

The Centre for Child and the Law of the National Law School of India University (CCL-NLSIU) is a specialized research centre working in the area of child rights, since 1996. The main thrust of the work is on Juvenile Justice and Child Protection, Universalisation of Quality Equitable School Education, Child Labour, Protection of Children from Sexual Offences, Justice to Children through Independent Human Rights Institutions, Right to Food and Child Marriage. The mission of CCL NLSIU is to institutionalize a culture of respect for child rights in India.

This Toolkit provides information and tools to enable monitoring of the rights of children alleged to be in conflict with law in India residing in an Observation Home, established under the Juvenile Justice (Care and Protection of Children) Act, 2015, and the compliance of the State with legal standards applicable to these Homes.

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TOOLKIT TO MONITOR THE RIGHTS OF CHILDREN ALLEGED TO BE IN CONFLICT WITH THE LAW IN OBSERVATION HOMES

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**Centre for Child and the Law**  
**National Law School of India University**

**March 2018**

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RIGHTS OF  
CHILDREN ALLEGED TO BE IN CONFLICT  
WITH THE LAW IN OBSERVATION HOMES**



**By  
Centre for Child and the Law  
National Law School of India University  
Bengaluru**

**With Support from**

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## About the Centre for Child and the Law, NLSIU

The Centre for Child and the Law (CCL) is a specialized research centre of the National Law School of India University (NLSIU), and was established in 1996. CCL adopts a multi-disciplinary integrated praxis based child rights approach while working on issues concerning children and the law. The main thrust of the work is on Juvenile Justice and Child Protection, Universalisation of Quality Equitable School Education, Child Labour, Protection of Children from Sexual Offences, Justice to Children through Independent Human Rights Institutions, Right to Food, and Child Marriage. The mission of CCL NLSIU is to institutionalize a culture of respect for child rights in India.

The Juvenile Justice team at CCL NLSIU engages in research, teaching, law reform and system reform while also providing multi-disciplinary, psycho-socio and legal services to a limited number of children and families journeying through the juvenile justice system, in order to enable them to claim their rights while also working towards positively impacting policy, law and practice on issues concerning children. The team has published Frequently Asked Questions on the Juvenile Justice (Care and Protection of Children) Act, 2015 and the Juvenile Justice (Care and Protection of Children) Model Rules, 2016. For more information please visit our official website - [www.nls.ac.in/ccl](http://www.nls.ac.in/ccl).

## Abbreviations

Beijing Rules	UN Standard Minimum Rules for the Administration of Juvenile Justice, 1985
CACL	Children Alleged to be in Conflict with the Law
CIDT	Cruel, Inhuman and Degrading Treatment
CICL	Children in Conflict with Law*
CINCP	Children in need of Care and Protection
CRC	Committee on the Rights of the Child
Cr.P.C	Code of Criminal Procedure
CW	Case Worker
CWC	Child Welfare Committee
CWO	Child Welfare Officer
DCPO	District Child Protection Officer
DCPU	District Child Protection Unit
DLSA	District Legal Services Authority
DWCD	Department of Women and Child Development
GA	General Assembly
GC	General Comment
Havana Rules	UN Rules for Protection of Juveniles Deprived of their Liberty, 1990
HC-JJC	High Court Juvenile Justice Committee

HIV	Human Immunodeficiency Virus
HRC	Human Rights Committee
ICP	Individual Care Plan
ICPS	Integrated Child Protection Scheme
ICCPR	International Covenant on Civil and Political Rights, 1966
ICESCR	International Covenant on Economic, Social and Cultural Rights, 1966
IPC	Indian Penal Code, 1860
JJ Act, 2015	Juvenile Justice (Care and Protection of Children) Act, 2015
JJB	Juvenile Justice Board
JJ MR, 2016	Juvenile Justice (Care and Protection of Children) Model Rules, 2016
LAL	Legal Aid Lawyers
LPO	Legal cum Probation Officer
LSA	Legal Services Authority
NALSA	National Legal Services Authority
NCPCR	National Commission for Protection of Child Rights
NGO	Non-Governmental Organisation
NHRC	National Human Rights Commission
OH	Observation Home
OHCHR	Office of the High Commissioner on Human Rights

PO	Probation Officer
POCSO, Act, 2012	Protection of Children from Sexual Offences Act, 2012
Riyadh Guidelines	UN Guidelines for the Prevention of Juvenile Delinquency, 1990
RPD Act, 2016	Rights of Persons with Disabilities Act, 2016
RTE Act, 2009	Right of Children to Free and Compulsory Education Act, 2009
RTI Act, 2005	Right to Information Act, 2005
SCPCR	State Commission for Protection of Child Rights
SCPS	State Child Protection Society
SHRC	State Human Rights Commission
SJPU	Special Juvenile Police Unit
SLSA	State Legal Services Authority
SH	Special Home
SIR	Social Investigation Report
UDHR	Universal Declaration on Human Rights, 1948
UN	United Nations
UNCRC	United Nations Convention on the Rights of the Child, 1989
UNCRPD	United Nations Convention on the Rights of Persons with Disabilities, 2006

\*In some contexts, a Child in Conflict with Law would also include a Child Alleged to be in Conflict with Law.



## Acknowledgements

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The Toolkit was authored by Arlene Manoharan and Swagata Raha.

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Last, but certainly not the least, many children who have journeyed through the juvenile justice system, and stayed at the Observation Home, Bengaluru, have honoured us by sharing their personal stories of hardship, pain and even police torture. We cannot disclose their names, given our duty to protect their right to privacy and confidentiality. However, the hope and trust they have vested in us while doing so, places an obligation on us to do our best to enable them to secure justice, care, protection, treatment, development, rehabilitation and social re-integration - goals enshrined in the Preamble of the JJ Act, 2015, as well as embedded in the vision of the Constitution and the UN Convention on the Rights of the Child, 1989. We express our heartfelt gratitude to each child and/or family member, whose life experience has inspired and informed this toolkit in any way.

We sincerely hope that the use of this toolkit will help bring about small but powerful ripples of change within Observation Homes across the country - changes that result in the development of robust monitoring systems as well as greater accountability and commitment to ensure that the rights of these children are respected, protected and monitored effectively. We also hope that these changes contribute to building greater faith amongst children and the wider community that juvenile justice system delivers the rehabilitative outcomes for children, it aims to achieve.

## Introduction to the Toolkit

The law governing children alleged to have committed an offence and children found to have committed an offence, the Juvenile Justice (Care and Protection of Children) Act, 2015, aims at ensuring that such children receive care, protection, treatment, development and rehabilitation. This would entail an obligation to ensure that all their rights are respected and protected at every stage throughout the process of apprehending the child, inquiry, aftercare, and rehabilitation. This requires that the child be empowered to exercise the right to be heard in processes, and through exercise of this right, to also claim all other rights as provided by law. Children alleged to be in conflict with law are entitled to be treated with the respect they deserve, irrespective of the allegations against them, their class, religion, caste, sex, gender identity, place of birth or other status, particularly when they are in the custody of the State and detained in the Observation Home (OH).

However, there are no indicators available to monitoring authorities that could enable them to assess the compliance with legal standards or identify the violation of rights when the child is in the OH. Keeping this reality in mind, the Centre for Child and the Law (CCL), National Law School of India University (NLSIU) is publishing this Toolkit to help address this need.

The primary sources that have been relied upon while putting together the content for this handbook include the

insights from experience of members of the multi-disciplinary Juvenile Justice team at CCL NLSIU in providing psycho-socio-legal services to children alleged and found to be in conflict with law and their families in Bangalore. The handbook also draws from primary sources of law such as the Indian Constitution, The Juvenile Justice (Care and Protection of Children) Act, 2015 (JJ Act, 2015); The Juvenile Justice (Care and Protection of Children) Model Rules, 2016 (JJ MR, 2016), and other legislations such as The Right to Free and Compulsory Education Act, 2009; The Protection of Children from Sexual Offences Act, 2012; and The Right to Food Security Act, 2013. It also includes references to India's obligations under the United Nations Convention on the Rights of the Child, 1989 (UNCRC), the United Nations Convention on Rights of Persons with Disability, 2006 (UNCRPD), the International Covenant on Civil and Political Rights, 1966 (ICCPR) and the International Covenant on Economic, Social and Cultural Rights, 1966 (ICECSR). References to soft law instruments such as The UN Standard Minimum Rules for the Administration of Juvenile Justice, 1985 (the Beijing Rules), The UN Guidelines for the Prevention of Juvenile Delinquency, 1990 (the Riyadh Guidelines), The UN Rules for the Protection of Juveniles Deprived of their Liberty, 1990 (the Havana Rules), and The Guidelines for Action on Children in the Criminal Justice System, 1997 (Vienna Guidelines) and relevant General Comments by treaty bodies have been included as well.

The indicators have been developed based on the Office of the High Commissioner on Human Rights publication Human Rights Indicators – A Guide to Measurement and Implementation (2012) (OHCHR Guide).<sup>1</sup>

It is hoped that this Toolkit provides useful guidance to government functionaries, monitoring authorities, civil society

<sup>1</sup> Available at [http://www.ohchr.org/Documents/Publications/Human\\_rights\\_indicators\\_en.pdf](http://www.ohchr.org/Documents/Publications/Human_rights_indicators_en.pdf)

and the wider child rights community in their endeavour to promote, protect and fulfil the rights of these children in India.

## Purpose of the Toolkit

The purpose of the Toolkit is manifold, as it could be used to achieve a number of goals, including the following:

### Domestic Level

- a) To help monitoring authorities in determining deprivation or violation of certain rights of children alleged to be in conflict with law, and take necessary steps to address such violations.
- b) To help monitoring authorities in assessing the extent of adherence to applicable legal standards in Observation Homes in India, and recommend necessary steps to improve complaints.

### International Level

- a) To inform India's official report to the UN Committee on the Rights of the Child<sup>2</sup>, as required under Article 44, UNCRC;
- b) To inform reports by specialized agencies (including NGOs), UNICEF/UN bodies to the UN Committee on the Rights of the Child;<sup>3</sup>
- c) To inform reports of the National Human Rights Commission (NHRC) or the National Commission for Protection of Child Rights (NCPCR) for their submissions to the UN Committee on the Rights of the Child,<sup>4</sup> and

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2 UNCRC, 2009, Article 44.

3 UNCRC, 2009, Article 45.

4 Child Rights Connect, "The Reporting Cycle of the Committee on the Rights of the Child - A Guide for NGOs and NHRIs", [http://www.ohchr.org/Documents/HRBodies/CRC/GuideNgoSubmission\\_en.pdf](http://www.ohchr.org/Documents/HRBodies/CRC/GuideNgoSubmission_en.pdf)

- d) To inform reports of the NHRC or NCPCR for their submissions to the Human Rights Council for the Universal Periodic Review process.<sup>5</sup>

## The intended user

The intended user is a government functionary, a monitoring authority under an existing domestic legislation and civil society. For example, though the JJ MR, 2016 provides a Form<sup>6</sup> to enable the Inspection Committee to inspect Child Care Institutions (CCIs) under Rule 46(3), JJ MR, 2016, the Inspection Committee could consider referring to this Toolkit to inspect whether or not other rights/legal standards are being adhered to or not.

This tool is intended for use by the following authorities/bodies as per their legal mandate:

- a) **Management Committees** under Section 53(2), JJ Act, 2015;
- b) **State Child Protection Societies** under Section 106(1), JJ Act, 2015;
- c) **District Child Protection Units** under Section 106(1), JJ Act, 2015;
- d) **Inspection Committees** under Section 54, JJ Act, 2015;
- e) **Juvenile Justice Boards** under Section 8(3)(j), JJ Act, 2015;
- f) **National Commission for Protection of Child Rights** (NCPCR) and **State Commissions for Protection of Child Rights** (SCPCR) under Section 13(1), Commissions for Protection of Child Rights Act, 2005 (CPCR Act) as well as Section 109, JJ Act, 2015;

5 OHCHR, “3<sup>rd</sup> UPR cycle: contributions and participations of “other stakeholders” in the UPR”, <http://www.ohchr.org/EN/HRBodies/UPR/Pages/NgosNhris.aspx>

6 JJ MR, 2016, Form 46.

- g) **National Human Rights Commissions and State Human Rights Commissions** under Section 12, Protection of Human Rights Act, 1993;
- a) **Institutions and Agencies such as reputed academic institutions, schools of social work of Universities, Management Institutions, or multi-disciplinary Committees constituted by the Central Government or State Government** to evaluate the functioning of registered institutions, or fit facilities under Section 55, JJ Act, 2015 and Rule 42, JJ MR, 2016.

Additionally, this Toolkit may be used by the **High Court Juvenile Justice Committees (HC-JJCs)**<sup>7</sup>. It could also be used for **conducting a social audit of the Observation Homes**.<sup>8</sup> For more details refer to Chapter 3.

### **Limitation of the Toolkit**

The Toolkit provides information and tools to enable monitoring of only the rights of children alleged to be in conflict with law in India residing in an OH, established under the JJ Act, 2015, and the compliance of the State with legal standards applicable to these Homes. It does not provide guidance for monitoring compliance with legal standards or the violation of rights of children released on bail from the OH, or children transferred to the Children’s Court for trial as an adult, or children found to be in conflict with law and placed in the Special Home, or of children during proceedings of the Juvenile Justice Board. While a child alleged to be in conflict with the law may also be

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<sup>7</sup> For more information about HC-JJCs, see section 3.7.

<sup>8</sup> CCL NLSIU, Recommendations related to Social Audit on Juvenile Justice for inclusion in the XII Plan available at <https://www.nls.ac.in/ccl/jjdocuments/jjsocialaudit2015.pdf>

placed in a 'Place of Safety', the Toolkit is confined to the OH as a setting. This tool is also not designed for use by children alleged to be in conflict with law or Children's Committees established within the OH under the JJ Act, 2015. However, the content could be adapted for their use subsequently.

The Toolkit does not provide guidance on methodology to be adopted while monitoring these rights. It can, however, form the basis for developing such formats and testing them on their rights-based quotient before it is actually used.

The Toolkit should not be viewed as an authoritative legal resource but as an initial offering in the form of a compilation of applicable international and domestic normative standards that could enable monitoring of the rights of children alleged to be in conflict with law in Observation Homes in India.





# The Rights Holder and the Observation Home Setting

This Chapter defines the rights holder who is the prime focus of this Toolkit i.e. a child alleged to be in conflict with the law (CACL). It explains what an OH is and the obligations the State Government has with regards to the set up and functioning of an OH.

## 1.1 About Children in Conflict with Law

### 1.1.1. What is meant by “child in conflict with the law”?

A “child in conflict with the law” is defined under the JJ Act, 2015 to mean “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”.<sup>1</sup>

### 1.1.2. How is a “child alleged to be in conflict with the law” (CACL) different from a “child found to be in conflict with the law”?

A CACL is a child against whom an allegation has been made but not yet proven. This child has a right to be presumed innocent until proven guilty. A child found to be in conflict with the law is a child whose guilt with respect to the alleged offence stands proven. While the basic entitlements of all children are the same, certain rights are specific to their situation. The procedures

<sup>1</sup> JJ Act, 2015, Section 2(13).

and processes that a CACL may be subjected to in the course of inquiry would differ from those applicable to a child found to be in conflict with the law.

### **1.1.3. What happens to the CACL when their inquiry is pending?**

A CACL may or may not be apprehended by police, depending on the nature of offence alleged against the child and the child's best interest. However, when apprehended and not released on bail by the police or the Juvenile Justice Board (JJB), such a child can be kept in an OH<sup>2</sup> or a Place of Safety.<sup>3</sup>

## **1.2 About The Observation Home (OH)**

### **1.2.1. What is meant by 'Observation Home'?**

The OH is a Child Care Institution (CCI) meant for the temporary reception, care and rehabilitation of a child *alleged* to be in conflict with the law, during the pendency of an inquiry under the JJ Act, 2015.<sup>4</sup>

### **1.2.2. What is a "Place of Safety" and how is it different from an OH?**

A child found to be in conflict with the law by the JJB can be sent to a Special Home for a maximum period of three years for reformatory services including education, skill development, counselling, behaviour modification therapy, and psychiatric support during the period of stay.<sup>5</sup> Only a CACL can be placed in an OH, pending inquiry. Some children can be kept in a Place of Safety during the pendency of inquiry by the JJB or the Children's

2 JJ Act, 2015, Sections 12(2) and 12(3).

3 JJ Act, 2015, Section 2(46).

4 JJ Act, 2015, Section 47(1), read with Section 2(21).

5 JJ Act, 2015, Section 18(1)(g).

Court and for ongoing rehabilitation after having been found guilty.<sup>6</sup> A 'Place of Safety' is a CCI meant for both CACL or those found to be in conflict with the law,<sup>7</sup> established separately or attached to an OH or a Special Home.<sup>8</sup> It cannot be a police lockup or jail.<sup>9</sup> The person in-charge of the Place of Safety should be willing to receive and take a child based on order of the JJB or Children's Court.<sup>10</sup> The law requires that separate arrangement and facilities should be made in a Place of Safety for children or persons whose inquiry is underway and for children or persons who are found to have committed an offence.<sup>11</sup>

### **1.2.3. What is the age group of children who can be kept in an Observation Home?**

A child between 7-18 years alleged to have committed an offence can be kept in an OH, pending the bail inquiry; or if the child has been denied bail by the police or the JJB. A person who has completed 18 years of age and is apprehended for having allegedly committed an offence when he was below 18 years will be kept in a Place of Safety and not the OH during the inquiry process, if bail is denied.<sup>12</sup>

### **1.2.4. Who is responsible for establishing an OH?**

The JJ Act, 2015 makes it mandatory for the State Governments to establish and maintain an OH in every district or group of districts, either by itself, or through voluntary organisations or NGOs. The OH should be registered under

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6 JJ Act, 2015, Section 2(46).

7 JJ Act, 2015, Section 49(1).

8 JJ Act, 2015, Section 2(46).

9 JJ Act, 2015, Section 2(46).

10 JJ Act, 2015, Section 2(46).

11 JJ Act, 2015, Section 49(2).

12 JJ Act, 2015, Section 6(2).

Section 41, JJ Act.<sup>13</sup> The State Government can also recognise any registered institution it considers fit for the temporary reception of CACL during the pendency of the inquiry and register it as an OH.<sup>14</sup>

### **1.2.5. What are the provisions that the State Government must abide by with respect to establishment of OH?**

Within the OH, the CACL should be segregated based on age and gender, after giving due consideration to their physical and mental status and degree of the offence allegedly committed.<sup>15</sup> There should be a separate OH for boys and girls; and the children should be classified and separated based on their age, preferably into the following groups - 7-11 years, 12-16 years, and 16-18 years.<sup>16</sup> State Governments have been empowered to frame Rules to provide for the management and monitoring of the OH, including the standards and various types of services to be provided by them for rehabilitation and social integration of a CACL, as well as the requirements related to registration of the OH.<sup>17</sup>

### **1.2.6. Who is responsible for the day-to-day management and control of an OH?**

According to Rule 2(xii), JJ MR, 2016, “Person-in-charge” means a person appointed for the control and management of the CCI.” An OH is a CCI as per Section 2(21) of the JJ Act, 2015.

The Person-in-charge of the OH is responsible for the control and supervision of the staff of the OH and can, by order,

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13 JJ Act, 2015, Section 47(1).

14 JJ Act, 2015, Section 47(1 & 2).

15 JJ Act, 2015, Section 47(4).

16 JJ MR, 2016, Rule 29(1).

17 JJ Act, 2015, Section 47(3).

determine their specific duties and responsibilities in accordance with the JJ Act, 2015 and JJ MR, 2016.<sup>18</sup> The Person-in-charge of an OH for girls should be female and only female staff should be appointed in such OH.<sup>19</sup>

### **1.2.7. What should the personnel strength of the OH be?**

The personnel strength should be determined based on the duty, posts, hours of duty, and category of children.<sup>20</sup> The number of posts in each category of staff should be determined based on the capacity of the OH and will proportionately increase with the increase in capacity.<sup>21</sup> The JJ MR, 2016 suggests the staffing pattern for institutions with a capacity of 100 children.<sup>22</sup>

Security personnel should be trained and oriented to deal with children with sensitivity.<sup>23</sup> Former servicemen or retired para-military personnel should preferably be appointed.<sup>24</sup> They should not be armed or carry guns, but should be trained and skilled to deal with crisis situations, control violence and situations where children may attempt to run away from the OH, conduct searches and frisking and security surveillance.<sup>25</sup>

### **1.2.8. What are the conditions for appointment of staff of the OH?**

No person should be appointed to or work in the OH without police verification.<sup>26</sup> No person associated with the OH should have been convicted of an offence or have been involved

18 JJ MR, 2016, Rule 26(2).

19 JJ MR, 2016, Rule 26(4).

20 JJ MR, 2016, Rule 26(1).

21 JJ MR, 2016, Rule 26(3).

22 JJ MR, 2016, Rule 26(7).

23 JJ MR, 2016, Rule 26(10).

24 JJ MR, 2016, Rule 26(10).

25 JJ MR, 2016, Rule 26(11).

26 JJ MR, 2016, Rule 26(6).

in any immoral act including child abuse or employment of child labour or in an offence involving moral turpitude, nor should the person hold any office in any political party during his tenure.<sup>27</sup>

Where State Governments have a Child Protection Policy that governs recruitment, appointment and induction of personnel, it should be followed. The Karnataka State Child Protection Policy for Educational Institutions, 2016<sup>28</sup> and the Child Protection Policy of the Department of Women and Child Development of Government of NCT Delhi for Child Care Homes/Institutions registered under the Juvenile Justice (Care and Protection of Children) Act, 2000<sup>29</sup> are examples of such state level policies governing this subject.

### **1.3. Rights and Standards of Care within the OH**

#### **1.3.1. What are the rights available to a CACL residing in an OH?**

The rights of CACL who are detained in an OH are contained in the Constitution of India, JJ Act, 2015, JJ MR, 2016, UN Convention on the Rights of the Child, Beijing Rules, Havana Rules, and other international instruments. These rights include the right not to be subjected to torture, cruel, inhuman or degrading treatment or punishment, the right to legal aid, the right to education, the right to privacy, the right to be heard, the right to equality and non-discrimination, and all other human rights and safeguards available to human beings, as also those specifically attributed to children.

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27 JJ MR, 2016, Rule 26(5).

28 Available at [http://dwcdkar.gov.in/index.php?option=com\\_docman&task=cat\\_view&gid=54&lang=en&limitstart=5](http://dwcdkar.gov.in/index.php?option=com_docman&task=cat_view&gid=54&lang=en&limitstart=5)

29 Available at <http://www.wcddel.in/pdf/1AGMPCSA.pdf>

The process of rehabilitation and social integration of CACL should be undertaken in the OH, if the child is not released on bail.<sup>30</sup> Certain services should be provided by institutions in the process of rehabilitation and re-integration of children.<sup>31</sup> The content of these services have been expanded upon in the JJ MR, 2016. Refer to the tool pertaining to the right to rehabilitative services in Chapter 4.

### 1.3.2. What could the daily routine of children living in the OH be like?

According to the JJ MR, 2016, the daily routine should be framed in consultation with the Children’s Committees and should be prominently displayed at various places within the OH.<sup>32</sup> The daily routine could provide for “regulated and disciplined life, personal hygiene and cleanliness, physical exercise, yoga, educational classes, vocational training, organised recreation and games, moral education, group activities, prayer and community singing and special programmes for Sundays and holidays and national holidays, festive days, birthdays”.<sup>33</sup>

### 1.3.3. What are the structural stipulations that the OH should comply with?

**Appearance:** The OH should be child-friendly and should not look like a jail or lock-up.<sup>34</sup> The flooring of the OH should be proper and non-slippery to prevent accidents.<sup>35</sup>

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30 JJ Act, 2015, Section 39(2).

