings and forced labor (Article 23)<sup>21</sup>

The trafficking of human beings forced labor, and any form of coerced begging is strictly prohibited. Anyone found in violation of this rule will be subject to punishment in accordance with the law.<sup>22</sup>

4. Right against Exploitation (Articles 23 and 24)<sup>23</sup>:

Article 23 of the law strictly prohibits the act of trafficking human beings, including children, for any immoral or exploitative purposes. This includes but is not limited to activities such as forced labor, commercial sexual exploitation, and any other forms of exploitation or abuse. Article 24 prohibits the employment of children below the age of 14 in hazardous occupations and factories.

5. Right to Freedom of Religion (Article 25-28)<sup>24</sup>:

These articles also ensure the freedom to profess, practice, and propagate any religion for children.

6. Right to Nutrition and Early Childhood Care (Article 39(f))<sup>25</sup>:

The principle outlined here emphasizes the fundamental need to ensure that children are afforded the necessary opportunities and resources to grow and develop in a manner that fosters their physical and emotional well-being, while also preserving their sense of autonomy and respect. Furthermore, it underlines the critical importance of safeguarding children and young people from exploitation and from being subjected to conditions of neglect, both in terms of their moral and material welfare.

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<sup>20</sup> Constitution of India 1949

<sup>21</sup> Constitutional Law of India - Chapter 9 - Right against exploitation, <http://student.manupatra.com/Academic/Abk/Constitutional-Law-of-India/CHAPTER-9.htm> (last visited Jun 12, 2024).

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> Constitution of India 1950

<sup>25</sup> Constitution of India, HAQ : CENTRE FOR CHILD RIGHTS, <https://www.haqrc.org/child-rights/constitution-of-india/> (last visited Jun 12, 2024).

## 7. Right to Early Childhood Care and Education (Article 45)<sup>26</sup>:

The directive principle mandates that the state must establish and maintain accessible and high-quality early childhood care and education programs for all children until they reach the age of six years, ensuring that every child has the opportunity to receive a solid foundation for their future learning and development.

Acknowledging that children in India possess the same fundamental legal rights as adult citizens is crucial for ensuring their protection, dignity, and overall well-being. The Constitution of India recognizes children as equal citizens and provides specific provisions to safeguard their rights.<sup>27</sup> There are some points which mention about the importance of upholding children's rights:

1. Rights are inalienable: Children's rights are inalienable and inherent, regardless of their age, gender, socio-economic status, or any other factor. These rights are not granted by the state but are inherent to their human dignity.
2. Equal protection: Children are entitled to equal protection under the law, just like adults. Discriminating against children or denying them their fundamental rights would be a violation of the constitutional principles of equality and non-discrimination.<sup>28</sup>
3. Best interests of the child: The principle of the best interests of the child is a cornerstone of child rights. All actions and decisions concerning children should prioritize their overall well-being, development, and protection<sup>29</sup>.
4. Vulnerability and dependence: Children are more vulnerable and dependent on others for their care, protection, and development. Upholding their rights is essential to ensure that they are not subjected to exploitation, abuse, or neglect<sup>30</sup>.
5. Recognizing children's rights, including the right to express their views freely in all matters affecting them, empowers them to participate in decisions that affect their lives. This encompassing approach is in line with the understanding that as children grow and develop, their ability to make informed choices and engage in decision-making processes also evolves.<sup>31</sup>

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<sup>26</sup> *Id.*

<sup>27</sup> NHRC\_Children\_Issues\_27122016.pdf, *supra* note 1.

<sup>28</sup> *Id.*

<sup>29</sup> Best Interest of Child – Rights of Women and Children, <https://ebooks.inflibnet.ac.in/hrdp05/chapter/best-interest-of-child/> (last visited Jun 12, 2024).

<sup>30</sup> Shilpa Khanna Arora et al., *Defining and Measuring Vulnerability in Young People*, 40 INDIAN J COMMUNITY MED 193 (2015).

<sup>31</sup> CCYP-Empowerment-and-participation-guide-for-web.pdf, <https://ccyp.vic.gov.au/assets/resources/Empowerment-and-Participation-Guide/CCYP-Empowerment-and-participation-guide-for-web.pdf> (last visited Jun 12, 2024).

*“Fundamental rights, if violated, can be brought before the courts. Directive Principles lay down the guidelines the Government have to follow. If they are violated, they cannot be taken before the courts, but because of judicial interpretation, many of the directive principles have now become enforceable through legal actions brought before courts. Our constitution also provides various rights to the children.”<sup>32</sup>*

The Preamble of the Indian Constitution guarantees that justice, liberty, equality, and fraternity are provided to all citizens, without discrimination based on age, including children. Article 14 of the Constitution of India enshrines the principle of equality before the law and provides for equal protection under the law. The said provision confers the power upon the State to enact special legal provisions for the protection and welfare of children. It is a constitutional mandate for the government to ensure the welfare of children. It is, therefore, incumbent upon the government to take all necessary measures to ensure the protection and well-being of children.<sup>33</sup> This responsibility should be taken seriously and with utmost care, as children are the future of the nation<sup>34</sup>. The legislation that concerns children is a crucial area of focus as it caters to the most vulnerable segment of society. As such, it is instrumental in safeguarding the interests of this group and ensuring their welfare and protection. In light of the foregoing, it is imperative to underscore the importance of this subject matter and the need to accord it the attention and resources it deserves. “Children’s rights” refers to the legal framework governing the relationship between children and the law. This framework is designed to ensure that children receive the necessary protection and support to lead a safe and healthy life. At the intersection of these two domains, the concept of children's rights emerges, reflecting the need to balance legal obligations with the child's best interests<sup>35</sup>.

As citizens of our country, children have certain fundamental rights outlined in key constitutional provisions. These rights are significant and must be respected. By upholding children's rights and treating them with respect and equality, India can foster an environment where children can develop their full potential, free from discrimination, exploitation, and abuse<sup>36</sup>. It is the state, society, and families' collective responsibility to ensure that children's rights are protected and promoted at all times.

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<sup>32</sup> Protection of children’s human rights in India. (n.d.). <https://www.legalserviceindia.com/legal/article-11-protection-of-childrens-human-rights-in-india.html> (last visited on 20 March 2024)

<sup>33</sup> Article 14 - Equality Before Law and Equality protection of the law, <https://articles.manupatra.com/article-details/Article-14-Equality-Before-Law-and-Equality-protection-of-the-law> (last visited Jun 12, 2024).

<sup>34</sup> *Id.*

<sup>35</sup> Nicoletta Fabbri, *HAQ: Centre for Child Rights*.

<sup>36</sup> 10 Fundamental Rights of a Child in India - Ensuring a Bright Future, CRY - GIVE CHILDREN A HAPPY, HEALTHY AND CREATIVE CHILDHOOD | CRY - INDIA’S LEADING NON-PROFIT (2024), <https://www.cry.org/blog/rights-of-child-in-india/> (last visited Jun 12, 2024).

### III. Definitions and Meaning

The Juvenile Justice (Care and Protection of Children) Act, which was passed in 2015, classifies children into two categories: 'child in conflict with law' and 'child in need of care and protection.' The former refers to children who have committed an offence, and the latter refers to children who are in need of special care and protection due to their vulnerable situation. defined Sec. 12,13, 14 respectively as follows:

12. — *“child” means a person who has not completed eighteen years of age;*

13. — *“child in conflict with law” means a child who is alleged or found to have committed an offence and who has not completed eighteen years of age on the date of commission of such offence;*

14. — *“child in need of care and protection” means a child —*

*i. who is found without any home or settled place of abode and without any ostensible means of subsistence; or*

*ii. who is found working in contravention of labour laws for the time being in force or is found begging, or living on the street, or*

*iii. who resides with a person (whether a guardian of the child or not) and such person —*

*a. has injured, exploited, abused or neglected the child or has violated any other law for the time being in force meant for the protection of child; or*

*b. has threatened to kill, injure, exploit or abuse the child and there is a reasonable likelihood of the threat being carried out; or*

*c. has killed, abused, neglected or exploited some other child or children and there is a reasonable likelihood of the child in question being killed, abused, exploited or neglected by that person; or*

*iv. who is mentally ill or mentally or physically challenged or suffering from terminal or incurable disease, having no one to support or look after or having parents or guardians unfit to take care, if found so by the Board or the Committee; or*

*v. who has a parent or guardian and such parent or guardian is found to be unfit or*

*incapacitated, by the Committee or the Board, to care for and protect the safety and well-being of the child; or*

- vi. *who does not have parents and no one is willing to take care of, or whose parents have abandoned or surrendered him, or*
- vii. *who is missing or run away child, or whose parents cannot be found after making reasonable inquiry in such manner as may be prescribed; or*
- viii. *who has been or is being or is likely to be abused, tortured, or exploited for the purpose of sexual abuse or illegal acts; or*
- ix. *who is found vulnerable and is likely to be inducted into drug abuse or trafficking or*
  - x. *who is being or is likely to be abused for unconscionable gains; or*
- xi. *who is victim of or affected by any armed conflict, civil unrest, or natural calamity; or*
  - xii. *who is at imminent risk of marriage before attaining the age of marriage and whose parents, family members, guardian, and any other persons are likely to be responsible for solemnisation of such marriage*<sup>37</sup>.

*Under Sec.34, Children's Homes: (1) "The State Government may establish and maintain either by itself or in association with the voluntary organisations, children's homes, in every district or group of districts, as the case may be, for the reception of child in need of care and protection during the pendency of any inquiry and subsequently for their care, treatment, education, training, development, and rehabilitation.*

*(2) The State Government may, by rules made under this Act, provide for the management of children's homes, including the standards and the nature of services to be provided by them, and the circumstances under which and the manner in which, the certification of a children's home or recognition to a voluntary organisation may be granted or withdrawn.*

*(3) Without prejudice to anything contained in any other law for the time being in force, all institutions, whether State government-run or those run by voluntary organizations 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 this Act in such manner as may be prescribed"*<sup>38</sup>.

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<sup>37</sup> Juvenile Justice (Care and Protection of Children) Act, 2015, No.6, Acts of Parliament, 2016(India).

<sup>38</sup> The Juvenile Justice (Care and Protection of Children) Act, 2000 No.56, Acts of Parliament, 2016(India).

#### **IV. THE JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2015**

The Indian government enacted the National Children's Act in 1960 to safeguard children's rights. Later, this act was replaced by the Juvenile Justice Act in 1986. The Juvenile Justice Act of 1986 is a comprehensive legislation that ensures the protection and care of children in conflict with the law. It lays down the procedures for apprehending, detecting, and rehabilitating juvenile delinquents. The Juvenile Justice Act of 1986 has been amended several times since its inception to keep up with society's changing needs and demands. The legislation is a fundamental part of India's legal system aimed at safeguarding and promoting the well-being of children. In 1992, India officially endorsed the United Nations Convention on the Rights of the Child (UNCRC), a major global agreement dedicated to ensuring the protection of children's rights.<sup>39</sup> To comply with this convention's obligations, the previous legislation enacted in 1986 was repealed and replaced by the Juvenile Justice (JJ) Act of 2000. This act represented a comprehensive overhaul of the previous legislation and introduced new procedures and guidelines for dealing with children in conflict with the law. Subsequently, the Juvenile Justice Act of 2000 was replaced by the Juvenile Justice (Care and Protection of Children) Act of 2015, which came into effect on January 15, 2016. This act marked a significant step towards ensuring the welfare and protection of children in India and superseded the previous legislative framework. The legislation encompasses provisions for the care and protection of children who are residing in state custody, ensuring the provision of education to all children, regardless of their origin, race, gender, abilities, or disabilities, and access to healthcare and advocacy. The Act addresses a wide range of issues related to juvenile delinquency and the legal processes that involve children. It ensures that children in the criminal justice system receive fair treatment, proper legal representation, and access to effective rehabilitation services. Additionally, the Act distinguishes between two groups of children: those who have committed offenses and those who require care and protective services.

"Children in Conflict with the Law" is a term used to describe minors who are accused of engaging in criminal behaviour and are consequently involved with the legal system. These children are under the age of 18 and could have committed anything from minor offenses to serious crimes. The Juvenile Justice (Care and Protection of Children) Act, 2015 in India governs the treatment and rehabilitation of these children. The Act emphasizes a child-friendly

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<sup>39</sup> UNCRC\_2020.pdf, [https://nhrc.nic.in/sites/default/files/UNCRC\\_2020.pdf](https://nhrc.nic.in/sites/default/files/UNCRC_2020.pdf) (last visited Jun 12, 2024).



and holistic approach, providing young offenders with a supportive and corrective environment to help them reintegrate into society and lead productive lives.

The term “child in need of care and protection” refers to a child who requires assistance due to various challenging circumstances. These circumstances include being homeless or lacking the means of subsistence, engaging in unlawful labour, living on the streets or resorting to begging, residing with an abusive guardian, being at risk of drug abuse or trafficking, experiencing unconscionable exploitation, suffering from incurable diseases or disabilities, being a victim of armed conflict or natural disasters, or facing the risk of early marriage.

## **V. JUVENILE JUSTICE (CARE AND PROTECTION) MODEL RULES 2016**

Child protection is a crucial endeavour aimed at shielding children from any actual or perceived threats to their safety, physical and emotional well-being, and the preservation of their childhood. The primary objective is to mitigate their exposure to harm and to guarantee that no child is left without adequate support. Furthermore, special emphasis is placed on providing additional care and attention to children who are considered to be more vulnerable, although it is important to underscore that protection is a fundamental right for all children. Some rules mentioned in the Juvenile Justice Care and Protection Model Rules 2016 ensure the importance of childcare institutions for the child's best interest.

Rule 21 says about the manner of the registration of childcare institutions<sup>40</sup> where it says about the institutional care services for children in need of care and protection or children in conflict with the law and also says about how the institutions must take care of children's wellbeing like health, education, boarding, and vocational facilities and rehabilitation as per the act in the form mentioned in the act and it also strictly says about the state government will not grant provisional registration for those institutions which did not comply the rules and regulations of the act and they will not grant them the license and as well as the registration of the institutions and the decision of the renewal of institutions shall be disposed within 60 days and decision and it will based on the annual review which is done in the end of the year.

Rule 25 says about the after care of children leaving institutional care<sup>41</sup> where it is comprehensive program for children leaving Child Care Institutions upon attaining the age of eighteen. The State Government is required to prepare a program that provides education, employable skills, placement, and temporary accommodation to facilitate their reintegration

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<sup>40</sup> JUVENILE JUSTICE (CARE AND PROTECTION) MODEL RULES 2016

<sup>41</sup> Id.

into society. Children can avail after-care facilities till the age of twenty-one, or in exceptional cases, up to twenty-three years, as ordered by the relevant authorities. The District Child Protection Unit maintains a list of organizations and individuals interested in providing after-care services, such as education, medical support, nutrition, and vocational training. The program includes provisions for community group housing, stipends or scholarships, skill training and placement, creative outlets, loans and subsidies for entrepreneurial activities, and encouragement towards self-sustenance. The authorities monitor the effectiveness of the after-care program and its utilization for the intended purposes, ensuring the progress and rehabilitation of the children.

Rule 26 says that the management and monitoring of childcare institutions<sup>42</sup> outlines the guidelines for determining the personnel strength and requirements for staff in Child Care Institutions. The staff strength is based on the duties, posts, working hours, and the category of children they cater to. The person in charge oversees and assigns specific duties to the staff, ensuring compliance with statutory requirements. The number of staff positions is proportional to the institution's capacity, with only female staff appointed in institutions housing girls. Background checks and police verification are mandatory for all staff members to ensure they have not been involved in any criminal, immoral, or child-related offenses. Institutions housing infants must have provisions for ayahs and paramedical staff. Security personnel, preferably ex-servicemen or retired paramilitary personnel, are deployed based on the institution's requirements, considering the children's strength, age groups, mental and physical status, and the need for segregation based on the nature of offenses. The security personnel should be adequately trained to handle crisis situations, control violence, conduct searches, and ensure security surveillance, but without carrying arms or guns.

Rule 29 says about the physical infrastructure, emphasizes the importance of maintaining separate premises for children in conflict with the law and those in need of care and protection.<sup>43</sup> It outlines specific criteria for accommodation, including separate Child Care Institutions (CCIs) for girls and boys, as well as classification and segregation based on age, nature of offenses (for juveniles in conflict with the law), and mental and physical status. Adequate norms for building construction, including non-slippery flooring, proper lighting, ventilation, heating, cooling, and age-appropriate and disabled-friendly toilet facilities, are mandated. The CCIs should have adequate water supply, first-aid kits, fire extinguishers, dormitories, rooms for vocational training, recreation, counselling, and storage. Regular inspections of electrical installations and proper storage and inspection of food are essential. Facilities and equipment

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<sup>42</sup> JUVENILE JUSTICE (CARE AND PROTECTION) MODEL RULES 2016

<sup>43</sup> Ibid.

should cater to the needs of differently-abled children. Additionally, the CCIs should be equipped with logistical and functional items such as computers, photocopiers, printers, telephones with internet access, furniture, and projectors. The overall environment should be child-friendly and should not resemble a jail or lock-up.

Rule 30 talks about clothing, bedding, toiletries, and other articles that outline comprehensive guidelines for providing appropriate clothing, bedding, and miscellaneous items to children residing in child care institutions (CCIs).<sup>44</sup> These guidelines take into account factors such as climatic conditions, age, and gender-specific needs. Clothing and bedding must conform to prescribed scales and be suitable for the local climate, ensuring the children's comfort and protection. A structured approach is outlined for providing miscellaneous items like slippers, shoes, school uniforms, bags, stationery, and handkerchiefs, catering to the children's daily needs and educational requirements. Each child is entitled to receive a new suit once every three years, allowing for formal attire as their clothing needs change with growth. The clothing and dress code are designed to be gender-specific and age-appropriate, acknowledging the varying needs of boys and girls across different developmental stages. Separate provisions are made for night clothing and bedding in hospital facilities attached to the CCIs, ensuring comfortable and hygienic sleeping arrangements for children receiving medical care. Toiletries like oil, soap, broomsticks, and mosquito repellent machines are provided according to specified scales, contributing to maintaining good hygiene and living conditions. The guidelines aim to create a comfortable and conducive environment for the children by providing essential clothing, bedding, and miscellaneous items that cater to their basic needs while considering factors such as climate, gender, age, and specific requirements like hospital stays.

Rule 31 about sanitation and hygiene outlines the essential facilities and maintenance requirements for ensuring a healthy and hygienic living environment in every Child Care Institution (CCI)<sup>45</sup>. Firstly, it emphasizes the provision of sufficient treated drinking water through water filters or RO systems installed at multiple locations like the kitchen, dormitories, and recreational areas for easy access. Adequate water supply, including hot water, must be available for bathing, washing clothes, and maintaining cleanliness throughout the premises. Proper drainage systems and arrangements for garbage disposal are crucial, along with measures to protect against mosquitoes through using nets or repellents and annual pest control measures. The CCIs must have well-lit and airy toilets and bathrooms with proper fittings, in the proportion of at least one toilet for every seven children and one bathroom for every ten children. Dedicated spaces for washing and drying clothes, with washing machines where

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<sup>44</sup> JUVENILE JUSTICE (CARE AND PROTECTION) MODEL RULES 2016

<sup>45</sup> *Ibid.*

possible, are mandatory. The kitchen area must be clean, fly-proof, and separate from the utensil washing area. Regular sunning of bedding and clothes, daily sweeping and wiping of floors, and twice-daily cleaning of toilets and bathrooms are essential. Proper washing of vegetables and fruits, hygienic food preparation practices, and cleaning of kitchen slabs, floors, and gas stoves after every meal are required. The CCIs must have a clean and pest-proof store for food articles and other supplies, and beddings must be disinfected annually. In case of contagious or infectious diseases, fumigation of sick rooms or isolation rooms is necessary after discharge. Maintaining cleanliness in the Medical Centre is also a priority. The purpose of these guidelines is to establish and maintain an environment that ensures the safety and health of the children, addressing their physical, mental, and emotional well-being.

Rule 32 talks about the daily routine: the guidelines mandate that every child care institution (CCI) must establish a well-structured daily routine for the children, which is developed in consultation with the Children's Committees.<sup>46</sup> This routine should be prominently displayed throughout the CCI premises. The daily schedule should promote a regulated and disciplined lifestyle, emphasizing personal hygiene and cleanliness. It must incorporate physical exercise, yoga, educational classes, vocational training, organized recreational activities, games, moral education sessions, group activities, prayer, and community singing. Special programs and celebrations should be planned for Sundays, holidays, national festivals, and birthdays, creating a positive and engaging environment. The daily routine aims to holistically address the children's physical, educational, vocational, recreational, moral, and spiritual needs, fostering their overall growth and development within a structured and nurturing environment.

Rule 33 says that the nutrition and diet scale sets guidelines for a mandate that Child Care Institutions (CCIs) must follow a strict nutrition and diet scale to ensure the children receive a balanced and varied diet.<sup>47</sup> Children shall be provided four meals a day, including breakfast, with the menu prepared in consultation with nutritional experts and children's committees to adhere to minimum nutritional standards and offer variety. Special meals are permitted on holidays, festivals, and celebrations, while infants and sick children shall receive specialized diets as per medical advice. Individual nutritional needs must be considered, including iron and folic acid supplements. Variations in the diet based on seasonal and regional factors, such as alternating lentil varieties, providing alternative protein sources for vegetarians, including leafy vegetables weekly, and offering seasonal fruits, are encouraged. The person in charge may make temporary dietary alterations when necessary without exceeding the prescribed scale. Special

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<sup>46</sup> JUVENILE JUSTICE (CARE AND PROTECTION) MODEL RULES 2016.

<sup>47</sup> Ibid.

lunches or dinners shall be provided on national festivals, local festivals, and the CCI's Annual Day, promoting a balanced and diverse nutritional intake for the children's overall well-being.

Rule 34 says about the medical care<sup>48</sup> outlines the medical and healthcare facilities that must be provided in Child Care Institutions (CCIs). It mandates that a medical officer should be available on-call for regular medical check-ups and treatment of children. A nurse or paramedic must be available round the clock. Each child should undergo a medical examination within 24 hours of admission, before transfer, and regular monthly check-ups. Medical records, including weight, height, illnesses, treatments, and physical or mental issues, should be maintained. Facilities for quarterly medical check-ups, including dental, eye, and skin screening, should be available. CCIs must have first-aid kits and trained staff, arrange for immunization, take preventive measures during disease outbreaks, and provide constant medical supervision for sick children. Surgical interventions require parental consent, except in emergencies. Regular counselling, mental health interventions, and referrals to specialized centers should be provided. Drug de-addiction and rehabilitation programs should be arranged as needed. Baseline investigations like blood tests, HIV, hepatitis, and addiction screening should be conducted upon entry. Pregnancy tests and procedures under the Medical Termination of Pregnancy Act should be facilitated for victims of sexual offences. Special care, medical, psychiatric, and psychological support should be provided for children with special needs. Girls who have attained puberty should undergo health assessments for iron deficiency, with necessary dietary plans and medicines prescribed.

Rule 35 mentions mental health<sup>49</sup> and creates an abuse-free and enabling environment in Child Care Institutions (CCIs) to help children regain confidence and cope with their situations. All staff involved in childcare must facilitate a supportive environment and collaborate with therapists. Milieu-based interventions, which provide an enabling culture and environment to discover each child's abilities, choices, and right to decision-making, and individual therapy as a specialized mental health intervention, are essential for every child. CCIs must have trained counsellors or collaborate with external agencies to provide regular individual therapy. Recommendations from mental health experts must be maintained in case files. Children cannot be administered medication for mental health issues without evaluation and diagnosis by trained professionals, and only trained medical staff can administer medicines, not other home staff. The primary goal is to establish an environment that fosters care and support, offering suitable therapeutic interventions, and adhering to the correct procedures for mental health assistance and the management of medication.

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<sup>48</sup> JUVENILE JUSTICE (CARE AND PROTECTION) MODEL RULES 2016

<sup>49</sup> Ibid.

Rule 36 mentions education outlines that all institutions must ensure the provision of age-appropriate and ability-based education to every child, whether within the institution premises or outside, through a range of opportunities like mainstream inclusive schools, bridge schools, open schooling, non-formal education, and customized learning options as needed.<sup>50</sup> Extra coaching, tutoring, and support from specialized trainers and experts must be facilitated for school-going children and those with special needs, including identification, assessment, and assistance for learning disorders. Regularity of education programs and children's attendance is mandatory. Children should have access to scholarships, grants, schemes, and sponsorships to support their educational needs and progress.