31 JJ Act, 2015, Section 53(1) I to xiii.

32 JJ MR, 2016, Rule 32(1).

33 JJ MR, 2016, Rule 32(2).

34 JJ MR, 2016, Rule 29(2).

35 JJ MR, 2016, Rule 29(8).



**Management:** A Management Committee should be constituted for the management and monitoring of the progress of every child in the OH.<sup>36</sup> The Person-in-charge should stay within the OH and should be provided with residential accommodation; and in his or her absence, a senior staff member should stay in the OH to supervise the overall care of children and take decisions during crisis or emergency.<sup>37</sup> There should be a copy of the JJ Act, 2015 and the JJ MR, 2016/ State Rules under the JJ Act, 2015, (whichever is applicable), for use by the staff and children.<sup>38</sup>

**Amenities:** Lighting, heating and cooling arrangements, ventilation, safe drinking water, clean and accessible gender, age appropriate and disabled friendly toilets and high walls with barbed wire fencing should also be ensured.<sup>39</sup> Provision for first-aid kit, fire extinguishers in kitchen, recreation room, vocational training room, dormitories, store rooms and counselling room should be made<sup>40</sup> and all staff should be trained<sup>41</sup>. Computers, photocopiers, printer, scanner cum fax, telephone with internet facility, web cam, furniture for officials, record keeping cabinets, work stations, wheel chair, stretchers for medical room, furniture for study and dining hall, and projector may be provided.<sup>42</sup> The appropriate accommodation in the building as per its size has also been stipulated under the JJ MR, 2016.<sup>43</sup>

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36 JJ Act, 2015, Section 53(2) and JJ MR, 2016, Rule 29(4).

37 JJ MR, 2016, Rule 29(7).

38 JJ MR, 2016, Rule 29(3).

39 JJ MR, 2016, Rule 29(9).

40 JJ MR, 2016, Rule 29(10)(i).

41 JJ Act, 2016, Section 108 (b) and Rule 89, JJ MR, 2016.

42 JJ MR, 2016, Rule 29(12).

43 JJ MR, 2016, Rule 29(6).

**Preparedness for disasters:** Mock drills should be carried out periodically to help staff and children familiarise themselves with the use of fire extinguishers and evacuation during emergencies such as fire or natural disasters. Programs of the National Disaster Management Authority must also be carried out in all CCIs, including OHs. Electric installations should be periodically inspected, food articles should be properly stored and inspected, and stand-by arrangements for water storage and emergency lighting should be ensured.<sup>44</sup>

**Accessibility:** The requirements of children with disabilities should be considered and special infrastructural facilities and equipment designed by specialists or experts should be provided to them.<sup>45</sup>

### 1.3.4. What are the sanitation and hygiene standards that the OH should comply with?

According to the JJ MR, 2016, there are 21 facilities that should be provided in the OH- i.e. sufficient treated drinking water; sufficient water including hot water for bathing, washing clothes and cleaning the premises; proper and regularly maintained drainage system; arrangement for disposal of garbage; protection from mosquitoes; annual pest control; sufficient, well- lit, airy toilets and bathrooms with proper fittings; sufficient space for washing and drying clothes; washing machine if possible; clean kitchen; sunning of bedding twice every month and clothes regularly; cleanliness in the Medical Centre; daily sweeping and wiping of all the floors; washing of toilets and bathrooms twice a day; proper washing of vegetables and fruits and hygienic preparation of food; cleaning of the kitchen after every meal;

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44 JJ MR, 2016, Rule 29(10) (ii), (iii), and (iv).

45 JJ MR, 2016, Rule 29(11).

clean storage of food articles and supplies; and disinfection of beddings at least once a year and fumigation of the sick room after every discharge, in case of contagious diseases.<sup>46</sup>

### **1.3.5. What are the dietary and nutrition standards that should be followed by the OH?**

According to the JJ MR, 2016, children should be provided four meals a day, including breakfast, and the menu should be developed with the assistance of a nutritional expert or doctor to ensure balanced diet, variety in taste and compliance with the minimum nutritional standard and diet scale.<sup>47</sup> The Children's Committee should also be consulted in the preparation of the menu, a copy of which should be displayed in the dining hall.<sup>48</sup> Children can be provided special meals on holidays, festivals, sports day, etc.<sup>49</sup> Special diet based on the advice of the doctor should be provided to sick children.<sup>50</sup> Each child's requirement for iron and folic acid supplements should be considered.<sup>51</sup> Seasonal and regional variations should also be taken into account.<sup>52</sup> The JJ MR, 2016 prescribes the timings of the meals, but also vests the Person-in-charge with the discretion to alter the time for distribution of food.<sup>53</sup> For a description of the domestic and international framework related to the right to food relevant to a CACL, refer to the tool on the right to food, in Chapter 5.

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46 JJ MR, 2016, Rule 31.

47 JJ MR, 2016, Rule 33(1).

48 JJ MR, 2016, Rule 33(5).

49 JJ MR, 2016, Rule 33(2).

50 JJ MR, 2016, Rule 33(3).

51 JJ MR, 2016, Rule 33(4).

52 JJ MR, 2016, Rule 33(6).

53 JJ MR, 2016, Rules 33(7) and 33(8)(i).

### **1.3.6. What are the clothing and bedding materials that should be provided to children in the OH?**

Children in the OH should be provided clothing and bedding as per climatic conditions and the scale prescribed in Rule 30, JJ MR, 2016. The scale stipulates the minimum standards for bedding, clothing based on sex, and toiletries.

### **1.3.7. What educational opportunities should be available to children within the OH?**

The OH should provide education to all children based on their age and ability, both inside and outside the institution, as per the requirement of the child.<sup>54</sup> The range of educational opportunities should be wide and include “mainstream inclusive schools, bridge school, open schooling, non- formal education and learning”.<sup>55</sup> Extra coaching should be made available to school going children by tying up with coaching centres or tutors, or through volunteer services.<sup>56</sup> The OH should appoint specialised trainers and experts “to cater to educational needs of children with special needs, either physical or mental.”<sup>57</sup> Further, learning disorders should be identified, assessed and reported in the Individual Care Plan (ICP), and assistance to the children should be given by trained professionals.<sup>58</sup> The OH should ensure regularity of the education programme and attendance of children.<sup>59</sup> Children in the OH should be able to apply to and receive scholarships, grants, schemes, and sponsorships.<sup>60</sup> To ensure schooling, the JJB is empowered to “pass appropriate

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54 JJ MR, 2016, Rule 36(1).

55 JJ MR, 2016, Rule 36(2).

56 JJ MR, 2016, Rule 36(3).

57 JJ MR, 2016, Rule 36(4).

58 JJ MR, 2016, Rule 36(4).

59 JJ MR, 2016, Rule 36(5).

60 JJ MR, 2016, Rule 36(6).

orders for re-admission or continuation of the child in school, where the child has been disallowed from continuing his education in a school on account of the pendency of the inquiry or the child having stayed in a Child Care Institution.”<sup>61</sup> For a description of the domestic and international framework related to the right to education relevant to a CACL, refer to the tool on the right to education in Chapter 4.

### **1.3.8. What steps should be taken to provide vocational training to children in the OH?**

The OH should provide gainful vocational training to children based on their age, aptitude, interest and ability, within or outside the institution.<sup>62</sup> Children can be sent outside the institution for vocational training as well and must be escorted with proper security planning and services.<sup>63</sup> Vocational training should include occupation therapy and skill and interest based training, with the objective of suitable placement when the course ends.<sup>64</sup> A certificate should be given to the child at the end of the course.<sup>65</sup> Record of children attending vocational programmes and their progress should be maintained and reviewed. The report should be submitted to the JJB or the Children’s Court, as the case may be, on a quarterly basis.<sup>66</sup>

### **1.3.9. What kind of recreational facilities should be provided to children in the OH?**

A child’s right to rest and leisure and to engage in play and recreational activities is recognised under Article 31(1), UNCRC.

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61 JJ MR, 2016, Rule 7 (iii).

62 JJ MR, 2016, Rule 37(1).

63 JJ MR, 2016, Rule 37(3).

64 JJ MR, 2016, Rule 37(2).

65 JJ MR, 2016, Rule 37(2).

66 JJ MR, 2016, Rule 37(4).

The JJ MR, 2016 states that recreation facilities could include “indoor and outdoor games, yoga and meditation, music, television, picnic and outings, cultural programmes, gardening and library, etc.”<sup>67</sup> The OH should maintain the regularity of activities with support from institutions and NGOs, if necessary, and submit a report on this on a quarterly basis to the JJB or Children’s Court, as the case may be.<sup>68</sup> For an explanation of the recreational facilities, refer to the tool on the right to recreation in Chapter 4.

### **1.3.10. What steps should be taken to ensure medical care of children living in the OH?**

A Medical Officer should be available on call for regular medical check-up and treatment of children in the OH.<sup>69</sup> A nurse or a paramedic should however be available round the clock.<sup>70</sup> The psycho-social profile of every child in the OH should be maintained and updated on a monthly basis and special observations should be recorded.<sup>71</sup> It is the responsibility of the Person-in-charge of the institution to ensure that recommendations made in connection with the medical care of the child are complied with.<sup>72</sup> The JJ MR, 2016 lays down a list of responsibilities for the concerned OH staff to ensure medical care including arranging for medical examination within 24 hours of being admitted to the institution, or of being transferred. A detailed medical record of each child and a first aid kit should be maintained. Preventive measures should be taken and necessary immunization should be facilitated. If surgical intervention

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67 JJ MR, 2016, Rule 38(1).

68 JJ MR, 2016, Rule 38(8).

69 JJ MR, 2016, Rule 34(1).

70 JJ MR, 2016, Rule 34(2).

71 JJ MR, 2016, Rule 34(8).

72 JJ MR, 2016, Rule 34(8).

is required, the parent or the guardian of the child should be contacted. The OH should also provide for counselling and should refer children for deaddiction programs, if.<sup>73</sup>

Baseline investigations of complete blood count, urine routine, HIV, VDRL, Hepatitis B and Hepatitis C tests, allergy or addiction to drugs should be carried out at the time of the child's entry into the institution, based on the doctor's suggestion after examination of the child.<sup>74</sup> The provisions of the HIV and AIDS (Prevention and Control) Act, 2017 will have to be adhered to while facilitating HIV tests. The JJ MR, 2016 also stipulates that pregnancy tests or tests for sexual diseases should be conducted, if required, by order of the JJB or Children's Court.<sup>75</sup> The DCPU should facilitate the procedures under the Medical Termination of Pregnancy Act, 1971, if required.<sup>76</sup> Health assessments to detect iron deficiency should be conducted for girls who have attained puberty and dietary plans and medicines should be prescribed by the nutritionist and doctor for such children, if necessary.<sup>77</sup>

Provisions should be made by the State Government through the DCPU for children with hormonal problems, immunocompromised diseases, and physical or mental disabilities, based on recommendation of the medical officer.<sup>78</sup>

### **1.3.11. What steps should be taken to protect and ensure the mental health of children living in the OH?**

The environment in the OH should be free from abuse, so as to permit the children to cope with their situation and regain

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73 JJ MR, 2016, Rule 34(3).

74 JJ MR, 2016, Rule 34(4).

75 JJ MR, 2016, Rule 34(5).

76 JJ MR, 2016, Rule 34(5).

77 JJ MR, 2016, Rule 34(7).

78 JJ MR, 2016, Rule 34(6).

confidence.<sup>79</sup> To this end, the staff and persons responsible for their care should facilitate an enabling environment and collaborate with therapists, if needed.<sup>80</sup> The JJ MR, 2016 mandates individual based therapy and also milieu based interventions for all children living in the OH,<sup>81</sup> (milieu based therapy being a process of recovery achieved in an enabling environment, by encouraging the child's abilities and choices and acknowledging their right to take decisions regarding their life).<sup>82</sup> The OH should have trained counsellors or collaborate with child guidance centres, psychology and psychiatric departments or similar Government and non-Governmental agencies, for specialised and regular individual therapy for the child.<sup>83</sup> Recommendations of mental health experts should be maintained in the case file.<sup>84</sup> The JJ MR, 2016 prohibits the administration of medication for mental health problems without a psychological evaluation and diagnosis by trained medical health professionals.<sup>85</sup> Further, medicines should be administered to the children only by trained medical staff.<sup>86</sup> For a description of the domestic and international framework related to the right to health relevant to a CAAL, refer to the tool on the right to health, including mental health in Chapter 4.

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79 JJ MR, 2016, Rule 35(1).

80 JJ MR, 2016, Rule 35(2).

81 JJ MR, 2016, Rule 35(3).

82 JJ MR, 2016, Rule 35(3), Explanation.

83 JJ MR, 2016, Rule 35(5).

84 JJ MR, 2016, Rule 35(6).

85 JJ MR, 2016, Rule 35(7).

86 JJ MR, 2016, Rule 35(8).





## Mapping the Rights Framework

India and the international community have acknowledged the special status of children, given their physical and mental immaturity, and their vulnerable position, in comparison to adults. Such special status demand distinct legislations aimed at providing protection and entitlements to children, including CACL.

This chapter briefly outlines the rights of CACL under domestic and international human rights law. It also briefly refers to the policy framework relevant to CACL in India.

### 2.1. Constitutional Framework

The Constitution of India, 1950, recognizes the unique status of children in many of its provisions. Several Articles contained in Part III and Part IV of the Constitution – Fundamental Rights and Directive Principles of State Policy, respectively, are applicable to children. The Constitution particularly emphasizes that children need to be nurtured and cared for, and recognizes them as right-holders. In relation to these rights, specific obligations are placed on the State to ensure that children are protected from exploitation, and receive free and compulsory education.<sup>1</sup> While fundamental rights are enforceable and justiciable, directive

<sup>1</sup> Constitution of India, Article 24 and 21A.

principles are non-enforceable, yet provide guidance for good governance. The Supreme Court has, through judicial activism, elevated some directive principles to the status of fundamental rights. The right to education, for instance, was a directive principle that was held to be a constituent of the right to life under Article 21, before Article 21A was introduced.

Article 14 encapsulates the right to equality before the law and equal protection of laws. Articles 15(1) which prohibits discrimination on grounds of religion, race, caste, sex or place of birth, and Article 15(3) allows the State to make special provisions for children. The Juvenile Justice Act, 1986 was passed [later replaced by the Juvenile Justice (Care and Protection of Children) Act, 2000] under the special powers conferred by this provision. The Juvenile Justice (Care and Protection of Children) Act, 2000, and the JJ Act, 2015 which replaces it, were both enacted in furtherance of Articles 15(3), 39, 45 and 47.

Article 20(3) recognizes the privilege against self-incrimination and prohibits compelling an accused person to be a witness against himself. Pursuant to this, CACLs cannot be compelled to confess before the JJB or Children's Courts. Article 22(1) entitles an arrested person to consult with a lawyer and to be defended by a lawyer of his choice. Article 39-A requires the State to provide free legal aid to ensure that citizens are not prevented from accessing the legal system due to economic or other disabilities. CACL have a right to be heard in all legal and judicial proceedings and free legal aid should be made available to them if they are unable to afford legal representation. Further, Article 22(2) requires the production (within 24 hours) before a Magistrate of a person arrested or detained in custody. This protection applies in full force to CACL and the police are duty-bound to produce them before the JJB within 24 hours.

Article 21, guarantees that a person cannot be “deprived of his life or personal liberty except according to a procedure established by law.” Although couched negatively, its expansive interpretation by the Supreme Court has led to the recognition of several positive rights.

Article 21-A recognises the right to free and compulsory education to children between six and fourteen years. Children cannot be deprived of their fundamental right to education because of their detention in a custodial institution like the OH. There is a constitutional obligation on the State to ensure that CACL below 14 years residing in the OH are compulsorily provided free education.<sup>2</sup> Further, Article 350-A, a special directive, requires the State to provide adequate facilities for instruction in mother-tongue during primary education to children belonging to linguistic minority groups. This constitutional obligation would also apply to children living in the OH.

The Constitution also prohibits traffic in human beings and forced labour, and the employment of children below 14 years in hazardous employment in Articles 23 and 24, respectively. In Article 39 (e) and (f), obligation is cast on the State to ensure that the tender age of children is not abused and “children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.” These directive principles are referred to in the Preamble of the JJ Act, 2015 and hold significance for CACL in the OH, requiring the State to ensure that they are not exploited, stigmatized, isolated, and deprived of rehabilitative services and opportunities while in the custody of the State. Further, Articles

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<sup>2</sup> See <https://www.nls.ac.in/ccl/jjdocuments/jjactrecommendrtemarch2017.pdf>

46 and 47 require the State to safeguard the educational and economic interests of weaker sections, and raise the nutritional levels and public health, respectively. For children living in the OH, it would imply that their right to education, nutrition, and health should be respected, protected and fulfilled.

In addition to the above provisions, the other fundamental rights in the Constitution such as the right to fundamental freedoms such as the freedom of speech and expression (Article 19(1)), the right to freedom of religion (Article 25), and other fundamental rights apply to them as well.

The Supreme Court, in many instances, has been very vocal regarding the need to protect child rights particularly with regard to their special vulnerable status. In *Salil Bali v. Union of India*<sup>3</sup>, the Supreme Court held that “children are amongst the most vulnerable sections in any society. They represent almost one-third of the world’s population, and unless they are provided with proper opportunities, the opportunity of making them grow into responsible citizens of tomorrow will slip out of the hands of the present generation.”<sup>4</sup>

The Supreme Court can be directly approached under Article 32 and the High Court under Article 226, to seek relief for a violation of fundamental rights. In 1986, in *Sheela Barse v. Union of India*,<sup>5</sup> the Supreme Court’s attention was drawn to the large number of children, including children with mental and physical disabilities, who were languishing in jails in different states of the country. The Court expressed its disapproval at this state of affairs, stating that not only was keeping a child in jail illegal, exposure to the baneful influences of jail had the

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3 *Salil Bali v. Union of India*, (2013) 7 SCC 705 at para 51.

4 *Salil Bali v. Union of India*, (2013) 7 SCC 705 at para 51.

5 (1986) 3 SCC 596.

effect of coarsening a child's conscience and alienating him from the society, all of which is also highly detrimental to the development of the child. Taking note of the dismal conditions in which the Juvenile Courts were functioning, the Supreme Court recommended the Central Government to enact uniform legislation in force throughout India for the protection of children in conflict with the law. The Juvenile Justice Act, 1986 was enacted pursuant to this, as also to the adoption of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules) by the international community.<sup>6</sup>

The writ jurisdiction of the Supreme Court and High Courts has been invoked several times to draw attention to the rights violations of children in conflict with the law. For instance, in *Court on Its Own Motion v. Dept. of Women and Child Development*,<sup>7</sup> the Delhi High Court received a letter pointing out that many times when the accused persons are arrested by the police and even when they happen to be children, they are lodged in Tihar Jail and subjected to the hardship of the adult criminal justice system. The High Court issued directions that when a person suspected to be a child has been lodged in a jail, he/she shall be kept separately from all other prisoners and be produced before the JJB. The Investigating Officers (IO), while making the arrest, should reflect the age of the prisoner arrested in the Arrest Memo. The court also ordered the introduction of "Age Memo" on the line of "Arrest Memo" to facilitate this process. When a young person, appears to be below 18 years of age, or where his arrest memo age states his age to be 18-21 years, is arrested and produced before the Magistrate, it will be the duty of the

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6 Adopted by the UN General Assembly on 29<sup>th</sup> November 1985.

7 *Court on Its Own Motion v. Dept. of Women and Child Development*, WP (Civil) No. 8889 of 2011 May 11, 2012 (A.K. Sikri and R.S. Endlaw) (High Court of Delhi).

Magistrate also to order ascertainment of age of such a person. The Court also declared that when any police officer receives a complaint that a juvenile has been treated as an adult, he or she should record the statement of such complainant and then register a daily diary (DD) Entry and cause corrective steps to be taken.

In *Sampurna Behura v. Union of India*,<sup>8</sup> the Supreme Court emphasized the need for registration of child care institutions under the JJ Act, 2015 and identified the State Child Protection Societies and the District Child Protection Units as having an enormous responsibility in ensuring that the JJ Act is effectively implemented and Child Care Institutions are managed and maintained in a manner that is conducive to the well being of children in all respects including nutrition, education, medical benefits, skill development and general living conditions.

The Supreme Court also advised State Governments and Union Territories to appoint eminent persons from civil society as visitors to monitor the CCI.

In *Re: Exploitation of children in orphanages in Tamil Nadu*,<sup>9</sup> the Supreme Court noted that, despite the availability of technology, registration of CCIs has still not been completed. The Court directed the Union, State and Union Territory Governments to complete the process of registration of all CCIs by 31 December 2017.

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8 W.P.(Civil) No.473 of 2005 decided on 09.02.2018 by the Supreme Court.

9 *Re: Exploitation of Children in Orphanages in the State of Tamil Nadu vs. Union of India & Ors.*, Writ Petition (Criminal) No. 102 of 2007, order date 05.05.2017.

## 2.2. Statutory Framework of Rights

### 2.2.1. Juvenile Justice (Care and Protection of Children) Act, 2015 and Model Rules, 2016

#### *Rights under the JJ Act, 2015 and JJ MR, 2016*

The JJ Act, 2015 is the principal legislation governing the apprehension, detention, prosecution, penalty or imprisonment, rehabilitation and social-reintegration of children in conflict with the law.<sup>10</sup> The title of the Act and its preamble indicate the essence of the juvenile justice system - that the CICL (which includes CACL) too requires care and protection in the same manner as a child in need of care and protection; that such child's basic needs require be catered to; that a child-friendly approach is to be adopted; that a child's best interest should be considered when taking any decision; and that the goal of the juvenile justice system is the child's rehabilitation and social re-integration. The different components of the juvenile justice system, including the functionaries of the OH, should keep the title, the preamble and the *General Principles* in mind when dealing with CACL.

The rights of CACL residing in OHs that can be gleaned from several provisions under the JJ Act, 2015 and the JJ MR, 2016, including those that pertain to the key duties of the authorities, functionaries, and registered institutions vis-à-vis them under the JJ Act are as follows:

- 1 Right to be tried under the special law for children in conflict with law- Section 1(4)(i), JJ Act, 2015
- 2 Right to be treated as a child during the inquiry for an offence allegedly committed as a child, even on completion of 18 years- Section 6 (1), JJ Act, 2015

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<sup>10</sup> JJ Act, 2015, Section 1(4)(i).



- 3 Right to be presumed innocent until proven guilty – Section 3(i), JJ Act, 2015
- 4 Right to raise the plea of juvenility at any stage of the legal process- Section 9(2), JJ Act, 2015
- 5 Right to child friendly procedures and ambience- Section 7(1), JJ Act, 2015 and Rules 6(5), and 8(3)(v), JJ MR, 2016.
- 6 Right to have the parent or guardian informed of apprehension- Section 13(1)(i), JJ Act, 2015 and Rule 8(2)(i), JJ MR, 2016.
- 7 Right to not be detained in a police lockup or lodged in a jail- Proviso to Section 10(1), JJ Act, 2015 and Rules 8(3)(i), 9(6), 69 D(1), JJ MR, 2016.
- 8 Right to be produced before the JJB within 24 hours of apprehension- Section 10 (1), JJ Act, 2015 and Rules 9(1), 8(2)(iii), 8(3)(i) and 9(6), JJ MR, 2016.
- 9 Protection against ill-treatment – Section 14(5), JJ Act, 2015.
- 10 Right to be heard and informed participation of the child, availability of legal aid, and protection of rights throughout the legal process- Sections 3(iii), 8(3)(a), (b), (c), and (d), JJ Act, 2015.
- 11 Right to Bail- Section 12(1), JJ Act, 2015.
- 12 Right to be kept only in an OH or Place of Safety when bail is denied- Section 12(2) and (3), JJ Act, 2015 and Rule 10(iv), JJ MR, 2016.
- 13 Right to fair and speedy inquiry- Section 14(5), JJ Act, 2015 and Rule 7(1)(iv), JJ MR, 2016
- 14 Right against joint proceedings with adult offenders- Section 23, JJ Act, 2015 and Rule 13(7)(iii), JJ MR, 2016.

- 15 Prohibition against imposition of death penalty or life imprisonment without the possibility of release- Section 21, JJ Act, 2016.
- 16 Right to rehabilitation and re-integrative services within institutions- Section 53, JJ Act, 2015 and Rules 29-38, JJ MR, 2016.
- 17 Right to Privacy- Sections 74 and 99, JJ Act, 2015 and Rule 73(1), JJ MR, 2016.

### ***Fundamental Principles under the JJ Act, 2015***

All duty bearers working in the JJ system in India are legally bound to apply a set of principles that have been laid down in the JJ Act, 2015, in Section 3, *General Principles to be followed in administration of Act*. The monitoring authorities should also adhere to these fundamental principles while performing their monitoring functions, and also ensure their implementation by all duty bearers including the staff of the OH. Explanation of these Principles is as follows:

- (i) **Principle of presumption of innocence:**<sup>11</sup> Any child shall be presumed to be an innocent of any *mala fide* or criminal intent up to the age of eighteen years.
- (ii) **Principle of dignity and worth:**<sup>12</sup> All human beings shall be treated with equal dignity and rights. It reflects the fundamental human right enshrined in Article 1 of the Universal Declaration of Human Rights and Article 21 of the Constitution. The use of the word 'all', means that the principle places a duty on all stakeholders to treat every person with dignity and worth, irrespective

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11 JJ Act, 2015, Section 3(i).