Rule 37 says about vocational training where Every Child Care Institution must provide gainful vocational training to children based on their age, aptitude, interest, and ability. The training should include occupational therapy, skill-building, and interest-based components aimed at securing suitable job placement after completion. It must be provided either within the institution or at an external, preferably government-recognized institute that will issue a certificate upon course completion. If training occurs off-premises, children must be escorted with proper security, especially those at risk. Detailed records must be kept on each child's attendance and progress, with quarterly reports submitted to the relevant authorities like the Board, Committee, or Children's Court. The overarching goal is to equip children through tailored vocational programs that lead to gainful employment opportunities.

Rule 38 recreational facilities says about the Child Care Institutions have to offer a comprehensive array of recreational facilities and activities to foster the holistic development of children under their care<sup>51</sup>. These should encompass indoor and outdoor games, yoga, meditation, music, television, picnics, educational and cultural outings to places like museums and zoos, gardening with technical guidance, and a well-equipped child-friendly library with age-appropriate reading materials in various formats, which is mentioned in the rule and it also Engaging recreational pursuits like music, dance, and art therapy should be incorporated to aid in the healing process. To nurture talents and celebrate festivals, cultural events, and sports competitions must be organized quarterly. Institutions should allocate adequate space for outdoor sports and gardening activities. While maintaining regularity, support from external organizations can be leveraged to facilitate these recreational programs. Comprehensive reports documenting the implementation and impact of these initiatives must be submitted every quarter to the relevant authorities overseeing child welfare.

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<sup>50</sup> JUVENILE JUSTICE (CARE AND PROTECTION) MODEL RULES 2016

<sup>51</sup> Ibid.

Rule 40 mentions the children's committee where it mentions in which every Child Care Institutions must facilitate the formation of Children's Committees for different age groups (6-10, 11-15, 16-18 years), comprised solely of children elected through a democratic process<sup>52</sup>. These committees should actively participate in improving institutional conditions, reviewing care standards, planning routines/diets/activities, promoting mutual support during crises, reporting abuse, and creatively expressing views. Monthly committee meetings must be held, with proceedings documented and presented to the Management Committee. Adequate resources, space, guidance from the person in charge, and potential assistance from local organizations/child experts should be provided. External entities can support activities like elections, framing rules, record maintenance, and innovative initiatives. The Management Committee must regularly review the functioning of these Children's Committees through reports from the person in charge and take necessary actions to ensure children's active involvement in decision-making and well-being, as well as providing a platform for their voices within the institutional setup.

Rule 41 mentions about the inspection, which will be conducted in a regular basis in which it will conduct in state and district wise also and which ensures the child in the institution and also the state inspection committee and as well as the district inspection committee will visit the children and get feedback for them for well-being for the child and on the same time if it is found any violation it will take the necessary steps and follow up action on the report of the inspection committee<sup>53</sup>.

Rule 79 mentions if a child wants to get released from the child care institution like a person in charge of various functions, and also sets the guidelines for ensuring a systematic and humane release process for children from Child Care Institutions (CCIs) upon completion of their ordered period of stay<sup>54</sup>. The person in charge must diligently maintain a roster documenting cases of children due for release on the expiry of their stipulated stay as ordered by the relevant authorities (Board, Committee, or Children's Court). Also, timely information about the child's release date must be communicated to their parent(s) or guardian(s), who should be called to the CCI to take custody on the appointed date, with the CCI bearing the actual travel expenses for the parent(s)/guardian(s) and the child, if necessary. In situations where the parent(s) or guardian(s) fail to arrive on the scheduled date, the child shall be escorted back to them by CCI staff, with female escorts accompanying girl children to ensure a safe handover of custody. At the time of release or discharge, each child may be provided with a set of suitable clothing and

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<sup>52</sup> JUVENILE JUSTICE (CARE AND PROTECTION) MODEL RULES 2016Ibid.

<sup>53</sup> Ibid.

<sup>54</sup> Ibid.

essential toiletry items to meet their basic needs. Furthermore, upon attaining the age of 18 years, eligible children may be placed in an after-care program, subject to their personal consent and the approval of the concerned authorities. In the event that the scheduled release date for the child coincides with a Sunday or a public holiday, the child will be permitted to be discharged on the preceding day. It is essential to ensure that appropriate documentation is recorded in the discharge register to authorize early discharge. The person in charge holds the authority to order the payment of subsistence money to the child at rates fixed by the State Government, along with railway and/or road travel fares, as applicable. In cases where a girl child has no place to go after release and requests a temporary extension of her stay at the CCI beyond the ordered period, the person in charge may allow her continued stay for a limited duration, subject to the approval of the relevant authorities. This provision aims to provide a transition period until suitable long-term arrangements can be made for the girl child's accommodation and well-being after leaving the CCI.

The above-mentioned provisions and rules mention about how the institutions should work for the well-being of the child and also it mentions that how it should be followed and Guidelines ensure how a child care institutions should work and which will not affect the child in ca of mental health, education, and social well-being and also it mentions about the mental health of the child in the institutions and if any child is in violations of the rules mentioned the rules it will take necessary action and work for the well being of the child, and it ensures that the child should happily live in the institutions and also it says about the periodic check-up in the institutions which clearly mentions about that there is a higher authority in the well maintaining and to look after the child and work in the best interest of the child.

## **VI THE KERALA JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) RULES, 2014**

The Kerala Juvenile Justice (Care and Protection of Children) Rules, 2014, are a comprehensive set of regulations formulated by the Government of Kerala. These rules are designed to provide an extensive framework for the care, protection, treatment, development, and rehabilitation of children who are in conflict with the law or in need of care and protection. The regulations have a significant impact on childcare institutions in Kerala, as they cover a wide range of aspects including the establishment, management, monitoring, and standards of these institutions. By addressing these various components, the rules aim to ensure the proper functioning and oversight of the institutions responsible for the well-being of children. Every aspect of the children's welfare is carefully considered within these rules, reflecting the commitment to safeguard and nurture the most vulnerable members of society.



Section 2 (k) mentions about the individual care plan for the child in the institutions, and there will be having a separate record for the child in the institutions and in that record, it says about the child's background, well-being, educational records, and as well as everything which is linked to the child in the institution.<sup>55</sup> It also outlines that it has a comprehensive development plan that must be formulated for each juvenile or child based on their specific age, gender, needs, and case history through consultation with the child and their biological parents, if available. The primary aim is to assist individuals in rebuilding their confidence, self-respect, and sense of worth. This involves providing guidance and support to help them develop the skills and mindset needed to become responsible and contributing members of society, and this support continues until they reach the age of 18. This holistic plan should comprehensively address the child's health, emotional, psychological, educational, training, leisure, creativity, play, attachment, and relationship needs.<sup>56</sup> It must provide protection from all forms of abuse, neglect, and maltreatment while facilitating social mainstreaming. The plan should include follow-up support post-release/restoration, rehabilitation for differently-abled and mentally challenged children, psycho-social rehabilitation for sexually abused children, and de-addiction or de-toxification treatment where relevant. Through this participatory approach involving the child and parents, the development plan aims to nurture the overall well-being, rehabilitation, social integration, and equip the juvenile or child with necessary skills and support to become a responsible member of society<sup>57</sup>.

Chapter III in the rules mentions about the juvenile justice board<sup>58</sup> where it says that there are one or more juvenile justice boards in every district and it says that it has a judicial magistrate of the first class as the principal magistrate and along with the two social workers, and where it has one woman as social worker and in every bench it is compiled by code of criminal procedure 1973 and also it says that in consultation with the High Court, the Government of Kerala shall designate a Judicial Magistrate of First Class, preferably a woman, with special knowledge or training in child psychology or child welfare, as the Principal Magistrate of the Juvenile Justice Board. In the absence of a suitable Principal Magistrate with the required expertise, the State Government shall provide necessary short-term training in child psychology or child welfare to the appointed Magistrate.<sup>59</sup> The State Government shall appoint two social workers, at least one of whom shall be a woman, as members of the Board. These social workers shall be appointed based on the recommendations of a Search/Selection Committee set up under the relevant rules. The Government shall ensure that all members of the Juvenile Justice Board, including the

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<sup>55</sup> THE KERALA JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) RULES, 2014

<sup>56</sup> Ibid.

<sup>57</sup> Ibid.

<sup>58</sup> Ibid.

<sup>59</sup> Ibid.

Principal Magistrate and social workers, receive appropriate training and orientation in areas such as child psychology, child welfare, child rights, and national and international standards for juvenile justice. This training shall be provided as deemed necessary by the Government to equip the Board members with the required knowledge and skills to discharge their duties effectively. The Juvenile Justice Board shall adjudicate and dispose of cases involving juveniles in conflict with law, take cognizance of crimes committed against children under Sections 23 to 28 of the Act, monitor institutions for juveniles in conflict with law to ensure compliance and suggest improvements for any lapses, deal with non-compliance by government or voluntary organization functionaries through due legal process, maintain liaison with the Child Welfare Committee for cases needing care and protection as well as with other district Boards to facilitate speedy inquiry and disposal of cases, take suitable action through appropriate authorities to address unforeseen situations arising during Act implementation in the best interest of the juvenile, send quarterly reports on juveniles in conflict with law to relevant authorities for review of pending cases, and carry out any other functions assigned by the government is actively engaged in the High Court to address matters pertaining to juveniles who are in conflict with the law. The primary objective is to guarantee the comprehensive and efficient execution of the Juvenile Justice Act while maintaining and giving priority to the well-being of the juveniles concerned.

Rule 53 talks about the physical infrastructure of the institutions,<sup>60</sup> the guidelines stipulate that facilities designed for juveniles in conflict with the law and children in need of care and protection must be situated in separate buildings. This separation aims to provide an environment tailored to the specific needs of each group, ensuring that appropriate interventions and support can be facilitated. In specific terms, Observation Homes should provide distinct accommodation for male and female residents, segregated based on age groups (7-11, 12-16, 16-18 years), while also considering the individuals' physical/mental well-being and the nature of their offenses. This segregation should encompass bathing and sleeping facilities. Similarly, Special Homes should offer separate housing for boys and girls according to the same age-based classification criteria. In Children's Homes, separate accommodations for boys and girls, categorized by age groups (5-11, 12-16, 16-18 years), complete with separate sleeping and bathing facilities, are necessary. Without specialized agencies, separate facilities for children aged 0-5 years are also required. Shelter Homes and Places of Safety should likewise be segregated by gender. Compliance with the standards for a 50-capacity juvenile/children institution entails a configuration inclusive of dormitories, classrooms, a sick room, kitchen, dining area, storage, a recreation room, library, bathrooms, toilets, office rooms, a counseling

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<sup>60</sup> THE KERALA JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) RULES, 2014

room, facilities for differently-abled individuals, the Superintendent's residence, and amenities such as rainwater harvesting, a kitchen garden, a playground, appropriate flooring, lighting, ventilation, potable water, first aid, fire and electrical safety, food storage, and child-friendly premises that do not resemble a jail or lock-up. Moreover, the Superintendent is required to reside within the institution's premises.

Rule 58 states about medical care in childcare institutions that every institution must maintain a medical record for each juvenile or child, based on monthly medical check-ups, and provide necessary medical facilities<sup>61</sup>. The medical record must include weight, height, sickness, treatment, and other physical or mental issues. Arrangements should be made to ensure that there are comprehensive medical facilities available on-site. This includes having a qualified doctor on call and available during all working days to conduct regular check-ups and provide necessary treatment. Furthermore, there should be a sufficient supply of medical equipment to handle minor health problems, fully stocked first-aid kits, and a range of emergency medicines to address potential health issues. All staff must be trained in first-aid. The institution should establish tie-ups with local health centers, hospitals, medical colleges, clinical psychologists, psychiatrists, and mental health institutes for regular visits by doctors and students and periodic health camps within the institutions. Necessary arrangements must be made for immunization coverage and preventive measures taken in case of contagious or infectious disease outbreaks. A system for referral of deteriorating health or severe cases to the nearest hospital or recognized treatment centers must be set up. Sick children must be kept under constant medical supervision. Children can be admitted without insisting on a medical certificate initially, but a medical examination by the Medical Officer must be arranged within 24 hours or immediately in exceptional cases or emergencies. Similar examinations are required within 24 hours before transfer. No surgical treatment must be carried out without prior parental/guardian consent, except in emergencies. Regular counseling and specific mental health interventions must be provided, including separate counseling rooms. Children requiring specialized drug abuse prevention and rehabilitation programs must be referred to appropriate qualified centers. Community health facilities must provide adequate preventive and remedial medical care to prevent stigmatization and promote integration, including dental, ophthalmologic, mental health care, and special diets as medically indicated. Each institution must have the necessary medical staff, including a nurse and part-time Medical Officer, to ensure regular medical treatment facilities and immunization coverage. Medicines must only be administered for treatment on medical grounds, never for eliciting information, confession, punishment, or restraint. Children must never be subjected to experimental drug testing. The District Medical

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<sup>61</sup> Ibid.

Officer must arrange for a Medical Officer to conduct weekly check-ups and provide emergency services as required. The administration of any medication must always be duly authorized and performed by qualified medical professionals.

Rule 59 mentions that the mental health of the child in the institution's where mental health record should be established for each juvenile or child, offering both individual and group therapy to facilitate recovery, create a supportive environment, identify capabilities, and foster self-assurance<sup>62</sup>. It is crucial to maintain an institutional environment devoid of abuse, allowing for coping and confidence-building, with all caregivers engaging in and cooperating with therapists to foster a supportive setting. Individual counseling, group therapy, and experiential workshops should be arranged as vital interventions led by trained counselors in collaboration with external mental health agencies. A mental health care plan, developed by the Superintendent in consultation with relevant experts, must be integrated into the individual care plan of each juvenile/child, with expert recommendations retained in case files. These care plans should undergo monthly review by the Management Committee and quarterly review by the Child Welfare Committee. The administration of medication for mental health conditions is prohibited without prior psychological evaluation and psychiatric diagnosis. In situations where an individual is suffering from mental illness or dealing with addiction, the competent authority has the legal authority to order a temporary transfer to a psychiatric hospital, nursing home, or rehabilitation center. This transfer is mandated for the purpose of providing the necessary duration of inpatient treatment, with the aim of addressing the specific needs of the individual in question.

Rule 60 talks about the education in which every institution shall provide education to all juveniles or children as per their age and ability, both inside or outside the institution as required, through a range of opportunities, including mainstream inclusive schools, bridge schools, open schooling, non-formal education, and inputs from special educators where needed, with special tuition made available and better education at reputed residential schools for those showing higher interest in studies<sup>63</sup>. General education up to age 14 is compulsory, with physical exercise, drills, games based on available facilities, and gardening being compulsory for all children. The government may exempt institution children from public examination fees, and transfer certificates issued by institutions shall be considered equivalent to government school certificates for admission purposes. Opportunities for self-education and further studies shall be provided, with facilities to appear as private candidates in examinations, and outstanding Class 8 students desirous of higher studies may be given facilities as specified

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<sup>62</sup> THE KERALA JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) RULES, 2014

<sup>63</sup> Ibid.

by the government. The officer in charge shall send lists of inmates attending high school and above each academic year and those who passed/failed to the Social Justice Director. Teachers/headteachers may be deputed for refresher/in-service training by the Education Department and be eligible for allowances. The District Education Officer shall conduct academic school inspections and forward reports to the Social Justice Director.

Rule 62 mentions about recreation<sup>64</sup>, where the institutions must be followed for the well being of the child, and all juveniles or children must have access to supervised recreational activities, which should encompass a variety of indoor and outdoor games, music, television, computer usage, literacy programs, excursions, cultural events, leadership camps, experiential workshops, Bala Sabha programs, observance of religious festivals, and recognition of each child's birthday. The Department of Social Justice is responsible for coordinating yearly cultural gatherings, such as the "Bala mela" at each children's home and a state-level children's festival, which should involve representatives from all children's homes as participants.

The Kerala JJ Rules of 2014 reflect a comprehensive approach to incorporating the necessary components for the optimal care and protection of children under this Act. Notably, the Kerala state Government's State Policy for The Child, 2016, aligns with the JJ Rules, 2016, demonstrating its commitment to compliance. The State Child Policy 2016 effectively encompasses the significant provisions of the JJ Rules, 2016, focusing on safeguarding children's mental and physical well-being. It emphasizes the importance of providing education and medical care and prioritizes mental health in childcare institutions. Furthermore, the policy addresses the infrastructure, clothing, and bedding in childcare institutions, ensuring the holistic well-being of children and serving their best interests.

## **VII. LEGISLATION ENACTED FOR THE BETTERMENT OF CHILDREN**

The legislative body has enacted laws aimed at enhancing the well-being of children. This move aims to create an environment that fosters the growth and development of children. The proposed legislation encompasses a comprehensive approach to enhancing the welfare of children, encompassing critical areas such as education, healthcare, and social welfare services. The overarching objective of this legislation is to guarantee that every child has equitable access to high-quality support and resources, thereby empowering them to realize their maximum potential. The anticipated implementation of these laws is poised to yield substantial improvements in the overall well-being and prospects of children across the nation.

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<sup>64</sup> Ibid.

The Hindu Adoptions and Maintenance Act of 1956 is a codification of laws that govern the adoption and maintenance of both male and female children. The Act ensures that sons and daughters are treated equally in matters of succession.<sup>65</sup>

The Pre-conception and Pre-natal Diagnostic Techniques Act of 1994 is the regulatory framework for employing pre-natal sex determination methodologies. The act aims to ensure that such techniques are in compliance with the established legal and ethical standards. By setting out the provisions for regulating these techniques, the act safeguards the interests of women, the unborn child, and society as a whole.<sup>66</sup>

The Immoral Trafficking (Prevention) Act (ITPA) of 1956 prohibits sex trafficking, and all prostitution-related charges are reported under the Act. According to this Act, A minor has not yet reached the age of 18.<sup>67</sup>

The Child Labour (Prohibition and Regulation) Act of 1986 provides hope for children and their well-being. By prohibiting their employment in certain industries and regulating their working conditions in others, the act ensures a brighter future for the young generation, free from exploitation and abuse. The Child Labour (Prohibition and Regulation) Act of 1986 is a legal mandate that prohibits the employment of children in certain industries and also regulates the working conditions of minors in other industries.<sup>68</sup>

The Prohibition of Child Marriage Act came into effect on October 1st, 1929. Section 3 of the Act stipulates that any male above 18 years of age who enters into a child marriage shall be held liable for punishment. It is crucial to note that any marriage that is performed in violation of the Child Marriage Restraint Act is considered invalid<sup>69</sup>.

Society must recognize the importance of upholding laws that protect children from being subjected to early marriages. The Prohibition of Child Marriage Act is an essential legal instrument that serves to safeguard the rights of children and ensure their protection from harmful practices. By enforcing this Act, we can help prevent the physical, emotional, and psychological damage that child marriages can inflict upon children.

It is incumbent upon authorities, organizations, and individuals to take a proactive approach towards ensuring the implementation and enforcement of the Prohibition of Child Marriage

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<sup>65</sup> Hindu Adoptions and Maintenance Act, 1956

<sup>66</sup>Pre-conception and Pre-natal Diagnostic Techniques Act of 1994

<sup>67</sup> Immoral Trafficking (Prevention) Act (ITPA) of 1956

<sup>68</sup> Child Labour (Prohibition and Regulation) Act of 1986

<sup>69</sup> The Prohibition of Child Marriage Act, 2006

Act. We can create a safe, just, and equitable society through concerted efforts and effective collaboration.

## **VIII LEGAL AND POLICY INSTRUMENTS OF INDIA GOVERNING INSTITUTIONAL CARE**

The aforementioned phrase, "Legal and Policy Instruments of India Governing Institutional Care," pertains to the comprehensive set of laws and regulations implemented by the Indian government to oversee and regulate institutional care throughout the country. The regulatory framework in India is meticulously designed to ensure that institutions' care meets government standards and upholds principles of good governance, accountability, and transparency. The Legal and Policy Instruments governing Institutional Care in India are a crucial part of the healthcare system, encompassing a comprehensive set of laws, policies, and regulations. These instruments play a pivotal role in safeguarding the rights and welfare of individuals receiving institutional care, ensuring their protection and well-being.

The Juvenile Justice (Care and Protection of Children) Act of 2015 stands as a vital legal framework designed to cater to the needs of children who find themselves in conflict with the law. It encompasses provisions for their care, protection, treatment, and rehabilitation. The Juvenile Justice (Care and Protection of Children) Model Rules, 2016 further bolster the implementation of this Act by offering detailed guidelines for safeguarding children's rights and ensuring their rehabilitation. The Integrated Child Protection Scheme (ICPS) is a comprehensive program aimed at establishing a nurturing and safeguarded environment for children in need of care and protection. These policy measures collectively create a well-structured framework for executing laws and policies concerning the rights of children. They serve as significant milestones in our journey toward creating a society that is not only safer but also more just and equitable for children.

## **IX CHILD CARE INSTITUTION UNDER JUVENILE JUSTICES ACT, 2015**

The Juvenile Justice Act of 2015 is a well-crafted legislation that provides a comprehensive framework for establishing childcare institutions that cater to the unique and specific needs of children requiring specialized care and attention. These institutions are adequately equipped with the necessary resources and personnel to provide a safe and nurturing environment for children to thrive.

In accordance with Section 2(21) of the JJ Act 2015, "child care institutions" refer to various establishments such as children's homes, open shelter, observation home, special home, place

of safety, Specialised Adoption Agency, and a fit facility that is officially recognized under this Act. These institutions are responsible for offering care and protection to children who are in need of such services.

According to Section 2(51) of the JJ Act 2015, the term "registered" is defined in reference to child care institutions, agencies, or facilities managed by the State Government or voluntary/non-governmental organizations. These include observation homes, special homes, places of safety, children's homes, open shelters, Specialized Adoption Agencies, fit facilities, or any other institutions that may be established to cater to specific needs. This definition also encompasses agencies or facilities authorized and registered under section 41 of the act for the purpose of providing residential care to children on a short-term or long-term basis.

The services offered by the Childcare Institutions under the Juvenile Justice Act are informative and fundamental in promoting the sincere welfare and well-being of the children who require additional care and support. Overall, the act underscores the importance of providing children with the necessary care and support to achieve their full potential.

## **X. REHABILITATION AND SOCIAL RE-INTEGRATION**

The process of rehabilitating and reintegrating children into society is a complex undertaking that involves a range of strategies and interventions aimed at providing assistance and care for children who have undergone traumatic experiences or difficult life circumstances. This process comprises psychological, social, and physical elements, all of which need to be considered to achieve positive results. This process emphasizes the importance of providing tailored care and support services to address the individual needs of every child. These services encompass mental health support, personalized education assistance, and opportunities for social and recreational engagement, all of which aim to cultivate a strong sense of community and inclusion.

The Juvenile Justice Act 2015, Section 39, outlines the process of rehabilitation and social integration for children under the juvenile justice system in India. It emphasizes that this process should be based on individual care plans, tailored to each child's specific needs. The Act prioritizes family-based care options, including restoration to the child's family or guardian (with or without supervision), sponsorship, adoption, or foster care. This approach recognizes the importance of a family environment in a child's development and rehabilitation. The Act also includes a provision to keep siblings together in care, unless it's determined to be against their best interests. This acknowledges the importance of maintaining familial bonds even when children are placed in care outside their immediate family. For children in conflict with the law, the Act specifies different placement options based on their situation. If not released on bail,



they may be placed in observation homes. Alternatively, they might be sent to special homes, places of safety, fit facilities, or placed with fit persons, as ordered by the Juvenile Justice Board. In all cases, the focus remains on rehabilitation and social integration. Children in need of care and protection who cannot be placed with families may be accommodated in registered institutions or with fit persons or facilities. These placements can be either temporary or long-term, depending on the child's circumstances. Regardless of the placement type, the Act emphasizes that the process of rehabilitation and social integration should continue. Recognizing the challenges faced by children aging out of the system, the Act provides for financial support to those leaving institutional care or special homes upon turning 18. This support is intended to aid their reintegration into mainstream society, helping to bridge the gap between institutional care and independent living. Throughout all these provisions, the Act maintains a strong focus on rehabilitation and social integration. It recognizes that different children may have different needs and circumstances, and thus provides for a range of care options and support mechanisms to ensure the best possible outcomes for each child in the juvenile justice system.<sup>70</sup>

The principal objective of the process of rehabilitation and social reintegration is to assist minors in restoring their sense of dignity and self-worth. This is achieved by mainstreaming them through rehabilitation within their own family, if possible, or through alternative care programs. In the event that neither of these options is feasible, long-term institutional care shall be utilized as a last resort.