12 JJ Act, 2015, Section 3(ii).

of their age, sex, occupation, caste, role, or any other status, irrespective of the nature of the offence alleged to have been committed.

- (iii) **Principle of participation:**<sup>13</sup> Every child has a right to be heard and to participate in all processes and decisions affecting his interest and the child's views shall be taken into consideration with due regard to the age and maturity of the child. This principle is an elaboration of Article 12, UNCRC. With respect to CACLs in the OH, functional Children's Committees and seeking of views of the children while framing the daily schedule, the menu, and recreation programs, are some of the ways in which this right is operationalized in the JJ MR, 2016.
- (iv) **Principle of best interest:**<sup>14</sup> This principle is an attempt to incorporate Article 3, UNCRC into the domestic law, which stresses that all decisions shall be based on the best interest of the child and to help the child to develop full potential. "Best interest of child" has been defined under the JJ Act, 2015. It "means the basis for any decision taken regarding the child, to ensure fulfillment of his basic rights and needs, identity, social well-being and physical, emotional and intellectual development."<sup>15</sup> The *UN General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration* provides guidance on how this principle can be applied in practice.

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13 JJ Act, 2015, Section 3(iii).

14 JJ Act, 2015, Section 3(iv).

15 JJ Act, 2015, Section 2(9).

- (v) **Principle of family responsibility:**<sup>16</sup> This principle designates that the primary responsibility of care, nurture and protection of the child lies with the biological family or adoptive or foster parents. All decisions made for the child should involve the family of origin unless it is not in the best interest of the child to do so. In furtherance of this principle, the OH management may facilitate regular contact between the families and the children, it is in the child’s best interest.
- (vi) **Principle of safety:**<sup>17</sup> This principle reiterates the importance of ensuring that that the child is safe and is not subjected to any harm, abuse or maltreatment while in contact with the care and protection system, and thereafter. The monitoring authorities and other duty bearers should be cautious to prevent harm caused by the interventions made, however well-intentioned they may be. The monitoring authorities should be vigilant about whether or not the child is being subjected to corporal punishment, sexual abuse, torture, or any other form of degrading treatment.
- (vii) **Positive measures:**<sup>18</sup> This principle stipulates that all measures should be to promote the well-being and the developing of identity of the child, by providing an inclusive and enabling environment and reducing the vulnerabilities of children. This is reflection of the commitment of the state to abide by Article 4, UNCRC, requiring all “appropriate legislative, administrative, and other measures for the implementation of the rights,” as also the constitutional vision enshrined in

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16 JJ Act, 2015, Section 3(v).

17 JJ Act, 2015, Section 3(vi).

18 JJ Act, 2015, Section 3(vii).

the Directive Principles of State Policy. It is imperative that any treatment to a child within the juvenile justice system, including in an OH, has a positive impact upon such child.

- (viii) Principle of non-stigmatising semantics:**<sup>19</sup> This principle prohibits the use of adversarial or accusatory words. This principle underlines that a child is not a criminal, and that the juvenile justice system is a distinctive system where the focus is on rehabilitation of the child. This places a duty on all stakeholders to ensure that 'child-rights friendly' language is used while dealing with children, one that respects them as persons, and protects their dignity. The monitoring authorities should therefore be very professional in how they address children, and even take notice of incidents when children, staff or other authorities use such stigmatizing language.
- (ix) Principle of non-waiver of rights:**<sup>20</sup> This principle prohibits the waiver of any rights. The essence of this principle being that in no circumstances should a child in conflict with law be denied protection under the JJ Act, 2015.
- (x) Principle of equality and non-discrimination:**<sup>21</sup> This principle forbids discrimination against a child on any grounds including sex, caste, ethnicity, place of birth, disability and equality of access, opportunity and treatment shall be provided to every child. This principle

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19 JJ Act, 2015, Section 3(viii).

20 JJ Act, 2015, Section 3(ix).

21 JJ Act, 2015, Section 3(x).

reflects the right to equality<sup>22</sup> and non-discrimination<sup>23</sup> enshrined under the Constitution and in Article 2 of the UNCRC. Children have to be protected against all forms of discrimination or punishment based on the status, activities, expressed opinions, or beliefs of their parents, legal guardians, or family members. The phrase “discrimination on the basis of disability” has been defined in the UN Convention on the Rights of Persons with Disability, 2006 (UNCRPD) ratified by India in 2007. The UNCRPD also goes beyond the principle of non-discrimination and includes “respect for difference and acceptance of persons with disabilities as part of human diversity and humanity.”<sup>24</sup> This principle of non-discrimination however is not a barrier for “positive discrimination,” (as provided for under Article 14 and 15 (3) of the Constitution) which basically means that the state is permitted to take measures to ensure substantive equality. Monitoring authorities should ensure that the information collected is disaggregated based on sex, religion, caste, disability and other factors so as to assess the extent to which children in the OH are receiving equal access to entitlements.

- (xi) **Principle of right to privacy and confidentiality:**<sup>25</sup> This principle protects the right to privacy and confidentiality of a child.<sup>26</sup> This provision is especially important to ensure the social reintegration of a child. However, there are some exceptions to this principle when it

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22 Constitution, Article 14.

23 Constitution, Article 15(1).

24 UNCRPD, 2006, Article 3(d).

25 JJ Act, 2015, Section 3(xi).

26 JJ Act, 2015, Section 99(1), and JJ MR, 2016, Rule 73(1).

may defeat other principles. For example, when such information directly concerns the safety of the child, and the child is potentially at risk of harm, or even of harming her/himself, reporting such information is necessary to ensure the child's safety. The monitoring authorities should ensure that they follow the principle of confidentiality while handling complaints from a child or a group of children. If authorized to speak to the media, the monitoring authorities should not reveal the names or identity of any child. Perusal of a letter from or to a child by the person-in-charge and its non-delivery is permitted under the JJ MR, 2016<sup>27</sup> only in extraordinary situations, and the reasons for the same should "be prepared and placed before the Managing Committee."

- (xii) Principle of institutionalization as a measure of last resort:**<sup>28</sup> This principle stipulates that institutionalization should be used as a last resort. This principle is incorporated in Article 37(b) of the UNCRC, and reiterated in the Beijing Rules, which provides that a decision which results in sending a child to an institution should be considered as a very last option, after detailed inquiry and for the least time possible.<sup>29</sup> This is because of the harm such institutionalization has on the overall growth and development of a child, and the need to need sustain and even strengthen ties with family and community is kept as a priority. The monitoring authorities should inquire as to whether the recommendations for the ICPs adhere to this principle.

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27 JJ MR, 2016, Rule 74(5).

28 JJ Act, 2015, Section 3(xii).

29 Beijing Rules, 1995, Rule 13.1.

**(xii) Principle of repatriation and restoration:**<sup>30</sup> This principle establishes the right to be re-united with family at the earliest and to be restored to the same socio-economic and cultural status that the child was in, unless such restoration and repatriation is not in the child's best interest. The UNCRC also requires States Parties to respect the right of the child to preserve the child's identity, including nationality, name and family relations.<sup>31</sup> This principle indicates the need to release the child on bail and / or reduce delays in passing final orders for children who are institutionalized pending inquiries, and the need to make reasoned decisions on whether a child should be restored back to the family or not, bearing in mind that a very high percentage of cases of abuse, exploitation and/or neglect are found from within the family itself.

**(xiv) Principle of fresh start:**<sup>32</sup> This principle provides for all past records of any child under the Juvenile Justice System to be erased. It reflects the objective of juvenile legislation that there should be no obstruction to the rehabilitation of a child in conflict with law. Further, whatever crime they may have committed as a child, should not be held against them when they are adults. This principle, read with Section 8(3)(b) of JJ Act, 2015 places a duty on JJBs to ensure that all children in conflict with law (excluding children between the age of sixteen and eighteen years found guilty of a heinous offence by the children's court after a trial)<sup>33</sup> are

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30 JJ Act, 2015, Section 3(xiii).

31 UNCRC, 2009, Article 8(1).

32 JJ Act, 2015, Section 3(xiv).

33 JJ Act, 2015, Proviso to Section 24(1).



ensured a right to fresh start and that the policies and guidelines regarding school admission, pertaining to access to public utility services and vital documentation do not discriminate against them. The monitoring authorities can play a pivotal role in taking up matters with concerned authorities such as the JJB, to ensure that they initiate action against institutions that deny admission to children because of their involvement in a crime.

**(xv) Principle of diversion:**<sup>34</sup> This principle encourages for measures to deal with children in conflict with law without resorting to judicial proceedings to be promoted, unless it is in the best interest of the child. It enables police and JJBs to consider diverting CACL away from the judicial process as a first line of action, recognizing the negative impact of such proceedings on their young lives. The JJ MR, 2016 requires the police to apprehend children involved in only heinous offences unless it is in the best interest of the child.<sup>35</sup>

**(xvi) Principles of natural justice:**<sup>36</sup> This principle encourages the adherence to basic procedural standards of fairness, including the right to a fair hearing, rule against bias and the right to review. To assure a child “a fair hearing,” the child should be represented by a lawyer before the JJB. In the absence of a lawyer, the JJB should ensure availability of legal aid for the child.<sup>37</sup> Substance of reports should be communicated to the child so that the child is able to counter its content and / or produce

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34 JJ Act, 2015, Section 3(xv).

35 JJ MR, 2016, proviso to Rule 8(1).

36 JJ Act, 2015, Section 3(xvi).

37 JJ Act, 2015, Section 8(3)(c).

evidence in respect thereof<sup>38</sup>. Though this principle relates to review by those “acting in a judicial capacity”, it would also apply to functionaries of the Juvenile Justice System to give every child an opportunity to be heard before taking any decision against him. For example, if a complaint is made against a child regarding his behavior in an OH, he should be given a personal hearing before any coercive action is taken.

### 2.2.1. Protection of Children from Sexual Offences Act, 2012 (POCSO Act)

The POCSO Act criminalizes penetrative sexual assault, aggravated penetrative sexual assault, sexual assault, aggravated sexual assault, sexual harassment against a child and using a child for pornographic purposes. The term ‘child’ is defined to mean a person below 18 years.<sup>39</sup> Penetrative sexual assault or sexual assault by a person on the management or staff of the OH would constitute aggravated penetrative sexual assault or aggravated sexual assault, respectively.<sup>40</sup> The POCSO Act places a duty to report a sexual offence against a child, upon any person who has apprehension that an offence is likely to be committed or has the knowledge that the offence has been committed.<sup>41</sup> Failure to report the commission of an offence is a punishable offence<sup>42</sup> and the penalty is higher, if the failure is on the part of a person-in-charge of any institution.<sup>43</sup> If the accused is a child, he should be dealt with under the JJ Act, 2015.<sup>44</sup>

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38 JJ Act, 2015, Proviso to Section 99(1).

39 POCSO Act, Sections 2(d), 3, 5, 7, 9, 11, and 13.

40 POCSO Act, Sections 5(d) and 9(d).

41 POCSO Act, Section 19(1).

42 POCSO Act, Section 21(1).

43 POCSO Act, Section 21(2).

44 POCSO Act, Section 34(1).

## 2.2.2. Right of Children to Free and Compulsory Education Act, 2009 (RTE Act)

The RTE Act entitles children between 6-14 years to the right to free and compulsory education in a neighbourhood school till the completion of elementary education.<sup>45</sup> The appropriate government is responsible for ensuring that children belonging to weaker sections or disadvantaged groups “are not discriminated against and prevented from pursuing and completing elementary education on any grounds”.<sup>46</sup> The RTE Act defines “child belonging to disadvantaged group” to mean

a child with disability or a child belonging to the Scheduled Caste, the Scheduled Tribe, the socially and educationally backward class or such other group having disadvantage owing to social, cultural, economical, geographical, linguistic, gender or such other factor, as may be specified by the appropriate Government, by notification.<sup>47</sup>

CACL are socially disadvantaged owing to the stigma that immediately attaches to them and their families when an F.I.R. is registered against them. Their right to education is often disrupted when they are detained in an OH. It is therefore imperative for CACL in OHs to have access to education.

## 2.3. International Human Rights Law Framework

Article 51(1)(c) of the Indian Constitution directs the State to “foster respect for international law and treaty obligations.” Article 253 of the Constitution vests the Parliament with the power to enact laws to implement treaties ratified by India. In

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45 RTE Act, 2009, Section 3(1).

46 RTE Act, 2009, Section 8(c).

47 RTE Act, 2009, Section 2(d).

the case of *Vishaka v. State of Rajasthan*<sup>48</sup> the Supreme Court held that, in the absence of domestic law provisions, reliance could be placed on international law as well as international norms as long as they are not in contravention of any existing domestic law and the Constitution.

India has ratified the International Covenant on Civil and Political Rights, 1966 (ICCPR), the International Covenant on Economic, Social and Cultural Rights, 1966 (ICESCR), the UN Convention on the Elimination of All Forms of Discrimination Against Women, 1976 (CEDAW), the UN Convention on the Rights of the Child, 1989 (UNCRC), and the UN Convention on the Rights of the Persons with Disabilities, 2006 (UNCRPD). Of these instruments, the ICCPR and the UNCRC expressly recognise the rights of children in conflict with the law, including CACL.

### **2.3.1. International Covenant on Civil and Political Rights, 1966**

Article 10(1)(b) of the ICCPR requires “accused juvenile persons” to be separated from adults, while Article 10(1)(c) prescribes segregation of juvenile offenders from adults and treatment appropriate to the age and legal status of juveniles. According to Article 14(4), the procedures with respect to juveniles should take into account “their age and the desirability of promoting their rehabilitation.” Article 6(5) prohibits the imposition of death penalty on persons who were below 18 years at the time of commission of the crime.

### **2.3.2. UN Convention on the Rights of the Child, 1989**

Express references to the UNCRC, appears in the Preamble of the JJ Act, 2015. The rights of CACL should include those

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<sup>48</sup> AIR 1997 SC 3011.

contained in the UNCRC, which India has acceded to on 11<sup>th</sup> December 1992. The rights of CAAC stipulated in the UNCRC are stated below.

1. Right against torture, inhuman punishment, degrading treatment, capital punishment and life imprisonment without the possibility of release- Article 37(a);
2. Right against unlawful and arbitrary detention- Article 37(b);
3. Right of every child deprived of liberty to be treated with dignity and humanity- Article 37(c);
4. Right to legal aid and the right to challenge a deprivation of liberty before an independent and impartial authority- Article 37(d);
5. Right to be treated with dignity – Article 40(1),
6. Duty to promote the child's reintegration in society- Article 40 (1);
7. Right against retrospective application of laws- Article 40(2)(a);
8. Right to presumption of innocence- Article 40(2)(b)(i);
9. Right to be informed of charges and to appropriate legal aid- Article 40(2)(b)(ii);
10. Right to speedy, fair and impartial justice- Article 40(2)(b)(iii);
11. Right to remain silent and examination of witnesses- Article 40(2)(b)(iv);
12. Right to review- Article 40(2)(b)(v);
13. Right to assistance of interpreters- Article 40(2)(b)(vi);

14. Right to privacy- Article 40(2)(b)(vii);
15. Right of the child to maintain personal relations and direct contact with parents- Article 9(3) and (4);
16. Duty of the State Party to establish laws and procedures governing children accused of infringing a penal law- Article 40(3);
17. Duty of the State to establish a minimum age of criminal responsibility (MACR)- Article 40(3)(a);
18. Duty of the State Party to provide for diversionary measures- Article 40(3)(b); and
19. Duty of the State to provide for dispositional alternatives to Institutionalization- Article 40(4).

There are other Articles in the UNCRC that protect and promote the rights of children which also should be adhered to while a child is in the OH. These are stated below:

1. Right against non-discrimination -Article 2;
2. Best interest of the child -Article 3;
3. Right to life, survival and development -Article 6;
4. Right to be heard -Article 12;
5. Right to freedom of thought, conscience and religion -Article 14;
6. Right to physical and mental health -Article 25;
7. Right to education -Articles 28 and 29;
8. Right to engage in play and recreational activities -Article 31; and
9. Right against sexual exploitation and sexual abuse -Article 34.

All States Parties are required to submit reports to the UN Committee on the Rights of the Child on the measures they have adopted which give effect to the rights recognized in the UNCRC and on the progress made on the enjoyment of those rights.<sup>49</sup> In 2014, the Committee, in its Concluding Observations on the India Country report, took note of the absence of age-appropriate separation of children in conflict with the law in OH and Special Homes and joint placement of children in conflict with the law and children in need of care and protection. It recommended India to ensure age-appropriate separation as well as separation of children in conflict with law from children in need of care and protection. It also urged India to ensure that detention conditions “are compliant with international standards including with regard to access to education and health services.”<sup>50</sup>

### 2.3.3. UN Guidelines on Juvenile Justice

The United Nations has been active in the development of international standards on juvenile justice, contained in several instruments, such as, the Standard Minimum Rules for the Administration of Juvenile Justice, 1985 (the Beijing Rules), and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, 1990 (Havana Rules). The Preamble of the JJ Act, 2015 also makes reference to ‘any other related international instruments’ such as the United Nations Guidelines for the Prevention of Juvenile Delinquency, 1990, (the Riyadh Guidelines), the Guidelines for Action on Children in the Criminal Justice System, 1997(Vienna Guidelines), etc.

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49 UNCRC, 1989, Article 44(1).

50 UN Committee on the Rights of the Child, Concluding Observations on the combined third and fourth periodic reports of India, CRC/C/IND/CO/3-4, 7 July 2014, paras 87(d) and 88(e).

### 2.3.3.1. UN Standard Minimum Rules for the Administration of Juvenile Justice, 1985 (Beijing Rules)

The Beijing Rules provide guidance to States for the protection of the rights of juveniles<sup>51</sup> and for respect for their needs. These Rules provide some specific guidance with regard to CACL. Basic procedural safeguards such as the presumption of innocence, the right to be notified of the charges, the right to remain silent, the right to counsel, the right to the presence of a parent or guardian, the right to legal aid are presided in these Rules. According to these Rules, detention pending trial shall only be used as a measure of last resort and whenever possible, it should be replaced by alternative measures, like close supervision, intensive care or placement with a family or in an educational setting or home.<sup>52</sup> Such detention should also be for the least period of time possible.<sup>53</sup> While in detention pending trial, the juvenile should be kept separate from adults.<sup>54</sup> In case of institutionalisation, priority should be given to ‘open’ over ‘closed’ institutions.<sup>55</sup> Further, juveniles should be provided with care, protection and all necessary individual assistance (whether social, educational, vocational, psychological, medical or physical) that may be required in view of their age, sex and personality.<sup>56</sup> Parents or guardians of the juvenile should have a right of access to their institutionalised child.<sup>57</sup>

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51 The term “juvenile” is used in the Beijing Rules although the JJ Act 2015 uses the phrase “child in conflict with the law”.

52 Beijing Rules, 1985, Rule 13.2.

53 Beijing Rules, 1985, Rule 13.1.

54 Beijing Rules, 1985, Rule 13.4.

55 Beijing Rules, 1985, Rule 19.1.

56 Beijing Rules, 1985, Rule 13.5.

57 Beijing Rules, 1985, Rule 26.5.



### 2.3.3.2. United Nations Rules for the Protection of Juveniles Deprived of their Liberty, 1990 (Havana Rules)

The Havana Rules establish minimum standards for the protection of juveniles. The intention of these rules is to facilitate reintegration, post detention.<sup>58</sup> Like the Beijing Rules, the Havana Rules also provide that detention before trial should be limited to exceptional circumstances.<sup>59</sup> The Rules provide that juveniles should have the right to free legal aid, the right to be provided with opportunities to pursue work with remuneration, and to continue education or training, as are compatible with the interests of the administration of justice.<sup>60</sup>

Most importantly, the Havana Rules lay down guidelines for the maintenance of juvenile facilities.<sup>61</sup> The Rules elaborate that the conditions and physical environment of the detention facilities should conform with the rehabilitative aim of residential treatment.<sup>62</sup>

The Rules also provide that the juveniles have the right to possession of personal effects,<sup>63</sup> to use of their own clothing,<sup>64</sup> to healthy food,<sup>65</sup> to education<sup>66</sup> and vocational training,<sup>67</sup> to remunerative labour,<sup>68</sup> clean drinking water,<sup>69</sup> to satisfy religious

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58 Havana Rules, 1990, I, Fundamental Perspectives, Para 3.

59 Havana Rules, 1990, Rule 2.

60 Havana Rules, 1990, Rule 18.

61 Havana Rules, 1990, Rule 19.

62 Havana Rules, 1990, Rule 32.

63 Havana Rules, 1990, Rule 35.

64 Havana Rules, 1990, Rule 36.

65 Havana Rules, 1990, Rule 37.

66 Havana Rules, 1990, Rule 38.

67 Havana Rules, 1990, Rule 43.

68 Havana Rules, 1990, Rule 46.

69 Havana Rules, 1990, Rule 37.

and spiritual needs<sup>70</sup>, to clean and hygienic surroundings,<sup>71</sup> to suitable amount of daily free exercise and leisure activities,<sup>72</sup>adequate medical care<sup>73</sup> and adequate communication with the outside world.<sup>74</sup>

### **2.3.3.3. UN Guidelines for Action on Children in the Criminal Justice System (Vienna Guidelines), 1997**

The Vienna Guidelines were developed to implement the goals set out in the UNCRC with respect to the administration of juvenile justice.<sup>75</sup> The Guidelines stipulate “a comprehensive child-centred juvenile justice process” and the review of the impacts of juvenile justice laws on children.<sup>76</sup> Placement of children in closed institutions should be minimized and corporal punishment should be prohibited. Further, an independent body should be established to monitor compliance with UN standards and report regularly on conditions in custodial facilities.<sup>77</sup>

## **2.4. Policy Framework**

### **2.4.1. The National Policy for Children, (NPC) 2013.<sup>78</sup>**

The National Policy of Children, 2013 affirmed the Government of India’s rights based approach towards challenges in the situation of children and reaffirmed that “every child is unique and a supremely important national asset.”<sup>79</sup>

70 Havana Rules, 1990, at para 48.

71 Havana Rules, 1990, Rule 34.

72 Havana Rules, 1990, Rule 47.

73 Havana Rules, 1990, Rule 49.

74 Havana Rules, 1990, para 59.

75 ECOSOC Resolution 1997/30, Annex

76 Vienna Guidelines, 1997, para 14.

77 Vienna Guidelines, 1997, Clause 21.

78 Available on the following link to the official website of the MWCD, Government of India - <http://wcd.nic.in/policie>

79 The National Policy for Children, 2013, Preamble, para 2.2., <http://www.childlineindia.org.in/pdf/The-National-Policy-for-Children-2013.pdf>

The Preamble of the Policy recognizes the need for specialised responses based on the circumstances of the child.<sup>80</sup> The NPC lays down Guiding Principles<sup>81</sup> include the need to address the mental, emotional, cognitive, social and cultural development of the child<sup>82</sup> and to provide a conducive environment for children to express their views in matters affecting them.<sup>83</sup> The key priorities that are specifically applicable to children in the OH relate to provision of facilities to ensure their survival, health, nutrition, development, education, protection and participation, which are undeniable rights of every child protected under this National Policy.<sup>84</sup> The Policy also calls for coordination and monitoring<sup>85</sup> and to ensure that the mechanisms established to deliver services under this policy child sensitive.<sup>86</sup>

#### 2.4.2. Integrated Child Protection Scheme (ICPS)

The Integrated Child Protection Scheme (ICPS) was developed to support the effective implementation of the JJ Act, 2000, and since that law has been repealed, it now supports the effective implementation of the JJ Act, 2015. The ICPS is a scheme sponsored by the Central Government that was launched in 2009 and revised in 2014.

The scheme supports the creation of new institutional facilities and maintenance of existing institutional facilities for children alleged to be in conflict with law.<sup>87</sup> Though the ICPS does provide some standards relating to infrastructure of the

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80 The NPC, 2013, Article 2.1.