## **XI. RESTORATION OF CHILD IN NEED OF CARE AND PROTECTION**

The process of rehabilitating and reintegrating children into society is a complex undertaking that involves a range of strategies and interventions aimed at providing assistance and care for children who have undergone traumatic experiences or difficult life circumstances. This process comprises psychological, social, and physical elements, all of which need to be considered to achieve positive results. This process revolves around providing personalized care and tailored support services to address the individual needs of every child. These encompass access to mental health resources, educational assistance, and opportunities for social interaction and recreational activities, all designed to nurture a feeling of belonging and community.

Section 40 of the Juvenile Justice Act 2015 relates to the restoration of children in need of care and protection. Section 40(1) of this act sets the foundational principle for all child care institutions covered by the Act. It states that the "restoration and protection of a child" should be the primary goal of Children's Homes, Specialized Adoption Agencies, and Open Shelters.

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<sup>70</sup> Juvenile Justice (Care and Protection of Children) Act, 2015, No.6, Acts of parliament, 2016(India).

This means that these institutions are not just meant to provide temporary shelter or care, but should actively work towards finding permanent, safe, and nurturing environments for the children. The use of the term "prime objective" emphasizes that this goal should take precedence over other considerations in the operation of these institutions.<sup>71</sup>

Section 40(2) of this act, which mention about the section elaborates on the practical implications of the principle stated in the first paragraph. It mandates that the aforementioned institutions must take all necessary steps to restore and protect children who are under their care. This applies to children who are either temporarily or permanently separated from their family environment. The phrase "steps as are considered necessary" gives these institutions some flexibility in their approach, allowing them to tailor their efforts to each child's unique circumstances. However, it also places a significant responsibility on these institutions to be proactive and thorough in their efforts to restore children to suitable family environments.<sup>72</sup>

Section 40(3) of the act which mentions that paragraph shifts focus to the powers of the Committee, which is likely a statutory body established under the Act to oversee child welfare matters. The Committee is granted the authority to restore a child to their parents, guardian, or a "fit person". Importantly, this power comes with a responsibility - the Committee must first determine the suitability of the parents, guardian, or fit person to care for the child. This implies a process of assessment and evaluation to ensure the child's best interests are served. Additionally, the Committee can issue "suitable directions", which could include instructions on care, follow-up visits, or other measures to ensure the child's well-being after restoration.<sup>73</sup>

It mainly explains the term "restoration and protection of a child." The primary aim of this concept is to ensure that a child is placed in a safe and secure environment that promotes their overall well-being and development. In practical terms, restoration and protection can involve returning a child to their biological parents, adoptive parents, foster parents, or a guardian, as long as these individuals are deemed fit to provide the necessary care and support required by the child.

It is important to note that this process is not just about returning a child to their previous caregiver. Instead, it takes into account various factors, such as the child's emotional, physical, and psychological needs, as well as any potential risks or dangers that may be present. Ultimately, the goal is to ensure that the child is placed in an environment that is conducive to their growth and development and that their safety and well-being are always the top priority.

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<sup>71</sup> Juvenile Justice (Care and Protection of Children) Act, 2015, No.6, Acts of parliament, 2016(India).

<sup>72</sup> Ibid.

<sup>73</sup> Juvenile Justice (Care and Protection of Children) Act, 2015, No.6, Acts of parliament, 2016(India).

## CONCLUSION

It is essential that young individuals who come into contact with the juvenile justice system are not subjected to any form of mistreatment or abuse within the facilities meant for their treatment and rehabilitation. The apprehension surrounding the likelihood of such an occurrence taking place has the potential to obstruct an individual's forward movement and result in adverse effects on their mental well-being. The well-being of individuals who use certain facilities heavily depends on the safety and nature of the environment that surrounds them. Therefore, it is of utmost importance to pay close attention to the conditions of these facilities to guarantee that they are secure and provide a nurturing atmosphere that fosters their growth and development. Unfortunately, a large number of young people are currently experiencing cruel, illegal, and barbaric conditions of confinement. These detained and committed youth deserve access to education, medical care, legal aid, and other essential services, and they are entitled to protection from unsanitary conditions, physical abuse, and substandard legal representation. As a community, it is incumbent upon us to take the necessary steps to ensure that individuals who are vulnerable due to various circumstances such as age, disability, or socioeconomic status, are treated with the dignity and respect they deserve. We must work diligently to uphold their rights, advocate for their needs, and create an environment where they feel supported and valued. Additionally, the Indian judiciary has played a crucial role in interpreting and expanding the rights of children through various landmark judgments. The Juvenile Justice (Care and Protection of Children) Act, 2015, and the Protection of Children from Sexual Offences (POCSO) Act, 2012 are also significant legal frameworks that aim to safeguard the rights and interests of children in India. In addition to these interventions, it is also imperative to ensure that children have access to appropriate medical care and basic necessities such as food, shelter, and clothing. This requires a coordinated effort between caregivers, social workers, and other professionals, as well as the involvement of family members and other support systems. Overall, child care's rehabilitation and social re-integration is an intricate and demanding process requiring high expertise and commitment. By implementing evidence-based practices and providing comprehensive support and care, it is possible to help children recover from trauma and build a better future. In the upcoming chapter, the researcher will delve deeply into the working, composition, and necessity of childcare institutions. The focus will be on how these institutions are structured and the judicial developments made by the court in the realm of the juvenile justice system.

## CHAPTER 3

# CHILD CARE INSTITUTIONS AND JUDICIAL DEVELOPMENT ON JUVENILE JUSTICE

### 3.1 INTRODUCTION

The researcher will undertake an extensive analysis of the operations, framework, and critical significance of childcare institutions. The study will specifically focus on the organizational structure of these institutions and the nuanced legal developments introduced by the court in the context of the juvenile justice system.

### 3.2 Introduction of Child Care Institutions

The implementation of the Juvenile Justice Act is a legal mandate that advocates for the establishment of specialized institutional care structures designed to cater to the unique needs of children. These institutions are divided into two categories: those intended for children in need of care and protection (CNCP) and those intended for children in conflict with law (CCL). The main goal of these institutions is to create a nurturing and protective space where children can thrive and develop to their full potential. Each child receives personalized care and support tailored to their specific needs and circumstances, ensuring a safe and secure environment for their growth. The Juvenile Justice Act serves as a sincere and thoughtful effort to promote the positive development of children and provide them with a brighter future. In compliance with international standards and the Juvenile Justice Act, placing a child in institutional care is considered an option of last resort. Institutional care is only to be considered when it has been determined that reunifying the child with their parents or family is not in the child's best interest. It is essential to note that the decision to place a child in institutional care must be made with the utmost care, as it significantly impacts the child's well-being. When making decisions, it is imperative to comprehensively consider the specific needs and individual interests of the child and to unequivocally prioritize their safety and holistic development. Therefore, the placement of a child in institutional care must be viewed as a severe measure that should only be taken after careful consideration of all factors involved. When making decisions that impact a child, it is crucial to ensure that their physical, emotional, and developmental well-being are always the primary consideration. "Institutional care becomes essential for taking care of children who do not have parents, whose parents are not suitable to raise them, or whose parents are unable or incapacitated to take care of their children."<sup>74</sup> The wording in the book means that in situations where children lack appropriate parental guardianship or where parents are incapacitated and unable to

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<sup>74</sup> Ved Kumari, *The Juvenile Justice Act 2015-Critical Understanding*, 58 JOURNAL OF THE INDIAN LAW INSTITUTE 83 (2016).

provide sufficient care, institutional care becomes an imperative solution for ensuring the optimal well-being of these children.

In such circumstances, the CWC can order the child to be placed in a home run or recognized by the government.<sup>75</sup> Which is registered under section 50 of the JJ act<sup>76</sup>The Juvenile Justice Act offers a variety of residential care options, each tailored to meet the unique needs of children across different categories. This ensures that children are provided with the appropriate care and support they require in order to thrive. Residential properties may be broadly categorized into two distinct classes.

1. Homes - Observation Homes, Special Homes, Place of Safety for CCL, and Children's Homes for CNCP.
2. Open Shelter, Fit Facility, Fit persons who are to provide community-based residential care to children. These are different from adoption, foster care, and sponsorship, which fall in the category of non-institutional care.

Section 46 of the Juvenile Justice Act 2015<sup>77</sup> addresses the critical issue of after-care support for children transitioning out of child care institutions. This provision recognizes the challenges faced by young adults who have spent a significant part of their formative years in institutional care and are now expected to integrate into mainstream society. The section specifically focuses on children who are leaving child care institutions upon reaching the age of 18. This is a crucial transition point, as it marks the legal shift from childhood to adulthood, often accompanied by the expectation of self-sufficiency and independence. Recognizing the potential vulnerabilities of these young adults, the Act provides financial support to them. This financial assistance is not automatic but may be provided based on individual needs and circumstances. The primary goal of this support is to facilitate the child's re-integration into mainstream society. The provision of financial support acknowledges that the transition from institutional care to independent living can be challenging. These young adults may lack the family support, social networks, or practical life skills their peers who grew up in family settings might have naturally developed. The financial assistance aims to bridge this gap and provide a smoother transition. While the Act does not specify the exact nature or extent of the financial support, it leaves room for implementing agencies to determine appropriate forms of assistance. This could potentially include help with housing, education, vocational training, or other needs that support the young adult's journey towards self-reliance and social integration. By including this provision, the Act demonstrates a commitment to the long-term well-being of children who have been in

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<sup>75</sup> Section 2 (19) "Children's Home" means a Children's Home, established or maintained, in every district or group of districts, by the State Government, either by itself, or through a voluntary or non-governmental the organization and is registered as such for the purposes specified in Section 50.

<sup>76</sup> Juvenile Justice (Care and Protection of Children) Act, 2015

<sup>77</sup> Juvenile Justice (Care and Protection of Children) Act, 2015, No.6, Acts of parliament, 2016(India).

institutional care. It recognizes that the state's responsibility towards these children does not abruptly end when they turn 18, but extends to supporting their successful transition into adulthood and integration into society. As per the above-mentioned provisions, any individual who has attained the age of eighteen and is preparing to leave a childcare institution may be eligible for financial support to facilitate their re-integration into society. This assistance is intended to aid their successful transition into adulthood and promote their seamless integration into mainstream society. This support underscores our commitment to ensuring that all young people, regardless of their background, are given the best possible chance to thrive and succeed as they enter the next phase of their lives.

### **3.3 NEED AND PURPOSE OF CHILD CARE INSTITUTIONS (CCL)**

Observation Homes and Special Homes are two types of facilities that cater to children in conflict with the law. Observation Homes are designed to provide temporary shelter for children who are in police custody and await trial. The primary objective of Observation Homes is to provide a safe and secure environment for children and prevent them from coming into contact with adult offenders. On the other hand, Special Homes are for children who have been convicted of an offense and are serving their sentence. The purpose of Special Homes is not only to provide a secure environment but also to offer education, vocational training, and rehabilitation services to help children reintegrate into society.<sup>78</sup>

The Place of Safety is a vital establishment that can function as an Observation Home or a Special Home for children aged between 16 and 18 years who have been accused or found guilty of heinous offenses. The main purpose of these specialized homes is to establish a secure and supportive environment for children who have been accused or convicted of serious offenses. These homes are designed to offer a range of services, including appropriate care, guidance, and emotional support, to aid in the rehabilitation of the children. In addition, the homes provide comprehensive protection and support to address the physical, mental, and emotional needs of each individual child, ensuring that they receive the necessary help and guidance to reintegrate into society successfully. The Place of Safety serves as a sanctuary for these children, where they can receive proper education, medical care, and counselling, among other services. The staff responsible for managing these establishments are trained professionals who are well-equipped to handle the unique needs of the children residing there. The dedicated individuals tirelessly work around the clock to provide children with the essential care and support they need to overcome their difficult pasts and construct a brighter future. Every child, regardless of their background or circumstances, deserves the opportunity to grow and flourish in a nurturing and encouraging environment. Sadly, some children lack the necessary parental care,

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<sup>78</sup> Final Manual 24 April 2017\_5.pdf, [https://wcd.nic.in/sites/default/files/Final%20Manual%2024%20April%202017\\_5.pdf](https://wcd.nic.in/sites/default/files/Final%20Manual%2024%20April%202017_5.pdf) (last visited Jun 7, 2024).

placing them at a heightened risk of missing out on the supportive upbringing they deserve. It's crucial that we provide these children with the protection and resources they need to thrive.<sup>79</sup> This responsibility is undertaken to ensure that the child's well-being is preserved, and that they have access to the necessary care and support they require. The State is entrusted with the role of a protector of the child and ensures that their rights are respected and fulfilled. Therefore, the State must take the necessary steps to ensure that the child is placed in a safe and secure environment where their physical and psychological needs are met. The State must also ensure that the child has access to education, healthcare, and other essential services that are necessary for their development. Furthermore, the State must work collaboratively with competent local authorities and authorized CSOs to ensure that appropriate alternative care is provided to the child. This will involve developing and implementing policies and procedures that are focused on the child's best interests and that are consistent with international standards and guidelines. The State has a crucial responsibility to ensure that all children placed in alternative care receive the necessary level of supervision, care, and support to ensure their safety, well-being, and development. This includes regular reviews of the appropriateness of the care arrangement provided, and any necessary adjustments to ensure that the child's needs are being met in the most effective manner possible. By fulfilling this duty, the State can help to ensure that every child has the opportunity to thrive and reach their full potential, regardless of their circumstances.

### **3.4 THE COMPOSITION OF INSTITUTIONS UNDER JJ ACT**

The Juvenile Justice (Care and Protection of Children) Act, 2015 mandates institutional care mechanisms, in addition to non-institutional and family-based mechanisms, for the rehabilitation and reintegration of children in conflict with law (CCL) and children in need of care and protection (CNCP). This legislation aims to ensure that these vulnerable children receive the necessary care, support, and protection and are not subjected to any form of abuse or neglect. The institutional care mechanisms established under this act are designed to provide comprehensive and specialized care for children in need of care and protection (CNCP) and children in conflict with the law (CCL).<sup>80</sup> These facilities include observation homes, special homes, and children's homes. Children placed in these institutions receive individualized care, including education, healthcare, counseling, and other essential services, all in a safe and supportive environment. The institutions ensure that children's rights are respected, protected, and fulfilled, providing them with a foundation for a brighter future.

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<sup>79</sup> vikaspedia Domains, <https://vikaspedia.in/education/child-rights/living-conditions-in-institutions-for-children-in-conflict-with-law/place-of-safety> (last visited Jun 7, 2024).

<sup>80</sup> Module 6\_CCI.pdf,

[https://prachicp.com/tarunya/sharelink/Child\\_Protection\\_Smart\\_kit/CHILDPROTECTIONMATERIALS/ENGLISH/1.%20Final%20English%20Modules/Module%206\\_CCI.pdf](https://prachicp.com/tarunya/sharelink/Child_Protection_Smart_kit/CHILDPROTECTIONMATERIALS/ENGLISH/1.%20Final%20English%20Modules/Module%206_CCI.pdf) (last visited Jun 5, 2024).

The Juvenile Justice (Care and Protection of Children) Act, 2015, and its associated rules and regulations provide for different categories of childcare institutions in India to cater to the specific needs of children. These categories are as follows:

1. Observation Homes:

These are temporary reception centers for children in conflict with the law during the pendency of their inquiry. They are established by the state government or voluntary organizations.

2. Special Homes:

Special Homes are meant for the long-term stay and rehabilitation of children in conflict with the law, after the inquiry is completed. These homes provide care, education, vocational training, and counselling services.

3. Children's Homes:

Children's Homes are for the reception and rehabilitation of children in need of care and protection, such as orphaned, abandoned, or abused children. These homes provide shelter, care, education, and vocational training.

4. Shelter Homes:

Shelter Homes are temporary care facilities for children in need of shelter, care, and support services. They are meant for short-term stays and cater to children's basic needs.

5. Specialised Adoption Agencies:

These agencies are responsible for facilitating the rehabilitation of orphaned, abandoned, and surrendered children through adoption, following the prescribed procedures and regulations.

6. Open Shelters:

Open Shelters are community-based facilities that provide temporary residential support and services to children on the streets. These shelters aim to reintegrate children into families and communities.

7. Place of Safety:

A Place of Safety is a temporary accommodation facility for children who cannot be placed in a children's home or shelter home, due to various reasons, such as overcrowding or specific protection concerns.

8. Fit Facility:

A Fit Facility is a custodial facility established under the Act for the temporary reception and rehabilitation of children in conflict with the law who are found to be mentally ill or addicted to any



psychotropic substance. These categories of childcare institutions are designed to provide specialized care, protection, and rehabilitation services based on the specific needs and circumstances of children. The Act also mandates the maintenance of prescribed standards of care, protection, and development in these institutions.

The Juvenile Justice (Care and Protection of Children) Act of 2015 encompasses a comprehensive classification system for children's institutions. The system comprises various categories that are meticulously defined with relevant citations to ensure the proper implementation of the Act. The classification system is instrumental in safeguarding the rights and welfare of children in institutional care:

1. "Institutions for children in conflict with the law."

It defines residential facilities designated for juvenile offenders who have been adjudicated and placed in the custody of the justice system. These facilities provide a range of services, including education, healthcare, and rehabilitation services, in order to facilitate the successful reintegration of these minors into society.

- a) "An Observation Home is a specialized facility established and managed by the State Government or a voluntary/non-governmental organization in every district or a cluster of districts. These homes are officially registered and cater to the specific purposes specified in Section 47(1) of the relevant regulations or legislation."<sup>81</sup>
- b) "A 'Special Home' refers to a facility set up by a state government or a voluntary or non-governmental organization, registered under Section 48. It serves as a place to house and offer rehabilitative services to children who have been found to have committed an offense and are in conflict with the law. These children are sent to the institution by an order of the Board following an inquiry into the matter."<sup>82</sup>
- c) "Place of Safety" is defined as any location or facility, apart from a police lockup or jail, that is either established independently or affiliated with an observation home or a special home. The person in charge of this facility is willing to receive and care for children who are alleged or found to be in conflict with the law. This reception and care is carried out pursuant to an order from the Board or the Children's Court, both during the inquiry process and the ongoing rehabilitation after the child has been found guilty. The specific period and purpose of the stay are outlined in the order.

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<sup>81</sup> Section 2 (40), The Juvenile Justice (Care and Protection of Children) Act, 2015

<sup>82</sup> Section 2 (56), The Juvenile Justice (Care and Protection of Children) Act, 2015.

2. Institutions for Child in need of care and protection
  - a) Specialized institutions have been established to provide proper care and protection to children who require it. These institutions are designed to cater to the specific needs of children who are in situations where they require additional support and care. The main purpose of these institutions is to create a secure and supportive setting for children, allowing them to thrive and reach their maximum potential through growth and development.
  - b) Children’s Home means “a Children’s Home, established or maintained, in every district or group of districts, by the State Government, either by itself, or through a voluntary organisation or NGO, and is registered as such for the purposes specified in Section 50.”<sup>83</sup>
  - c) Open Shelter means “a facility for children, established and maintained by the State Government, either by itself, or through a voluntary organisation or NGO under sub-section (1) of Section 43, and registered as such, for the purposes specified in that Section.”<sup>84</sup>
  - d) Specialised Adoption Agency means “an institution established by the State Government or by a voluntary organisation or NGO and recognised under Section 65, for housing orphans, abandoned and surrendered children, placed there by order of the Committee, for the purpose of adoption.”<sup>85</sup>

### **3.5 THE FUNCTIONING PROCESS OF VARIOUS CHILD CARE INSTITUTIONS**

The functioning process of various child care institutions refers to the methods and techniques used by different organizations to provide care and support to children. This may include a variety of services such as basic needs like food, shelter, and clothing, as well as emotional support, education, and healthcare. The functioning process of these institutions can vary depending on their size, structure, and the needs of the children they serve. Some institutions may provide care for infants and toddlers, while others may focus on older children or those with special needs. Regardless of the specific focus or services provided, child care institutions aim to create a safe and nurturing environment that promotes the well-being and development of every child under their care.

As per the established guidelines, it is mandatory for the CCIs responsible for overseeing the operations of CCL and CNCP to operate from distinct premises. This mandated separation of premises is put in place to ensure that both the CCIs can function optimally and fulfill their respective roles efficiently. The facilities should comply with child-friendly standards, ensuring that no aspect of their

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<sup>83</sup> Section 2 (19), The Juvenile Justice (Care and Protection of Children) Act, 2015

<sup>84</sup> Section 2 (41), The Juvenile Justice (Care and Protection of Children) Act, 2015

<sup>85</sup> Section 2 (57), The Juvenile Justice (Care and Protection of Children) Act, 2015

design or appearance resembles that of a prison or detention center. As per the regulations, it is required that the staff and children residing in a particular location should have access to a copy of the Act and the rules framed by the State Government. It is essential to keep this copy handy as it serves as a reference point for understanding the guidelines and adhering to the norms laid down by the State Government. They shall keep a copy of the Act and the rules framed by the State Government for use by both the staff and children residing therein. In order to ensure that every child residing within the institution receives the requisite level of care and attention, it is recommended that a Management Committee be established. The role of the committee would be to manage the institution and monitor the progress of every child. This approach would enable the committee to identify areas requiring improvement and take the necessary steps to provide the children with a safe, nurturing, and supportive environment. The proposed measure is anticipated to enhance the institution's reputation and the quality of care provided to the children, resulting in a well-structured and organized management system. Institutional care requires an individualized care plan to be prepared for each child with the ultimate objective of rehabilitating and reintegrating them into society. The care plan must be based on the child's personal history, circumstances, and unique needs. The guidelines for developing the individualized care plan are detailed in the following sections. Each child must receive the care and support they require to aid in their rehabilitation and reintegration. Therefore, the individualized care plan must be developed with utmost care and attention to detail. Establishing a Management Committee is paramount for every institution, as it provides a structured approach to oversee the management and progress of every child. The Committee is entrusted with the responsibility of monitoring the institution's operations and ensuring that the unique needs of each child are met. Implementing this approach is highly recommended to provide a positive and supportive environment for the growth and development of every child. Therefore, institutions must adopt this methodology to ensure that all children under their care receive the necessary attention and support. As per regulatory guidelines, the individual in charge of any institution catering to children above the age of six is obligated to ensure the establishment of children's committees. The purpose of these committees is to participate in activities as specified by the regulations aimed at promoting the safety and well-being of children in the institution. It is the responsibility of the officer to facilitate the formation of these committees and ensure their active engagement in all prescribed activities.

### **3.6 REGISTRATION OF CHILD CARE INSTITUTIONS**

The Juvenile Justice (Care and Protection of Children) Act, 2015, also known as the JJ Act, is an important piece of legislation in India that addresses the care, protection, and rehabilitation of children in need of care and protection, as well as the adjudication and rehabilitation of children in conflict with the law.

The Juvenile Justice (Care and Protection of Children) Act, 2015 Act contains crucial provisions for the registration and regulation of childcare institutions. These institutions serve as safe havens for children who have been orphaned, abandoned, or without suitable parental care. Through these institutions, children receive not only shelter but also the necessary care and protection to ensure their well-being and development. The Act mandates that all childcare institutions, whether established and maintained by the government or voluntary organizations, must be registered under the Act. This registration process is aimed at ensuring that these institutions meet certain prescribed standards and norms related to infrastructure, staffing, health care, education, recreation, and rehabilitation services.

The registration process involves submitting an application to the designated authorities and the necessary documents and fulfilling the prescribed criteria. The competent authority may grant a registration certificate to the childcare institution upon evaluation and inspection, subject to certain conditions. Registered childcare institutions are subject to regular monitoring and inspections by the Child Welfare Committee, Juvenile Justice Board, or other authorized bodies to ensure compliance with the provisions of the JJ Act and the rules framed thereunder. The registration may be cancelled or suspended if the institution fails to comply with the conditions or violates any provisions of the Act or the rules. The registration process under the JJ Act is designed to establish a uniform and well-regulated framework for childcare institutions. Its goal is to guarantee that children in need of care and protection receive appropriate care, safeguarding, and support for their rehabilitation. As per the requirements of the Juvenile Justice (JJ) Act, all institutions, regardless of whether they are government or non-governmental organizations, are mandated to register themselves within six months of the commencement of said Act if they provide housing facilities to children in need of care and protection or those who are classified as juvenile offenders. This requirement is outlined under Section 41 of the Act. It is important to comply with this provision in order to ensure that children receive the protection and support they need in a safe and secure living environment. By adhering to this mandate, institutions can demonstrate their commitment to fulfilling their obligations towards vulnerable children and contribute to upholding their rights.