81 The NPC, 2013, Article 3.

82 The NPC, 2013, Article 3 (v).

83 The NPC, 2013, Article 3(xi).

84 The NPC, 2013, Article 4.

85 The NPC, 2013, Article 6.1.

86 The NPC, 2013, Article 5.4.

87 ICPS, 2014, pp. 57 and 61.

OH,<sup>88</sup> Rule 29(1)(i) of JJMR, 2016 or relevant provisions in the State Rules under the JJ Act, 2015 will override this by virtue of being delegated legislation.

While the JJ Act, 2015 and the JJMR, 2016 do not refer to the ICPS, service delivery structures under the ICPS, such as the State Child Protection Society, and District Child Protection Unit (DCPU), have now been included in the JJ Act, 2015.

As regards civil society organizations and individuals, the ICPS enables the voluntary sector to provide vibrant, responsive and child friendly services for detection, counselling, care and rehabilitation for all children in need; to contribute towards awareness raising, capacity development, innovations and monitoring, and requires their services to be financially supported by the State.<sup>89</sup>

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88 ICPS, 2014, p. 65.

89 ICPS, 2014, p. 12



## Authorities Responsible for Monitoring the Juvenile Justice System

The Juvenile Justice System comprises various personnel and bodies that are designed to monitor and assess the implementation of the JJ Act, 2015, in relation to OHs such as the Juvenile Justice Board, Management Committee, Inspection Committee, and Children’s Committee. State Governments are required to constitute State level and district level Inspection Committees to monitor the functioning of CCIs. The Central Government and State Governments can also engage other entities like academic institutions and schools of social work or management institutions to evaluate the functioning of registered institutions under the Act.<sup>1</sup>

The Chief Judicial Magistrate or the Chief Metropolitan Magistrate (whichever is applicable), is required to review the pendency of cases before the JJB once in every three months,<sup>2</sup> and the High Level Committee at the State level, (consisting of the Executive Chairperson of the State Legal Services Authority, the Home Secretary, the Secretary responsible for the implementation of this Act in the State and a representative from a voluntary or non-governmental organisation), is required

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1 JJ Act, 2015, Section 51(1).

2 JJ Act, 2015, Section 109.

to review pendency of cases before the JJB once in six months.<sup>3</sup> While their mandate is to only review pendency, the High Level Committee could additionally examine factors that contribute to pendency, which could include the quality of legal aid extended to CACL.

External monitors such as the State Commission for the Protection of Child Rights (SCPCR), the State Human Rights Commission (SHRC) and the High Court Juvenile Justice Committees (CHC-JJC), can review and monitor the working of the OH. Members of the SCPCR and the SHRC could also be a part of the Inspection Committee constituted under the JJ Act, 2015 and JJ MR, 2016.

The sections below detail the monitoring role of each of the above-mentioned authorities in the context of the OH.

### **3.1. Monitoring by the Juvenile Justice Board (JJB)**

The JJB, which is the adjudicating authority dealing with children in conflict with law, is also vested with the responsibility of ensuring the protection of the rights of the CICL during the entire legal process, from apprehension and inquiry, and even subsequently till aftercare and rehabilitation.<sup>4</sup>

The JJB must ensure the availability of competent legal aid for children in conflict with law,<sup>5</sup> including CACL detained in the OH. JJBs should undertake at least one inspection visit every month of residential facilities for CICL (including the OH that houses CACL) and recommend ameliorative action in quality of services to the DCPU and the State Government.<sup>6</sup> It must also

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3 JJ Act 2015, Section 16(2).

4 JJ Act, 2015, Section 8(3)(b)

5 JJ Act, 2015, Section 8(3)(c).

6 JJ Act, 2015, Section 8(3)(j).

inspect adult jails to check if any child is lodged in such jails and take immediate action to transfer the child to the OH.<sup>7</sup> The JJBs can order the police to register a FIR for offences committed against a CACL, which will extend to a child who may become a victim of an offence while residing in the OH or if an offence was committed against the child during apprehension or before production before the JJB.<sup>8</sup> Under the JJ MR, 2016, records of children in the OH attending vocational programmes and their progress should be submitted to the JJB on a quarterly basis.<sup>9</sup> The OH should maintain the regularity of recreational activities with support from institutions and NGOs, if necessary, and submit a report on this on a quarterly basis to the JJB.<sup>10</sup> The JJ MR, 2016 also stipulates that an order from the JJB is required before pregnancy tests or tests for sexual diseases are carried out.<sup>11</sup>

### 3.2. Management Committee

Section 53(2), JJ Act, 2015 requires every institution to have a Management Committee to manage the institution and monitor the progress of every child. This provision applies to OH's. The Management Committee should comprise:<sup>12</sup>

- (i) District Child Protection Officer (District Child Protection Unit)- Chairperson;
- (ii) Person-in-charge - Member-Secretary;
- (iii) Probation Officer or Child Welfare Officer or Case Worker - Member; Medical Officer - Member;
- (iv) Psychologist or Counsellor - Member;

7 JJ Act, 2015, Section 8(3)(m).

8 JJ Act, 2015, Section 8(3)(k).

9 JJ MR, 2016, Rule 37(4).

10 JJ MR, 2016, Rule 38(8).

11 JJ MR, 2016, Rule 34(5).

12 JJ MR, 2016, Rule 39(3).



- (v) Workshop Supervisor or Vocational Instructor- Member;
- (vi) Teacher - Member;
- (vii) Social Worker Member of the Board or the Committee - Member;
- (viii) Two child representatives from each of the Children's Committees - Members; and
- (ix) Any other special invitee with the consent of the Chairperson.

The Management Committee should meet at least once a month to consider and review the care of the institution, medical facilities and treatment, food, water, sanitation and hygiene conditions, mental health interventions, individual problems of children, individual care plans, provision of legal aid services, vocational training and opportunities for employment, education and life skills development programmes, social adjustment, recreation, group work activities, guidance and counselling, modification of residential programmes to the needs of the children, planning of pre and post release or restoration, the release or restoration and follow-up, minimum standards of care, daily routine, community participation and voluntary participation in education, vocational activities, recreation and hobby, maintenance of all registers duly stamped and signed, matters concerning Children's Committees and any other matter which the Person-in-charge may like to bring up.<sup>13</sup>

The Management Committee should set up a complaint and redressal mechanism and a Children's Suggestion Box should be installed in the OH at a place that is easily accessible to the children,<sup>14</sup> which should be checked every week by

13 JJ MR, 2016, Rule 39(4).

14 JJ MR, 2016, Rule 39(5).

the Chairperson or her/his representative from the DCPU.<sup>15</sup> An emergency meeting should be called for if a problem or suggestion requires immediate attention.<sup>16</sup> The suggestions received from the children and action taken based on decisions in the emergency meeting or action required to be taken should be placed for discussion and review during the monthly meetings of the Management Committee.<sup>17</sup>

A Children's Suggestion Book should also be maintained in the OH to record the complaints received and action taken by the Management Committee and the action and follow up should be communicated to the Children's Committee after the monthly meetings of the Management Committee.<sup>18</sup> The JJB should review the Children's Suggestion Book at least once a month.<sup>19</sup>

### 3.3. Children's Committees

Under Section 53(3), JJ Act, 2015, registered institutions housing children above six years of age should constitute Children's Committees for participating in prescribed activities, for the safety and well-being of children in the institution. The responsibility for facilitating the establishment of Children's Committees is vested upon the Officer-in-charge of the institution.<sup>20</sup> The Person-in-charge should facilitate the setting up of Children's Committees for different age groups of children - 6-10 years, 11-15 years, and 16-18 years - and these should be constituted solely by children.<sup>21</sup>

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15 JJ MR, 2016, Rule 39(6).

16 JJ MR, 2016, Rule 39(7).

17 JJ MR, 2016, Rule 39(10).

18 JJ MR, 2016, Rule 39(11).

19 JJ MR, 2016, Rule 39(12).

20 JJ Act, 2015, Section 53(3).

21 JJ MR, 2016, Rule 40(1).

The Children's Committees should be encouraged to participate in the improvement of the condition of the institution, review of the standards of care being followed, preparation of the daily routine and diet scale, development of educational, vocational and recreation plans, ensuring respect and support when managing crisis, reporting of abuse and exploitation by peers and caregivers', encouraging creative expression of their views through wall papers or newsletters or paintings or music or theatre and the management of institution through the Management Committee.<sup>22</sup>

The JJ MR, 2016 vests the responsibility of ensuring that the Children's Committees meet every month upon the Person-in-charge.<sup>23</sup> The person in charge must also maintain a register for recording their activities and proceedings and present it to the Management Committee during the monthly meetings.<sup>24</sup> Essential support and stationery, space, and guidance should be extended to the Children's Committee by the Person-in-charge.<sup>25</sup> Assistance of local voluntary organisations or child participation experts can be sought for setting up and functioning of the Children's Committees.<sup>26</sup>

### 3.4. Inspection Committees

While the Management Committee and the Children's Committee are internal monitoring mechanisms, under Section 54(1), State Governments must appoint an Inspection Committee for the State and for each District in order to enable inspection of all institutions registered or recognized to be fit. The Inspection

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22 JJ MR, 2016, Rule 40(2).

23 JJ MR, 2016, Rule 40(3).

24 JJ MR, 2016, Rule 40(3).

25 JJ MR, 2016, Rule 40(4).

26 JJ MR, 2016, Rule 40(5).

Committee should mandatorily conduct visits at least once in three months to all facilities housing children in the area allocated to them.<sup>27</sup> The inspection team should have at least three members of whom at least one should be a woman and one should be a medical officer.<sup>28</sup> The inspection reports should be submitted within a week of the visit to the DCPU or State Government, as the case may be, for further action.<sup>29</sup>

**Table 1: State and District level Inspection Committees**

	<b>State Inspection Committee (SIC)</b>	<b>District Inspection Committee (DIC)</b>
<b>Membership</b>	Maximum of seven members from among the State Government, namely the JJB or CWC, the SCPCR, the SHRC, State Adoption Resource Agency, medical and other experts, voluntary organisations and reputed social workers. <sup>1</sup>	Five members - Member of JJB or CWC, DCPO - Member Secretary, Medical Officer, one member of civil society working in the area of child rights, care, protection and welfare, and one mental health expert who has experience of working with children.
<b>Frequency of inspections</b>	Random inspections <sup>2</sup>	At least once every quarter. <sup>3</sup>

<sup>27</sup> JJ Act, 2015, Section 54(2).

<sup>28</sup> JJ Act, 2015, Section 54(2).

<sup>29</sup> JJ Act, 2015, Section 54(2).

The Member-Secretary, State Child Protection Society (SCPS) should be the Chairperson of the SIC.<sup>30</sup> Reports of the SIC should be submitted to the Secretary of the Department implementing the JJ Act.<sup>31</sup> Recommendations of the SIC for improvement and development of the OH should be forwarded to the SCPS or DCPU for appropriate action,<sup>32</sup> while that by the DIC should be submitted to the DCPU or State Government.<sup>33</sup> The SIC and DIC should interact with the children during visits to the institution to determine the well-being and to get their feedback.<sup>34</sup> The DCPU should take necessary follow up action on the report of the DIC.<sup>35</sup>

### 3.5 Evaluation by other agencies under the JJ Act, 2016

The JJ Act, 2015 and JJ MR, 2016 provide for the Central Government or State Government to evaluate the functioning of registered institutions such as Observation Homes once in three years, through reputed academic institutions, schools of social work of Universities, Management Institutions, or multi-disciplinary committees constituted for this purpose.<sup>36</sup> The findings based on the evaluation should be shared with the Central Government and State Governments to strengthen and improve the functioning of different structures.<sup>37</sup> The UN Committee on the Rights of the Child, in its General Comment No. 10 on Children's rights in juvenile justice<sup>38</sup> also recommends that States Parties conduct regular evaluations of their practice

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30 JJ MR, 2016, Rule 41(2).

31 JJ MR, 2016, Rule 41(5).

32 JJ MR, 2016, Rule 41(6).

33 JJ MR, 2016, Rule 41(11).

34 JJ MR, 2016, Rules 41(7) and 41(12).

35 JJ MR, 2016, Rule 41(13).

36 JJ Act, 2015, Section 55(1) and JJ MR, 2016, Rule 42(1).

37 JJ MR, 2016, Rule 42(2).

38 CRC GC No. 10, para 99

of juvenile justices. The Committee emphasizes the importance of children to be involved in this evaluation and research, in particular those who have been in contact with the juvenile justice system. The privacy of these children and the confidentiality of their cooperation should be fully respected and protected.

### **Appointment of Ombudsman/Monitoring Consultant by the Delhi Legal Services Authority**

The Delhi Legal Services Authority issued a Standard Operating Protocol in 2016 for the establishment of 'Monitoring Committees'. The Monitoring Committee at the level of the High Court is to be constituted by the Chairman of the Delhi High Court Legal Services Committee to include the Secretary of the High Court Legal Services Committee, a senior designated advocate practising in the High Court of Delhi and a senior Ex- Panel lawyer of legal aid having not less than 20 years of experience practicing in the High Court of Delhi who may be nominated by the Chairman of the Delhi High Court Legal Services Committee. The Ombudsman/Monitoring consultant appointed by the Committee is entrusted with advising the legal aid advocates/ retainers on factual and legal issues involved in cases or their functioning, as and when requested.

The Ombudsman is required to monitor the progress and performance of all the cases dealt by legal services advocates or retainers in the High Court and Districts or deputed by DLSA in Jails, CWC's, JJB's, Police Stations and also Legal Services Advocates with any Tribunal or Quasi-Judicial Authority constituted under any law. They should advise the legal aid advocates/retainers on factual and legal issues when requested and submit their report to the Monitoring Committee about the performance of the legal aid advocates/ retainers.

### 3.6. Human Rights Institutions

Human rights institutions such as the Commissions for Protection of Child Rights and the National or State Human Rights Commissions are statutory bodies that are broadly vested with the responsibility of monitoring the State's implementation of child rights and human rights.

The Commission for Protection of Child Rights Act, 2005 provides for the creation of a National Commission for the Protection of Child Rights (NCPCR), a State Commission for the Protection of Child Rights (SCPCR) and Children's Courts. The NCPCR and SCPCR are vested with functions to monitor the status of child rights and inquire into the violations of child rights *suo motu* or on the basis of a complaint. They can also inspect or cause to be inspected juvenile custodial homes under Section 13(1)(i). Its functions include inspection of juvenile custodial homes or institutions where children are detained or lodged and remedial action with competent authorities when necessary.

The functions authorize the CPCRs to look into the status of the rights of CACL in the various OH's and to inquire into complaints. They can also inspect jails to ascertain if CACL have been detained there instead of being produced before the JJBs and housed in the OH. For instance, in *Court on its own motion v. Department of Women and Child Development*,<sup>39</sup> the Delhi High Court had requested the NCPCR to carry out inquiries in Tihar Jail. The NCPCR's inquiry revealed that about 392 inmates in Tihar were probably juveniles. The Delhi High Court directed the NCPCR to constitute a panel of at least 10 persons to visit jails in Delhi to determine if CACL were being detained there.

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39 WP(C) No. 8899 of 2011 decided on 11.05.2012 available at [http://ncpcr.gov.in/show\\_img.php?fid=537](http://ncpcr.gov.in/show_img.php?fid=537).

Section 109 of the JJ Act, 2015 vests the NCPCR and SCPCR with the responsibility to monitor the implementation of the JJ Act 2015. If orders of the Commission are not complied with, the Commissions can forward the case to the Magistrate having the jurisdiction to try the case.<sup>40</sup> It is important to note that the orders of the Commissions are not binding. The Commissions can recommend initiation of proceedings for prosecution, approach the Supreme Court or High Court for directions, orders or writs and make recommendations to the State Government or Central Government for interim relief.<sup>41</sup>

Apart from the CPCRs, the broad mandate of the National Human Rights Commission (NHRC) and the State Human Rights Commission (SHRC) as stated in the Protection of Human Rights Act, 1993<sup>42</sup> would also empower them to address issues concerning children in conflict with the law. For instance, on 23 August 2016, the NHRC issued notice to the Tamil Nadu Government, based on a media report on illegal detention and torture of a 17-year-old boy from the Kurava community, in connection with a burglary.<sup>43</sup>

### 3.7. High Court Juvenile Justice Committees (HC-JJC)

High Court Juvenile Justice Committees (HC-JJC) are not provided for in any legislation. The establishment of HC-JJCs can be traced to two resolutions passed during the Chief Justice's Conference in 2006 and 2009. At these Conferences, the Chief Justices of all High Courts were urged to nominate a judge to

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40 CPCR Act, 2005, Section 14(2).

41 CPCR Act, 2005, Section 15.

42 Protection of Human Rights Act, 1993, Section 12.

43 "NHRC issues notice to the Government of Tamil Nadu on a media report about the illegal detention and torture of a juvenile of Kurava community by Tamil Nadu police (23.08.2016), available at <http://nhrc.nic.in/dispatchArchive.asp?fno=24083> (accessed on 12 September 2016).



supervise the condition and functioning of Observation Homes established under the JJ Act, to make periodical visits to Children's Homes, and to make recommendations for the improvement of conditions. Though the resolution did not prescribe the formation of a Committee, the Delhi High Court in 2007, constituted a three-member Committee to look at issues concerning the implementation of the JJ Act, 2015. Similarly, other High Courts too have since established their respective HC-JJCs, to monitor the functioning of the juvenile justice system, identify the gaps and take the necessary steps. In August 2013, the Supreme Court Committee on Juvenile Justice was established, and Hon'ble Mr. Justice Madan B, Lokur was nominated to ensure the effective implementation of the then Juvenile Justice (Care and Protection of Children) Act, 2000. Hon'ble Mr. Justice Deepak Gupta is also a member of the supreme court committee.

The Committee has held a series of Regional Round Table Conferences in 2014, 2015 and 2016 to promote learning from across the States and to develop strategies for effective implementation of the JJ Act across the country. Several Committees have taken the initiative to inspect CCIs and question the State Government about the quality of care and rehabilitation.

In *Sampurna Behura v. Union of India*,<sup>4</sup> the Supreme Court issued the following direction with respect to monitoring of Child Care Institutions:

State Governments and Union Territories would be well advised to appoint eminent persons from civil society as Visitors to monitor and supervise the Child Care Institutions in all the districts. This will ensure that the management and maintenance of these Institutions are addressed. We have no doubt that the State Legal Service Authorities and the District Legal Service Authorities will extend full assistance and cooperation to the government authorities in this venture as well as to the Visitors.

## Table Endnotes

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- 1 JJ MR, 2016, Rule 41(2).
- 2 JJ MR, 2016, Rule 41(4).
- 3 JJ MR, 2016, Rule 41(10).
- 4 Writ Petition (Civil) No. 473 of 2005 decided on 09.02.2018.



## Tools to Monitor the Rights of Children Alleged to be in Conflict with Law in Observation Homes

This Chapter provides guidance on indicators that can be used to monitor select rights of CACL residing in the OH, that have been identified for inclusion in this toolkit. The rights included facilitate the rehabilitation and social reintegration of a CACL and their protection within the OH. It provides an illustrative list of quantitative and qualitative indicators that the JJBs, Management Committees, Inspection Committees, SCPCRs, NCPCRs, SHRCs, NHRCs, State Governments, Central Governments, Institutions/Agencies authorized by the Central/State Governments to conduct evaluations, the High Court Committees on Juvenile Justice Committees (HC-JJC), and civil society organisations could consider, to ascertain compliance with the law and standards promoting the child rights approach.

These indicators have to be used as tools to assess compliance with legal standards, and the findings have to be supplemented with data drawn from case files, records, registers containing the proceedings of the Children's Committees, minutes of meetings of the Management Committees, and other documents such as orders passed by the JJBs, etc., in order to arrive at a comprehensive assessment of the degree to which the rights-based approach is being complied with. For instance, data on complaints filed about abuse of children within the OH

will not by itself provide an insight into the gravity or extent of the problem. This has to be read along with the data on rights violated, characteristics of victims (age, sex, caste, tribe, disability, etc.) and perpetrators (staff, service provider, child), and the outcome of the redress process.<sup>1</sup> Interviews with civil society organisations and individuals are also important as they are “an essential alternative source of credible information on human rights abuses and violations”.<sup>2</sup>

An attempt has been made to frame comprehensive indicators based not just on the Constitution, JJ Act, 2015 and JJ Model Rules, 2016, but also international standards on rights of children. The indicators have been developed based on the Office of the High Commissioner on Human Rights Publication *Human Rights Indicators – A Guide to Measurement and Implementation* (2012) (OHCHR Guide). A “human rights indicator” has been defined to mean:<sup>3</sup>

specific information on the state or condition of an object, event, activity or outcome that can be related to human rights norms and standards; that addresses and reflects human rights principles and concerns; and that can be used to assess and monitor the promotion and implementation of human rights.

- 1 OHCHR, *Human Rights Indicators – A Guide to Measurement and Implementation*, (2012), page 53, available at [http://www.ohchr.org/Documents/Publications/Human\\_rights\\_indicators\\_en.pdf](http://www.ohchr.org/Documents/Publications/Human_rights_indicators_en.pdf).
- 2 Naval, Walter and Suarez de Miguel, *Measuring Human Rights and Democratic Governance*, cited in OHCHR, *Human Rights Indicators – A Guide to Measurement and Implementation*, (2012) p. 55.
- 3 *Human Rights Indicators*, (2012), p. 16.

**The OHCHR Guide classifies indicators as structural, process, and outcome indicators. These are explained in the box item below:**

**Structural indicators:** These include “ratification and adoption of legal instruments and creation of basic institutional mechanisms deemed necessary for the promotion and protection of human rights”.<sup>1</sup> In the context of the right to legal aid, for instance, a structural indicator would be the number of Legal Aid Lawyers attached to the JJB to provide legal aid to CACL.

**Process indicators:** These indicators serve as a tool to assess the efforts being made by the functionaries to give effect to their human rights obligations and facilitate the enjoyment of human rights.<sup>2</sup> They would entail a continuous assessment of measures undertaken to discharge obligations.<sup>3</sup> For instance, the percentage of children between 6 and 14 years in the OH attending school and the percentage of children above 14 years continuing their education outside or inside the OH.<sup>4</sup> Other process indicators include those related to budget allocations, human rights complaints received and redressed, awareness measures undertaken to address specific human rights issues, etc.<sup>5</sup>

**Outcome indicators:** These indicators “capture individual and collective attainments that reflect the state of enjoyment of human rights in a given context,” and is considered a “slow moving indicator, less sensitive to capturing momentary changes than a process indicator.”<sup>6</sup> For instance, the incidence of death and physical injury resulting from use of corporal punishment in the OH, or the proportion of children who experienced corporal punishment in the OH, are outcome indicators that can illustrate the extent to which children’s right to be protected from corporal punishment has been protected by the functionaries.

**Benchmarks:** Monitoring authorities can develop benchmarks or goals on each right and use this tool as a means to measure compliance with the benchmark. For instance, the State Government could state that the right to education of 75% of children living in the OH would be ensured in one year. This tool can then be used by the State Government as well as any or all of the other monitoring authorities to assess the degree of compliance with the benchmark.

The right to equality and non-discrimination bears application to the enjoyment of all rights. All indicators, must therefore, be disaggregated based on age, religion, caste, tribe, sex, gender identity, language, disability, nature of offence, economic and social situation, etc.<sup>7</sup>

The Constitution of India guarantees the right to information.<sup>4</sup> The Right to Information Act, 2005 (RTI Act) was enacted in order to

provide for setting out the practical regime of right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority, the constitution of a Central Information Commission and State Information Commissions and for matters connected therewith or incidental thereto.<sup>5</sup>

It aims to help contain corruption, and enhance people's participation in democratic processes, given that an informed citizen is better equipped to keep necessary vigil on the instruments of governance and make the government more accountable to the governed. Considering the RTI Act, 2005,<sup>6</sup> and the mandate of the monitoring authorities, the Person-in-charge of the OH, the DCPU, the SCPS, the Department responsible for the implementation of the JJ Act, 2015, and the State Government should extend full cooperation and provide authentic data.

Monitoring authorities should take necessary precautions to ensure that children's identities are not compromised and private information concerning a particular child is not used for a purpose incompatible with the Indian Constitution, JJ Act, 2015, JJ Model Rules, 2016, and applicable international standards. For instance, a child may have provided incriminating information about his involvement in an alleged offence. This information should not, however, be used in manner so as to adversely affect the child's privilege against self-incrimination.

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4 Constitution of India, Article 19 (1)a- Freedom of Speech and Expression .

5 RTI Act, 2005, Preamble.

6 The RTI Act, 2005 requires public authorities to respond expeditiously to requests for information from citizens. The Act also mandates public authorities to maintain all their records in a systematic manner.

In order to ensure accountability, monitoring authorities should calibrate the responses to complaints received by them. An example of one such classification or responses received from the State about violations of rights, is given below:

### **Classification of Responses on Complaints**

In 2009, in his capacity as the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston classified the responses he received from the State about violations as follows:<sup>8</sup>

- (a) **“Largely satisfactory response”** denotes a reply that is responsive to the allegations and that substantially clarifies the facts. It does not, however, imply that the action taken necessarily complies with international human rights law;
- (b) **“Cooperative but incomplete response”** denotes a reply that provides some clarification of the allegations but that contains limited factual substantiation or that fails to address some issues;
- (c) **“Allegations rejected but without adequate substantiation”** denotes a reply denying the allegations but which is not supported by documentation or analysis that can be considered satisfactory under the circumstances;
- (d) **“Receipt acknowledged”** denotes a reply acknowledging that the communication was received but without providing any substantive information;
- (e) **“No response”**.

The above categorisation was endorsed by the OHCHR in its report on *Human Rights Indicators* as a useful tool to determine the responsiveness of the State to the communications about violations handled by the Special Rapporteur.<sup>9</sup>

Such a classification can be used by the monitoring authority to assess the “effectiveness” of the State or authority’s response to a violation of a right.



Tools containing an introductory section listing the rights and other relevant legal provisions in the JJ Act, 2015 and JJ Model Rules, 2016, applicable international norms/standards, as well as Structural, Process, and Outcome indicators have been developed for a few select rights of children alleged to be in conflict with law residing in Observation Homes. These are listed and explained below:

### **A. Rehabilitation and Social Re-integration**

1. Right to legal aid;
2. Right to education;
3. Right to health including mental health interventions;
4. Right to food;
5. Right to recreation;
6. Right to maintain contact with family.

### **B. Protection**

7. Right to be protected from torture, cruel, inhuman or degrading treatment or punishment including corporal punishment; and
8. Right not to be subjected to sexual abuse.

### **4.1. Rehabilitation and Social Re-Integration**

The Juvenile Justice System in India is premised on the principle of rehabilitation and reintegration of the child. The JJ Act, 2015 and JJ Model Rules, 2016 contain detailed requisites to ensure that the child's rehabilitation is at the centre of the process.<sup>7</sup> The preamble of the JJ Act, which reflects the objective of the law, states that this law is an Act to amend and consolidate the law

<sup>7</sup> JJ Act, 2015, Chapter VII and JJ MR, 2016, Chapter VI.

relating to CINCP and CICL, by “catering to their basic needs through proper care, protection, development, treatment, social re-integration...”, to ensure that a “child-friendly approach” is adopted by the authorities vested with the duty of passing orders, and that such disposal of matters is undertaken “in the best interest of children and for their rehabilitation through processes provided, and institutions and bodies established.” It thereby links rehabilitation to the child’s “best interest,” which in turn has been defined as “the basis for any decision taken regarding the child, to ensure *fulfilment of his basic rights and needs, identity, social well-being and physical, emotional and intellectual development.*”<sup>8</sup> Moreover, the principle of best interests is also a fundamental principle that should be adhered to by all authorities and agencies.<sup>9</sup> By re-inforcing the idea that best interest determinations are to help the child to develop to full potential, the preamble lays down the foundation for all decisions to be such that they enable the child to “integrate” and “assume a constructive role in society,” in keeping with the standards laid down in the UNCRC. Aside from being listed in the preamble, an entire Chapter has been devoted to Rehabilitation and Social Re-integration in the JJ Act, 2015,<sup>10</sup> as well as in the JJ Model Rules, 2016,<sup>11</sup> indicating the importance given to this legislative goal in the law.

Article 40(1), UNCRC recognizes the right of every child to reintegration.<sup>12</sup> In its General Comment No. 10, the Committee on the Rights of the Child emphasizes that the protection of the best interests of the child means that the traditional objectives of criminal justice, such as repression/retribution, must give way to

8 JJ Act, 2015, Section 2(9).

9 JJ Act, 2015, Section 3(iv).

10 JJ Act, 2015, Chapter 7.

11 JJ MR, 2016, Chapter 6.

12 UNCRC, 2009, Article 40(1).

rehabilitation and restorative justice objectives.<sup>13</sup> The ICCPR also considers ‘rehabilitation’ as one of the aims of the administration of juvenile justice.<sup>14</sup>

Internationally, there has been recognition of the potential for the state to abuse rehabilitation as a means of social control, because rehabilitation generally implies that responsibility rests solely with an individual who can be removed from society for treatment and once restored, released.<sup>15</sup> This concept also runs contrary to the principle of institutionalization as a measure of last resort and for the minimum necessary period, enshrined in the UN Standard Minimum Rules for the Administration of Juvenile Justice, 1985, (Beijing Rules).<sup>16</sup> There has therefore been a shift from rehabilitation, to a more holistic notion of ‘re-integration’ which has a very different starting point. It rejects the assumption that the difficulties which children face are necessarily individual and considers the social environment of the child.<sup>17</sup> The UN Guidelines for the Prevention of Juvenile Delinquency, 1990, (Riyadh Guidelines), seeks to assist children in developing a sense of responsibility.<sup>18</sup> It takes the concept of integration even further, advocating for children to be assisted within the community in order to develop a sense of responsibility, something that can only be accomplished if the child begins to develop a sense of belonging.

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13 Committee on the Rights of the Child, General Comment No. 10 on Children’s Rights in juvenile justice (2007), para 10

14 International Covenant on Civil and Political Rights, 1966, Article 14(4).

15 G. Van Bueren, “Article 40: Child Criminal Justice”, in: A. Alen, J. Vande Lanotte, E. Verhellen, F. Ang, E. Berghmans and M. Verheyde (Eds.) *A Commentary on the United Nations Convention on the Rights of the Child* (Martinus Nijhoff Publishers, Leiden, 2006), para 22, p. 12.

16 UN Minimum Standards for the Administration of Juvenile Justice, 1985, (Beijing Rules), Rule 13.1, and JJ Act, 2015, Section 3(xii).

17 *Supra* n. 15.

18 UN Guidelines for the Prevention of Juvenile Delinquency, 1990, (Riyadh Guidelines), Guideline 18.

However, there is a distinct lack of proper enabling mechanisms in OH's to effectively reintegrate these children. Further, families often obstruct such rehabilitation by withdrawing their support to the child. There are no diversion programs in place for children involved in petty offences, to ensure that admission to a home is a measure of last resort.<sup>19</sup> Institutions severely lack financial resources to invest in rehabilitation programs. There are no proper preventive and rehabilitation mechanisms to interrupt the cycle of poverty, drug dependence, and crimes. There is a dearth of adequate de-addiction centres available for CICL.<sup>20</sup> Though the law demands that the child's rehabilitation needs are prioritized, the Social Investigation Reports (SIRs) are prepared without sufficient inquiry, and coordination between probation officers and the police is minimal. SIRs and ICPs are not individualized and are routinely duplicated.<sup>21</sup> Hence, there remains a lot to be done to ensure that rehabilitation as laid down the JJ Act remains at the heart of the process.

All of the above implies that interventions aimed at rehabilitation and re-integration of children in Observation Homes should naturally encompass efforts that contribute to the fulfilment of all their 'basic rights and needs'. The monitoring tools in this Chapter have been clustered broadly into two groups - Group A, which includes rights that directly facilitate rehabilitation and re-integration of children, and Group B, which includes right to protection from harm during the juvenile justice processes. These two groups of rights are not mutually

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19 JJ Act, 2015, Section 3(xii).

20 UNICEF, Strengthening Rehabilitation & Restoration of Children under the Juvenile Justice System, September 2016, Recommendations Regional Consultations, pp. 26 and 27 available at [http://www.unicef.in/Uploads/Publications/Resources/pub\\_doc116.pdf](http://www.unicef.in/Uploads/Publications/Resources/pub_doc116.pdf)

21 *Ibid.*

exclusive. Even if all the rights of CACL's listed in Group A (i.e., rights to legal aid; education; health; food; recreation; and contact with family) are fulfilled during the period of stay in the home, but the fundamental principle of safety is not adhered to, resulting in the child experiencing torture or child sexual abuse, these experiences would not only disrupt the process of rehabilitation and social re-integration, but probably propel the child into a cycle of violence and crime. It is therefore imperative that all rights of children in juvenile justice are seen as intricately linked to each other as mutually re-enforcing and bolstering the possibility of the child moving towards a life of dignity. This will then enable the fulfilment of Article 40(1), UNCRC, which envisages a juvenile justice system that "reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society".

#### **4.1.1. Tool to Monitor the Right to Legal Aid**

Children, a majority of them hailing from the disadvantaged sections of society, enter the juvenile justice system, and require to be treated with care. Practice reveals that CACL are often unrepresented during initial hearings and are represented by a lawyer only during a bail hearing. Sustained, competent legal aid and assistance is often unavailable to CACLs. Children and families are largely unaware about the availability of the services of a free Legal Aid Lawyer (LAL). They often pay money to the LALs, unaware that no fee is meant to be charged. The quality of legal aid is also rarely monitored or reviewed. This is also compounded by the inadequate number of empanelled LALs to deal with cases of children before the JJB.

**Table No. 1: Summary of Normative Legal Framework Relevant to the Rights of CACLs to Free Legal Aid**

<b>Domestic Framework</b>	
<b>Constitution of India, 1950</b>	Article 21 guarantees an accused the <b>right to a fair trial</b> . Article 22(1) guarantees anyone who is arrested the <b>right to consult and be defended by a legal practitioner of his choice</b> . Article 39-A requires the State to <b>provide legal aid through suitable legislation or schemes</b> to ensure that people are not deprived of the opportunity to secure justice due to economic or other disabilities.
<b>Legal Services Authorities Act, 1987</b>	Under the Legal Services Authorities Act, 1987, amongst others, children and persons in custody are entitled to legal aid. <sup>10</sup>
<b>JJ Act, 2015</b>	Section 3(iii), JJ Act, recognises the <b>principle of participation</b> which is the right of every child to be heard and to participate in all processes and decisions affecting his interest. <sup>11</sup> Such participation is possible by ensuring legal representation to a child in conflict with the law. Duties have been cast on the JJB, police officer who apprehends a CACL, person-in-charge of a CCI to <b>ensure that a child unable to afford a private lawyer is represented by or has access to a free legal aid lawyer</b> . <sup>12</sup> The Central Government and the State Governments are required to take measures to ensure that provisions of the Act are given wide publicity through media and at regular intervals so as to make the general public, children and their families aware of these provisions. <sup>13</sup> They must also train their officers and other concerned persons periodically on matters related to the implementation of the Act. <sup>14</sup>

<b>JJ Model Rules, 2016</b>	A duty has also been imposed on the police officer who apprehends a CACL to inform the DLSA to arrange for free legal aid to the child. <sup>15</sup> The Person in Charge of a CCI should co-ordinate with the Legal cum Probation Officer in the DCPU or the SLSA/DLSA to ensure that every child is legally represented and provided free legal aid. <sup>16</sup>
<b>Code of Criminal Procedure, 1973</b>	Section 303, CrPC recognises the right of a person accused of an offence before a criminal court to be defended by a lawyer of his choice.
<b>Rights of Persons with Disabilities Act, 2016</b>	Section 12, of the RPD, Act, 2016 tasks the Government with ensuring that suitable support is available to people with disabilities to ensure the exercise of their legal rights, <sup>17</sup> including access to any scheme by the National Legal Services Authority. <sup>18</sup> A police officer who receives a complaint of an offense committed against a person with a disability is obligated to inform the person of their right to free legal aid. <sup>19</sup>
<b>International Framework</b>	
<b>International Covenant on Civil and Political Rights, 1966</b>	Article 14(3)(d) recognises the right of the accused to be informed of the right to be defended and to be provided free legal assistance if he does not have sufficient means to pay for it.
<b>UN Convention on the Rights of the Child, 1989</b>	<p>Article 12(1) recognises the right of a child capable of forming views to express them freely in all matters affecting the child. Article 12(2) requires the child to be given an opportunity to be heard in judicial and administrative proceedings affecting the child, directly or through a representative or appropriate body. The Committee explained that this right should be observed at all stages of the judicial process.<sup>20</sup></p> <p>Article 37(d) guarantees a child prompt access to legal and other appropriate assistance.<sup>21</sup></p>

<b>UN Convention on the Rights of Persons with Disabilities, 2006</b>	Article 13 of the Convention guarantees people with disabilities the access to effective justice on an equal basis with others.
<b>UN Standard Minimum Rules for the Administration of Juvenile Justice, 1985 (Beijing Rules)</b>	The Beijing Rules protect the “right to counsel” <sup>22</sup> and the right of a “juvenile” to be represented by a legal adviser or apply for free legal aid throughout the proceedings. <sup>23</sup>
<b>Basic Principles on the Role of Lawyers, 1990</b>	The Basic Principles on the Role of Lawyers <sup>24</sup> guarantees a competent and experience lawyer free of charge to a person who cannot afford one <sup>25</sup> and entrusts the Government to ensure that persons arrested or detained have prompt access to a lawyer, not later than forty-eight hours from the time of arrest or detention. <sup>26</sup>

Based on the normative framework, the following are the key attributes of the right to free legal aid:

- **Access to Legal Aid:** A child should be represented throughout the judicial process and a child unable to afford a private lawyer of his/her choice should be provided legal aid;
- **Free Legal Aid:** Legal aid should be free;
- **Effective Redress:** Procedures should be in place to redress complaints related to denial of, or, quality of legal aid; and
- **Quality of Legal Aid:** The Legal Aid Lawyer should be competent and experienced.



The indicators below have been developed based on the above attributes for use by the JJB, SCPCR, NCPCR, NHRC, NALSA, SLISA, and State Governments (through Inspection Committees), Central Government, and also the High Court-Juvenile Justice Committee (HC-JJC).

Certain indicators require sensitive information-gathering techniques to be used such that children and their families are not placed at risk or subjected to reprisals. For instance, the key attribute of legal aid is that it should be “free”. To fairly assess this, monitoring authorities will have to interact with children, their families, as well as civil society organisations and individuals who provide legal and psycho-social services to CACLS. The information should be collected in a manner such that the children or the families are not identifiable.

## INDICATORS FOR MONITORING THE RIGHT TO LEGAL AID

Structure	Access to Legal Aid	Provision of Free Legal Aid	Effective Redress	Quality of Legal Aid
	<ul style="list-style-type: none"> <li>Whether LAIs are attached to every JJB.</li> </ul>		<ul style="list-style-type: none"> <li>Evaluation procedure developed by NALSA/SLSA to assess efficacy of LAIs.</li> </ul>	
	<ul style="list-style-type: none"> <li>Number of LALs attached to JJBs in the districts.</li> </ul>			
	<ul style="list-style-type: none"> <li>Average number of visits every week by each LAL attached to each JJB.</li> </ul>			
	<ul style="list-style-type: none"> <li>Number of LALs appointed to visit the OH and for what purpose.</li> </ul>			
	<ul style="list-style-type: none"> <li>Frequency of visits by each LAL to each OH.</li> </ul>			
	<ul style="list-style-type: none"> <li>Physical infrastructural arrangements in OH for meetings between a child and his lawyer.</li> </ul>			

	Access to Legal Aid	Provision of Free Legal Aid	Effective Redress	Quality of Legal Aid
	<ul style="list-style-type: none"> <li>Whether any restrictions are being placed on the number of meetings that may be held between a child and his lawyer.</li> </ul>			
<b>Process</b>	<ul style="list-style-type: none"> <li>Whether any restrictions are being placed on the timings of the meetings that may be held between a child and his lawyer, and if so, are they reasonable.</li> <li>Percentage of children detained in the OH represented by LALs and private lawyers, respectively with details about the stages of representation.</li> </ul>	<ul style="list-style-type: none"> <li>Percentage of children/families paying for legal services provided by a LAL, be it in the form of 'fees', in cash or in kind.</li> </ul>	<ul style="list-style-type: none"> <li>Number of complaints received by JJBs, SCPCRs, SLSAs about the services provided by LALs and redressed.</li> </ul>	<ul style="list-style-type: none"> <li>Percentage of defence lawyers including LALs who have had training on the JJ Act, 2015.</li> </ul>

	Access to Legal Aid	Provision of Free Legal Aid	Effective Redress	Quality of Legal Aid
<ul style="list-style-type: none"> <li>Number of children being represented by each of the empaneled LAL.</li> </ul>	<ul style="list-style-type: none"> <li>Number of complaints received about payment demanded or made to LALs by CACLs to JJBs, Management Committee, or State Legal Services Authority and effectively redressed.</li> </ul>	<ul style="list-style-type: none"> <li>Number of formal inquiries or investigations against LALs providing services to CACL living in the OH.</li> </ul>		<ul style="list-style-type: none"> <li>Number and frequency of training programs held for LALs representing CACL.</li> </ul>
<ul style="list-style-type: none"> <li>Percentage of children appearing before the JJB without legal representation at the first hearing.</li> </ul>	<ul style="list-style-type: none"> <li>Number of formal inquiries or investigations against LALs providing services to CACL living in the OH.</li> </ul>			<ul style="list-style-type: none"> <li>Number and frequency of training programs held for JJBs, SJPUs, police, DCPU, and staff of the OH in which the CACL's right to legal aid is addressed.</li> </ul>

	Access to Legal Aid	Provision of Free Legal Aid	Effective Redress	Quality of Legal Aid
	<ul style="list-style-type: none"> <li>Number of children residing in the OH, who are required to be produced before a JJB located in another district.</li> <li>Average time taken for a LAL to be assigned to a CACL from the date of apprehension.</li> <li>Number and percentage of children appearing before the JJB without legal representation for two or more hearings.</li> </ul>			<ul style="list-style-type: none"> <li>Number of awareness campaigns on the right to free legal aid held for CACL and their families.</li> <li>Number and nature of media campaigns on the right to legal aid for CACL.</li> </ul>
<b>Outcome</b>	<ul style="list-style-type: none"> <li>Number and percentage of children living in the OH represented by LAL.</li> <li>Number and percentage of children living in OHs who were not represented before the JJB during hearings.</li> <li>Number and nature of action taken by the State or District Legal Services Authority on reported cases of misconduct by LALs.</li> </ul>			
<p><i>Note: All indicators must be disaggregated based on age, religion, caste, tribe, sex, gender identity, language, disability, nature of offence, economic and social situation.</i></p>				

The data collected through use of the above indicators could be supplemented with surveys about the availability and quality of legal services among CACL residing in Observation Homes and experts like social workers, probation officers, lawyers, and NGOs who work with children in conflict with the law.

To assess the availability of free legal aid services, experts and children should be asked to rate the provision of legal aid on conditions of anonymity. The following questions can be considered:<sup>22</sup>

**1. In your experience, how often do CACL living in the OH actually receive free legal aid services at all stages of the proceedings against them? Give reasons for the rating.**

(1) Never (2) Rarely (3) Often (4) Very often

**2. How would you rate the legal representation generally available to CACL during JJB proceedings? Give reasons and supporting evidence for the same, if available.**

(1) Very poor (2) Poor (3) Good (4) Very good

On conditions of anonymity, children should, be asked the following questions:

**1. How often did the LAL explain to you the legal procedures and consequences for you? Give reasons.**

(1) Never (2) Rarely (3) Often (4) Very often

**2. How often did the LAL seek your views on the case strategy or steps? Give reasons.**

(1) Never (2) Rarely (3) Often (4) Very often

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<sup>22</sup> These two questions have been replicated from the *United National Rule of Law Indicators*, [http://www.un.org/en/events/peacekeepersday/2011/publications/un\\_rule\\_of\\_law\\_indicators.pdf](http://www.un.org/en/events/peacekeepersday/2011/publications/un_rule_of_law_indicators.pdf), p.50.

3. What has been your overall experience with the LAL?  
(1) Very poor (2) Poor (3) Good (4) Very good

The scores arrived at based on totalling the value of the options should be monitored over a period of time to determine the extent of change in the availability and quality of legal service.

#### 4.1.2. Tool to Monitor The Right to Education

CACL's have a right to education, including free and compulsory primary education. The duty to provide education both inside or outside the institution<sup>23</sup> rests on the OH management. However, every district does not have an OH and there is also very low probability of a CACL having access to private education. The education provided by the OH should include vocational training and should cater to children with special needs as well. The right to education can be enforced in the OH by ensuring the child regularly attends school, and additional training and classes as needed, as well as by providing certain necessary infrastructure in the OH, including books and computers to create an environment that encourages learning. Most OH's do not provide specialised education and training services for children with special needs and career guidance is lacking.<sup>24</sup>

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<sup>23</sup> JJ MR, 2016, Rule 36(1).