The Juvenile Justice (Care and Protection of Children) Act of 2015 mandates the registration of all childcare institutions, whether established by the government or voluntary organizations. These institutions include Children's Homes, Observation Homes, Special Homes, Places of Safety, and Specialized Adoption Agencies. The registration procedure necessitates the submission of an application to the appropriate authorities, such as the State Child Protection Society or District Child Protection Unit, accompanied by requisite documentation and pertinent particulars.

The application is scrutinized, and inspections are conducted to assess the institution's suitability concerning infrastructure, staffing, and other prescribed requirements. The competent authority grants a registration certificate, subject to specific conditions and a validity period if found eligible. The

conditions may include norms related to physical infrastructure, staffing, record maintenance, provision of essential services, and implementation of child protection policies. Registered childcare institutions are subject to regular monitoring and inspections by authorized bodies, such as the Child Welfare Committee and Juvenile Justice Board, to ensure compliance with the provisions of the JJ Act and prescribed standards of care and protection. The registration is valid for a specified period and needs to be renewed periodically. It may be cancelled or suspended if the institution fails to comply with the conditions or violates the Act or rules. The registration process under the JJ Act is designed to establish a controlled and uniform setting for childcare institutions. Its goal is to ensure that children in need receive proper care, protection, and rehabilitation. Additionally, it aims to promote transparency and accountability in the operations of these institutions.

Childcare institutions must register under the JJ Act 2015 guidelines. The guidelines ensure that the institutions meet the required standards and regulations. Registering is essential to protect the welfare of the children in the institutions. The guidelines cover everything from the minimum infrastructure requirements to the necessary documentation and procedures. All institutions must follow these guidelines to comply with the law and protect the children's best interests.

All institutions housing children in need of care and protection or children in conflict with law must be registered under this Act, regardless of their management (state-run, voluntary, or non-governmental) or funding sources. This mandatory registration overrides any conflicting provisions in other existing laws and applies even if the institution doesn't receive government grants. However, institutions with valid registration under the Juvenile Justice (Care and Protection of Children) Act, 2000 at the time this new Act comes into effect will be automatically considered registered under the new Act.<sup>86</sup>

During the registration process under this Act, the State Government has specific responsibilities. After taking into account the District Magistrate's recommendations, the State Government must determine and officially record two key aspects of each institution: its capacity and its purpose. Based on this assessment, the State Government will then categorize and register the institution accordingly. The possible categories include Children's Home, Open Shelter, Specialised Adoption Agency, Observation Home, Special Home, or Place of Safety, depending on the institution's specific function and characteristics.<sup>87</sup>

When the State Government receives an application for registration from either an existing or new institution that houses children in need of care and protection or children in conflict with law, it may grant provisional registration. This provisional registration must be issued within one month of

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<sup>86</sup> Section 41 of the Juvenile Justice (Care and Protection of Children) Act, 2015

<sup>87</sup> *Ibid.*

receiving the application and is valid for a maximum of six months. This process aims to bring the institution under the scope of this Act. The registration certificate will specify the institution's capacity as determined by the State Government. However, the provisional registration will be automatically cancelled if the institution fails to meet the prescribed registration criteria within the specified six-month period. In such cases, the consequences outlined in sub-section (5) will apply.<sup>88</sup>

If the State Government fails to issue a provisional registration certificate within one month of receiving an application, an alternative provision comes into effect. In such cases, the proof that the institution submitted an application for registration will automatically serve as a provisional registration. This de facto provisional registration allows the institution to operate for a maximum period of six months. This measure ensures that institutions are not unfairly penalized for administrative delays and can continue their operations while awaiting official processing of their registration application.<sup>89</sup>

The State Government is expected to process registration applications within a six-month timeframe. If any officer or officers fail to dispose of an application within this period, it will be considered a serious neglect of their official duties. In such cases, the higher controlling authority will view this as dereliction of duty. Consequently, appropriate disciplinary proceedings will be initiated against the responsible officers. This provision aims to ensure timely processing of registration applications and hold government officials accountable for undue delays in the registration process.<sup>90</sup>

The registration granted to an institution under this Act is valid for a period of five years. Once this initial registration period expires, the institution must undergo a renewal process. This renewal requirement occurs every five years, ensuring that institutions are regularly reviewed and continue to meet the necessary standards and criteria for operation. This periodic renewal system helps maintain oversight and quality control of institutions caring for children over extended periods of time.<sup>91</sup>

The State Government has the authority to cancel or withhold the registration of institutions that fail to provide the rehabilitation and reintegration services outlined in section 53. This action can be taken after following a prescribed procedure. In cases where an institution's registration is cancelled, withheld, or pending renewal, the State Government will assume management of the institution until its registration status is resolved.<sup>92</sup>

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<sup>88</sup> Ibid.

<sup>89</sup> Section 41 of the Juvenile Justice (Care and Protection of Children) Act, 2015

<sup>90</sup> Ibid.

<sup>91</sup> Ibid.

<sup>92</sup> Ibid.

All child care institutions registered under this section are obligated to accept children as directed by the Committee, up to the institution's capacity limit. This duty applies regardless of whether the institution receives grants from the Central or State Government.<sup>93</sup>

The inspection committee established under section 54 has the authority to inspect any institution housing children, regardless of its registration status under this Act. This power supersedes any conflicting provisions in other current laws. The purpose of such inspections is to determine if these institutions are housing children who require care and protection.<sup>94</sup>

According to a report by the United Nations Children's Fund (UNICEF), it is estimated that India is home to approximately 30 million orphaned and abandoned children. A study conducted by SOS Children Village in 2011 found that these orphans make up about 4% of India's child population. However, more recent figures from the Childline India Foundation (CIF) and the Women and Child Development Ministry in 2017 revealed that out of the 30 million children, only 470,000 were in institutionalized care. Institutionalized care refers to a living environment that is specifically designed to meet the various needs of individuals, such as medical, personal, social, and housing needs, who may have physical, mental, and/or developmental disabilities. Shockingly, only a fraction of these children end up in family care due to the alarmingly low rates of adoption in India.<sup>95</sup>

### **3.7 COVID-19 AND ORPHANED CHILDREN**

The majority of children in Child Care Institutes (CCIs) - around 50% - are from families facing financial hardships that prevent them from being able to provide adequate care for their children. Unfortunately, the ongoing pandemic is expected to exacerbate this situation, increasing the number of children requiring assistance. Nonetheless, we remain unwavering in our commitment to supporting these vulnerable children and their families during these trying times.

According to the United Nations, between 42 to 66 million children worldwide may experience extreme poverty this year due to the pandemic crisis. This is in addition to the 386 million children who already lived in extreme poverty in 2019. Unfortunately, the pandemic is also increasing the number of children who are dropping out of school and becoming vulnerable to child labor, trafficking, and abuse. In India, the number of adoptions is low, with only 3,351 children adopted in the year ending March 2020, while tens of thousands of children are orphans. More than 66,000 children were adopted in the US in 2019. As per India's Juvenile Justice (Care and Protection of Children) Act, 2015, if a child loses both parents, appropriate measures are taken to ensure their well-

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<sup>93</sup> Ibid.

<sup>94</sup> Ibid.

<sup>95</sup> Business Standard, *Why India's Adoption Rate Is Abysmal despite Its 30 Million Abandoned Kids*, (2018), [https://www.business-standard.com/article/current-affairs/why-india-s-adoption-rate-is-abysmal-despite-its-30-million-abandoned-kids-118103000218\\_1.html](https://www.business-standard.com/article/current-affairs/why-india-s-adoption-rate-is-abysmal-despite-its-30-million-abandoned-kids-118103000218_1.html) (last visited Jun 7, 2024).

being and protection. The child may be placed either with extended family for foster care or in group foster care.<sup>96</sup> Alternatively, the child may be put up for adoption or sent to childcare institutions that are run by either the government or NGOs until they attain the age of 18. In cases where relatives decide to take care of the child, a thorough background check is conducted with the assistance of the Child Welfare Committee. On March 29th, 2020, the National Commission for Protection of Child Rights (NCPCR) released an advisory concerning the care and safety of children migrating with their families, those residing on the streets, and those under the care of Child Care Institutions (CCIs). The advisory aims to provide guidelines and recommendations to ensure the well-being and protection of this vulnerable group. The NCPCR advisory highlights the need for a coordinated effort among various stakeholders, including government bodies, non-governmental organizations, and community-based organizations, to address the complex issues surrounding the care of these children. The advisory also emphasizes the need for appropriate measures to safeguard their health and nutrition, education, and protection from abuse and exploitation.

The outbreak of the COVID-19 virus in India during the months of April and May 2021 had devastating effects on the country's healthcare system, with hospitals being overwhelmed and an official death toll of nearly 170,000 individuals. Experts suggest that the actual number of fatalities is likely much higher. Additionally, this pandemic has led to over 3,600 children in the country being orphaned, either due to COVID-19 or other causes, as per the affidavit filed by the National Commission for Protection of Child Rights earlier this month. This situation highlights the need to prioritize the protection of vulnerable populations during health crises.<sup>97</sup>

In May 2021, the esteemed Prime Minister of India, Narendra Modi, announced a scheme designed to support and assist orphaned children. The PM CARES Fund has been established to provide a financial grant of Rs 10 lakh for each child to support their education until they reach the age of 18. Once the child turns 23, they will receive the entire grant amount as a lump sum, which can be used for their personal or professional endeavors. This initiative aims to provide financial assistance and support for children's education and future aspirations. The program aims to offer educational opportunities to orphaned children below the age of 10 by ensuring their enrollment as day scholars in the nearest Kendriya Vidyalaya or private school. The PM CARES Fund will defray the cost of the child's fees, uniform, and books. For children between the ages of 11 to 18, admission will be granted to any Central government school, such as Navodaya Vidyalaya or Sainik School. Moreover, the PM CARES Fund will extend its support to the orphans by facilitating their acquisition of education loans for higher education. The interest on this loan will be borne by the Fund. This program has been

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<sup>96</sup> Role of Child Care Institutions (CCIs), <https://childhelpfoundation.in/blog/index.php/posts/Role-of-Child-Care-Institutions-CCIs> (last visited Jun 7, 2024).

<sup>97</sup> *Id.*



carefully crafted to offer essential assistance and significant opportunities to children who have lost their parents, empowering them to recognize their complete capabilities and accomplish their goals..<sup>98</sup>

### **3.8 CHILDCARE INSTITUTIONS TIED UP WITH CHILD HELP FUND**

The Child Help Foundation (CHF) is dedicated to actively participating in local initiatives and projects aimed at advancing the United Nations' Sustainable Development Goals (SDGs) within the community. During the fiscal year 2020-2021, CHF's Education Support Programme had a transformative impact on the lives of over 800 underprivileged children by providing inclusive and high-quality education. Our organization's primary objective is to provide comprehensive support to underprivileged children, equipping them with the necessary resources, education, and guidance to foster their personal development and well-being. We are fully committed to fostering a sustainable and positive impact on their lives, aiming to cultivate future responsible, productive, and healthy citizens. Our organization takes great pride in the accomplishments we have achieved thus far, and we are resolute in our mission to reach and uplift underprivileged children nationwide, creating a society that is more equitable for all.<sup>99</sup> The Children's Help Foundation (CHF) has established partnerships with several Child Care Institutions (CCIs) nationwide. These institutions primarily cater to orphaned children who originate from underprivileged families. CHF recognizes the importance of education in empowering these children and providing them with the tools necessary for a successful future. To achieve this goal, CHF extends support to the CCIs by facilitating the creation of educational opportunities for the children. This support includes assisting in setting up educational facilities, providing learning materials, and training the teaching staff to ensure the highest education standards are met. CHF is committed to ensuring that every child has access to primary education, which is a fundamental right and an essential step towards a better future. In addition to providing educational support, CHF helps the CCIs create a nurturing environment for the children. The organization is committed to providing essential resources such as nutritious food, proper clothing, safe shelter, and diverse recreational opportunities for every child under its care. The organization firmly believes that every child deserves the chance to thrive and develop within a safe, nurturing, and supportive environment, while also having access to the resources necessary to achieve their full potential. The acquisition of education is an essential ingredient for personal growth and development, ultimately leading to any nation's progress and prosperity. The Children's Help Foundation (CHF) has been tirelessly dedicated to the noble cause of providing primary education to the underprivileged sections of society. Eleven Child Care Institutions (CCIs) distributed nationwide have been pivotal in providing support and guidance to 812 children from underprivileged

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<sup>98</sup> Vikram Singh & Jason Aldag, *These Twins Are 5 Years Old. They Lost Both Parents to Covid-19.*, WASHINGTON POST, <https://www.washingtonpost.com/world/interactive/2021/india-coronavirus-orphans/> (last visited Jun 7, 2024).

<sup>99</sup> Annualreport2021-2022\_compressed.pdf, [https://in.childhelpfoundation.in/uploads/Annualreport2021-2022\\_compressed.pdf](https://in.childhelpfoundation.in/uploads/Annualreport2021-2022_compressed.pdf) (last visited Jun 7, 2024).

backgrounds. We maintain a steadfast belief in the notion that education serves as the cornerstone for unlocking one's potential and dismantling the cycle of poverty. Our ongoing dedication revolves around the pursuit of our mission to ensure that high-quality education is within reach for all.<sup>100</sup>

### **3.9 RECENT DEVELOPMENTS IN THE JUDICIARY SYSTEM CONCERNING JUVENILE JUSTICE.**

The Indian judiciary has always been known for its unwavering commitment to safeguarding the child's best interest in all cases. This is evident from the numerous judgments delivered on fundamental rights cases and in instances where any particular enactment has been challenged. The Supreme Court, in particular, has been at the forefront of upholding the child's best interest, and its timely interventions in many matters have brought about significant changes and helped develop judicial activism in the field of child rights and juvenile justice.

1. ***Hussainara Khatoon & Ors. v. Home Secretary, State of Bihar***<sup>101</sup>

In this case, the right to a speedy trial is guaranteed under Article 21 of the constitution, which falls under the broader right to life and education., the court held that — “the right to a speedy trial is a fundamental right implicit in Article 21 of the Constitution. If an accused is not tried speedily and his case remains pending before the Magistrate or the Sessions Court for an unreasonable length of time, it is clear that his fundamental right to a speedy trial would be violated unless, of course, the trial is held up on account of some interim order passed by a superior court or the accused is responsible for the delay in the trial of the case. The consequence of violation of the fundamental right to speedy trial would be that the prosecution itself would be liable to be quashed on the ground that it is in breach of the fundamental right”.

2. ***Unni Krishnan, J.P. & Ors. Vs. State of Andhra Pradesh & Ors***

The issue of providing access to education for children is of utmost importance, as it is not only a fundamental right but also implicit in the right to life as enshrined in Article 21 of the Indian Constitution. This right to education is further reinforced by the directive principle on education as outlined in Article 41. Therefore, it is imperative that all children have access to quality education, as it is not only their right but also essential for their holistic development and for the overall progress of the nation.

The case involves a challenge by private, professional educational institutions to state laws regulating the capitation fees they charge. The matter concerns the compatibility of such fees with the

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<sup>100</sup> Role of Child Care Institutions (CCIs), *supra* note 17.

<sup>101</sup> 1979 AIR 1369

constitutional framework governing the education sector, requiring a thorough examination of relevant precedents, statutes, and guidelines.

“The case involved a challenge by certain private, professional educational facilities to the constitutionality of state laws regulating capitation fees charged by such institutions. The Supreme Court held that the right to basic education is implied by the fundamental right to life (Article 21) when read in conjunction with the directive principle on education (Article 41). The Court held that the parameters of the right must be understood in the context of the Directive Principles of State Policy, including Article 45, which provides that the state is to endeavor to provide, within a period of ten years from the commencement of the Constitution, for free and compulsory education for all children under the age of 14. The Court ruled that there is no fundamental right to education for a professional degree that flows from Article 21. It held, however, that the passage of 44 years since the enactment of the Constitution had effectively converted the non-justiciable right to education of children under 14 into one enforceable under the law. Upon turning fourteen, access to education is contingent upon the economic capacity and development of the state (in accordance with Article 41). The court cited Article 13 of the International Covenant on Economic, Social and Cultural Rights, asserting that the state is obligated to strive to the best of its ability, using all appropriate means, to progressively achieve the full realization of the right to education, particularly higher education.” On the contrary, the Child Care Institutions (CCIs) operating in this area are not fulfilling their legal obligation to provide primary education to the children under their care. This failure to impart education violates the fundamental right to education, which is a crucial aspect of a child's growth and development. Steps must be taken to ensure that all children in CCIs have access to quality education, enabling them to build a better future for themselves and their communities.

### 3. *Leela Vs. State Of Kerala*<sup>102</sup>

In this case, the Kerala high court upheld the “Principle of best interest: All decisions regarding the child shall be based on the primary consideration that they are in the best interest of the child and to help the child to develop full potential.

Principle of family responsibility: The primary responsibility of care, nurture and protection of the child shall be that of the biological family or adoptive or foster parents, as the case may be.

Principle of institutionalization as a measure of last resort: A child shall be placed in institutional care as a step of last resort after making a reasonable inquiry.

Principle of repatriation and restoration: Every child in the juvenile justice system shall have the right to be re- united with his family at the earliest and to be restored to the same socio-economic and

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<sup>102</sup> RPJJ.No. 4 of 2018

cultural status that he was in, before coming under the purview of this Act, unless such restoration and repatriation is not in his best interest.

The finding of the competent authority under the statute cannot be interfered unless the High Court is satisfied as to the illegality or impropriety of the order challenged in revision. In the light of the circumstances narrated earlier, especially in view of the facts stated in report filed before the Committee by the Child line, we find no illegality or impropriety in Annexure A1 order passed by the Committee for admission of the child in a child care institution”.

In light of the above judgments, it is of utmost importance that the competent authority upholds, checks, and ensures children's best interests. Unfortunately, such infringements and exploitations are far too common in our society. To combat this issue, proper administration is necessary, which requires the effective implementation of the JJ Act of 2015. By doing so, we can reduce the prevalence of these violations and ensure that the rights and well-being of children are protected.

#### **4. *Nivedita Jha Vs. The State Of Bihar*<sup>103</sup>**

This case is well-known as the ‘Bihar Shelter Home Rape case,’ and it relates to the right against exploitation on the part of the abuse of physical and sexual- “More than 42 minors were allegedly sexually assaulted over a period of time in the shelter home which was run by Thakur’s state-funded NGO. The court held that Mr. Brajesh Kumar Thakur, who is in charge of Sewa Sankalp Evam Vikas Samiti, is a very influential person, and that is the reason people in the neighborhood are scared to complain against him. CBI needs to look into the antecedents, connections, and influence of the person concerned. Sewa Sankalp Evam Vikas Samiti has received about ₹4.5 crore from the State of Bihar over a period of ten years for their activities. It is necessary that the IT department should look into the income and assets of Mr Brajesh Thakur and, indeed, of the NGO. The next pointer to the list was that the Status report states the transfer of some girls by the Social Welfare Department from the Shelter Home. The transfer indicates that the Social Welfare Department was aware of the unsavory activities in the Shelter Home, and that may have been the reason for the transfer of the victims. Therefore, in this regard, the CBI should seize the record of the said department and further carry out the investigation. Court asked the State of Bihar to file an affidavit stating the reason for the transfer of those girls”.

On 28th July 2018, the Central Bureau of Investigation (CBI) registered a case and assumed responsibility for the investigation of a previous case that was filed at the Mahila Police Station in Muzaffarpur, Bihar. Following a thorough investigation, the CBI filed a chargesheet against 21 individuals before the Designated Court in Muzaffarpur on 18th December 2018. Subsequently, on

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<sup>103</sup> (2018) SCC 1616

7th February 2019, the Supreme Court ordered the transfer of the trial to Saket Court in New Delhi. On 30th March 2019, charges were framed against 20 of the accused under the provisions of the Indian Penal Code (IPC), Protection of Children from Sexual Offences (POCSO) Act, and Juvenile Justice (JJ) Act for engaging in physical and sexual assault, including rape of the victims. Prosecution evidence began on 6th April 2019 and continued on a day-to-day basis. The trial was concluded within the stipulated six-month timeframe, as directed by the Supreme Court of India. After a thorough trial, the Court reached a verdict on January 20th, 2020, in the Muzaffarpur Shelter Home case in Bihar, India. The case involved a series of serious offenses, including rape, gang rape, aggravated penetrative sexual assault, and abetment of these crimes. The Court found 19 individuals guilty of these crimes and acquitted one person. The verdict reflects the Court's commitment to upholding the rule of law and ensuring that justice is served, particularly in cases involving such heinous crimes. It serves as a reminder of the importance of protecting the safety, dignity, and rights of all individuals in society.<sup>104</sup>

#### 5. *Jose Maveli V. State Of Kerala*<sup>105</sup>

It has been reported that a former inmate of an orphanage was arrested for allegedly sexually abusing five children. Additionally, a computer teacher who concealed the incident has also been arrested. The orphanage, which had centres in Aluva and Nedumbassery in Ernakulam, was being run by Maveli. Earlier in May, allegations of irregularities surfaced, and the government took over both centres. On June 21, 2016, the state government told the Kerala High Court that children residing at Shishu Bhavan had been subjected to sexual abuse and physical torture. The government also mentioned that four children had gone missing from the orphanage. In May, the government took over both centers due to allegations of several violations. The center's owner, Jose Maveli, argues that the center has all the necessary permissions. However, the government has reiterated that the centre did not procure the necessary license stipulated under the JJ Act. Upon inspection by the Child Welfare Committee (CWC), it was revealed that the orphanage claimed to have 104 children, but only 42 children were found. Shockingly, many of the children were discovered to be from other states and have now been requested to be repatriated to their own states. This incident highlights the importance of proper licensing and regulation of childcare institutions to ensure children's safety and well-being. other states, who have now been asked to be repatriated to their own states. The Child Welfare Committee (CWC) has recently discovered that the center had used children's images in fundraising notices, violating the Juvenile Justice (JJ) Act. The center in question is facing several charges, including one under Section 75 of the JJ Act. This charge is based on the testimony of a child who had reported that he was subjected to physical torture while at the center. The case has been filed

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<sup>104</sup> Bhumika Indulia, *CBI | Accused in Muzaffarpur Shelter Home Case Sentenced by Trial Court*, SCC TIMES (Feb. 17, 2020), <https://www.scconline.com/blog/post/2020/02/17/cbi-accused-in-muzaffarpur-shelter-home-case-sentenced-by-trial-court/> (last visited Jun 7, 2024).

<sup>105</sup> (2006). CrI Rev Pet No. 4423 (C)

at the Kuttippuram police station and is currently under investigation. In the meantime, the centre has filed a plea in court to challenge the government's decision to take control of the centre. However, Biju Prabhakar, the secretary of the Department of Social Justice, has submitted a counter-affidavit requesting a thorough investigation into the purported irregularities that have been reported at the center.<sup>106</sup> This matter has been transferred to the high court, and the High Court of Kerala upheld that “it is not enough for an Institution to make an attractive claim that a child is well-fed, well-clothed and well-educated by the Institution. That alone may not cater to the needs of a child, which the law-makers dreamt of and also intended, as per the provisions of the relevant Statute. They have other duties to discharge, in the interest of the welfare of the children. But, they miserably failed to discharge their duties, in accordance with law. The prime object of the Act is to restore the child to parents and parental environment”. The current case has surfaced a deeply concerning issue that has been plaguing numerous institutions responsible for the care of children. It has been discovered that these institutions have been neglecting the proper rules and procedures required for running a Child Care Institution (CCI). This failure has resulted in countless instances of physical and sexual abuse towards children, which is a gross violation of their fundamental rights. It is imperative that we investigate these issues thoroughly and take appropriate action to ensure that justice is served for these vulnerable individuals. The court must play a critical role in this process by compelling states to strictly adhere to the laws outlined in the Act, holding defaulters accountable for their actions, and punishing them accordingly. Only then can we provide children with the timely and speedy justice they deserve, and ensure that such horrific incidents are prevented in the future.