<sup>24</sup> UNICEF, Strengthening Rehabilitation & Restoration of Children under the Juvenile Justice System, September 2016, Recommendations Regional Consultations, p. 31 available at [http://www.unicef.in/Uploads/Publications/Resources/pub\\_doc116.pdf](http://www.unicef.in/Uploads/Publications/Resources/pub_doc116.pdf)

**Table No. 2: Summary of Normative Legal Framework Relevant to the Rights of CACLs to Education**

<b>Domestic Framework</b>	
<b>Constitution of India, 1950</b>	Article 21 guarantees the right to education. The Supreme Court has held that the “right to education” is within the ambit of the “right to life” in <i>Mohini Jain v. State of Karnatka</i> <sup>27</sup> and <i>Unnikrishnan, J.P. v. State of Andhra Pradesh</i> . <sup>28</sup> Subsequently, in 2002, Article 21A was inserted, which recognises the right of children between 6-14 years to free and compulsory education. Article 350-A requires States and local authorities to endeavour to provide adequate facilities to linguistic minority groups for instruction in the mother-tongue at the primary level.
<b>JJ Act, 2015</b>	Section 53 (1)(iii), JJ Act, 2015 requires that every OH provide for rehabilitation and social integration of children through provision of services that include supplementary education and appropriate education for children with special needs. The OH must also provide vocational skill development, <sup>29</sup> occupational therapy and life skill education <sup>30</sup> and referral services for education, vocational training, deaddiction, treatment of diseases where required. <sup>31</sup>
<b>JJ Model Rules, 2016</b>	The JJB is empowered to pass orders for re-admission or continuation of the child in school if the child has been disallowed from continuing education in school due to the pendency of the inquiry or the child’s stay in a Child Care Institution. <sup>32</sup> The OH should provide education to all children based on their age and ability, both inside or outside the institution, as per the requirement of the child. <sup>33</sup>



The range of educational opportunities should be wide and include “mainstream inclusive schools, bridge school, open schooling, non-formal education and learning.”<sup>34</sup> Extra coaching should be made available to school going children by tying up with coaching centres or tutors or through volunteer services.<sup>35</sup> The OH should appoint specialised trainers and experts to cater to the educational needs of children with special needs.<sup>36</sup> Further, learning disorders should be identified, assessed and reported in the ICP and assistance to the children should be given by trained professionals.<sup>37</sup> The OH should ensure regularity of the education programme and attendance of children.<sup>38</sup> Children in the OH should be able to apply to and receive scholarships, grants, schemes, and sponsorships.<sup>39</sup> Their daily routine could provide for educational classes among other classes and activities.<sup>40</sup>

The Child Welfare Officer (CWO) or Case Worker (CW) to whom a child has been assigned should determine the child’s education and vocational status within five days of admission to the OH<sup>41</sup> on the basis of tests and interviews conducted with the assistance of technical staff and in this respect, linkages have to be forged with specialists, community welfare agencies, psychologist, psychiatrist, child guidance clinic, hospital and other Government and NGOs.<sup>42</sup> The Rehabilitation-cum-Placement Officer should facilitate certificates of completion of the education or vocational training courses.<sup>43</sup>

<p><b>Right to Free and Compulsory Education Act, 2009 (RTE Act)</b></p>	<p>Children between 7-14 years, residing in the OH's, have the right to free and compulsory education in a neighbourhood school, till completion of elementary education.<sup>45</sup> Should the child be required to attend a government school as part of bail orders or final orders, he will not be liable to pay any kind of fee or charges or expenses.<sup>46</sup></p> <p>The RTE Act also specifies that a child with a disability also has the right to pursue free and compulsory elementary education.<sup>47</sup> If a child in the OH has not been admitted in any school, or though admitted, could not complete elementary education, then the child should be admitted in a class appropriate to his or her age.<sup>48</sup></p>
<p><b>Rights of Persons with Disabilities Act, 2016</b></p>	<p>The Government should endeavour to ensure inclusive education, including catering to the specific needs of persons with disabilities.<sup>49</sup> The Government should also conduct a survey every five years to ensure their needs are being met,<sup>50</sup> and should provide adequate training to teachers and professionals on inclusive education and the promotion of the use of alternative modes of communication, including Braille and sign language.<sup>51</sup> The curriculum and examination system should also be modified to meet the needs of students with disabilities.<sup>52</sup> Section 19 requires the Government to formulate and enforce schemes to promote vocational training, skills development and self-employment of persons with disabilities.</p>
<p><b>National Policy on Children, 2013</b></p>	<p>The key priorities of the policy include education, which is an unalienable right of every child.<sup>53</sup> Every child should be able to access affordable, inclusive education in a safe environment, with all the necessary facilities, including children from disadvantaged groups.<sup>54</sup></p>

## International Framework

<b>Universal Declaration of Human Rights, 1948</b>	Article 26 guarantees the right to education, including the right to free and compulsory education. Higher education should be accessible equally, and the education should be directed towards the full development of the personality and strengthening respect for human rights and fundamental freedoms. Parents have a prior right to choose the kind of education they want their children to have. <sup>55</sup>
<b>UN Convention on the Rights of the Child, 1989</b>	The Convention recognizes children’s right to education and requires States Parties to take steps to ensure progressive realisation of the right. <sup>56</sup> Educational and vocational information and guidance should be made available and accessible to all the children. <sup>57</sup> Measures should be taken to encourage regular attendance at schools and to reduce drop-out rates. <sup>58</sup> Children with disabilities should have effective access to education. <sup>59</sup> States Parties are required to ensure via education the development of the child’s personality, talents and mental and physical abilities, <sup>60</sup> respect for human rights and fundamental freedoms, <sup>61</sup> respect for the child’s parents, cultural identity, language, and national values, <sup>62</sup> respect for the natural environment, <sup>63</sup> and to prepare the child to lead a responsible life. <sup>64</sup> This provision requires education to be “child-centred, child-friendly and empowering.” <sup>65</sup> CICLs face discrimination in accessing education and securing employment, which can be countered by effective support and training. <sup>66</sup>

<p><b>International Covenant on Educational, Social and Cultural Rights, 1966</b></p>	<p>The ICESCR requires States Parties to recognize the right of everyone to education<sup>67</sup>and obligates them to ensure free and compulsory primary education,<sup>68</sup>and make secondary education, including technical and vocational secondary education, accessible to all.<sup>69</sup>Higher education should also be made equally accessible to all<sup>70</sup> and fundamental education should be encouraged or intensified for those who have not received or completed their primary education.<sup>71</sup> Education is an indispensable means of realizing other human rights. As an empowerment right, education is the primary vehicle by which economically and socially marginalized adults and children can lift themselves out of poverty and obtain the means to participate fully in their communities.<sup>72</sup></p>
<p><b>UN Convention on the Elimination of All forms of Discrimination against Women, 1979</b></p>	<p>Article 10 prohibits discrimination against women in education, guaranteeing women the same opportunities to education, curricula, sponsorship and vocational guidance as men.</p>
<p><b>UN Convention on the Rights of Persons with Disabilities, 2006</b></p>	<p>Article 24 requires States Parties to establish inclusive education systems.<sup>73</sup>States Parties should take appropriate measures,<sup>74</sup> including facilitating the learning of alternative means of communication, including Braille and sign language and employing qualified teachers and trained staff.<sup>75</sup>States Parties also have a duty provide accessible general tertiary education, vocational training, adult education and lifelong learning to people with disabilities.<sup>76</sup></p>

<p><b>UN Standard Minimum Rules for the Administration of Juvenile Justice, 1985 (Beijing Rules)</b></p>	<p>The Beijing Rules require that education or vocation training be made available to juveniles, at all stages of the proceedings.<sup>77</sup> Therefore, while in custody in the OH, children have to receive care, protection and all necessary individual assistance – social, educational, vocational, psychological, medical and physical – that they may require in view of their age, sex and personality.<sup>78</sup> The Rules also recommend inter-departmental co-operation to ensure that children do not leave the institution at an educational disadvantage.<sup>79</sup></p>
<p><b>UN Rules for the protection of Juvenile Deprived of their Liberty (Harana Rules, 1990)</b></p>	<p>Juveniles should be provided education outside the detention facilities in community schools, wherever possible.<sup>80</sup> Children who are illiterate or have learning difficulties should be given special attention.<sup>81</sup> Detention facilities should have well stocked library and children should be encouraged and enabled to use it.<sup>82</sup> Every juvenile should receive vocational training and wherever possible, juveniles should be provided with the opportunity to perform remunerated labour.<sup>83</sup> Part of the earnings of a juvenile should normally be set aside to constitute a savings fund to be handed over to the juvenile on release.<sup>84</sup></p>
<p><b>Guidelines for Action on Children in the Criminal Justice System, 1997, (Vienna Guidelines)</b></p>	<p>The Vienna Guidelines call for a broad range of alternative and educative measures to be undertaken for the social rehabilitation of children.<sup>85</sup></p>

Based on the normative framework, the following are the key attributes of the right to education:

- **Free and Compulsory Primary Education:** A child between 7 and 14 years in the OH should receive free and compulsory primary education and it is the responsibility of the OH to ensure that this right is fulfilled.
- **Accessibility to secondary and higher education:** Children above 14 years living in the OH are entitled to receive appropriate education.
- **Curricula and educational resources:** Educational facilities within the OH should meet the standards for student-teacher ratio, have adequate trained staff, library facilities, and ensure that children have accessing to scholarships and sponsorship to access education; and
- **Educational opportunities and freedom:** Children with learning disabilities within the OH and vulnerable groups such as girls should also be provided learning opportunities. Children should also be provided with the freedom to pursue their interests.

The indicators below have been developed based on the above attributes for use by the JJB, SCPCR, NCPCR, NHRC, State Governments through Inspection Committees, Central Government, and the High Court-Juvenile Justice Committee (HC-JJC).

## INDICATORS FOR MONITORING THE RIGHT TO EDUCATION<sup>25</sup>

	Free and Compulsory Primary Education	Accessibility to secondary and higher education	Curricula and educational resources	Educational opportunity and freedom
<b>Structure</b>	<ul style="list-style-type: none"> <li>• Date on which the State Rules came into force.</li> <li>• Number of Child Welfare Officers, Case Workers, personnel, schools, coaching centers, tutors, experts, escorts, NGOs, psychologists, psychiatrists, and individuals formally involved in ensuring the right to education.</li> <li>• Number of qualified teachers appointed to impart education to children in the OH.</li> <li>• Number of special educators providing services to children in the OH.</li> <li>• Date on which the Educational Plan was developed by the Children’s Committee.</li> <li>• Inter-departmental cooperation co-operation fostered for providing adequate academic or, as appropriate, vocational training to children, with a view to ensuring that they do not leave the institution at an educational disadvantage.</li> <li>• Availability of facilities for Special Education in OH’s</li> <li>• Availability of elementary and secondary education in OH’s, including facilities such as libraries, computers etc.</li> <li>• Facilities for special education provided to children in the OH with special needs, within the institution and outside.</li> <li>• Provision of classrooms, vocational training labs, playground, indoor games, computer lab, number of computers in every OH.</li> <li>• Minutes of the Management Committee reflecting the situation of children’s right to educational and vocational training opportunities and quality of services.</li> </ul>			

<sup>25</sup> Many indicators have been drawn from the Illustrative indicators on the right to education in Human Rights Indicators, (2012) p.93.

	<b>Free and Compulsory Primary Education</b>	<b>Accessibility to secondary and higher education</b>	<b>Curricula and educational resources</b>	<b>Educational opportunity and freedom</b>
		Coverage of national policy on education for all, including provision for temporary and special measures for children alleged to be in conflict with the law		
<b>Procedure</b>	<ul style="list-style-type: none"> <li>• Percentage of children living in the OH who have never received formal education.</li> <li>• Percentage of children who had to discontinue schooling after coming to the OH.</li> <li>• Percentage of children identified as having special educational needs.</li> <li>• Percentage of children requiring extra coaching.</li> <li>• Percentage of children provided with coaching and/or tuitions to assist in their education.</li> <li>• Percentage of children attending mainstream inclusive schools, bridge school, or open schooling.</li> <li>• Percentage of children receiving non-formal education and learning.</li> <li>• Number of aptitude tests conducted to recognize/ identify a child's specific interests.</li> <li>• Number and type of short-term vocational training courses offered in OH and documentation of children's views on their usefulness.</li> <li>• Percentage of children in the OH getting education in their mother tongue.</li> <li>• Number of suggestions in the Children's Suggestion Box related to education and manner in which it was addressed.</li> <li>• Number of books procured on an annual basis and the languages.</li> <li>• Number of magazines and newspapers subscribed to on an annual basis (which adheres to the use and interests of the children).</li> <li>• Number of children accessing the library and issuing book, magazines, etc.</li> </ul>			



	<b>Free and Compulsory Primary Education</b>	<b>Accessibility to secondary and higher education</b>	<b>Curricula and educational resources</b>	<b>Educational opportunity and freedom</b>
	<ul style="list-style-type: none"> <li>• Number and type of educational classes held on a weekly basis.</li> <li>• Number of cases in which discontinuation of education due to stay in the OH was brought to the attention of the JJB on a monthly basis.</li> <li>• Percentage of attendance in educational programmes outside the OH.</li> <li>• Percentage of attendance in educational programmes held inside the OH.</li> <li>• Percentage of children participating in competitions and events outside the OH.</li> <li>• Number of suggestions or grievances received by the JJB related to education.</li> <li>• Number of applications received from children in the OH to pass orders for re-admission or continuation of the child in education.</li> <li>• Number of applications received by JJB for leave for exams, number of leave applications granted, and reasons for rejection.</li> <li>• Percentage of children whose educational status have been formally assessed by the Child Welfare Officer or Case Worker.</li> <li>• Proportion of complaints received by Management Committees in all Observation Homes relating to the right to education and action taken.</li> <li>• Number of children living in the OH who have been asked by the JJB whether their right to education is being respected in the OH.</li> <li>• Number of trainings held for Person-in-charge, Child Welfare Officers, Case Workers and staff of the OH on facilitating children's right to education.</li> </ul>			

	<b>Free and Compulsory Primary Education</b>	<b>Accessibility to secondary and higher education</b>	<b>Curricula and educational resources</b>	<b>Educational opportunity and freedom</b>
	<ul style="list-style-type: none"> <li>• Percentage of primary education teachers fully qualified and trained.</li> </ul>	<ul style="list-style-type: none"> <li>• Transition rate to secondary education by children in the OH.</li> <li>• Percentage of children who have completed their secondary education during their stay at the OH.</li> <li>• Percentage of children in the OH having access to higher education.</li> <li>• Percentage of students enrolled in vocational education programmes at secondary and post-secondary level.</li> <li>• Percentage of secondary or higher education teachers fully qualified and trained.</li> </ul>	<ul style="list-style-type: none"> <li>• Ratio of children to teachers, in primary, secondary and higher education in the OH.</li> <li>• Number of scholarships, grants, schemes, and sponsorships available for children in the OH to pursue educational opportunities.</li> </ul>	<ul style="list-style-type: none"> <li>• Percentage of children, by level, enrolled in distance and continuing education programmes.</li> <li>• Number of inputs of Children’s Committee that were considered while developing the educational plan and daily routine.</li> </ul>

	<b>Free and Compulsory Primary Education</b>	<b>Accessibility to secondary and higher education</b>	<b>Curricula and educational resources</b>	<b>Educational opportunity and freedom</b>
<b>Outcome</b>	<ul style="list-style-type: none"> <li>• Proportion of ICPS funds utilized by the State for educational activities for children in the OH.</li> <li>• Proportion of children satisfied with the educational opportunities made available to them during their stay in the OH.</li> </ul>			
	<ul style="list-style-type: none"> <li>• Percentage of children between 6 and 14 years not attending school.</li> <li>• Percentage of children attending primary school outside the OH.</li> <li>• Percentage of children receiving primary education within the OH.</li> </ul>	<ul style="list-style-type: none"> <li>• Percentage of children above 14 years not continuing education or receiving non-formal education.</li> <li>• Percentage of children attending secondary school outside the OH.</li> <li>• Percentage of children receiving secondary education within the OH.</li> </ul>	<ul style="list-style-type: none"> <li>• Improvement in primary, secondary, and higher education facilities.</li> </ul>	<ul style="list-style-type: none"> <li>• Percentage of girls with access to primary, secondary, and higher education.</li> </ul>
<p><b>All indicators should be disaggregated by age, sex, language, religion, caste, disability, and nature of offence.</b></p>				

### 4.1.3. Tool to Monitor the Right to Health

OHS must ensure that the child's health, including their mental health, is cared for. This includes maintaining a standard of hygiene in the home as well as the availability of services and professionals to care for the children's health. Mental health of children within CCIs remains heavily neglected. Mental health

assessments of children are not routinely carried out.<sup>26</sup> There is a shortage of psycho social workers, counsellors, physicians and medical professionals available to children in OH's.<sup>27</sup>

**Table No. 3 : Summary of Normative Legal Framework Relevant to the Rights of CACLs to Health**

Domestic Framework	
<b>Constitution of India, 1950</b>	“Right to life” under Article 21 of the Constitution includes the “right to health.” In <i>Paschim Banga Bhet Mazdoor Samity v. State of West Bengal</i> , <sup>86</sup> the Supreme Court observed held that preservation of human life is of paramount importance. Article 47 requires the State “to raise the level of nutrition and the standard of living and to improve public health.” The State is required to direct its policy to ensure that “the tender age of children are not abused”, <sup>87</sup> Article 41 imposes a duty on the State to provide public assistance for those who are ill or disabled.
<b>JJ Act, 2015</b>	All statutory institutions should provide mental health interventions, including counselling. <sup>88</sup> Equipment such as wheelchairs, prosthetic devices, hearing aids, braille kits, or any other suitable aids and appliances as required, for children with special needs should also be provided. <sup>89</sup> Referral services for deaddiction and treatment of diseases should be provided. <sup>90</sup>

26 UNICEF, Strengthening Rehabilitation & Restoration of Children under the Juvenile Justice System, September 2016, Recommendations Regional Consultations, p. 21, [http://www.unicef.in/Uploads/Publications/Resources/pub\\_doc116.pdf](http://www.unicef.in/Uploads/Publications/Resources/pub_doc116.pdf)

27 *Ibid*, p. 27.

	<p>A child suffering from a disease requiring prolonged medical treatment, can be sent to a fit facility.<sup>91</sup> Children with mental illness, addiction to drugs or alcohol should be transferred to a psychiatric hospital or psychiatric nursing home.<sup>92</sup></p>
<p><b>JJ Model Rules, 2016</b></p>	<p>When a child alleged to be in conflict with the law is apprehended by the police, he/she should be provided appropriate medical assistance.<sup>93</sup> Rule 26<sup>94</sup> requires every institution to have at least two Counsellors/Psychologists/Mental health experts and one Medical Officer or Physician to be available on-call and a para-medical staff/nurse to be present in the child-care institution [for every 100 children]. Every institution should have a Sick room or First-aid room, and a counselling-cum guidance room.<sup>95</sup> A different medical diet should be provided to sick children based on the recommendation of the institutions' doctor.<sup>96</sup> Medical examination is required to be conducted within 24 hours of the child being admitted as well as within 24 hours before the transfer,<sup>97</sup> along with monthly check-up of children and quarterly dental and eye check-ups quarterly.<sup>98</sup> Regular counselling, specific mental health interventions and de-addiction and rehabilitation programmes, with referrals to specialized centers should be provided.<sup>99</sup> Individual therapy should be provided by trained counsellors and other experts from Government or non-government organisations.<sup>100</sup></p>
<p><b>Rights of Persons with Disabilities Act, 2016</b></p>	<p>Section 25 ensures free health care, barrier free access in Government and private hospitals and priority in treatment and access to persons with disabilities. The Government also needs to make schemes for healthcare, including awareness schemes and programs for sexual and reproductive health and schemes for insurance.<sup>101</sup></p>

<p><b>Mental Healthcare Act, 2017</b></p>	<p>Section 104 (1) states that if it appears to the person in-charge of a children’s home that any resident of the institution has, or is likely to have, a mental illness, then, he shall take such resident of the institution to the nearest mental health establishment run or funded by the appropriate Government for assessment and treatment, as necessary.</p>
<p><b>National Policy on Children, 2013</b></p>	<p>The policy lays down that the right to health is an inalienable right of every child and should receive the highest priority.<sup>102</sup>The Government has committed to ensure equitable access to health care, of the highest standard, for all children.<sup>103</sup></p>
<p><b>International Framework</b></p>	
<p><b>Universal Declaration of Human Rights, 1948</b></p>	<p>Article 25 protects the right to a standard of living adequate to the health and well-being of all people. It also states that children are entitled to special care and assistance.</p>
<p><b>UN Convention on the Rights of the Child, 1989</b></p>	<p>Article 24(1) specifically recognises children’s right to enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. Every child has a right to a periodic review of the treatment provided to him.<sup>104</sup>  The CRC recommended considering individual behaviour and environmental factors to understand the increased vulnerability of some adolescents.<sup>105</sup> The CRC has underlined the need to pay attention to the special needs of girls in the JJ system.<sup>106</sup> Treatment for mental health disorders should abstain from unnecessary medication and institutionalization.<sup>107</sup>  It is essential to undertake an approach based on public health and psychosocial support to address mental ill-health among children and adolescents.<sup>108</sup> A mental health disorder, as far as possible, should be treated in the community in which the child lives.<sup>109</sup></p>

<p><b>International Covenant on Economic, Social and Cultural Rights, 1966</b></p>	<p>The ICESCR recognizes the right to the highest attainable standard of physical and mental health.<sup>110</sup> The CESCR Committee lists core obligations of States Parties, one of which is to ensure the right of access to health facilities, goods and services on a non-discriminatory basis, especially for vulnerable or marginalized groups.<sup>111</sup> The CESCR Committee has expressed its concern about the high rate of suicide among adolescents and observed that mental disorders and psychosocial illness are relatively common among adolescents.<sup>112</sup></p>
<p><b>Convention on the Elimination of All forms of Discrimination against Women, 1979</b></p>	<p>Article 12 prohibits discrimination against women in health care, and ensures women access to health care services, including those related to family planning.</p>
<p><b>UN Convention on the Rights of Persons with Disabilities</b></p>	<p>Article 25 recognizes the right to enjoy the highest attainable standard of health without discrimination on the basis of disability. States Parties are entrusted with ensuring access to health services, including free or affordable health care of the same standard as everyone else, including sexual and reproductive health.<sup>113</sup> The State must provide health services designed to minimize and prevent further disabilities including early identification and intervention.<sup>114</sup> The quality of health care, should be provided on par with others, including health insurance or life insurance, according to the national law.<sup>115</sup></p>

<p><b>UN Rules for the Protection of Juveniles Deprived of their Liberty, 1990 (Havana Rules)</b></p>	<p>One of the fundamental principles is that the juvenile justice system should promote the physical and mental well-being of children in conflict with law.<sup>116</sup> Children should be provided facilities and services that meet all the requirements of health and human dignity.<sup>117</sup> Every child should receive adequate medical care, as well as pharmaceutical products and special diets as medically indicated.<sup>118</sup> Medical facilities and equipment should be appropriate to the number and requirements of its residents; staff should be trained in preventive health care and the handling of medical emergencies; and children complaining of illness or displaying symptoms should be examined promptly by a medical officer.<sup>119</sup> Medicines should not be administered to elicit a confession or as a punishment or as a means of restraint.<sup>120</sup></p>
<p><b>Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1982</b></p>	<p>The principles<sup>121</sup> state that health personnel should provide protection of their physical and mental health and treatment of disease should be of the same quality and standard as is afforded to those who are not imprisoned or detained.<sup>122</sup></p>



<b>UN Standard Minimum Rules for the Administration of Juvenile Justice, 1985 (Beijing Rules)</b>	A juvenile held in custody during the pendency of proceedings, should receive all necessary individual assistance including psychological, medical and physical. <sup>123</sup> The objectives of institutional care should be in the interest of juveniles receiving wholesome development which includes medical and psychological assistance. <sup>124</sup>
<b>The Maastricht Guidelines on Violation of Economic, Social and Cultural Rights, 1997</b>	The Guidelines affirm that “the failure of States to provide primary health care to those in need may amount to a violation.” <sup>125</sup>

## INDICATORS FOR MONITORING THE RIGHT TO HEALTH<sup>28</sup>

	Sexual and Reproductive Health	Natural and Occupational Environment	Prevention, Treatment and Control of Diseases	Accessibility to Health Facilities and Essential Medicines
<b>Structure</b>	<ul style="list-style-type: none"> <li>• Date when the State Rules were notified.</li> <li>• Number of medical officers, counsellors, fit facilities providing medical/psychiatric facilities recognised under the Act and working with children in conflict with law and involved in ensuring the right to health including mental health.</li> <li>• Number of persons responsible for the implementation of the right to health and mental health in the OH settings.</li> <li>• Availability of Sick room, First-aid room, Counselling room</li> <li>• Medical room and counselling room having a child friendly ambience</li> <li>• Mechanism for periodic checking on expiry of medicines and purchase of new medicines is in place and reflected through the stock register of the medical room in OH.</li> </ul>			
<b>Procedure</b>	<ul style="list-style-type: none"> <li>• Percentage of OH following the minimum requirements in filling the medical records.</li> <li>• Number of times the JJB / Children’s Court peruse the medical reports, including mental health reports of every child.</li> <li>• Proportion of medical records maintained in the OH.</li> <li>• Number of times the reports are shared with JJBs periodically.</li> </ul>			

28 Human Rights Indicators, (2012), Table 3, p. 90.

	<b>Sexual and Reproductive Health</b>	<b>Natural and Occupational Environment</b>	<b>Prevention, Treatment and Control of Diseases</b>	<b>Accessibility to Health Facilities and Essential Medicines</b>
	<ul style="list-style-type: none"> <li>• Number of sessions on awareness on HIV/ AIDs and other STDs on a quarterly basis.</li> <li>• Number of tests conducted for HIV/ AIDs and other STDs on a quarterly basis.</li> <li>• Number of Sex Education classes conducted on a quarterly basis.</li> <li>• Number of girls pregnant on a monthly basis.</li> </ul>	<ul style="list-style-type: none"> <li>• Percentage of children needing special diet and action taken.</li> <li>• Number of complaints of children on health, sanitation, drinking water and nutrition and action taken.</li> <li>• Number of children with physical / mental disability kept in the OHs.</li> <li>• Number of wheelchairs, prosthetic devices, hearing aids, braille kits, or any other suitable aids and appliances as required, for children with special needs in the OH.</li> <li>• Number of sessions conducted to ensure awareness about medical facilities and importance of mental health in OH settings on a quarterly basis.</li> </ul>	<ul style="list-style-type: none"> <li>• Number of Medical Officers/ Physicians available on-call in each OH.</li> <li>• Number of medical check-ups conducted in the OH on a monthly basis.</li> <li>• Number of inspections conducted under Sec 54 since the Act came into force.</li> <li>• Number of medical and mental health experts, facilities and treatment identified by the DCPU for providing services in the OH.</li> <li>• Number of medical and mental health experts consulted for help on a monthly basis.</li> </ul>	<ul style="list-style-type: none"> <li>• Number of children who received medical assistance at the time of apprehension.</li> <li>• Number of medical examinations undertaken for children before being admitted as well as before transfer.</li> <li>• Number of check-ups undertaken for children in the OH (including weight, height, dental, and eye check-ups on quarterly basis).</li> <li>• Number and proportion of children ordered by JJB to be shifted to a fit facility for medical/ deaddiction / psychological illness on a quarterly basis.</li> </ul>

	Sexual and Reproductive Health	Natural and Occupational Environment	Prevention, Treatment and Control of Diseases	Accessibility to Health Facilities and Essential Medicines
		<ul style="list-style-type: none"> <li>• Percentage of children identified by the JJB as being in need of special rehabilitation.</li> </ul>	<ul style="list-style-type: none"> <li>• Number of children identified as requiring prolonged treatment.</li> <li>• Frequency of physical, dental and eye-checkups.</li> <li>• Frequency of individualized therapy sessions with counsellors.</li> <li>• Number and proportion of children being provided counselling in the OH.</li> <li>• Number of mental health interventions conducted per quarter.</li> <li>• Proportion of children undergoing medical screening before entering and after-release.</li> <li>• Percentage of referrals on which action was taken.</li> </ul>	<ul style="list-style-type: none"> <li>• Percentage of children provided special treatment, upon reports of first screening.</li> <li>• Number and type of counselling sessions conducted per child, per month.</li> <li>• Number of Anti-depressants and sleeping pills given without a medical prescription.</li> </ul>

	Sexual and Reproductive Health	Natural and Occupational Environment	Prevention, Treatment and Control of Diseases	Accessibility to Health Facilities and Essential Medicines
				<ul style="list-style-type: none"> <li>• Number of full- time counsellors and/or mental health professionals appointed for OHs.</li> <li>• Number of nurses/ para-medical staff present in the OH.</li> <li>• Percentage of children transferred to fit facility for medical or psychiatric services.</li> <li>• Number of persons in the State working in OH settings who have received basic first-aid training.</li> <li>• Number of children not receiving any medical/mental health services, even after suggestion/ recommendation from experts.</li> </ul>

	Sexual and Reproductive Health	Natural and Occupational Environment	Prevention, Treatment and Control of Diseases	Accessibility to Health Facilities and Essential Medicines
				<ul style="list-style-type: none"> <li>• Number of complaints raised by Children's Committee on medical care, rehabilitative services and other needs and action taken.</li> <li>• Number of complaints received by the Management Committee on health and action taken.</li> <li>• Number of specially trained staff and other facilities provided in the OH for children with special needs.</li> </ul>
<b>Outcome</b>	<ul style="list-style-type: none"> <li>• Proportion of external experts involved who are satisfied with the medical/special interventions take, based on their screening and consultation.</li> </ul>			

	Sexual and Reproductive Health	Natural and Occupational Environment	Prevention, Treatment and Control of Diseases	Accessibility to Health Facilities and Essential Medicines
			<ul style="list-style-type: none"> <li>• Proportion of children who were screened for psychiatric illnesses, satisfied with the treatment or therapy provided to them.</li> <li>• Prevalence of death, injuries, diseases and disabilities among children in the OH.</li> </ul>	<ul style="list-style-type: none"> <li>• Proportion of ICPS funds utilised by the State for ensuring the right to health of children in the OH.</li> <li>• Proportion of children satisfied with the health services made available to them during their stay in the OH.</li> <li>• Number of children who did not receive any mental health services.</li> </ul>
All indicators should be disaggregated by age, sex, language, religion, caste, disability, and nature of offence.				

#### 4.1.4. Tool to Monitor the Right to Food

The JJ Act, 2015, and JJ Model Rules, 2016, provide in detail for hygienic and nutrient rich food to be provided to the children, in line with international standards. The food should be adapted to the dietary needs of the child, and especially when recommended by a medical professional, the diet should be altered accordingly.

**Table No. 4: Summary of Normative Legal Framework Relevant to the Rights of CACLs to Food**

<b>Domestic Framework</b>	
<b>Constitution of India, 1950</b>	In <i>Francis Coralie Mullin v. Union Territory of Delhi</i> , <sup>126</sup> the Supreme Court construed the right to life under Article 21 as implying the “right to live with human dignity and all that goes along with it, viz, the bare necessities of life such as adequate nutrition, clothing and shelter over the head.” The State is entrusted with raising the level of nutrition as one of its primary duties. <sup>127</sup> In <i>PUCL v. Union of India</i> <sup>128</sup> the Court held that it is of utmost importance to ensure that adequate food is provided to destitute children.
<b>JJ Act, 2015</b>	Child-care institution should provide services including basic requirements such as food. <sup>129</sup>
<b>JJ Model Rules, 2016</b>	The Juvenile Justice Model Rules, 2016 specifies the nutritional requirements, sanitation and hygiene standards that have to be maintained in the child-care institutions. It holds the person-in-charge responsible for ensuring the proper storage and inspection of food stuffs as well as food served. <sup>130</sup> Four meals a day should be given to the children <sup>131</sup> and special meals on holidays, festivals, sports, cultural day and celebration of national festivals <sup>132</sup> and a special diet for sick children as per the advice of the doctor. <sup>133</sup> The menu should be prepared with the help of a nutritional expert or doctor to ensure balanced diet and variety in taste. <sup>134</sup> Further, extra diet for nourishment like milk, eggs, sugar and fruits should be issued to children on the advice of the institution doctor to enable children to gain weight or for other health reasons. <sup>135</sup> Iron and folic acid supplements are to be provided. <sup>136</sup> The Children’s Committee should be consulted for preparing the menu that will be displayed in the dining hall. <sup>137</sup>

	<p>Seasonal and regional variations should be reflected in the diet and varieties of dal, non-vegetarian food, sweets, and seasonal fruits in sufficient quantity should be provided.<sup>138</sup> The Rules specify that if a kitchen garden is attached to the institution, leafy vegetables should be grown and the Superintendent should try to issue variety of vegetables and see that the same vegetable is not repeated for at least a period of one week.<sup>139</sup> The timings for distribution of food can be altered at the discretion of the person-in-charge, depending on the season.<sup>140</sup> The Person-in-charge may make temporary alterations in the scale of diet in individual cases when considered necessary by him, or on the advice of the doctor of the institution.<sup>141</sup></p>
<p><b>National Policy for Children, 2013</b></p>	<p>The Preamble of the National Policy for Children, 2013 recognises the right to life, survival, health and nutrition as an inalienable right of every child. It further states that every child has a right to adequate nutrition and to be safeguarded against hunger, deprivation and malnutrition.<sup>142</sup> The National Policy also requires states to take special protection measures to secure the rights and entitlements of children in need of special protection and children in conflict and contact with the law.</p>
<p><b>Rights of Persons with Disabilities Act, 2016</b></p>	<p>Section 92 (c) makes it a punishable offence for a person having charge of a person with disability to voluntarily or knowingly deny food to them.</p>
<p><b>International Framework</b></p>	
<p><b>Universal Declaration of Human Rights, 1948</b></p>	<p>The right of every individual to food is stipulated in Article 25(1) of the Universal Declaration of Human Rights.</p>



<b>International Covenant on Economic, Social and Cultural Rights, 1966</b>	<p>Article 11(1) of the Convention, recognizes the right to adequate food as a part of the right to adequate standard of living and Article 11(2) explicitly recognizes the fundamental right of everyone to be free from hunger.<sup>143</sup> The CESCR stressed on the link between the right to food and the promotion of social justice and the need for policies at the domestic and international level for eradication of poverty.<sup>144</sup></p>
<b>UN Convention on the Rights of the Child, 1989</b>	<p>Article 24 (c) expressly enjoins the State to combat disease and malnutrition through the provision of adequate nutritious foods. States Parties are required to take appropriate measures within their means to support parents and to provide material assistance and support programmes, particularly with regard to nutrition.<sup>145</sup> Neglect or negligent treatment includes failure to provide the child with basic necessities including adequate food.<sup>146</sup></p>
<b>UN Convention of the Rights of Persons with Disability, 2006</b>	<p>The Convention ensures that no person is discriminated or denied food and fluids on the basis of their disability.<sup>147</sup> State parties are also obligated to ensure the right of persons with disabilities to an adequate standard of living for themselves and their families, including adequate food.<sup>148</sup></p>
<b>Universal Declaration on the Eradication of Hunger and Malnutrition, 1974</b>	<p>The Declaration recognised that every child has the inalienable right to be free from hunger and malnutrition in order to develop fully and maintain their physical and mental faculties.<sup>149</sup></p>

<b>United Nations Guidelines for the Prevention of Juvenile Delinquency, 1990</b>	Government agencies should provide sufficient funds and other resources for the effective delivery of services, facilities and staff for adequate nutrition. <sup>150</sup>
<b>The United Nations Rules for Protection of Juveniles Deprived of their Liberty, 1990 (Havana Rules)</b>	The Havana Rules state that every detention facility should ensure that every juvenile receives food that is suitably prepared and presented at normal meal times and of a quality and quantity to satisfy the standards of dietetics, hygiene and health and, as far as possible, religious and cultural requirements. <sup>151</sup>

Based on the normative framework, the following are the key attributes of the right to food:

- **Nutrition:** Guidelines on nutritional content of food followed, including when special dietary concerns are recommended.
- **Food safety:** Food is stored and prepared in hygienic environment.
- **Food availability:** Whether meals are provided on time and the grievances recorded and action taken.

## INDICATORS FOR MONITORING THE RIGHT TO FOOD<sup>29</sup>

	<b>Nutrition</b>	<b>Food Safety</b>	<b>Food Availability</b>
<b>Structure</b>	<ul style="list-style-type: none"> <li>• Number of OH's that display of the menu in the dining hall</li> <li>• Date on which the menu was prepared</li> <li>• Number of nutritional experts or doctors consulted in the preparation of the menu</li> </ul>	<ul style="list-style-type: none"> <li>• Number of separate kitchens and storage facilities, as per the rules.</li> <li>• Funds allotted for food, sanitation and hygiene per month</li> <li>• Clean and pest proof store for maintaining food articles and other supplies.</li> </ul>	<ul style="list-style-type: none"> <li>• Provision for adequate staff in the kitchen</li> <li>• Provision of a kitchen garden in the OH</li> </ul>
<b>Process</b>	<ul style="list-style-type: none"> <li>• Percentage of children mal-nourished after coming to the OH</li> <li>• Percentage of children identified as requiring special diet plan</li> <li>• Percentage of children below the minimum weight-height, as per their age, when entering the OH.</li> <li>• Percentage of children below the minimum weight-height, as per their age, leaving the OH.</li> <li>• Number of special meals cooked on special days such as national and religious festivals</li> </ul>	<ul style="list-style-type: none"> <li>• Number of trainings held for Person-in-charge, cook and staff of the OH on facilitating children's right to food.</li> <li>• Number of complaints about food safety in the Children's Suggestion Box and effectively addressed.</li> <li>• Number of children who were fallen ill after or due to consumption of food at the OH.</li> </ul>	<ul style="list-style-type: none"> <li>• Number of suggestions or grievances received by the JJB related to provision of food</li> <li>• Number of suggestion in the children's suggestion box related to quality, quantity and variety of food provided to children and effectively addressed</li> </ul>

<sup>29</sup> Human Rights Indicators, (2012), Table 2, p. 89.

	<b>Nutrition</b>	<b>Food Safety</b>	<b>Food Availability</b>
	<ul style="list-style-type: none"> <li>• Percentage of children who have had a health check-up to formally assess their diet requirements</li> <li>• Percentage of children receiving age appropriate quantity of food</li> <li>• Percentage of vegetarian children</li> <li>• Percentage of vegetarian children receiving sufficient protein food on days non-vegetarian food is served</li> <li>• Number of times dietary requirements is considered before placing a child in a certain home</li> </ul>		<ul style="list-style-type: none"> <li>• Number of times non-veg has been served in the OH</li> <li>• Number of times leafy vegetables are served in a week</li> <li>• Number of times seasonal fruits are served in a week</li> <li>• Number of times regional food is served in a month</li> <li>• Number of times time table for meals has not been followed and reasons</li> <li>• Proportion of complaints received by Management Committee in relating to the right to food of children and action taken</li> </ul>

	<b>Nutrition</b>	<b>Food Safety</b>	<b>Food Availability</b>
			<ul style="list-style-type: none"> <li>• Proportion of grievances received by the JJBs in a State related to right to food and effectively addressed</li> <li>• Number of children living in the OH who have been asked by the JJB whether their right to food is being respected in the OH.</li> </ul>
	<ul style="list-style-type: none"> <li>• Number of times dietary plan prepared in consultation with a qualified nutritionist is not followed.</li> <li>• Proportion of inputs of Children's Committee that were considered while developing the menu.</li> </ul>		

	Nutrition	Food Safety	Food Availability
<b>Outcome</b>	<ul style="list-style-type: none"> <li>• Proportion of funds utilised by the State for providing food for children in the OH.</li> <li>• Proportion of children satisfied with the food made available to them during their stay in the OH.</li> <li>• Number of children mal-nourished in the OH.</li> <li>• Number of sick children receiving special food</li> <li>• Percentage of fund used from the allotted funds, per month</li> </ul>		
<b>All indicators should be disaggregated by age, sex, language, religion, caste, disability, and nature of offence.</b>			

\* For the purpose of this toolkit, a nutritional expert is defined as a person who has studied nutrition and diet or an appointed OH doctor if they can advise on matters of food and nutrition and its health impact.

#### 4.1.5. Tool to Monitor the Right to Recreation

Children in OH's should have access to recreational facilities to ensure that their skills and talents are nurtured. The OH should have facilities including play areas, sports equipment, library and games for the child to access.

**Table No. 5: Summary of Normative Legal Framework Relevant to the Rights of CAChs to Recreation**

<b>Domestic Framework</b>	
<b>JJ Act, 2015</b>	The right of children living in the OH to recreational activities including sports and cultural activities' is recognised under Section 53(1)(vii) of the JJ Act 2015.
<b>JJMR, 2016</b>	Recreation facilities could include "indoor and outdoor games, yoga and meditation, music, television, picnic and outings, cultural programmes, gardening and library, etc." <sup>152</sup> The daily routine of children can include organised recreation and games. <sup>153</sup> Picnics and outings to education or science fairs, museums, planetariums, botanical or zoological gardens, cultural events or sports competitions can be undertaken. <sup>154</sup> A space in the home should to be made available for gardening and music, dance and art therapy should be a part of the recreational activities. <sup>155</sup> Sufficient space should be made available for outdoor sports and games. <sup>156</sup> The OH should maintain the regularity of activities with support from institutions and NGOs, if necessary, and submit a report on this on a quarterly basis to the JJB. <sup>157</sup> The Management Committee should consider and review the recreation facilities in the OH at its monthly meeting. <sup>158</sup>

<p><b>JJ Model Rules, 2016</b></p>	<p>As per Form 46, JJ MR 2016, Inspection Committees are required to inspect whether or not the following Recreational activities/ facilities are available for children:</p> <ul style="list-style-type: none"> <li>• Is there a TV set available with Cable Network?</li> <li>• How often are children allowed to view TV?</li> <li>• Are children playing games indoors?</li> <li>• What games are available to them?</li> <li>• Are children playing games outdoors?</li> <li>• Do they have equipment/ accessories to play?</li> <li>• Do children go for picnics/ excursions?</li> <li>• Do they have interactions with eminent personalities?</li> <li>• Is there a recreation room available to children?</li> </ul>
<p><b>Rights of Persons with Disabilities Act, 2016</b></p>	<p>The Government should ensure that educational institutions provide sports and recreational activities to persons with disabilities on par with others.<sup>159</sup> Recreational facilities for persons with disabilities should be established by redesigning courses, introducing technology and making recreation centres and other facilities accessible to persons with disabilities.<sup>160</sup></p>
<p><b>National Policy on Children, 2013</b></p>	<p>The Government should develop and sustain age-specific safe spaces for play, sports, recreation, leisure, cultural and scientific activities for children.<sup>161</sup></p>



## International Framework

<b>Universal Declaration of Human Rights, 1948</b>	Article 24 protects the right to rest and leisure, including periodic holidays of every individual.
<b>UN Convention on the Rights of the Child, 1989</b>	<p>Article 31 of the UNCRC recognizes the right of the child “to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the art.”</p> <p>The CRC emphasises on investment in structured and organised activities and to create time and space for children to engage in spontaneous play, recreation and creativity.<sup>162</sup> Recreational activities should include within its fold music, art, crafts, community engagement, sports, games, pursuing hobbies, etc., and should be a voluntary activity.<sup>163</sup> Children living in institutions for significant periods of time also require appropriate literature, periodicals and access to the Internet, as well as support to enable them to make use of such resources.<sup>164</sup> Furthermore, it is imperative to ensure that such rights are not restricted by the imposition of “adult-decided activities.”<sup>165</sup> It must be ensured that children from minority communities are given equal rights to participate in cultural and artistic activities reflecting their own language, religion and culture.<sup>166</sup></p>

<p><b>UN Convention on the Elimination of All forms of Discrimination against Women, 1979</b></p>	<p>Article 13 (c) guarantees women the right to participate in recreational activities, sports and all aspects of cultural life, on an equal basis with men.</p>
<p><b>UN Convention on the Rights of People with Disabilities, 2006</b></p>	<p>Children with disabilities have an equal right to participate in cultural life, recreation, leisure and sport.<sup>167</sup> This requires ensuring the availability of cultural materials, television programmes, libraries, etc. in an accessible format.</p>
<p><b>The United Nations Rules for Protection of Juveniles Deprived of their Liberty, 1990 (Havana Rules)</b></p>	<p>According to the Havana Rules, juveniles should be entitled to suitable time for daily free exercise in open air, weather permitting, and appropriate recreational and physical training should be provided to them,<sup>168</sup> including additional time for arts and crafts skill development.<sup>169</sup></p>

<b>United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines)</b>	Guideline 30 provides for a wide range of recreational facilities and services of particular interest to young persons to be made accessible.
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Based on the normative framework, the following are the key attributes of the right to recreation:

- **Access to Recreational Facilities:** Equipped libraries, computer rooms, gardens, playgrounds that are child friendly.
- **Access to Cultural Events:** Children should be able to access cultural events such as dance and music and competitive events to develop their talents.
- **Participation in Recreation:** Satisfaction with the facilities and grievances should be recorded and action should be taken to settle them.

### INDICATORS FOR MONITORING THE RIGHT TO RECREATION

	<b>Access to recreational facilities</b>	<b>Access to cultural events</b>	<b>Participation in recreation</b>
<b>Structural</b>	<ul style="list-style-type: none"> <li>• Playground facilities in OH's</li> <li>• Number of Observation Homes in the State that provide space for gardening.</li> </ul>	<ul style="list-style-type: none"> <li>• Number of OH's linked to a cultural centre.</li> </ul>	

	<b>Access to recreational facilities</b>	<b>Access to cultural events</b>	<b>Participation in recreation</b>
	<ul style="list-style-type: none"> <li>• Number of OH's with a library.</li> <li>• Number of Observation Homes in the State that comply with the building norms for recreation rooms.</li> </ul>		
	<ul style="list-style-type: none"> <li>• Date on which the Recreation Plan was developed by the Children's Committee.</li> <li>• Date on which the State Rules came into force.</li> <li>• Number of personnel, NGOs, institutions, voluntary organizations and individuals formally involved in ensuring the right to recreation.</li> </ul>		
<b>Process</b>	<ul style="list-style-type: none"> <li>• Number of books procured on an annual basis and the languages.</li> <li>• Number of magazines and newspapers subscribed to on an annual basis.</li> <li>• Number of children accessing the library and issuing book, magazines, etc.</li> </ul>	<ul style="list-style-type: none"> <li>• Number of picnics and outings conducted on an annual basis.</li> <li>• Number of cultural events conducted and number of children who participated in them.</li> <li>• Number of sports competitions conducted on an annual basis number of children who participated in them.</li> </ul>	<ul style="list-style-type: none"> <li>• Number of grievances received by the JJBs</li> <li>• Proportion of grievances discussed with children</li> <li>• Proportion of grievances finalised for action</li> <li>• Number of grievances effectively redressed</li> <li>• Rating given by children on satisfaction with grievance redressal</li> <li>• Proportion of unstructured play time in the daily schedule of children.</li> </ul>

	<b>Access to recreational facilities</b>	<b>Access to cultural events</b>	<b>Participation in recreation</b>
		<ul style="list-style-type: none"> <li>• Number of times a child participates in a sports or cultural event outside the OH</li> <li>• Number of times a child participates in a sports or cultural event outside their community.</li> <li>• Number and type of classes such as music, yoga, and dance held on a weekly basis.</li> </ul>	<ul style="list-style-type: none"> <li>• Proportion of suggestions in the Children’s Suggestion Box related to recreation and effectively addressed.</li> <li>• Proportion of complaints received relating to recreation facilities and activities and effectively addressed.</li> </ul>
<b>Outcome</b>	<ul style="list-style-type: none"> <li>• Proportion of ICPS funds utilised by the State for recreational activities for children in the OH.</li> </ul>	<ul style="list-style-type: none"> <li>• Proportion of children satisfied with the cultural events.</li> </ul>	<ul style="list-style-type: none"> <li>• Number of children participating in any recreational activity.</li> <li>• Proportion of children satisfied with the recreational activities.</li> </ul>
<b>All indicators should be disaggregated by age, sex, language, religion, caste, disability, and nature of offence.</b>			

#### 4.1.6. Tool to Monitor the Right to Maintain Contact with Family

A child who has been separated from their parents should be allowed to maintain contact with their family. This will facilitate the rehabilitative process for the child, and the psychological healing of the child and the family, and will also assist with the child’s social reintegration, as they will have social connections with the community when they return. The OH should provide the means of contact, and should respect the privacy of the child during such conversations.

**Table No. 6: Summary of Normative Legal Framework Relevant to the Rights of ACLs to maintain contact with family**

<b>Domestic Framework</b>	
<b>JJ Act, 2015</b>	In all decisions regarding the child, the primary consideration should be the best interests of the child. <sup>170</sup> The primary responsibility to care, nurture and protect the child lies with the family of the child. <sup>171</sup> Every child in the Juvenile Justice System has the right to be reunited with his or family, unless such restoration or repatriation is not in the child’s best interest. <sup>172</sup>
<b>JJ Model Rules, 2016</b>	Rule 74, JJ MR, 2016 recognises the right of a child residing within a Child Care Institution to maintain contact with the family. As per Rule 74(1): “Every child can be permitted to have one meeting per week with relatives. However, if parents or guardians have travelled a long distance from a different State or district, they can be allowed to meet the child on other days by the Person-in-charge after their identity is confirmed and if they have not been involved in subjecting the child to abuse and exploitation.”

- A newly received child should be allowed to meet the parent/guardian/family member on their first visit on any day. (Rule 74(2), JJ MR, 2016).
- If the parent/guardian/family member is found to have been involved in subjecting the child to violence, abuse and exploitation or is carrying prohibited articles, then the person will not be allowed to meet the child, unless permission is granted by the JJB or when the meeting is specifically directed by the child's counsellor. (Rule 74(3), JJ MR, 2016).
- Every child will be allowed to write two letters a week to the child's parent/guardian/relatives and necessary stationery and postage should be provided by the Person-in-charge. (Rule 74(4), JJ MR 2016). The letter can be perused by the Person-in-charge and the delivery of the letter can be denied based on reasons notes in the child's file. The report of the matter should be placed before the Management Committee and a copy should be sent to the JJB. Rule 74(5), JJ MR, 2016).
- A child may be allowed by the Person-in-charge to speak with her/his parents or guardians on telephone once a week under the supervision of the Child Welfare Officer/Case Worker/Probation Officer and records should be maintained of such calls. (Rule 74(7), JJ MR, 2016).
- A person desiring to meet the child should disclose name, address, photo identity card, and address proof and records of these should be maintained in the visitors register. If the person refuses to disclose these details, the meeting can be denied. (Rule 74(8), JJ MR, 2016).

- Meetings should take place in the presence of the Child Welfare Officer/Case Worker/ Probation Officer of the Child Care Institution and they will be responsible for any irregularity that may occur. They should be so placed so that they can see and prevent exchange of objectionable or prohibited articles. (Rule 74(10), JJ MR, 2016).
- The child should be searched before and after the meeting in the presence of the visitor. If an objectionable or prohibited article is found in the search conducted before the meeting, it should be seized and an inquiry should be initiated by the Person-in-charge to determine the identity of the person responsible for the article reaching the child. Appropriate action should be initiated against the person responsible if they are the staff of the CCI and a detailed report of the inquiry and its result should be forwarded to the Department and the JJB or court of competent criminal jurisdiction. (Rule 74(12), JJ MR. 2016). If an objectionable or prohibited article is found in the search conducted after the meeting, it should be seized and the article and the visitor should be detained if the article is illegal and they should be handed over to the police. A report should be made about the visitor and placed in the child's case file and a report of the incident should be forwarded to the Department and the JJB or court of competent criminal jurisdiction. (Rule 74(13) JJ MR, 2016).