#### 6. *Sher Singh @ Sheru Vs. State Of UP*<sup>107</sup>

In this case, the appellant in question was charged with the crime of kidnapping and made a plea to be tried as a juvenile. The plea was based on the appellant's High School Examination (Matriculation) Record, which indicated that the offense was committed prior to the appellant turning 18 years old. The appellant contended that the Juvenile Justice (Care and Protection of Children) Act, 2015, was applicable to the case and requested to be treated as a minor. However, the Juvenile Justice Board dismissed the plea based on a medical report stating that the appellant was 19 years old at the time of the offense. Subsequently, the appellant submitted another plea to be tried as a minor in the Session trial. However, this was also dismissed, and the order was deemed final. In 2013, the appellant filed a writ petition, which was rejected as untimely. Nevertheless, it is important to note that the appellant's right to assert the defense of juvenility remained unaffected by these decisions. The appellant's case

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<sup>106</sup> T. N. M. Staff, *Sexual Abuse of Children at Kerala Orphanage, Jose Maveli Arrested for Cover-Up*, THE NEWS MINUTE (2018), <https://www.thenewsminute.com/kerala/sexual-abuse-children-kerala-orphanage-jose-maveli-arrested-cover-85121> (last visited Jun 7, 2024).

<sup>107</sup> Criminal Appeal No. 1883 of 2013

underscores the complexities surrounding the defense of juvenility in criminal cases. Although the appellant sought to be tried as a minor, the evidence presented did not support his claim. Nonetheless, the appellant retained his right to assert the defense of juvenility, which is a crucial protection for minors accused of crimes.

#### 7. *Jarnail Singh Vs State Of Haryana*<sup>108</sup>

The case revolves around the kidnapping and gang rape of a minor girl (prosecutrix VW-PW6) by Jarnail Singh (the accused-appellant) and his three accomplices on the night of March 25, 1993. The prosecutrix was forcibly taken away when she went out to urinate, made unconscious by inhaling something, and then gang-raped by the four men. The prosecution's case rested primarily on the statement of the prosecutrix under Section 164 CrPC, her testimony in court as PW6, the recovery of the prosecutrix from Jarnail Singh's custody, the medical examination confirming sexual assault, and the forensic reports detecting semen and blood on her clothes. The accused-appellant's main contentions were that the prosecutrix had accompanied him willingly with the intention to marry, that the sexual intercourse was consensual, and that her testimony should not be relied upon due to contradictions. The Supreme Court rejected these arguments. It held that the prosecutrix's minority, conclusively established through school records, made her consent immaterial. The court found substantial corroborating evidence supporting her version of forcible kidnapping and gang rape. The contradictions in her statements were not deemed significant as she was not cross-examined on them. Upholding the conviction by the trial court and High Court, the Supreme Court dismissed the appeal. It found no merit in the accused-appellant's arguments and held that the guilt was proven beyond reasonable doubt under Sections 366, 376(g), and 120B IPC. The Supreme Court dismissed the appeal of Jarnail Singh and upheld his conviction by the trial court and High Court for the offenses of kidnapping (Section 366), gang rape (Section 376(g)), and criminal conspiracy (Section 120-B) against the minor prosecutrix. The Court conclusively determined the prosecutrix's minority through school records, rendering her consent immaterial. It found substantial corroborating evidence, including her statements, medical examination confirming sexual assault, forensic reports of semen/blood, and her recovery from Jarnail Singh's custody. The Court concluded that the prosecution had proven Jarnail Singh's guilt beyond reasonable doubt for the charged offenses based on the cogent evidence presented.<sup>109</sup>

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<sup>108</sup> 2013 SCC OnLine SC 507

<sup>109</sup> Procedure For Determination Of Age Of Minor Same For A Child Who Is In Conflict With Law And A Child Who Is, <https://www.lawyersclubindia.com/judiciary/procedure-for-determination-of-age-of-minor-same-for-a-child-who-is-in-conflict-with-law-and-a-child-who-is-the-victim-of-a-crime-jarnail-singh-vs-state-of-haryana-5645.asp> (last visited Jun 7, 2024).

## 8. *Rajendra Prasad Vs Union Of India*<sup>110</sup>

It is a public interest litigation filed by two organizations working for children's rights, alleging illegal transfer of children from states like Bihar, Jharkhand, West Bengal, and Arunachal Pradesh to Kerala, amounting to child trafficking. The petitioners referred to newspaper reports about the rescue of over 450 children from trains and their subsequent placement in orphanages and government homes. They contended that these children from impoverished communities were brought to Kerala under the pretext of free education, but were kept in poor conditions and separated from their cultural roots. The petitioners sought repatriation of the children, trauma counselling, and implementation of the Juvenile Justice (Care and Protection of Children) Act, 2000, to regulate orphanages. The court admitted the petition and directed an investigation by the Crime Branch and the CBI. The Child Welfare Committee treated the intercepted children as in need of care and protection, housing them in government homes and repatriating some. The court examined the definition of "children in need of care and protection" under the Act and its applicability to the children admitted by orphanages from outside Kerala. The judgment also discussed the registration requirements for orphanages under the Act and the Orphanages and Other Charitable Homes (Supervision and Control) Act, 1960. In this matter, the court disposed of the writ petitions (No. 14259/2014, 14604/2014, and 23875/2014) regarding the alleged child trafficking and illegal transfer of children from states like Bihar, Jharkhand, West Bengal, and Arunachal Pradesh to Kerala with the following directions:

1. The respective Child Welfare Committees shall take appropriate measures under the Juvenile Justice (Care and Protection of Children) Act, 2000, for the 578 children intercepted at Palakkad Railway Station in May 2014 from Bihar, Jharkhand, and West Bengal, who are still housed in orphanages/children's homes.
2. The Child Welfare Committee, Ernakulam, is allowed to take appropriate measures as per its earlier decision for the 16 children brought from Arunachal Pradesh and the 29 children intercepted at Ernakulam Junction Railway Station in May 2015, in accordance with the 2000 Act.
3. All orphanages/homes registered under the Orphanages and Other Charitable Homes (Supervision and Control) Act, 1960<sup>111</sup>, shall obtain registration under the 2000 Act if intended for the care, protection, and welfare of children below 18 years. The government order exempting them from registration under the 2000 Act is set aside.
4. District administrations shall assist the Child Welfare Committees in inspecting and taking appropriate measures for children in orphanages/homes as per the 2000 Act.

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<sup>110</sup> WP(C).No. 14259 of 2014 (S)

<sup>111</sup> Orphanages and Other Charitable Homes (Supervision and Control) Act, 1960



5. No orphanage/home shall receive children from outside the state without prior approval of the Orphanage Control Board and recommendation of the concerned state government, as per the regulations framed under Section 30(3) of the 1960 Act.

6. The Central Bureau of Investigation (CBI) shall investigate cases registered under Section 370 of the Indian Penal Code (IPC) for child trafficking from outside the state, including Crime Nos. 48 and 49 of 2014 registered by the Palakkad Railway Police.

7. The court dismissed a related writ petition (W.P(C) No.15844/2015) and appreciated the assistance provided by the amicus curiae.

**9. *Re: Exploitation Of Children In Orphanages In The State Of Tamil Nadu Vs. Union Of India & Ors.*<sup>112</sup>**

The Supreme Court's judgment in the case of *Re: Exploitation of Children in Orphanages in the State of Tamil Nadu vs Union of India & Ors* on 5 May 2017 addresses the issue of protecting the rights of children in need of care and protection, particularly those residing in child care institutions. The case originated from a newspaper article highlighting instances of sexual abuse of children in orphanages in Tamil Nadu. Over the years, the court expanded the scope of the case to encompass the broader rights of children and the implementation of various statutes like the Juvenile Justice (Care and Protection of Children) Act, 2015, the Protection of Children from Sexual Offences Act, 2012, and the Commissions for Protection of Child Rights Act, 2005.

The court made a point of stressing the importance of a comprehensive interpretation of what constitutes a "child in need of care and protection". This definition was expanded to encompass victims of sexual abuse, trafficking, and other crimes. The court also mandated the registration of all childcare institutions by December 31, 2017, and the enforcement of minimum care standards, as well as proper allocation of grants for child welfare schemes. In addition, the judgment underscored the significance of rehabilitating and reintegrating children by calling for individualized child care plans and exploring alternatives to institutionalization such as adoption and foster care. The court also emphasized the necessity of training personnel, conducting social audits for transparency and accountability, and strengthening the National and State Commissions for the Protection of Child Rights. It further recognized the role of Juvenile Justice Committees in High Courts and mandated the establishment of secretariats to support them. The court stressed the importance of collaboration among government agencies, the judiciary, and civil society organizations to effectively safeguard children's rights.

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<sup>112</sup> WRIT PETITION (CRIMINAL) NO. 102 OF 2007

### **3.10 CONCLUSION**

Every child deserves to be safe, well-cared for, and supported in their development. The State holds a critical responsibility to ensure that children in alternative care receive the necessary level of attention and review to ensure their well-being. By fulfilling this duty, we can create a brighter future for all children, where every child has the opportunity to thrive and reach their full potential. The JJ Act 2015 is a significant step towards promoting the welfare of children in India and underscores the government's commitment to providing a secure and nurturing environment for all children, especially those who are in need of care and protection. The Juvenile Justice Act and its associated rules provide a comprehensive framework for establishing and maintaining different types of child care institutions in India. These institutions are designed to cater to the specific needs and circumstances of children, ensuring their care, protection, rehabilitation, and overall development. The Act mandates the establishment of Observation Homes, Special Homes, Children's Homes, Shelter Homes, Specialized Adoption Agencies, Open Shelters, Places of Safety, and Fit Facilities. Each category of institution serves a distinct purpose, ranging from temporary reception and inquiry to long-term rehabilitation and adoption services. These institutions are required to maintain prescribed standards of care, including providing adequate accommodation, nutrition, healthcare, education, counselling, recreational activities, and vocational training. The Act also emphasizes the importance of separate facilities for boys and girls to ensure their safety and well-being. The composition and staffing of these institutions are clearly defined, with provisions for qualified personnel such as superintendents, counsellors, case workers, teachers, medical staff, and vocational instructors. Regular inspection and monitoring mechanisms are in place to ensure compliance with the standards and regulations. Overall, the Juvenile Justice Act and its associated rules aim to create a comprehensive and well-structured system of child care institutions to address the diverse needs of children in need of care and protection, as well as those in conflict with the law. The ultimate goal is to uphold the rights and best interests of children while facilitating their holistic development, rehabilitation, and reintegration into society. In conclusion, the State has a pivotal role to play in protecting the rights of children who are unable to receive adequate care from their own families. This involves ensuring that appropriate alternative care is made available to the child and that the child's well-being is safeguarded in a safe and secure environment. The NCPCR advisory serves as a critical resource for policymakers, practitioners, and advocates working to ensure the safety and protection of vulnerable children. The issue of abuse and violation of fundamental rights of children staying in Child Care Institutions (CCIs) has been a matter of grave concern in India. The situation has been worsening due to a lack of proper governance and monitoring mechanisms to ensure the safety and well-being of these children. The Supreme Court and High Courts of India have been proactively involved in addressing the issue and have been taking measures to ensure that the rights

of these children are protected. However, it has been observed that power and political dynamics often play a decisive role in the outcome of such cases, making it difficult to provide timely justice to the affected children. The situation in CCIs is dire, with children being denied fundamental human rights such as education, healthcare, and a safe living environment. Physical and mental abuse, exploitation, and neglect are rampant in these institutions, with many children suffering in silence due to a lack of proper redressal mechanisms. The lack of individual child care plans, socialization, and improper human development further exacerbate the situation, leaving the children vulnerable to further exploitation and abuse. In response to these issues, the JJ Act, 2000 and the JJ Rules, 2016 were enacted to address the shortcomings and provide a framework for the protection of children in CCIs. However, it is clear that institutionalization has an adverse impact on the physical, mental, and emotional well-being of these children, leading to long-term consequences that often go unaddressed. The Supreme Court order for mapping 9,589 homes, including observation homes, special homes, and open shelters across the country, was a much-needed initiative to assess the condition of children staying in these institutions. Through this exercise, the plight of these children will be brought to light, and the necessary measures will be taken to ensure that their fundamental rights are protected and that they are provided with a safe and nurturing environment for their growth and development. In the upcoming chapter, the researcher will investigate and analyse case studies and reports that delve into the experiences of children in childcare institutions. The focus will be on understanding the perspectives and outcomes of these children, taking into account their socio-cultural, economic, and familial backgrounds. Additionally, the role of childcare institutions in Kerala will be explored and examined.

## CHAPTER IV

### **SOCIO-LEGAL STUDY ON THE DEVELOPMENT OF CHILDCARE IN CHILDCARE HOMES**

#### **INTRODUCTION**

We have conducted an in-depth examination of the structure and operation of childcare institutions, focusing on their functioning across various departments and their handling of children at different developmental stages within the juvenile system. We have also explored how the judicial system supports these institutions. In this discussion, we will delve into the implementation of the aforementioned sections, rules, and regulations, and how they are put into practice within real-world childcare institutions. Furthermore, we will address how these institutions benefit the children under their care, the laws put in place to ensure the well-being of the children, and the dedicated efforts of the staff and caretakers to prioritize the best interests of the children.

#### **ANALYZE CASE STUDIES AND REPORTS ON THE EXPERIENCES OF CHILDREN IN CCIS TO UNDERSTAND THEIR PERSPECTIVES AND OUTCOMES.**

Child Care Institutions (CCIs) serve as the ultimate recourse for providing children safety and shelter and are deemed the least preferable option for long-term or permanent accommodation. They constitute a fundamental element of the juvenile justice system, established to furnish a secure space wherein children can recuperate from trauma, restore trust, and acquire the skills necessary to navigate the external environment beyond the confines of the CCI. By the Juvenile Justice Act 2015 and Juvenile Justice Model Rules 2016, all CCIs, irrespective of their financial backing, are mandated to ensure children's safety, security, dignity, and general well-being in a manner consistent with prescribed standards of care, emphasizing child-friendliness.<sup>113</sup>

The National Institute of Public Cooperation and Child Development (NIPCCD), commonly referred to as NIPCCD is a prestigious organization committed to fostering voluntary action, conducting comprehensive research, delivering specialized training programs, and meticulously documenting initiatives within the overarching scope of women and child development.<sup>114</sup> The institution, established in 1966 in New Delhi, operates as an autonomous body under the provisions of the Societies Registration Act of 1860. It falls under the purview of the Ministry of Women and Child Development, Government of India. The National Institute of Public Cooperation and Child Development (NIPCCD) is committed to promoting the overall well-being and holistic development of women and children across the nation through a multifaceted approach. The Institute prioritizes several critical areas concerning child development, including early childhood care and education,

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<sup>113</sup> Ratna Anjan Jena, (*Sanghamitra Barik*) Deputy Director, NIPCCD.

<sup>114</sup> Ibid

adolescent development, child rights, and child protection by implementing various programs and initiatives. This includes a comprehensive focus on maternal and child health and nutrition, emphasizing promoting early childhood care and education. The Institute also works towards addressing childhood disabilities and promoting positive mental health in children. Additionally, the Institute provides essential child care support services. Furthermore, the Institute is deeply involved in supporting and advancing national policies and programs for women's empowerment through extensive training, meticulous research, and comprehensive documentation to further women's development<sup>115</sup>.

Child care institutions often provide a critical support system for children who may face many challenges impacting their overall well-being. These challenges range from physical health concerns, such as stunted physical development, to mental health issues, with almost half of the children meeting the criteria for mental illness. Additionally, they may grapple with psychosocial difficulties like insecure attachment and lower IQ. Moreover, these vulnerable children are at risk of experiencing neglect, abuse, and discrimination, all of which can have lasting adverse effects on their overall well-being and future prospects. Implementing targeted support and interventions to enhance the conditions and outcomes for these particularly vulnerable children is imperative.

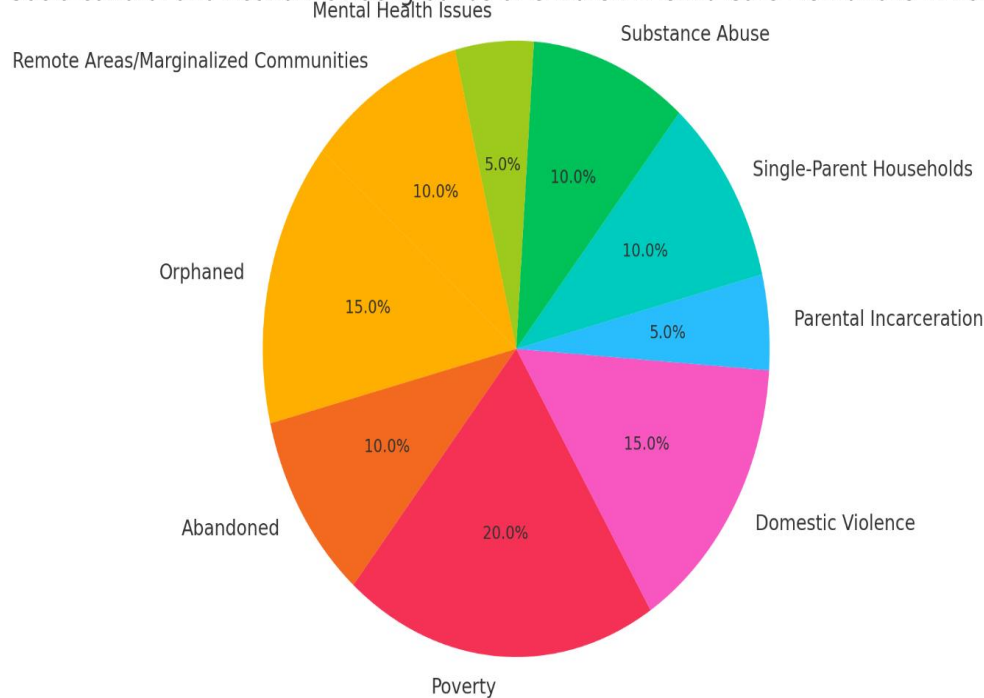
The researcher conducted the research by meticulously collecting data and establishing direct connections with children in various childcare institutions. The findings presented a complex picture, with some children expressing higher levels of comfort in these settings compared to their homes. However, the research also uncovered instances where children were subjected to mistreatment and unfavorable conditions by the caregivers, as highlighted in the responses gathered by the researcher. As per the data collected by the researcher from the institutions, there are some institutions were forced to shut down because they raised question and problems in their part.

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<sup>115</sup> Ibid

# I. THE SOCIO-CULTURAL, ECONOMIC, AND BACKGROUND OF CHILDREN IN CHILD CARE INSTITUTIONS (CCIS) IN KERALA.

Socio-cultural and Economic Backgrounds of Children in Child Care Institutions in Kerala



Here is a pie chart representing the socio-cultural and economic backgrounds of children in Child Care Institutions (CCIs) in Kerala. It talks about the different backgrounds, which include categories such as orphaned, abandoned, poverty, domestic violence, parental incarceration, single-parent households, substance abuse, mental health issues, and children from remote areas or marginalized communities. This visual aid helps to understand the diverse circumstances these children come from and the challenges they face.

Children in Child Care Institutions (CCIs) in Kerala come from diverse socio-cultural and economic backgrounds. These institutions cater to children who are orphaned, abandoned, or from families facing various challenges, such as poverty, domestic violence, or parental incarceration. Childcare institutions work as the backbone for child development who are in conflict with the law, and it helps the children to uplift and help to develop people. In some cases, it is not the case in which the children face difficulties because of the impact that happened in their past lives, and a child's background makes them feel uncomfortable. The researcher has found out that the institutions work for the children's best interests. On the other hand, child care works for the child's well-being and goodness and will not affect their future. In order to create interventions and support systems that genuinely meet these children's needs, it is essential to have a thorough understanding of the various aspects of their socio-cultural, economic, and background circumstances. When we consider the socio-cultural conditions of the children in institutions, it will be from the past conditions and past traumas that adversely affect children in their future lives. Kerala is a region known for its rich ethnic and linguistic

diversity, encompassing a wide array of communities such as tribes, fisherfolk, and other minority groups. The children belonging to these diverse communities may encounter distinctive obstacles stemming from their cultural practices, languages, and socio-economic circumstances. Many children come from single-parent households due to a variety of reasons, such as the separation or divorce of their parents. Additionally, some children grow up in families where they face challenges, including substance abuse, domestic violence, and mental health issues. Kerala is renowned for its rich cultural and religious diversity, fostering harmonious coexistence among various communities. This diversity is also evident among the children in Child Care Institutions (CCIs) in the region. It is imperative to acknowledge, appreciate, and respect these children's unique cultural and religious backgrounds to provide them with appropriate care and support. Children from remote areas or marginalized communities often encounter language and communication barriers that significantly impact their ability to communicate effectively. These barriers may stem from differences in dialects, limited access to language education, and lack of exposure to diverse linguistic environments. As a result, children may struggle to express themselves, engage in meaningful conversations, and fully participate in educational and social activities. It is important to address these challenges in order to create inclusive and supportive environments for all children. Children hailing from remote regions or marginalized communities often confront intricate language and communication barriers that profoundly hinder their capacity to communicate with fluency. These barriers can be attributed to variations in dialects, restricted access to language education, and limited exposure to diverse linguistic settings. Consequently, children may struggle to articulate their thoughts, engage in substantive dialogues, and actively involve themselves in educational and social endeavors. It is imperative to proactively tackle these challenges to establish genuinely inclusive and supportive environments for all children, regardless of their backgrounds.

“You may wonder why children with parents and all means of support end up here. It's because their parents are not getting along or are fighting with each other. For the best interest of the child, neither of the parents nor any relative has taken an interest in protecting the child from being tortured or traumatized, leading to the institutionalization of such children.”

- Ms. Devi {Member, Kerala State Commission for child rights}

In the concept of the economic background of the child, it says that many children living in CCIs come from families facing significant economic challenges. These challenges can range from long-standing poverty and high levels of unemployment to unstable financial circumstances, all of which play a role in why these children end up in these institutions and on the same time before being admitted to the CCIs also include lack of basic amenities where the child has experienced, a significant number of children may have faced challenges such as inadequate housing, limited access

to healthcare services, lack of educational opportunities, and insufficient access to other basic necessities. On the other hand, families' socioeconomic status, career paths, and income levels can profoundly impact their children's well-being, educational opportunities, and future prospects.

“The majority of the children come from minority backgrounds, such as SC/ST, Muslim, Christian, and other OBCs. Many of them may be orphans or come from single-parent families that struggle to provide sufficient care due to financial limitations. In some cases, the mother may be employed, and there might not be any other family member available to take care of the child. These children either reside in underprivileged areas or are involved in legal disputes.”

- Ms. Indira {Secretary, Shishu bhavan}

The circumstances in Kerala shed light on how the complex interplay of socio-cultural, economic, and familial factors has shaped the experiences of children in Child Care Institutions (CCIs). This illuminates the inadequacies of child welfare legislation and the social justice system in effectively safeguarding the rights of marginalized and vulnerable segments of the population. Despite the presence of family, community environment, and educational institutions, these children still need to receive the protection necessary to prevent their institutionalization. In today's society, a concerning cultural shift is emerging, where many people with the means and capability to care for children opt not to do so. The widespread availability of government and private Child Care Institutions (CCIs) has significantly contributed to offering an alternative childcare solution. Unfortunately, the convenience and perceived safety of CCIs are dissuading potential caregivers from taking on the responsibility and risk of providing direct care. However, what is often overlooked is that the nurturing, guidance, and affection that children receive from their parents cannot be replicated in an institutional setting. As a result, this trend could have serious implications, leading to increased vulnerability and marginalization of these children within mainstream society.

“ I am a Christian from Kasargod, my mother is working woman and has been divorced, and my mother is working in another place and she was not able to look after me because of their work and she has taken admitted to this institution and after I attained 18 years of age I will go back to my home and now am in 10<sup>th</sup> standard by that time my mother will come back to take care of me.”

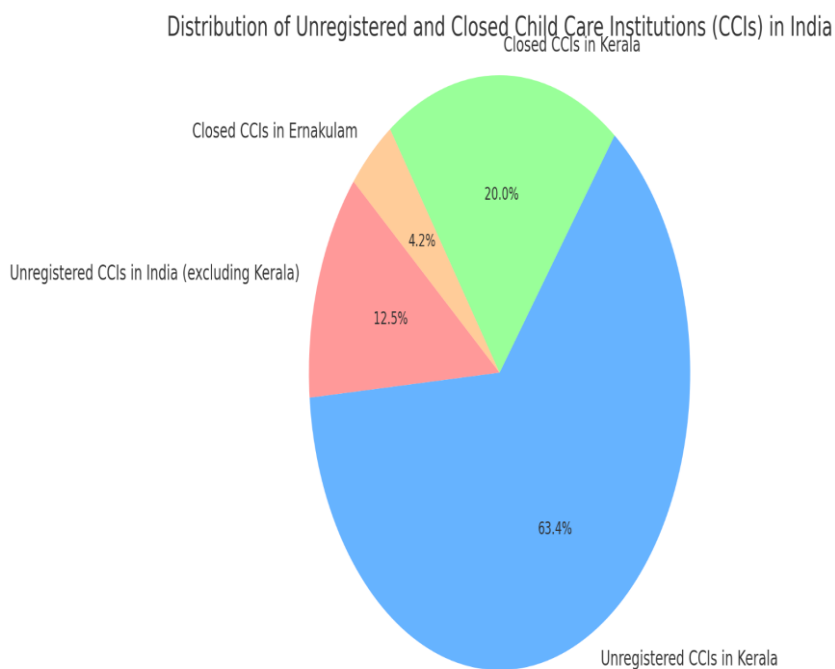
- Girl child {mercy home; chalakudy}

The researcher has engaged with children across a wide age range, from 5 to 18 years old, representing diverse religious groups including Christians, Hindus, and Muslims. The majority of these children are from scheduled castes, and it is evident that their parents may lack awareness of the basic amenities and education that should be provided for children in this age group. While interviewing



the students, the researcher found out that the children lack parental care and protection in which others share their feelings while they are going to school, and they have they feel like no one is there to drop and take care the same way as the other students get love, care and protection. I had a chance to engage with these children, and it was striking to observe that a majority of them conveyed deep-seated feelings of isolation and disconnection from a sense of home while residing in these institutions. Their expressions revealed a profound vulnerability, underscoring a significant failure on the part of these institutions in providing the necessary care and protection for these children. It is evident that the government's laws and policies have yet to effectively achieve the primary goal of prioritizing the best interests of these children and shielding them from marginalization. Despite the existence of numerous legislative measures, programs, and schemes intended for the welfare and integration of marginalized religious minorities, it is noteworthy that a staggering 90% of the children in these Child Care Institutions (CCIs) belong to such minority groups. This glaring statistic serves as a poignant reminder of the inability of policymakers and implementers to effectively deliver on the fundamental objectives of these welfare schemes and programs.

## II. REASON FOR CLOSING THE CHILD CARE INSTITUTIONS (CCIS) IN THE DISTRICT OF ERNAKULAM, KERALA.



The pie chart illustrates the distribution of unregistered and closed Child Care Institutions (CCIs) across India, with a particular focus on Kerala. Unregistered CCIs in Kerala. A staggering 1,165 unregistered CCIs are operational in Kerala, making up a significant 87% of the total unregistered CCIs in India. This overwhelming concentration of unregistered institutions within a single state underscores the magnitude of the issue in Kerala. These institutions are operating without proper

registration, which raises serious concerns about the state's standards of care and regulatory compliance.

Under the directives of a court order and in accordance with the guidelines of the Integrated Child Protection Scheme (ICPS) managed by the Women and Child Development Department of Kerala, around 280 unregistered Child Care Institutions (CCIs) in Kerala have been closed down forcefully. This action represents 24% of the total unregistered CCIs in the state. The closures reflect efforts to enforce regulations and ensure that child care institutions adhere to the standards set forth by the governing act. These measures are crucial for safeguarding the welfare of children and ensuring that only compliant and responsible institutions operate. And within Kerala, the district of Ernakulam has witnessed the highest number of CCI closures, with 58 institutions being shut down. This represents 21% of the closed CCIs in Kerala. Ernakulam's significant share of the closures indicates a concentrated effort to address non-compliant CCIs in this district. It also suggests that Ernakulam may have had a particularly high number of institutions operating without proper adherence to regulations.

As per the data from National Commission for Protection of Child Rights (NCPCR), there are a total of 1,339 unregistered Child Care Institutions (CCIs) across India, with a staggering 1,165 of these being operational in the state of Kerala. In compliance with a court order, approximately 280 CCIs in Kerala have been forcibly shut down. These closures have been made in accordance with the Integrated Child Protection Scheme (ICPS) overseen by the Women and Child Development Department of Kerala. Notably, the district with the highest number of shuttered CCIs is Ernakulam, with 58 institutions being closed within its borders. Researchers have brought to light the concerning trend of establishments opening CCIs purely for profit, without regard for the standards set forth by the governing Act. These evil entities fail to prioritize the welfare of the children in their care and shirk accountability by not complying with regulatory measures.<sup>116</sup>

“The court has mandated that all private Child Care Institutions (CCIs) must be registered under the Juvenile Justice Act and comply with its rules and procedures. The directors and administration of such CCIs should make an effort to get registered, provided that their main goal is to work in the best interests of needy children, and they have no malicious intentions. Some CCIs in the Ernakulam district have shut down; they were established for fundraising under the guise of donations and did not want to get registered, likely to avoid being held accountable. The situation of the children in these institutions is distressing, as we have received numerous complaints from the children and their well-wishers about mistreatment and poor services. It appears that all such CCIs are essentially

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<sup>116</sup> NCPCR data shows over 1,300 unregistered child care institutions in India, 1,165 alone in Kerala, FIRSTPOST (2018), <https://www.firstpost.com/india/ncpr-data-shows-over-1300-unregistered-child-care-institutions-in-india-1165-alone-in-kerala-4746071.html> (last visited Jun 16, 2024).

operating to raise funds and exploit the vulnerability of children. If they had no such interests, they would have made an effort to get registered.”

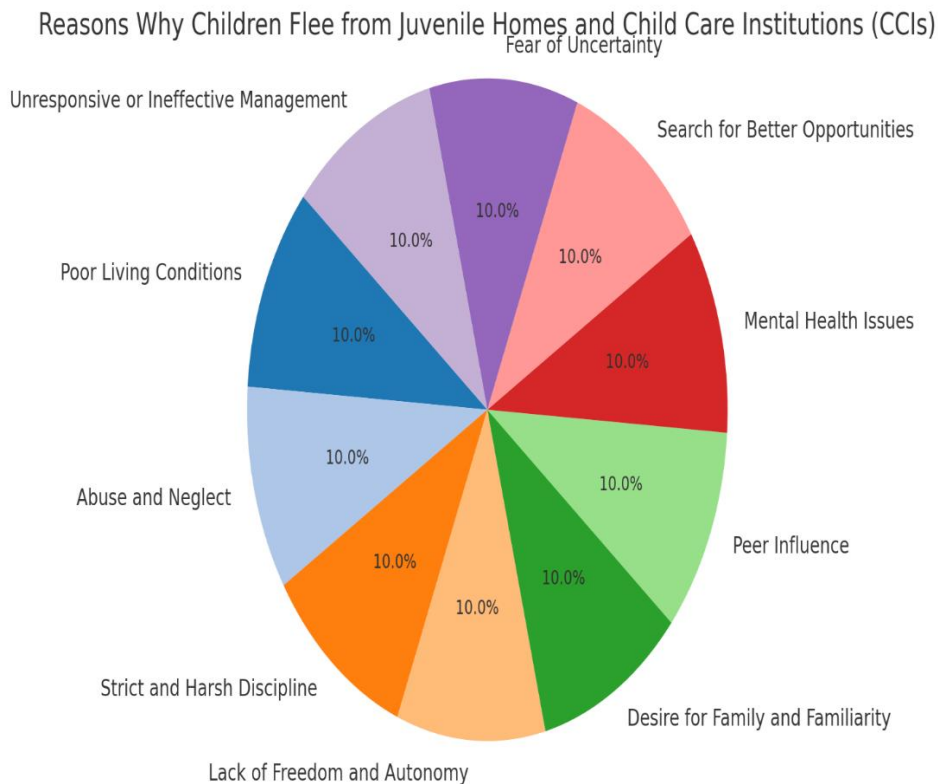
- Ms. Devi {Member, Kerala State Commission for Child Rights}

Unregistered childcare institutions (CCIs) are a cause for concern due to the lack of accountability measures in place. Without proper registration, these CCIs operate without the necessary oversight and transparency, making it challenging to monitor their activities and ensuring the safety and well-being of the children residing there. This absence of proper registration poses a significant risk to the welfare of the children under their care and underscores the importance of implementing robust accountability measures within the childcare system. Some childcare institutions (CCIs) are being established with the intention of prioritizing financial gain over the best interests of the children for whom they are responsible. This is a direct violation of the core principles and objectives of child protection laws and regulations, which are in place to ensure the safety and well-being of children in care. The use of unqualified and untrained staff in certain childcare institutions (CCIs) can be attributed to a decision to reduce operational costs and increase financial gains. Unfortunately, this may lead to a shortage of necessary skills and expertise required to deliver appropriate care and support, especially for children with special needs or those who have experienced trauma. This situation could result in inadequate care and support for vulnerable children, potentially exacerbating their challenges and hindering their overall well-being. The prioritization of profit over the well-being of children in Child Care Institutions (CCIs) is a clear violation of fundamental child rights as established in national and international legal frameworks and conventions. Children residing in these institutions are at risk of experiencing neglect, abuse, and exploitation as their fundamental needs and rights are neglected in favor of financial gains.

“The work done by the Child Welfare Committee (CWC) and the District Child Protection Unit (DCPU) in monitoring the Child Care Institutions (CCIs) is commendable. This monitoring has led to the shutdown of institutions that do not comply with the guidelines of the Juvenile Justice (JJ) Act. Institutions that prioritize interests such as seeking sponsorship and fundraising through donations, instead of focusing on the welfare of children, may not have the necessary facilities, infrastructure, or detailed records of the children in their care. It is not a cause for concern if such institutions are shut down, as many other CCIs are still operating and are dedicated to the welfare of children under the JJ Act. Registered CCIs are required to accept children referred by the CWC or DCPU, which may include children with a history of violence and substance abuse. Some institutions may not be equipped to handle the needs of such children, as they may lack the necessary expertise, such as psychologists and trained personnel.”

The statement commends the Child Welfare Committee (CWC) and the District Child Protection Unit (DCPU) for their effective monitoring of Child Care Institutions (CCIs), which has led to the closure of non-compliant institutions under the Juvenile Justice (JJ) Act. These closures are justified as they target institutions prioritizing sponsorship and fundraising over the welfare of children, often lacking necessary facilities, infrastructure, and detailed child records. The statement reassures that many other CCIs are still operational and dedicated to child welfare. Registered CCIs are required to accept children referred by the CWC or DCPU, including those with histories of violence and substance abuse, but not all are equipped with the needed expertise, such as psychologists and trained personnel, to handle these complex cases effectively.

### III. THE REASONS WHY CHILDREN FLEE FROM JUVENILE HOMES AND CHILD CARE INSTITUTIONS (CCIS).



As per the data collected by the researcher and analysis made by the researcher, it has been found that there are many reasons why children may flee from Juvenile Homes and Child Care Institutions (CCIs). While the equal distribution of segments is a simplification for visual representation, it highlights the multitude of factors that contribute to this concerning issue. Each segment offers insights into the challenges and shortcomings faced by children in these institutions, prompting them to take the drastic step of running away. One of the significant reasons depicted is poor living

conditions, encompassing inadequate facilities, overcrowding, and poor hygiene. These substandard conditions not only compromise the well-being of children but also foster an environment that fails to meet their basic needs, making escape seem like a viable option. Abuse and neglect are closely related issues that can manifest in various forms, including physical, emotional, or sexual abuse, as well as the failure to provide a child with necessary care and rights. Such experiences can have profound psychological impacts, driving children to seek refuge elsewhere. The chart also highlights the impact of strict and harsh disciplinary measures, which can create an oppressive and fear-inducing environment for children. Coupled with a lack of freedom and autonomy, where personal choices and expression are restricted, children may feel compelled to escape in search of greater independence and self-determination. The desire for family and familiarity can be a powerful motivator for children. They yearn for the comfort and security of their loved ones and the familiar surroundings that provide a sense of belonging. Additionally, peer influence plays a significant role as children are influenced by their peers who have either successfully escaped or are in the process of planning an escape. This influence from friends can further fuel their desire for freedom and independence. This social pressure can create a ripple effect, encouraging others to follow suit. Mental health issues, if left unaddressed, can also contribute to children's decisions to flee, as they grapple with emotional and psychological challenges without adequate support and care.

The search for better opportunities, whether educational, social, or economic, is another factor depicted in the chart. Children may perceive their current circumstances as limiting and seek greener pastures elsewhere. Additionally, the fear of uncertainty, particularly regarding their futures and the prospect of prolonged stays in these institutions, can breed feelings of hopelessness and drive them to take matters into their own hands. Finally, the chart highlights the role of unresponsive or ineffective management in CCIs, which can fail to address the needs and concerns of children, exacerbating their dissatisfaction and prompting them to escape. Effective management and responsive leadership are crucial in creating a supportive and nurturing environment for these vulnerable individuals.

“The children in the homes flee from our institutions because they think that they can live freely outside of the institution without any restrictions or strict order; they want live happily, and some of the children are influenced by their boyfriends, and they want to contact with the lovers with is not allowed in the institutions and some of the children are not well-mannered ones, and they will not obey the rules and regulations of the child care institutions, and they are totally against the manner and rules of the institutions, and at the same time they are influence other children in the home and make them also feel that the institutions is not safe and it is restrictive in all ways”

- Ms. Betty {chairperson, CWC, Ernakulam}

In the pie chart, it's clear that the researcher's comprehensive analysis has revealed many interconnected reasons driving children to flee from Juvenile Homes and Child Care Institutions. The chart serves as a stark reminder of the critical need for far-reaching reforms and targeted interventions to address these underlying issues effectively. It underscores the imperative for these institutions to center their efforts on prioritizing the holistic well-being, safety, and empowerment of the children within their care.

#### **IV. THE STAFF AND CARETAKERS LACK SENSITIVITY AND PROPER TRAINING.**

The issue of inadequate education for child care workers is multifaceted and deeply impactful. Many institutions only require minimal educational qualifications, often just a high school diploma, without mandating specialized training in child development or early education. This results in a workforce that may lack crucial understanding of children's developmental stages and needs. Even when training is provided, it often falls short in covering child development comprehensively. This gap in knowledge can lead to misunderstandings about children's behaviors and needs at different stages of their growth. Moreover, there's a significant lack of training in trauma-informed care, which is critical given that many children in care systems have experienced trauma. Without this understanding, caregivers may misinterpret trauma responses as simple behavioral issues, potentially exacerbating the child's distress. Training programs tend to prioritize physical care and safety, often at the expense of emotional and social development. This imbalance can result in missed opportunities to support children's emotional regulation, social skills, and mental health. Additionally, some child care workers may rely on outdated practices if they haven't received education on current best practices in early childhood care and education. Many training programs lack sufficient hands-on, practical experience under experienced mentors. This shortfall can leave new workers ill-prepared for the realities of day-to-day child care. Once employed, opportunities for ongoing professional development are often limited, hindering workers' ability to keep their skills current and expand their knowledge base. There's also a notable lack of specialized training for working with children who have special needs, come from diverse cultural backgrounds, or face specific challenges like language delays or behavioural issues. This gap can lead to inadequate support for these children's unique requirements. Budget constraints in many child care centers further compound these issues, limiting their ability to provide comprehensive training or hire staff with advanced educational backgrounds. High turnover rates in the field can also discourage employers from investing in extensive training programs, creating a cycle of underprepared staff. Addressing these educational and training gaps is crucial for improving care quality in child care institutions. It requires a comprehensive approach involving policy changes, increased funding, partnerships with educational institutions, and a strong commitment to ongoing professional development. By investing in the education and training of child

care workers, we can significantly enhance the quality of care and support provided to children in these crucial early years.

“It is a great problem in the institutions where the child care takers are not well trained and educational whereas there is no practical session being conducted in part of their they have only book knowledge as whereas they will not be able to look after the child in proper manner and well behavioral manner which adversely affect the child future and wellbeing”

- Ms. Anu mol, Home manager

The issue highlighted is indeed a serious concern in childcare institutions. The reliance on book knowledge without adequate practical training creates a significant gap between theory and practice for childcare workers. This disconnect can severely impact their ability to provide effective care and support to children. When caregivers lack hands-on experience, they often struggle to handle real-world challenges that arise in childcare settings. Book knowledge alone doesn't prepare them for the unpredictable and complex situations they'll face daily. This can lead to difficulties in managing challenging behaviours, as theoretical understanding doesn't always translate into effective intervention strategies. In addition, caregivers who lack hands-on experience may face difficulties in effectively nurturing children's emotional growth. They could potentially overlook key emotional signals or be unable to offer the necessary emotional guidance, which is vital for a child's overall welfare. Moreover, mastering communication skills for working with children can be challenging without practical, real-life exposure. Effective communication with children of various ages and developmental stages requires nuanced skills that go beyond theoretical knowledge. The lack of practical training can also hinder a caregiver's ability to create engaging and stimulating learning environments. While they may understand the theory of child development, they might struggle to translate this into age-appropriate activities and stimulating environments. Additionally, the adaptability required in child care – the ability to flexibly respond to each child's unique needs and rapidly changing situations – is a skill best developed through hands-on experience.

## **V. RESTRICTIONS ON MOVEMENT AND ASSOCIATED PUNISHMENTS.**

Restrictions on movement and associated punishments in child care institutions are deeply problematic practices that can severely impact children's development and well-being. The restrictions on movement in these institutions often go far beyond reasonable safety measures. Children may be confined to specific areas for extended periods, denied access to outdoor spaces, or required to move in regimented ways. Such severe limitations on physical activity can hinder motor skill development, reduce opportunities for social interaction, and stifle natural curiosity and exploration. These movement restrictions are typically enforced through a system of punishments, creating an atmosphere of constant surveillance and control. Punishments for violating movement

rules might include isolation, withdrawal of privileges, or even physical discipline in some cases. This punitive approach instills fear rather than fostering understanding and self-regulation.

“The children are not comfortable with the rules and regulations that the institution imposes regulations where the children will be unable to follow like the main focus on the institution will be study, health as well as the future of the children, where they are not allowed to use any social media, and there is no phone for children. The aim duty of the institutions will be timetable based, and they will not be allowed to break the rules.”

- Ms. Indira, secretary, JenaSeva Shishu bhavan

## **VI. CHALLENGES FACED BY THE CHILDREN IN THESE INSTITUTION'S**

The researcher has found out by interviewing the children as well as officers of the institutions. The researcher has two different opinions about the challenges faced by children in the institution. The situation described in Child Care Institutions (CCIs) reveals a deeply concerning approach to child care and rehabilitation. These institutions, meant to protect and nurture vulnerable children, are instead creating environments that suppress children's voices and rights under the guise of safety. This suppression has far-reaching consequences, eroding children's self-esteem, teaching them that their opinions don't matter, and preventing caregivers from truly understanding and addressing children's needs. The resulting fear of speaking up among children is particularly alarming. When children learn that expressing themselves leads to negative consequences, they become afraid to voice their thoughts, concerns, or even report abuse. This silence not only hinders their immediate well-being but also stunts the development of crucial life skills such as critical thinking, decision-making, and the ability to form and express personal values and beliefs. For children in conflict with the law, the situation is even more dire. Treating these children as criminals, regardless of the severity of their actions, ignores the fundamental principles of juvenile justice that emphasize rehabilitation over punishment. This approach fails to consider the circumstances that may have led to the child's actions and can lead to long-term stigmatization, making it difficult for these children to reintegrate into society successfully. Children in CCIs often lack meaningful opportunities to participate in decision-making processes, which is a major concern. Involving children in their own rehabilitation can have significant benefits, but many institutions do not effectively support this. Instead of being active participants in their own growth and development, children are frequently seen as passive recipients of care. This approach limits opportunities for decision-making and responsibility, hindering the development of important life skills and overlooking the potential for peer support and community building among children. On the other hand, the opinion of the officers from the various institutions the researcher got statement which is very opposite to the opinion of the abovementioned opinion, whereas the officers says that



“The children make the caretakers confused, and if they make any action or order, the children will say that they have been treated in a not good way, and they manipulate the caretakers and make a stand that they have abused the children in order to achieve their goal.”

- Ms. Anu mol, Home Manager

The statement highlights a complex challenge in child care institutions where some children may manipulate situations, falsely claiming mistreatment or abuse by caretakers to achieve their goals. This type of behaviour may originate from a range of factors, such as previous traumatic experiences, a need for control in situations where one feels powerless, or as a way to test limits and boundaries. It creates a difficult dynamic where caretakers may become hesitant or confused in their interactions, fearing misrepresentation of their actions. This situation underscores the need for clear policies, thorough documentation, comprehensive training for staff, and improved communication channels within these institutions. It's crucial to address the underlying reasons for such behavior while maintaining a balanced approach that protects both children from actual abuse and caretakers from false accusations. Ultimately, this issue calls for a nuanced, empathetic response that prioritizes children's well-being while also supporting the caretakers who work with them, emphasizing the importance of creating an environment built on trust, understanding, and open communication. The government's interest in shutting down Child Care Institutions (CCIs) that do not comply with registration requirements is driven by a desire to enforce standards of care and ensure children's welfare. By mandating compliance, the government aims to regulate and oversee these institutions more effectively, reducing the risk of abuse, neglect, and exploitation. This ensures that children in CCIs are provided with safe and nurturing environments that meet the minimum standards set by law. However, this approach has its downsides, particularly when it results in the abrupt closure of non-compliant CCIs without providing adequate alternatives or support for these institutions to meet the required standards. On the other hand, the management of some CCIs might find it convenient to shut down their establishments instead of complying with the registration requirements. Compliance often requires significant investment in infrastructure, training, and administrative processes, which can be resource-intensive. For some institutions, especially those with limited resources or those operating under questionable practices, the prospect of undergoing scrutiny and meeting stringent standards might be daunting. Consequently, these institutions may choose to close down rather than invest in the necessary improvements, avoiding the transparency and accountability that comes with compliance. The closure of CCIs has a profoundly negative impact on the children residing in these institutions. Dislocation from one place to another disrupts their lives, causing emotional and psychological stress. Stability and continuity are crucial for the well-being of children, and frequent relocations undermine this stability. Additionally, transferring children to registered CCIs can lead to

overcrowding in these institutions. Many registered CCIs may not have the capacity to accommodate the sudden influx of children, resulting in inadequate living conditions, insufficient personal space, and strained resources. Overcrowded facilities struggle to provide the proper care, individual attention, and support that children need for their development and well-being.

“The major challenge being faced these days due to the closure of Child Care Institutions (CCIs) is the dislocation of children. Many have been sent back home, while others have left school. Some of them have moved to other registered CCIs, which are overcrowded and lack space, facility, and proper care and attention for the children.”

- Ms. Indira {seceretary , jenaseva bhavan}

The researcher's observations reveal a deeply disturbing pattern of exploitation and rights violations within certain child care institutions. These facilities, meant to protect and nurture vulnerable children, are instead engaging in practices that compromise the very individuals they are supposed to safeguard. The systematic denial of constitutional rights to these children is another critical issue. Many are deprived of basic rights guaranteed by law, including protection from exploitation, freedom of expression, and privacy. This denial not only violates legal standards but also significantly hinders children's development and future prospects. The exploitation and abuse described occur at multiple levels – physical, emotional, sexual, financial, and educational. The pervasive nature of this abuse creates an environment that is harmful and fails to provide the necessary protection and support for children. It violates important human rights principles, such as the right to privacy, protection from all types of violence, and safeguarding against sexual exploitation, as stated in the UN Convention on the Rights of the Child. The long-term consequences of these practices can be devastating. Children subjected to such environments may carry trauma into adulthood, struggle with trusting institutions or authority figures, face challenges in personal relationships and social integration, and potentially become caught in continued cycles of vulnerability and exploitation. By exposing these issues, the researcher highlights the critical need for intervention to protect vulnerable children and ensure that institutions meant to care for them are actually fulfilling that duty, rather than perpetuating cycles of exploitation and abuse. The findings underscore the importance of ongoing vigilance and reform in child protection systems to safeguard the rights and well-being of society's most vulnerable members.

## **VII. INSTITUTIONALIZATION AND THE IMPACT ON CHILDREN'S MENTAL HEALTH**

The influence of institutionalization on the mental well-being of children is a multifaceted and crucial matter that has the potential to yield profound and enduring implications. Children in institutional

care face unique challenges that significantly influence their psychological well-being, often in ways that persist well into adulthood. One of the most significant impacts of institutionalization is on a child's ability to form secure attachments. High child-to-caregiver ratios and frequent staff turnover in many institutions make it difficult for children to develop stable, nurturing relationships. This can lead to attachment disorders, manifesting as difficulties in trusting others, problems forming and maintaining relationships later in life, and emotional detachment or indiscriminate friendliness. Developmental delays are another common consequence of institutional care. Insufficient personalized attention and cognitive stimulation can lead to delays in cognitive development, language acquisition, and motor skill proficiency. These delays can have enduring effects on a child's academic performance and overall functioning, potentially influencing their life prospects. Many children in institutions have experienced trauma prior to their placement, and the institutional environment itself can be a source of ongoing stress. This can result in various mental health issues, including post-traumatic stress disorder (PTSD), anxiety disorders, depression, and behavioural problems. The cumulative effect of these experiences can significantly impact a child's emotional stability and resilience. Institutional care's highly structured environment can hinder children from developing important self-regulation skills. This may result in struggles with emotional management, impulsivity, and attention and focus issues, which can continue into adulthood, impacting both personal and professional aspects of life. Additionally, growing up in an institution can significantly influence a child's self-identity and self-esteem. Children may struggle with low self-esteem, lack of personal identity, and difficulty making independent decisions. The institutional setting, which often prioritizes conformity over individuality, can stifle the development of a strong sense of self. Children may develop behaviors specific to institutional living that are maladaptive in other settings. These can include hoarding food or possessions, difficulty with personal boundaries, and learned helplessness. Such institutionalized behaviors can hinder social integration and adjustment to life outside the institution. Limited exposure to diverse social situations in institutional settings can hinder the development of social skills. This often leads to difficulty reading social cues, problems with peer relationships, and challenges in adapting to different social contexts. These social deficits can persist into adulthood, affecting personal and professional relationships. The institutional environment may not provide adequate sensory stimulation, potentially leading to sensory integration problems. Children may develop hypersensitivity or hyposensitivity to certain stimuli, which can impact their daily functioning and quality of life.

The researcher discovered mixed reviews of the facilities responsible for assessing the mental health of children. According to officials, these institutions offer routine mental health check-ups and counselling services for children. They emphasize the importance of ongoing check-ups in order to support the maintenance and enhancement of children's mental well-being. The officials stated that

implementing the Juvenile Justice (JJ) Act as a part of childcare institutions would significantly help improve the mental health of children. It aims to better understand and address the mental health needs of children living in these institutions.

In certain circumstances, it is evident that children often establish a profound and unwavering sense of connection and comfort within the institutions they consider as their homes. When engaging in conversations with them, it becomes apparent that they consistently articulate their satisfaction with the level of care they receive, often drawing parallels between the nurturing they experience and the warmth found within a loving family. They emphasize the significance of receiving high-quality clothing and wholesome nourishment, and describe the overall environment as one that fosters the realization of aspirations and the pursuit of a more promising future. Many express a strong desire to reunite with their parents once they reach adulthood, yearning for the opportunity to carve out improved life trajectories for themselves. However, beneath these positive reflections, there exists a poignant acknowledgment of the absence of parental guidance and protection that many other children are fortunate to have.

On the other hand, the caregivers argue that children in childcare institutions compare their lives to those of children from stable family environments when they interact with classmates at school. The children share their experiences and lifestyles, leading to feelings of inadequacy among children in childcare institutions who believe they lack the same freedoms. Unlike their peers, these children have limited opportunities for outdoor activities, restricted access to social media and private phones, and experience a rigid daily routine. These limitations can negatively impact their mental well-being, particularly since access to counsellors may be limited. This discrepancy in lifestyles can lead to feelings of isolation and a sense of missing out on typical childhood experiences, which can contribute to emotional distress and a lack of comfort.

Researchers, by the observation and words of the workers, found that those who spent time in institutional care as children have higher rates of mood disorders, anxiety disorders, substance abuse issues, and personality disorders. These long-term mental health risks underscore the importance of addressing the psychological impact of institutionalization early and effectively. Addressing these mental health challenges requires a multi-faceted approach. This includes providing trauma-informed care, offering individual and group therapy, ensuring stable, nurturing relationships with caregivers, creating opportunities for skill development and autonomy, and facilitating family reunification or placement in family-based care when possible. The institutionalization of these children does not contribute to improving their lives as intended by the law. In fact, it has negative effects on their physical health, leaving them feeling tired and unenergetic. Their faces bear the evidence of the trauma they are experiencing as a result of being in such institutions. Due to high staff turnover and poor quality of interaction with caregivers, the children are deprived of the opportunity to form stable

and continuous relationships. It is essential to recognize the rights of children to voice their opinions and to ensure that their views are heard. It is crucial to create a safe and trusting environment in the child care institutions to encourage children to freely express themselves. Furthermore, it is imperative that the staff working closely with children are carefully selected, undergo mandatory training in child rights, and possess qualities such as kindness, compassion, patience, and attentiveness.

## **VIII. NUTRITION AND WELLNESS IN CHILDCARE FACILITIES**

Nutrition in childcare facilities plays a vital role in children's growth, cognitive development, and overall health. Proper nutrition during early years sets the foundation for lifelong health and learning abilities. Childcare facilities play a crucial role in providing children with well-rounded, healthy meals and snacks throughout the day. It's important for nutrition programs at these facilities to encompass a diverse range of foods from all food groups, while also considering the specific nutritional requirements of children at different stages of development. Ensuring that children receive a balanced and nutritious diet is essential for their growth and development. This means providing them with a variety of fruits, vegetables, whole grains, lean proteins, and dairy or suitable dairy alternatives. It's also important to limit their intake of processed foods, sugary snacks, and beverages high in added sugars. Additionally, childcare facilities should take into consideration any specific food allergies and intolerances that children may have, and ensure that alternate suitable options are available for them. Childcare facilities should have well-defined and comprehensive protocols in place to identify and manage food allergies, such as developing and maintaining a nut-free environment if required. It's crucial for the staff to undergo thorough training in recognizing and promptly responding to allergic reactions. Furthermore, meal times at childcare facilities should be designed to be not only a time for food consumption but also an opportunity to educate children about nutrition and foster a positive and inclusive dining environment. They provide opportunities for social interaction, learning about nutrition, and developing healthy eating habits. Caregivers can use meal times to teach children about different foods, encourage trying new things, and model good eating behaviours. Wellness in childcare facilities extends beyond nutrition to include physical activity, rest, and overall health practices. Engaging in regular physical activity is essential for promoting the physical development and motor skills of children, while also contributing to their mental well-being. Childcare facilities should provide ample opportunities for both structured and unstructured physical play, both indoors and outdoors when possible. Rest and sleep are equally important aspects of wellness in childcare. Facilities should have designated quiet times or nap times, with appropriate sleeping arrangements that meet safety standards. The duration and timing of rest periods should be adjusted based on children's ages and individual needs. Hygiene practices are another critical component of wellness in childcare settings. This includes regular handwashing, proper diaper

changing procedures, and maintaining a clean environment to prevent the spread of illnesses. Staff should be trained in these practices and facilities should have clear policies and procedures in place. Mental and emotional wellness should not be overlooked. Childcare facilities should create a nurturing environment that supports children's emotional development. This includes providing opportunities for self-expression, managing stress and conflicts, and fostering positive relationships among children and with caregivers. Regular health screenings and monitoring of children's growth and development are also important aspects of wellness in childcare facilities. This can help in early identification of any health or developmental concerns.

According to insights from researchers at Child Care Institutions (CCIs) and caretakers, it has been brought to light that these institutions adhere to a detailed dietary and health regimen for the children under their care. This regimen is put into practice in compliance with the regulations outlined in the Juvenile Justice (Care and Protection of Children) Act and is supervised by the Early Childhood Development Services (ECDS). The institutions are committed to rigorously adhering to the directives provided by the head department, ensuring strict compliance with the prescribed methods and guidelines. Residents of the institutions indicated that the food provided adheres strictly to the nutritional plan, emphasizing the inclusion of protein and essential nutrients. However, they expressed concerns about not being able to exercise personal food choices, leading to dissatisfaction with certain meals, particularly with regard to taste. Moreover, the residents highlighted the lack of individualized attention and care, especially from their loved ones, impacting their overall food experience. The absence of personalized choices and the impact on the children's well-being were important aspects that emerged from these discussions.

Lastly, childcare facilities should strive to create a culture of wellness that extends to staff and families. This could include offering nutrition education for parents, promoting work-life balance for staff, and organizing wellness-focused community events. By prioritizing nutrition and wellness, childcare facilities can significantly contribute to children's healthy development, setting the stage for lifelong health and well-being. It's an investment in children's futures that pays dividends in terms of their physical health, cognitive abilities, and overall quality of life.

## **IX. EXTRACURRICULAR ACTIVITIES AND HOLISTIC DEVELOPMENT OF THE CHILDREN IN CCIS.**

Participation in extracurricular activities is vital for the comprehensive development of children in Child Care Institutions (CCIs). These activities transcend conventional education and caregiving, significantly contributing to a child's overall growth and well-being. Through extracurricular engagement, children can explore and express their unique interests and talents, acquire valuable life skills, and form meaningful connections with their peers, all of which may not be achievable within

the confines of their daily CCI routine. Participating in these activities can compensate for the limited range of experiences children in institutional care often encounter. Childcare centers has created an enriching environment that caters to children's diverse interests and abilities. This can be achieved through a variety of engaging activities such as team sports, creative art projects, musical exploration, dance and drama workshops, hands-on gardening experiences, cooking classes, and the formation of special interest clubs. By offering a broad spectrum of options, childcare centers aim to empower children to explore and develop their unique talents and passions.

"The children in the institution have an adequate amount of time and space according to the schedule we provide. We allocate time for their extracurricular activities and offer them opportunities to learn new skills such as stitching and making clothes and bags. Through these activities, they will be able to lead happy and independent lives after leaving this home."

- A caretaker Shishu bhavan

The statement highlights the efforts made by an institution to ensure that children in their care have a structured and supportive environment. The institution provides sufficient time and space for the children according to a planned schedule, which ensures they have enough time for various activities, rest, and personal time. Specific periods are allocated for extracurricular activities, which are essential for the holistic development of the children, helping them explore interests outside of academics, develop social skills, and enhance physical well-being. Additionally, the children are given opportunities to learn practical skills such as stitching and making clothes and bags. This focus on skill development equips the children with valuable abilities useful for their future. The ultimate goal of these efforts is to enable the children to lead happy and independent lives after they leave the institution, with the comprehensive approach fostering a sense of independence and confidence essential for their future success and well-being. The children are expressing dissatisfaction with the amenities provided by non-governmental organizations. They do not have adequate space for children's activities and are encountering challenges in adhering to the regulations pertaining to extracurricular activities. The absence of extracurricular activities in these homes hinders the children's group interaction and team skills and discourages them from actively participating in socialization processes. These children deserve to experience activities that provide entertainment and guidance, shaping their childhood and leading to a well-organized and enthusiastic adolescence. However, there is a lack of a rights-based approach and insufficient understanding of developmental counseling, life skills training, educational interventions, and health support for these children. The placement of these homes is driven more by political considerations rather than the actual needs of the children. The lasting trauma of abuse demands a healing process, which, unfortunately, is not recognized in the majority of these homes. The responsibility for facilitating the healing process lies with the management and staff, but there is a general lack of awareness regarding this crucial aspect.

## **X. THE STANDARD OF EDUCATION AND THE EDUCATIONAL ENVIRONMENT.**

The Constitution (Eighty-sixth Amendment) Act of 2002 marked a significant milestone in India's education system by incorporating Article 21-A.<sup>117</sup> The constitutional amendment was created with the goal of ensuring that all children between the ages of six and fourteen have the fundamental right to receive free and compulsory education. This amendment set the stage for the introduction of the Right of Children to Free and Compulsory Education (RTE) Act in 2009. The RTE Act mandates that every child has the entitlement to receive full-time elementary education that meets certain essential standards, ensuring equitable and satisfactory quality education in a formal school environment. The RTE Act, which came into effect on 1 April 2010, encapsulates the principles of "free and compulsory" education. "Free education" prohibits the imposition of any fees, charges, or expenses that may hinder a child's access to elementary education, except for children attending non-government supported schools. "Compulsory education" refers to the legal requirement imposed on the government and local authorities. The aim is to guarantee that every child aged between 6 and 14 is enrolled, attends regularly, and successfully finishes primary education. This legal framework signifies a significant transition towards a rights-based approach, compelling both the Central and State Governments to uphold and execute the fundamental right to education as outlined in Article 21-A of the Constitution. This is in line with the provisions of the RTE Act. It should be mandated to all such institutions to send the children to school and get educated through minimum standard of education. It is mandatory to fulfil institutional obligations. Thus they should be provided assistance as to tutoring in the subjects and making them to have an ambitious life to achieve goals and a sort preparatory mechanism to make them compatible in the society. The researcher again would like to highlight the huge disparity between the government and private CCI students who are studying in regional medium government and aided schools. The administrators of such CCIs shouldn't have any prejudice regarding the future of these children. They are supposed to send these children to school not just in the name since it's mandatory to do so under the law. Even after reaching 18 years of age, the children are send back to home and they don't have any after-care programs to check whether they have going to school for higher studies. They also lack in proper organized structure to take care of the children and setting up goals for his/her career, especially in government homes. But the government has many such programmes and initiatives for assisting for them in soft skill learning, vocational training and higher education, but their implementation and benefit to children is still debatable. The passage emphasizes the crucial need to mandate educational attendance for all children in institutional care. It stresses the responsibility of these institutions to ensure that the children receive a minimum standard of education and comprehensively support them to cultivate ambition

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<sup>117</sup> School Education | Government of India, Ministry of Education, <https://www.education.gov.in/rte> (last visited Jun 17, 2024).



and prepare them for societal integration. The writer draws attention to the significant gap between government and private institution students, particularly those attending regional medium government and aided schools. The text advocates for the removal of any biases regarding these children's future prospects and underscores the importance of establishing after-care programs to monitor their educational pursuits, particularly those residing in government homes. It further discusses the various government programs and initiatives aimed at providing assistance through soft skill learning, vocational training, and higher education while also raising questions about their actual implementation and impact on the children.

“In many educational institutions, there's a noticeable emphasis on adhering to rules and regulations rather than prioritizing the genuine well-being and future prospects of the children. Furthermore, the limited availability of English medium schools and the absence of freedom to select their preferred educational institutions significantly hampers the educational journey of these children. Moreover, the lack of autonomy in choosing school locations further exacerbates this issue, leaving many children without access to quality education that meets their needs and aspirations.”

- Ms. Anu mol, home manager

The statement highlights several critical issues within the educational system that collectively undermine the well-being and future prospects of children. In many educational institutions, there is a noticeable emphasis on adhering to rules and regulations, which often takes precedence over prioritizing the genuine needs and long-term success of the students. This rigid focus on compliance can overshadow the creation of a nurturing and supportive learning environment, which is crucial for the holistic development of children. The enforcement of strict rules can limit creativity, critical thinking, and personal growth, which are essential for the overall well-being and future prospects of the children. Furthermore, the limited availability of English medium schools poses a significant barrier to many students. English medium schools are often perceived as providing superior educational opportunities due to the global significance of the English language. When these schools are scarce, many children are deprived of the opportunity to receive an education that could significantly enhance their future prospects. This limitation can impact their ability to compete effectively in higher education and the global job market, thereby affecting their long-term success and economic opportunities. The inability to choose preferred educational institutions significantly impedes students' educational experiences. When students and their families are unable to select schools that meet their educational needs and aspirations, it can lead to a mismatch between their learning styles and the teaching methods utilized by the schools they are required to attend. This limitation on choice restricts educational opportunities and can impact students' overall academic success. Such mismatches can result in disengagement, lower academic achievement, and reduced motivation, ultimately impeding the students' educational progress and personal development.

Moreover, the lack of autonomy in choosing school locations further exacerbates these challenges. When children cannot attend schools that are conveniently located or that meet their specific educational requirements, it creates additional barriers to accessing quality education. This restriction often forces children to attend schools that may not provide the necessary level of education or a supportive environment conducive to their success. The inability to access suitable educational institutions can have long-lasting effects on students' academic performance and their overall educational journey.

The researcher meticulously examined the data concerning the significant challenges encountered by children in these homes or institutions. This encompassed a thorough analysis of their institutional care, encompassing their holistic development, overall well-being, and the utilization of motivational practices to enhance their quality of life and access to a well-maintained, cheerful childhood. Additionally, the research meticulously documented the mental and emotional trauma resulting from bullying and abuse by the administrators and caretakers in these institutions. It was revealed that the more vulnerable the children, the more they were subjected to institutionalized marginalization and the denial of their fundamental human rights by the very individuals entrusted with their care. This stark reality stands in direct contrast to the mandate of protecting their rights and nurturing their childhood, portraying a flagrant violation of their natural rights by those who are supposed to be their guardians.

## **CONCLUSION**

In this chapter, the researcher carefully analysed the data and responses collected through a prepared questionnaire. While the researcher encountered some limitations in accessing certain data, the work has been successfully completed. The findings provide insights into the operations and impact of child care institutions on children. The next chapter will delve into the conclusions drawn from this work and provide suggestions aimed at improving the well-being of children in various homes. These suggestions will be targeted towards various departments to work in the best interest of the child.

## CHAPTER 5

### CONCLUSION AND SUGGESTIONS

**“History will judge us by the difference we make in the everyday lives of children.”**

**— Nelson Mandela**

The quote highlights the idea that our legacy as a society will be determined not by grand gestures or lofty ideals, but by the tangible impact we have on the most vulnerable members of our community - children. It suggests that the true measure of a society's progress and moral standing is how it treats and nurtures its youngest citizens. Mandela's words carry significant weight due to his own life experiences and his role in shaping South Africa's future. As a leader who fought against apartheid and worked tirelessly for social justice, he understood that lasting change comes from investing in future generations. By focusing on children, we are essentially shaping the future of our society. Even when parents are present, the situation is still concerning. It is particularly distressing to contemplate the circumstances of children without a guardian. The JJ Act of 2015 is dedicated to safeguarding the rights of these children and providing them with care and protection through institutional support. The Central and State governments, in addition to other legal law enforcement agencies, are exerting considerable effort to ensure the well-being of these marginalized and vulnerable children. They have launched many programs to guarantee that these children receive the entitlements that are their fundamental rights as human beings.

Childcare institutions, whether run by the government, private organizations, or international entities, are currently grappling with a myriad of challenges. These issues encompass a wide spectrum, from children absconding from these establishments to instances of mistreatment by caregivers. There are also concerns about the lack of empathy and inadequately trained staff. Instances of verbal, physical, and psychological abuse are widespread, along with restrictions on freedom of movement and the use of punitive measures. Additionally, there are reports of forced conversions of children's religious beliefs and the detrimental effects of institutionalization on their mental well-being. The lack of comprehensive developmental opportunities and extracurricular activities for these children is also a cause for concern. Furthermore, the absence of effective grievance redressal mechanisms, substandard educational standards, inadequate oversight by authorities, and insufficient auditing exacerbate the situation. It is clear that the well-being of these children is not receiving the necessary attention from the relevant officials and authorities. There is a noticeable lack of support programs being put into action, law enforcement agencies are not adequately addressing important issues, and political interference is hindering the prompt delivery of justice. The backlog of legal cases

concerning child rights and protection underscores the systemic hurdles. Inadequate training for officials and a lack of financial support for families further perpetuate these challenges, resulting in an ongoing struggle for these vulnerable children. Despite proposed solutions by researchers, these issues persist, significantly impacting the well-being of children in these care institutions.

After thoroughly examining the data collection and data analysis discussed in previous sections, researcher have developed a set of precise and achievable suggestions to enhance the conditions of children's homes and establish more effective measures to protect their rights. These suggestions have been carefully formulated based on input provided by various key informants who play significant roles as stakeholders in this area. These recommendations are specifically tailored to the involved stakeholders and address particular themes such as:

### **5.1 SUGGESTIONS TO THE RELEVANT AUTHORITIES AT THE NATIONAL AND STATE LEVELS REGARDING CHILD CARE INSTITUTIONS (CCIS).**

To improve Child Care Institutions (CCIs), national and state authorities should first focus on strengthening regulatory frameworks. This involves developing comprehensive guidelines and standards for CCIs, implementing a robust licensing and accreditation system, and conducting regular inspections and audits. These measures will ensure that CCIs meet minimum quality standards and operate in compliance with child rights and protection laws. Improving staffing and training is crucial for the effective functioning of CCIs. To promote the safety and well-being of children, it is essential for authorities to establish sufficient staffing ratios, require comprehensive background checks for all staff members, and offer continuous training on child rights, protection, and development. These measures are crucial for fostering a secure environment for children and enhancing the quality of care they receive. Enhancing monitoring mechanisms is essential to maintain accountability. Establishing independent oversight committees, implementing grievance redressal systems for children, and utilizing technology for real-time monitoring can help identify and address issues promptly. These measures will also promote transparency in CCI operations. Authorities should focus on deinstitutionalization by promoting family-based alternative care options. This includes developing programs to reunite children with families where possible and supporting foster care and adoption initiatives. The goal is to ensure that institutional care is used as a last resort and for the shortest possible duration.<sup>118</sup>

Adequate funding is critical for the proper functioning of CCIs. Authorities should increase budgetary allocations, ensure timely disbursement of funds, and promote public-private partnerships for resource mobilization. This will help improve infrastructure, services, and overall care quality in

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<sup>118</sup> Child Care Institutions, <https://pib.gov.in/pib.gov.in/Pressreleaseshare.aspx?PRID=1846135> (last visited Jun 19, 2024).

CCIs. Emphasizing mental health and well-being is vital for the holistic development of children in CCIs. Providing access to counselling and psychological support, implementing trauma-informed care practices, and promoting recreational and extracurricular activities can significantly improve children's emotional and psychological well-being. Improving data management through centralized databases, proper documentation, and the use of data analytics can lead to more informed decision-making. This will help authorities better understand the needs of children in CCIs and allocate resources more effectively. Enhancing education and skill development opportunities for children in CCIs is crucial for their future success. Authorities should ensure access to quality education, provide vocational training and life skills education, and support higher education opportunities. This will better prepare children for independent living and improve their chances of social and economic integration.

Strengthening child protection measures within CCIs is paramount. This includes implementing strict child protection policies, training staff on identifying and reporting abuse, and establishing child protection committees within CCIs. Implementation of these measures will contribute to the establishment of a secure environment for children while also serving to mitigate occurrences of abuse or negligence. Finally, promoting community integration can help reduce the isolation often experienced by children in CCIs. Encouraging community involvement in CCI activities, facilitating interactions between children and local communities, and supporting transition programs for children leaving CCIs can improve social integration and prepare children for life outside the institution.

The Ministry of Women and Child Development, along with the Social Justice Departments of all states, is entrusted with overseeing the enforcement of the Juvenile Justice (JJ) Act, 2015, and the JJ Model Rules, 2016. Their primary objective is to ensure that all Child Care Institutions (CCIs) and Homes are covered by the provisions of the Act. This involves the registration and oversight of CCIs to ensure compliance with the law and to uphold the principle of the "best interests of the child." Both the central and state governments play a crucial role in establishing and upholding this framework.<sup>119</sup>

The "District Child Protection Unit" is an entity established by the State Government under section 106, specifically designated as the focal point for ensuring the effective implementation of the Act and additional child protection measures within the district. This Unit serves as a centralized mechanism responsible for coordinating, monitoring, and enforcing child protection initiatives in accordance with the provisions outlined in the legislation.<sup>120</sup> It is important to establish a special juvenile police unit, which is a designated unit within the police force of a district, city, or other police

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<sup>119</sup> CIF Report 1.pdf, <https://wcd.nic.in/sites/default/files/CIF%20Report%201.pdf> (last visited Jun 19, 2024).

<sup>120</sup> Module 2\_DCPU.pdf,

[https://prachicp.com/tarunya/sharelink/Child\\_Protection\\_Smart\\_kit/CHILDPROTECTIONMATERIALS/ENGLISH/1.%20Final%20English%20Modules/Module%202\\_DCPU.pdf](https://prachicp.com/tarunya/sharelink/Child_Protection_Smart_kit/CHILDPROTECTIONMATERIALS/ENGLISH/1.%20Final%20English%20Modules/Module%202_DCPU.pdf) (last visited Jun 19, 2024).

unit, such as the railway police, with the specific responsibility of handling cases involving children under section 107 and section 106. These units need to be closely monitored and their activities assessed to ensure that they are effective and accountable in their dealings with children. This monitoring will help enhance their effectiveness and ensure that they fulfil their responsibilities to the highest standard. The creation of SJPU represents a specialized approach to dealing with juvenile cases. These units are designated within the existing police force structure, whether at the district, city, or other levels, such as railway police. Their primary purpose is to handle cases involving children as mandated by Sections 107 and 106 of the relevant juvenile justice legislation. This specialization ensures that officers dealing with juvenile cases have the necessary training and sensitivity to address the unique needs of children in conflict with the law or children in need of care and protection. The composition of SJPU is critical to their effectiveness. These units should ideally consist of officers who have received specialized training in child psychology, child rights, and juvenile justice laws. This training equips them to interact with children in a manner that is sensitive, non-threatening, and respectful of their rights. The unit should also include or have access to child welfare officers, counsellors, and other professionals who can provide comprehensive support to children involved in the justice system. The assessment of SJPU activities should cover various aspects of their work. This includes evaluating the timeliness and appropriateness of their interventions, the quality of their investigations, their adherence to child-friendly procedures, and their success in diverting children from formal legal proceedings where appropriate. It's also important to assess how well they collaborate with other stakeholders in the juvenile justice system, such as child welfare committees, juvenile justice boards, and rehabilitation centers.<sup>121</sup>

The collaborative efforts of central and state authorities are crucial for the successful implementation of "foster care" as a viable alternative to the institutionalization of children in Child Care Institutions (CCIs). Despite the importance of "foster care," it has not received adequate attention from the authorities. Foster care, as defined by the Child Welfare Committee, is the process of placing children in a temporary family environment when they cannot live with their biological family. This carefully selected, qualified, and supervised foster family is approved by the District Child Protection Unit to ensure that they can provide necessary care and support for the children as outlined in section 44. The foster family undergoes training and assessment to ensure they can offer a loving and stable environment for the children in their care.<sup>122</sup>.

The government must take proactive measures to mandate regular visits by the committee to all existing child care institutions. These visits should encompass thorough assessments of the facilities'

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<sup>121</sup> Module 3\_SJPU.pdf,

[https://prachicp.com/tarunya/sharelink/Child\\_Protection\\_Smart\\_kit/CHILDPROTECTIONMATERIALS/ENGLISH/1.%20Final%20English%20Modules/Module%203\\_SJPU.pdf](https://prachicp.com/tarunya/sharelink/Child_Protection_Smart_kit/CHILDPROTECTIONMATERIALS/ENGLISH/1.%20Final%20English%20Modules/Module%203_SJPU.pdf) (last visited Jun 19, 2024).

<sup>122</sup> Juvenile justice ( care and protection ) act 2015

operations, infrastructure, and the overall welfare of the children residing there. Additionally, the committee should conduct comprehensive orientation sessions for the staff to ensure the proper and effective functioning of the child care institutions. Furthermore, it is essential for the committee members to engage directly with the children, creating a platform for open communication to evaluate how they are being treated and cared for. Subsequently, the committee should meticulously document their findings and make well-informed recommendations to the relevant authorities to promptly address any identified issues or problems.

The Women and Child Department should designate a person or officer to oversee the evaluation of the Board, Committee, SJPU, and related entities. The evaluating body should define specific criteria for assessing the institution, including infrastructure, documentation, educational and vocational training facilities. Similarly, a similar assessment should be conducted for non-institutional care, with clear accountability. It is imperative to establish a grassroots committee for the purpose of evaluating the efficacy or shortcomings of individual care plans for children in conflict with the law (CCL) and children in need of care and protection (CNCP) as outlined in the JJ rules, 2016.<sup>123</sup>

The national government should take the initiative to establish a comprehensive and efficient tracking mechanism in every state. This monitoring system should be designed to meticulously record and analyse data on the number of children in conflict with the law (CCL) and children in need of care and protection (CNCP) across the country. The mechanism should not only track the prevalence of juvenile delinquency and vulnerability but also collect detailed information on the circumstances, demographics, and specific needs of these children to inform targeted interventions and support programs. This comprehensive system should not only track their initial placement but also meticulously maintain their whereabouts after leaving such institutions. This detailed tracking mechanism would enable the government to proactively identify and provide necessary support to these children. It would facilitate their inclusion in tailored aftercare programs and ensure seamless coordination with state and central welfare schemes, thereby facilitating their successful reintegration into mainstream society. Furthermore, such a system would play a crucial role in preventing these children from engaging in further acts of offense. To achieve this, it is imperative for the authorities to create and implement thorough aftercare plans to address the specific needs of each child upon their release from these institutions. In addition, the state should actively engage and collaborate with non-governmental organizations to bolster support for these children, and the government should actively endorse and encourage these collaborative efforts.

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<sup>123</sup> Module 5\_CWC.pdf,

[https://prachicp.com/tarunya/sharelink/Child\\_Protection\\_Smart\\_kit/CHILDPROTECTIONMATERIALS/ENGLISH/1.%20Final%20English%20Modules/Module%205\\_CWC.pdf](https://prachicp.com/tarunya/sharelink/Child_Protection_Smart_kit/CHILDPROTECTIONMATERIALS/ENGLISH/1.%20Final%20English%20Modules/Module%205_CWC.pdf) (last visited Jun 19, 2024).

Child Care Institutions (CCIs) have a significant responsibility to keep detailed records of each child under their care. It is crucial for the government to work closely with social workers and non-governmental organizations (NGOs) to perform a thorough social audit. This audit should be aimed at verifying the presence and well-being of every child and preventing any occurrences of forced religious conversion within these institutions.

In addition to abiding by the Rules & Regulations, the central and state governments must take proactive measures to offer assistance to these institutions while ensuring compliance with the JJ Act, 2015. It is essential to strike a balance, preventing the strict enforcement from negatively impacting the well-being of the vulnerable children residing in these facilities. Timely interventions by the authorities are crucial in the event of potential closures of such CCIs. Additionally, the government should streamline the registration process for these institutions and allocate financial resources to support the maintenance and enhancement of their facilities, ensuring that they meet the minimum standards mandated by the JJ Act, 2015.

## **II. SUGGESTIONS FOR CIVIL SOCIETY ORGANIZATIONS**

In order to ensure that the best interests and rights of children are always the top priority in any decision-making process related to child rights, it is essential for the authorities to focus on developing strong connections with civil society organizations. This involves helping these organizations understand the difference between rules that are mandatory and those that are suggested. Effective collaboration between the organizations and the government and relevant authorities is crucial to achieving this goal. The focus on developing strong connections between authorities and CSOs is crucial because it creates a more comprehensive and effective system for protecting children's rights. Government bodies often have the legal mandate and resources, while CSOs frequently have grassroots connections, specialized expertise, and the flexibility to respond quickly to emerging issues. Understanding the difference between mandatory rules and suggested guidelines is vital for CSOs. Mandatory rules are typically enshrined in law and must be followed without exception. These might include reporting requirements for suspected child abuse or minimum standards for child care facilities. Suggested guidelines, on the other hand, are often best practices or recommendations that, while not legally binding, can significantly improve outcomes for children. By clearly communicating this distinction, authorities can help CSOs prioritize their efforts and ensure compliance with legal requirements while also striving for best practices.

Civil society organizations (CSOs) focused on child rights should operate with unwavering independence and integrity, free from external influences and personal interests. This independence is crucial for maintaining objectivity, credibility, effectiveness, and innovation in their work. It allows CSOs to assess situations impartially, advocate fearlessly for children's rights, and develop creative



solutions to complex problems. Simultaneously, these organizations must prioritize ethical practices, including transparent financial management, clear conflict of interest policies, and regular external audits to ensure their actions always align with their mission of protecting children's rights.<sup>124</sup> In addition to independent operation, CSOs should actively collaborate with other authorities to conduct impactful awareness programs. This collaborative approach leverages diverse expertise, reaches broader audiences, and presents a unified message about child rights. By combining resources and networks, these joint efforts can more effectively educate the public, challenge harmful practices, and promote positive child-rearing methods. Such collaborations also enhance the credibility and sustainability of awareness campaigns, making them more likely to resonate with and influence society at large. A key focus of these awareness programs should be reminding society of its collective responsibility towards children. This approach recognizes that protecting and promoting children's rights is not solely the duty of governments or specialized organizations, but a shared obligation of all members of society. These programs should aim to educate the public about children's rights, highlight ways individuals and communities can contribute to child welfare, and foster a sense of collective responsibility. By addressing harmful cultural practices, encouraging reporting of abuse, and inspiring community-based initiatives, CSOs can help create a culture that truly prioritizes children's rights and well-being. This comprehensive approach, combining independent operation, collaborative awareness efforts, and a focus on societal responsibility, positions CSOs as pivotal actors in creating a society where the protection and nurturing of children is a shared value and a collective endeavor.<sup>125</sup>

The collaboration between authorities and civil society organizations (CSOs) in studying the challenges and changing dimensions of child-related issues is crucial for developing effective child protection strategies. This joint approach allows for a comprehensive understanding of the complex and evolving nature of child abuse, particularly within institutional settings. By combining the resources, expertise, and perspectives of both governmental bodies and CSOs, a more nuanced and up-to-date picture of the challenges facing children can be developed. This collaborative study can encompass various aspects such as emerging forms of abuse, the impact of technology on child safety, changing social norms, and the effectiveness of current protection measures. While collaborative efforts are valuable, it's equally important for authorities and CSOs to conduct their own individual studies. This dual approach ensures a diversity of viewpoints and methodologies, potentially uncovering insights that might be missed in a single, unified study. Authorities might focus on aspects related to policy implementation, legal frameworks, and systemic issues within government-run

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<sup>124</sup> UNICEF civil society partnerships | UNICEF, <https://www.unicef.org/partnerships/civil-society> (last visited Jun 21, 2024).

<sup>125</sup> The Convention on the Rights of the Child: The children's version | UNICEF, <https://www.unicef.org/child-rights-convention/convention-text-childrens-version> (last visited Jun 19, 2024).

institutions. On the other hand, CSOs might delve deeper into grassroots-level challenges, the lived experiences of children, and innovative protection approaches being tested in various communities. These individual studies can complement each other, providing a more holistic understanding of the issues at hand. The ultimate goal of both collaborative and individual studies should always be to serve the best interests of the child. This principle should guide every aspect of the research process, from design to implementation to the application of findings. Studies should not only identify problems but also propose practical, child-centered solutions. They should consider the diverse needs of children from different backgrounds and circumstances, ensuring that no group is overlooked. Moreover, these studies should actively involve children themselves, respecting their right to participate in matters affecting them and recognizing the unique insights they can provide. By maintaining this focus on the best interests of the child, authorities and CSOs can ensure that their research directly contributes to more effective policies, programs, and interventions that genuinely improve children's lives and protect their rights.

### **III. SUGGESTIONS FOR LAW ENFORCEMENT AGENCIES**

Law enforcement agencies, such as the Juvenile Justice Board (JJB) and the District Child Protection Unit (DCPU), play a crucial role in safeguarding the rights of children. In addition to law enforcement, social workers and police officers are key figures in ensuring the well-being of children. To enhance their effectiveness, it is essential to provide comprehensive training programs that focus on promoting child-friendly approaches and strategies<sup>126</sup>.

The emphasis on training law enforcement agencies, social workers, and specialized units is crucial for creating a more effective and child-friendly system of child protection. This comprehensive training approach should encompass various aspects, including child psychology, trauma-informed care, child-friendly communication, legal frameworks, alternative dispute resolution, and cultural sensitivity. By inculcating these constructive approaches, agencies like Juvenile Justice Boards (JJB), District Child Protection Units (DCPU), and police forces can shift from purely punitive measures to more rehabilitative and supportive interventions. This shift is essential for building trust with children, ensuring their cooperation, and ultimately achieving better outcomes in child protection cases.<sup>127</sup>

Parallel to this training initiative, the empowerment and strengthening of Special Juvenile Police Units (SJPU) play a vital role in enhancing child protection efforts. This empowerment involves increasing resources, providing specialized training, improving coordination with other agencies, integrating modern technology, and developing community outreach programs. By bolstering the capabilities of SJPU, their ability to intervene effectively in child-related issues is significantly

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<sup>126</sup> Module 3\_SJPU.pdf, *supra* note 5.

<sup>127</sup> Child Rights Centre CNLU, *Role of JJB & CWC in Protecting Child Rights*, CRC CNLU, PATNA (2021), <https://www.crc.cnlu.ac.in/post/role-of-jjb-and-cwc-in-protecting-child-rights> (last visited Jun 19, 2024).

enhanced. This increased capacity allows for quicker response times, more thorough investigations, better support for child victims and witnesses, improved prevention efforts, and more effective rehabilitation programs for juvenile offenders.

The focus on "more intervention" by SJPU's suggests a proactive approach that goes beyond merely responding to incidents. It involves actively working to prevent child abuse and exploitation through regular monitoring of high-risk areas, conducting awareness programs, developing early warning systems, and collaborating with social services to support vulnerable families. By combining comprehensive training for all child-focused agencies with the empowerment of specialized units like SJPU's, a more robust and effective child protection system can be created. This holistic approach ensures that children's rights are protected at every level of interaction with the legal and social welfare systems, from prevention and early intervention to rehabilitation and reintegration, ultimately serving the best interests of children in all circumstances.

#### **IV. SUGGESTIONS FOR THE NGOS AND THE GOVERNMENT OFFICERS**

Non-governmental organizations (NGOs) are deemed to have a crucial impact in championing the rights and welfare of children, a role that has been underscored by the Convention on the Rights of the Child (CRC). Their unique position in society allows them to act as a bridge between communities and policymakers, often giving voice to those who might otherwise go unheard. NGOs' involvement in child-related initiatives and policies is crucial because they bring a grassroots perspective, provide an independent voice, offer specialized expertise, drive innovation, and engage in powerful advocacy. Their ability to work directly with children and communities gives them insights that may not be readily available to government agencies, allowing them to provide unbiased feedback on policies and their implementation, free from political constraints<sup>128</sup>.

The CRC's provision for NGOs to submit alternative reports is a critical mechanism for ensuring comprehensive oversight of children's rights. These reports serve several important functions, including providing complementary information to official government reports, offering critical analysis of the government's progress in implementing the CRC, highlighting gaps in child protection, and suggesting specific actions or policy changes to improve children's situations. These alternative reports contribute significantly to the global monitoring of children's rights, allowing for comparison and learning across countries. By submitting these reports, NGOs play a crucial role in holding states accountable for their commitments under the CRC and ensuring that children's rights remain a priority on national and international agendas.

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<sup>128</sup> Implementing and monitoring the Convention on the Rights of the Child | UNICEF, <https://www.unicef.org/child-rights-convention/implementing-monitoring> (last visited Jun 19, 2024).

To ensure the efficacy of these alternative reports, they must encompass a comprehensive exploration of the multitude of issues and challenges encountered by children across various aspects of their lives, including but not limited to education, health, safety, and well-being. This comprehensive approach might include areas such as education, health, protection from abuse and exploitation, juvenile justice, poverty and social exclusion, special needs, child labor, family environment, children's participation in decision-making, and emerging challenges like digital rights and climate change impacts. By covering this broad spectrum of issues, NGO reports can provide a holistic picture of children's situations in society, ensuring that no significant aspect of children's rights and welfare is overlooked. This comprehensive coverage is essential for identifying systemic issues, tracking progress over time, and informing evidence-based policies and interventions that can truly improve the lives of children. Through their interventions and reporting, NGOs contribute significantly to creating a society where children's rights are fully realized and protected.

The non-governmental organizations (NGOs) and government officials are tasked with the critical role of closely monitoring the administrative processes and operations of all Child Care Institutions (CCIs) across different tiers of governance, including local panchayats and district levels. This oversight aims to ensure that the CCIs are fully compliant with the specified rules and procedures of the Act, and are effectively utilizing the allocated aid and resources to promote and safeguard the best interests of the children under their care. The national and state commissions have an important role in overseeing existing Child Care Institutions (CCIs) while considering the establishment of new institutions under the Act. It is crucial for them to carry out their responsibilities diligently in the field without any lapses. The government must ensure that these commissions are effectively executing their duties. States should not grant any exemptions or special considerations in matters related to children.

NGOs have a vital role to play in ensuring that authorities are held accountable for their actions. It is important for the government to actively support and monitor the work carried out by NGOs, particularly in terms of grant allocation and utilization. This mutual cooperation and oversight mechanism serves to remind all parties of their responsibilities and ultimately benefits the overall governance.<sup>129</sup> The government must take immediate action to prioritize family-based care and implement necessary measures with the support of all stakeholders. It is essential that these efforts are incorporated into policies and laws related to childcare and the protection of children's rights. The government must ensure that all responsible individuals fulfill their obligations through quality checks and inspections to guarantee that children receive at least the minimum standard of care and protection. It is imperative for the government to require regular reports on the effectiveness and

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<sup>129</sup> <https://www.akshayapatra.org/role-of-ngos-in-india>, AKSHAYA PATRA FOUNDATION, <https://www.akshayapatra.org/role-of-ngos-in-india> (last visited Jun 19, 2024).

operations of all the statutory bodies under the JJ Act, 2015, and to take legal action as needed. The meaningful participation of voluntary organizations in critical aspects of child protection, especially in the provision of foster care services, is paramount. This participation should be underpinned by a comprehensive, transparent, and responsible process that explicitly delineates the roles and responsibilities of each stakeholder, ensuring accountability at every level. The process of reintegrating and rehabilitating children in need of care and protection (CNCP) and children in conflict with the law (CCL) should be carefully planned and executed. It should consider the unique needs and situations of each child to ensure their successful reintegration into society.

## **CONCLUSION**

The government has a critical responsibility to offer assistance to families who are unable to provide care for their children. It is crucial to create a diverse range of accessible and effective services and resources to ensure that children have the opportunity to remain with their families whenever it is feasible and in their best interest. These initiatives must be implemented without any form of discrimination or corruption. Institutionalization of children should be viewed as a last resort, with the government obligated to offer support services to families to prevent such separations. For children who have no choice but to be placed in institutions, it is imperative to guarantee that they receive the minimum standards of living conditions as outlined in relevant legislation. Hence, the hypothesis set by the researcher has been proved. After leaving these institutions, it is the duty of the government to ensure that these children benefit from aftercare programs that focus on reintegrating them into mainstream society. This process should be inclusive of support from both state and central governments, as well as voluntary organizations. By working collaboratively, these entities can implement effective schemes to provide these children with the necessary resources and opportunities to lead a better life and secure livelihood within society.

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## ANNEXURE – 1

### INTERVIEW SCHEDULE AS A PART OF LLM DISSERTATION

Dear Sir/Ma'am,

I am Varsha Gulzar, Master of Laws (LL.M) student at the National University of Advanced Legal Studies (NUALS), Kochi bearing Register Number. 10598. This questionnaire is prepared in pursuance to my LL.M Dissertation titled "EMPOWERING VULNERABLE JUVENILE AND STRATEGIES FOR ENHANCING CHILD CARE INSTITUTIONS". The objective the questionnaire to know the living conditions of the children and their conditions in the institutions. I would be extremely thankful, if your kind heart could devote a few minutes in answering the questions provided in the questionnaire. I hereby assure you that the information collected will be utilised for the purpose of this dissertation only.

Thanks

Varsha Gulzar

### **QUESTIONNAIRE TO THE CHILDREN**

1. Name:
2. Nationality
3. Are you satisfied with this place?
  - If yes , your response on the Place including the accommodation , living condition, bedding, playing space, diet, sanitation, toilet, health , medical needs?
4. Do you find any problems staying at this place? If yes description of problem?
5. How has been the conduct, response, attitude of staff at this Place?
6. Have you ever expressed any demand or complained against any services, living condition of this place?
7. Are you attending school? If yes, Class (std.) ...., location of School, Government, and Private School?
8. Do you find the environment in School (including teacher's response, students, staff responses, behaviour) conducive for your well-being and development?
9. Do you find any problems at School (including teacher's response, students, staff responses, behaviour)?

10. Do you face any problem in school or any discrimination by the students or teachers?

If yes, could you describe the same?

11. Do you feel free to express your problems and any difficulties to your friends, teachers, or to any one here in this home?

12. What is the daily routine prescribed for you all at this place including school, study, play and sleeping hours and diet routine?

13. Do you feel that you have experienced any kind of intimidation or threatening or any kind of abuse from the institution or from the care takers or anyone outsiders?

14. Have you experienced any physical and mentally abuse during your stay at this place?

15. What are your expectations and demands for your better development from these institutions?

16. What are your future expectations in your career, personal life?

## ANNEXURE – II

### INTERVIEW SCHEDULE AS A PART OF LLM DISSERTATION

Dear Sir/Ma'am,

I am Varsha Gulzar, Master of Laws (LL.M) student at the National University of Advanced Legal Studies (NUALS), Kochi bearing Register Number. 10598. This questionnaire is prepared in pursuance to my LL.M Dissertation titled “EMPOWERING VULNERABLE JUVENILE AND STRATEGIES FOR ENHANCING CHILD CARE INSTITUTIONS”. The objective the questionnaire the working of NGO and how they manage their organisation for the wellbeing of the child. I would be extremely thankful, if your kind heart could devote a few minutes in answering the questions provided in the questionnaire. I hereby assure you that the information collected will be utilised for the purpose of this dissertation only.

Thanks

Varsha Gulzar

### **QUESTIONNAIRE TO THE OFFICIALS OF CCLS**

1. What is objective behind establishing this type of institution?
2. What do you think is the attitude of public towards these institutions?
3. What are the financial funding sources for the functioning of these institutions?
4. What is social background of the children in these institutions?
5. Is there any public participation including NGO in working of this institution to help the affected or vulnerable children?
6. What are the state and central government 's role and functions to support such institutions?
7. What are the difficulties and challenges faced by the institution during the implementation of JJ Act, 2015?
8. What kind of schools are the children sent to? (Govt. Private) How are their requirements fulfilled?
9. What are the initiatives taken by the institution for the holistic development pertaining to their Mental, Physical and Emotional needs? How have the students benefited from these programmes?

10. Are there any skilled professionals to understand and counsel such children going through issues of mental and physical trauma?
11. Are there any complaints of incidents of mental, sexual and physical violence against the officials or social workers as reported by the children?
14. What is the regularity of parents and relatives wanting to visit the institution? What is the response of the parents or guardians when they are asked to visit the institution on the demand of a child?
15. Have there been any incidents reported in the past on the issue of children trying to escape from the institution? Have you been able to assess the reason for the same?

## ANNEXURE – III

### INTERVIEW SCHEDULE AS A PART OF LLM DISSERTATION

Dear Sir/Ma'am,

I am Varsha Gulzar, Master of Laws (LL.M) student at the National University of Advanced Legal Studies (NUALS), Kochi bearing Register Number. 10598. This questionnaire is prepared in pursuance to my LL.M Dissertation titled “EMPOWERING VULNERABLE JUVENILE AND STRATEGIES FOR ENHANCING CHILD CARE INSTITUTIONS”. The objective the questionnaire to know nature of work behind the institutions and also the working conditions of the institutions. I would be extremely thankful, if your kind heart could devote a few minutes in answering the questions provided in the questionnaire. I hereby assure you that the information collected will be utilised for the purpose of this dissertation only.

Thanks

Varsha Gulzar

### **QUESTIONNAIRE TO AUTHORITIES AND SOCIAL WORKERS**

1. What is the nature of work, service, and assistance provided to JJ related matters?
2. What is the reason behind large number of CCI in Kerala?
3. What is the total number of register CCIs in Kerala?
4. How have been the standard of living condition, sanitation, and staff of these CCI in Kerala?
5. How many sexual or physical abuse and child exploitations incidents have been reported from theses institution?
6. Do you think that there are any other alternatives for development of a child apart from CCIs?

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**EMPOWERING VULNERABLE JUVENILES AND STRA**  
**ENHANCING CHILDCARE INSTITUTION**

*A Dissertation submitted to the National University of Advanced Legal Studies*  
*fulfilment of the requirements for the award of Degree of Master of Laws in C*  
*Administrative Law*

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