	<ul style="list-style-type: none"> <li>• A child can be denied meetings if the child abuses the privilege of meetings by the Person-in-charge and a report of the same should be sent to the JJB. (Rule 74(14), JJ MR. 2016).</li> </ul> <p>The JJ Model Rules, 2016 places a duty on the Probation Officer to ‘assist the child to develop contacts with family and also provide assistance to family members.<sup>173’</sup></p>
<b>Rights of Persons with Disabilities Act, 2016</b>	Section 9(1) provides that no person with disabilities shall be separated from their parents or their family, unless the law requires it. All programs and campaigns undertaken by the Government should foster respect for the decisions made by persons with disabilities on all matters related to family life. <sup>174</sup>
<b>National Policy on Children, 2013</b>	The Policy states that children should not be separated from their family, unless it is in their best interests. <sup>175</sup> The State should encourage the active involvement and participation of families in securing the rights of the child. <sup>176</sup>
<b>International Framework</b>	
<b>Universal Declaration of Human Rights, 1948</b>	Article 12 protects every individual from arbitrary interference with his family and correspondence. Article 16 (3) states that the family is the natural and fundamental group unit of society and is entitled to protection by society and the State.
<b>UN Convention on the Rights of the Child, 1989</b>	The UNCRC places an obligation to respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child’s best interests. <sup>177</sup>

	Further, States Parties should ensure that the child shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances. <sup>178</sup>
<b>UN Convention on the Rights of Persons with Disabilities, 2006</b>	Article 23 (3) ensures that persons with disabilities have equal rights with respect to family life. Article 23 (4) provides that a child with disabilities shall not be separated from their parents, except when the law requires it.
<b>UN Standard Minimum Rules for the Administration of Juvenile Justice, 1985 (Beijing Rules)</b>	The Beijing Rules recognise the right of access of parents or guardians, in the interest and well-being of the institutionalized juvenile. <sup>179</sup> The right of access follows from the provisions of other rules which require the parents or guardian of the juvenile to be notified of the charges and informed about the apprehension, <sup>180</sup> to participate in the proceedings if it is in the interest of the child, <sup>181</sup> and for the juvenile to not be removed from parental supervision, unless necessary. <sup>182</sup>
<b>UN Rules for Protection of Juveniles Deprived of their Liberty 1990 (Harana Rules)</b>	Juveniles should have the right to receive regular and frequent visits that respect the need of the juvenile for privacy, contact and unrestricted communication with the family and the defence counsel. <sup>183</sup> Every means should be provided to ensure that juveniles have adequate communication with the outside world, including allowing a visit to their home and family. <sup>184</sup>

<b>UN Guidelines for Alternative Care of Children, 2010</b>	<p>In order to promote and facilitate such a right, the child should be placed in a facility that is as close as possible to the place of residence of his/her family.<sup>185</sup> The staff of the facility should promote and facilitate frequent contacts of the child with the wider community, including communications with his/her family, friends and other persons or representatives of reputable outside organizations, and the opportunity to visit his/her home and family.<sup>186</sup></p>
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Based on the normative framework, the following are the key attributes of the right to remain in contact with your family:

- **Access to means of Contact:** Facilities such as a separate visiting room where the child can meet their family, without OH staff present, access to computers and internet and phones and material to write and post letters should be made available.
- **Information provided to parents:** Parents should also be provided with information about their children's whereabouts, as well as should be able to contact them whenever needed.
- **Frequency of Contact:** It is important to monitor the number of times and the frequency that the child is allowed to maintain contact, whether by visits, phone calls or letters.

## INDICATORS FOR MONITORING THE RIGHT TO MAINTAIN CONTACT WITH FAMILY

	Access to means to maintain contact	Information provided to Parents	Frequency of Contact
<b>Structural</b>	<ul style="list-style-type: none"> <li>• Availability of phones with working connections to ensure every child has the opportunity to make a phone call</li> <li>• Availability of computers for skype, emails for children with family far away</li> <li>• Visiting rooms where the child and their family members can enjoy some time and privacy</li> <li>• The number of districts the OH caters to.</li> <li>• The proportion of children in the OH whose parents reside outside of the district in which the OH is situated.</li> <li>• The proportion of children in the OH whose parents reside outside of the State in which the OH is situated.</li> </ul>		
	<ul style="list-style-type: none"> <li>• Number of times a call is denied and the reasons for denial.</li> <li>• Availability of Complaint boxes for children to record their grievances when they are denied access to contact with family members.</li> <li>• Whether OHs have fixed days for parents/ guardian to meet their children/wards.</li> </ul>	<ul style="list-style-type: none"> <li>• Provision of Emergency contact information for the family to be able to contact the child urgently and vice versa.</li> <li>• Where parents are unable to visit, whether efforts made to ensure telephonic contact between the child and his/ her parents/ guardians.</li> </ul>	<ul style="list-style-type: none"> <li>• Proportion of suggestions received in the Children’s Suggestion Box related to contact with family and efficiency redressed.</li> </ul>

	<b>Access to means to maintain contact</b>	<b>Information provided to Parents</b>	<b>Frequency of Contact</b>
<b>Process</b>	<ul style="list-style-type: none"> <li>• Number of complaints received from children about not being allowed to meet their parents/guardians.</li> <li>• Number of times the child is allowed to meet with family during these visits without presence of staff of OH.</li> <li>• Number of times the child is allowed to talk to their family without presence of staff of OH.</li> <li>• Proportion of letters read by the staff of the OH prior to posting or delivering to child.</li> <li>• Number of times the staff refused to post or deliver a letter and reasons.</li> </ul>	<ul style="list-style-type: none"> <li>• Number of times parents/guardians are called by OH / LAL to get the child legal representation and stay updated on the case proceedings.</li> </ul>	<ul style="list-style-type: none"> <li>• Number of phone calls per child per month</li> <li>• Frequency of visits from family members.</li> <li>• Frequency of telephonic contact with family : (a) Weekly; (b) Fortnightly; (c) Monthly; (d) More than a month; (e) As per wishes and / or convenience of the child / family.</li> <li>• Number of times children are able to meet their parents/guardians in a month.</li> </ul>

	<b>Access to means to maintain contact</b>	<b>Information provided to Parents</b>	<b>Frequency of Contact</b>
	<ul style="list-style-type: none"> <li>• Number of times facilities available for someone to read or write the letter to the child was provided when child was unable to do so.</li> <li>• Number of times the child is permitted to have visits from and/or communicate with persons other than such child's family - friends, relatives, representatives of NGOs.</li> </ul>		
<b>Outcome</b>	<ul style="list-style-type: none"> <li>• Frequency of letters sent by child in an OH to family : (a) Weekly; (b) Fortnightly; (c) Monthly; (d) More than a month; (e) As per wishes of child.</li> <li>• Frequency of family visits permitted in an OH : (a) Weekly; (b) Fortnightly; (c) Monthly; (d) More than a month; (e) As per wishes and convenience of family.</li> </ul>		
<b>All indicators should be disaggregated by age, sex, language, religion, caste, disability, and nature of offence.</b>			

## 4.2. Protection

Protection mechanisms in OH's are severely lacking, and children fleeing from violence and abuse often find themselves in a cycle of abuse again. Disregard for legal provisions, ineffective monitoring mechanisms and the large number of unregistered homes operating illegally contribute largely to this endemic culture wherein the environment within the OH is sometimes anything but "child friendly".

### 4.2.1 Tool to Monitor the Right not to be subjected to Torture or other Cruel, Inhuman or Degrading Treatment or Punishment

The right to be free from torture is recognised as customary international law, and has been reiterated in several international human rights instruments. The JJ Act, 2015 clearly provides that the institutions should ensure that children are protected from abuse, neglect, maltreatment and corporal punishment. The Act also prescribes punishment for those who inflict cruelty or corporal punishment on a child.

Torture and abuse by police is deeply rooted in institutional practice in India, and is perpetuated from the time of arrest.<sup>30</sup> Torture of street children by police, whether by severe beatings with fists, *lathis*, or other instruments, and kicking is also routine. These children are then sent to OHs, where they are often subjected to further torture and beatings by the staff, sometimes landing them in hospital.<sup>31</sup>

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30 Human Rights Watch, "Bound by Brotherhood" India's Failure to End Killings in Police Custody, available at <https://www.hrw.org/news/2016/12/19/india-killings-police-custody-go-unpunished> Chapter I.

31 Human Rights Watch, Police Abuse and Killings of Street Children in India, available at <https://www.hrw.org/reports/1996/India4.htm>.

**Table No. 7: Summary of Normative Legal Framework Relevant to the Rights of CACLs not to be subjected to Torture or other Cruel, Inhuman or Degrading Treatment or Corporal Punishment**

<b>Domestic Framework</b>	
<b>Constitution of India, 1950</b>	<p>Subjecting a person to torture or other cruel, inhuman or degrading treatment or punishment is contrary to Article 21 as it deprives such individual of his dignity and to Article 20(1) as it amounts to a penalty greater than that which might have been inflicted under the law in force. In <i>Prem Shankar Shukla vs. Delhi Administration</i>,<sup>187</sup> the Supreme Court noted that making a person stand in court for hours amounts to torture and defiles his dignity.</p> <p>Articles 39(e) and 39(f) of the Indian Constitution require the State to ensure that the tender age of the children is not abused and that children are given opportunities to develop in a healthy and dignified manner and their childhood is protected against exploitation. This obligation requires the state to enact legislations to protect the child from corporal punishment and has resulted in corresponding provisions in the RTE Act as well as the JJ Act. In <i>Parents Forum for Meaningful Education v. Union of India</i>,<sup>188</sup> the Delhi High Court held that that the imposition of corporal punishment on the child is not in consonance with his right to life guaranteed by Article 21 of the Constitution.</p>



	<p>Hence, if a child is subjected to torture, or other cruel, inhuman or degrading treatment, or corporal punishment within a state-run OH, compensation may be awarded by the Supreme Court or High Court to the victim or his family. In <i>Saheli, A Women's Resource Centre v. Commissioner of Police, Delhi Police Headquarters</i><sup>189</sup> compensation was awarded by the Supreme Court to a mother whose nine year old son died due to physical assault by the police.</p>
<p><b>JJ Act, 2015</b></p>	<p>The Guiding Principles require all measures to be undertaken to ensure that the child is safe and free from harm, abuse or maltreatment when in the JJ system, and thereafter.<sup>190</sup></p> <p>Section 75, JJ Act 2015, prescribes punishment for cruelty to a child in the form of imprisonment up to three years and/or fine of Rs.1 lakh for those who, having the actual charge of, or control over, a child, assault, abandon, abuse, expose or wilfully neglect the child or cause or procure the child to be assaulted, abandoned, abused, exposed or neglected in a manner likely to cause such child unnecessary mental or physical suffering. If the person committing such an offence is employed by or managing a OH, the penalty is rigorous imprisonment, which can extend to five years and fine upto Rs 5 lakhs. If such child is a disabled child, then the offender shall be liable to twice the penalty provided for the offence.<sup>191</sup></p>

The JJB has an obligation under Section 14(5)(a), while initiating the inquiry, to satisfy itself that a child in conflict with the law has not been subjected to ill treatment by any person and to take corrective steps if necessary.

The phrase “corporal punishment” has been defined in Section 2(24), JJ Act 2015 to mean “subjecting of a child by any person to physical punishment that involves the deliberate infliction of pain as retribution for an offence, or for the purpose of disciplining or reforming the child.”

The imposition of corporal punishment in child care institutions is an offence under Section 82(1), JJ Act 2015 that is punishable with a fine of Rs 10,000 on the first conviction and imprisonment upto three months or fine or both for subsequent offences. The employee of the institution convicted for corporal punishment should be dismissed from service and debarred from working with children directly.<sup>192</sup> If the management of the institution does not cooperate with the inquiry or comply with the orders of the JJB or State Government, the person-in-charge can be punished with imprisonment for a minimum term of three years and fine which may extend to Rs 1 lakh.<sup>193</sup>

## JJ Model Rules, 2016

OH's are required to establish a system to ensure that there is no abuse, neglect and maltreatment and create awareness among staff about what constitutes such abuse and how to respond to it.<sup>194</sup>

In case of physical, sexual or emotional abuse, the incident should be reported by any staff member immediately to the Person-in-charge.<sup>195</sup>

The Person-in-charge should place the report before the JJB and the JJB should take due cognizance, and order a special investigation, directing the local police station or SJPU to register the case, and conduct necessary investigation.<sup>196</sup>

The JJB should also transfer the child to another institution, place of safety, or fit person.<sup>197</sup> The JJB should provide legal aid and counselling to the child victim and also ensure completion of the inquiry.<sup>198</sup> The Person-in-charge of the institution should inform the Chairperson of the Management Committee about the incident and place a copy of the report of the incident and action taken in the next meeting.<sup>199</sup> The JJB could also consult the Children's Committee to inquire into the abuse and exploitation and also take assistance from voluntary organisations, child rights experts, mental health experts or crisis intervention centres while dealing with such matters.<sup>200</sup>

All OH's should have a complaint box at a prominent place in the building and the box should be opened in the presence of a representative of the District Child Protection Unit on a monthly basis.<sup>201</sup>

Complaints of corporal punishment should be presented to the Judicial Magistrate of the First Class nearest to the Child Care Institution and copies should be forwarded to the JJB or CWC.<sup>202</sup>

The Judicial Magistrate should have the case investigated by the Child Welfare Police Officer and take appropriate measures.<sup>203</sup> If the management of the institution does not cooperate with the inquiry or comply with orders of the court, the Judicial Magistrate of the First Class can take cognizance directly or direct the registration of FIR against the person-in-charge of the management of the institution.<sup>204</sup> The JJB, CWC, or State Government can issue directions to the management directly in respect of an incident of corporal punishment and, if they do not comply, the JJB can direct registration of a FIR under Section 82(3).<sup>205</sup> A person dismissed from service or debarred from working directly with children or convicted for subjecting a child to corporal punishment will be disqualified from further appointments under the Act.<sup>206</sup>

	<p>Rule 69 (N) of the JJ Rules, 2016 provides that action taken should be commensurate with the nature and degree of violation and the age of the child. While a child can be warned formally, or be assigned housekeeping tasks, or be given imposition writing or have privileges forfeited, the child can in no circumstance be subjected to corporal punishment or any mental harassment.</p>
<p><b>Right to Free and Compulsory Education Act, 2009</b></p>	<p>Section 17(1), RTE Act, 2009 prohibits the imposition of physical punishment or mental harassment in schools. Contravention of this prohibition will result in disciplinary action.<sup>207</sup></p>
<p><b>NCPCR Guidelines to Eliminate Corporal Punishment in Schools, 2009</b></p>	<p>Although the Guidelines pertain to schools, the NCPCR observed that corporal punishment is rampant in juvenile justice institutions.<sup>208</sup> These guidelines prescribe punishment as a tactic of last resort, and recommend the positive engagement of a child as a solution to disciplining the child.<sup>209</sup></p>
<p><b>Rights of Persons with Disabilities Act, 2016</b></p>	<p>Section 6 (1) mandates the Government to protect persons with disabilities from being subjected to torture, cruel, inhuman or degrading treatment.</p>
<p><b>National Policy on Children, 2013</b></p>	<p>Clause 4.6 (xv) mandates the state to ensure that no child is subjected to any physical punishment or mental harassment. Positive engagement should be promoted to impart discipline.</p>

## International Framework

<p><b>Universal Declaration of Human Rights, 1948</b></p>	<p>Article 5 reads: “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”</p>
<p><b>UN Convention on the Rights of the Child, 1989</b></p>	<p>Article 37(a) prohibits subjecting a child to torture, cruel or other inhuman or degrading treatment or punishment. Article 19(1) obligates States Parties to take legislative, administrative, social and educational measures to protect children from physical or mental violence and injury or abuse while in the care of the parent, legal guardian, or any other person.</p> <p>Disciplinary measures should not undermine the dignity of children in conflict with the law and “corporal punishment, placement in a dark cell, closed or solitary confinement, or any other punishment that may compromise the physical or mental health or well-being of the child concerned” should be strictly barred.<sup>210</sup></p> <p>Corporal punishment is defined by the CRC as “any punishment in which physical force is used and intended to cause some degree of pain or discomfort, however light. Most involves hitting (‘smacking’, ‘slapping’, ‘spanking’) children, with the hand or with an implement – a whip, stick, belt, shoe, wooden spoon, etc. But it can also involve, for example, kicking, shaking or throwing children, scratching, pinching, biting, pulling hair or boxing ears, forcing children to stay in uncomfortable positions, burning, scalding or forced ingestion (for example, washing children’s mouths out with soap or forcing them to swallow hot spices).”<sup>211</sup></p>

	<p>The CRC considers corporal punishment a violation of children’s right to human dignity and physical integrity.<sup>212</sup></p> <p>The CRC states that disciplinary measures should be consistent with the fundamental objectives of institutional care.<sup>213</sup> The Committee is aware of the widespread and intense violence applied against children in State institutions and by State actors including in schools, care centres, residential homes, police custody and justice institutions which may amount to torture and killing of children.<sup>214</sup></p>
<p><b>International Covenant on Civil and Political Rights, 1966</b></p>	<p>Article 7, ICCPR prohibits torture or cruel, inhuman or degrading treatment or punishment. The Human Rights Committee (HRC) observed that the prohibition pertains not just to acts that cause physical pain, but also extends to those that result in mental suffering.<sup>215</sup> According to the HRC, implementation of this provision would require States to appropriately train personnel involved in the custody of individuals subjected to arrest, detention or imprisonment.<sup>216</sup> According to the HRC, an effective way to prevent torture and ill treatment is by systematically reviewing interrogation rules and practices and arrangements in custodial institutions as well as the treatment of people in custody.<sup>217</sup> Appropriate redress mechanisms to address violations should also be put in place by the State.<sup>218</sup></p>

<p><b>UN Convention on the Rights of People with Disabilities, 2006</b></p>	<p>States Parties are required under Article 15(2) to take legislative, administrative, judicial or other measures to prevent persons with disabilities, on an equal basis with others, from being subjected to torture or cruel, inhuman or degrading treatment or punishment.</p>
<p><b>Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, 1984 (CAT)</b></p>	<p>“Torture” is defined to mean any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person.<sup>219</sup> This Convention also covers “other acts of cruel, inhuman or degrading treatment of punishment which do not amount to torture under Article 1”.<sup>220</sup> The Government of India has signed this Convention on 19<sup>th</sup> October 1997, but has not ratified it. Complaints of torture may be raised on the international platform before the Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.</p> <p>The Committee against Torture establishes that State Parties should prohibit, prevent and redress torture in institutions that engage in the care of children, where the failure of the State to intervene encourages and enhances the danger to them.<sup>221</sup></p>
<p><b>UN Standard Minimum Rules for the Administration of Juvenile Justice, 1985 (Beijing Rules)</b></p>	<p>Rule 17(3), Beijing Rules states that “juveniles shall not be subject to corporal punishment.” The explanation to this Rule states that this is in line with article 7 of the ICCPR and the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,<sup>222</sup> as well as the CAT and UNCRC.</p>



**United Nations  
Rules for the  
Protection of  
Juveniles Deprived  
of their Liberty, 1990  
(Havana Rules)**

The Havana Rules mandates the full protection of the physical and mental health of juveniles, including protection from physical, sexual and emotional abuse and exploitation, and immediate action to secure medical attention should be undertaken whenever required.<sup>223</sup> Corporal punishment is strictly prohibited.<sup>224</sup> Labour can be seen solely as a means of education, not imposing and enforcing discipline.<sup>225</sup>

Based on the normative framework, the following are the key attributes of the right not to be subjected to torture or other cruel, inhuman or degrading treatment of punishment:

- **Physical and Mental Integrity of Children living in the OH:** Action taken against errant staff is necessary to ensure physical and mental integrity of children as well as using positive disciplining measures to ensure that no physical/mental harm is caused to a child.
- **Conditions of detention:** The legal mandate with respect to the conditions within the OH should be met and internal monitoring mechanisms should be functional.
- **Redress Mechanisms:** Systems and mechanisms should be in place to identify cases of torture, cruel, inhuman or degrading treatment or punishment, for children to complain, and for authorities to respond to them effectively.

The indicators below have been developed based on the above attributes for use by the JJB, SCPCR, NCPCR, NHRC, State Governments through Inspection Committees, Central

Government, and the High Court-Juvenile Justice Committee (HC-JJC).

Certain indicators require sensitive information-gathering techniques to be used such that children and their families are not endangered or subjected to reprisals. Monitoring authorities will have to interact with children, their families, as well as civil society organisations and individuals who provide legal and psycho-social services to CACLs. The information should be collected in a manner such that the children are not identifiable.

In addition to the below-mentioned indicators, the following should also be assessed:

- Measures to identify children who have been subjected to torture, or other cruel, inhuman or degrading treatment / punishment at the hands of management or staff of OH.
- Type of action taken against the management or staff of OH who has subjected a child therein to torture or other cruel, inhuman or degrading treatment / punishment.
- Measures taken to rehabilitate a child who has been subjected to torture, or other cruel, inhuman or degrading treatment / punishment.
- Time within which such action has been taken against the management or staff of OH.

**INDICATORS FOR MONITORING THE RIGHT NOT TO BE SUBJECTED TO TORTURE OR OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR CORPORAL PUNISHMENT (Torture and CIDT) <sup>32</sup>**

	<b>Physical and Mental Integrity of Children detained in the OH</b>	<b>Conditions of detention</b>	<b>Redress Mechanisms</b>
<b>Structural</b>	<ul style="list-style-type: none"> <li>• Functional Management Committee and Children’s Committee in every OH.</li> <li>• Date on which the State Rules came into force.</li> <li>• Number and location of Children’s Suggestion Boxes in Observation Homes.</li> <li>• Child Protection Policy and the date on which it was issued.</li> <li>• Code of conduct for staff of the OH and service providers, including rules for dealing with and disciplining children.</li> </ul>		
<b>Process</b>	<ul style="list-style-type: none"> <li>• Percentage of received complaints on the right not to be tortured and corporal punishment received, and special investigations ordered by the JJB, inquiries by the NCPCR, SCPR, NHRC, or SHRC and percentage of these responded to effectively by the State Government.</li> <li>• Number of cases in which registration of FIR was directed against the management/ staff of the OH.</li> </ul>		

<sup>32</sup> Indicators for this tool have been drawn from the illustrative indicators on the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment (UDHR) in OHCHR (2012), *Human Rights Indicators – A Guide to Measurement and Implementation*, p.91.

	<b>Physical and Mental Integrity of Children detained in the OH</b>	<b>Conditions of detention</b>	<b>Redress Mechanisms</b>
	<ul style="list-style-type: none"> <li>• Number of reports received from the Person-in-charge pertaining to the right not to be tortured including corporal punishment and nature of the action taken.</li> <li>• Percentage and category of staff within the OH trained in rules of conduct concerning proportional use of force and detention.</li> <li>• Percentage and category of staff within the OH trained in recognizing torture and dealing with it, and in positively disciplining children.</li> <li>• Number of times the Children’s Committee was consulted in cases of right not to be tortured including corporal punishment.</li> <li>• Mention in minutes of the management committee and verified through minutes maintained by the children’s committee of reports of unnatural death, abuse, torture, violence and action taken.</li> <li>• Number of corporal punishment complaints reported by the District Child Protection Unit to Judicial Magistrates of the First Class.</li> <li>• Percentage of suggestions in the Children’s Suggestion Box related to the right not to be tortured and effectively addressed.</li> </ul>		

	<b>Physical and Mental Integrity of Children detained in the OH</b>	<b>Conditions of detention</b>	<b>Redress Mechanisms</b>
	<ul style="list-style-type: none"> <li>• Percentage of the OH staff formally investigated for allegations of physical and/or non- physical abuse, corporal punishment or crime against the detained children.</li> <li>• Percentage of formal investigation of the OH staff resulting in disciplinary action or prosecution.</li> <li>• Percentage of employees convicted for subjecting a child to corporal punishment and dismissed from employment.</li> <li>• Number of children given formal warnings, assigned house-keeping tasks, given imposition writing, and whose privileges have been forfeited for unacceptable behavior.</li> </ul>	<ul style="list-style-type: none"> <li>• Actual occupancy as a proportion of the capacity of the OH.</li> <li>• Number of staff per inmate.</li> <li>• Percentage of OHs with facilities to segregate children alleged to be in conflict with law by sex, age, nature of offence, etc.</li> </ul>	<ul style="list-style-type: none"> <li>• Percentage of complaints in the Complaints Box in all OHs in the State related to the right not to be tortured and CIDT including corporal punishment and effectively addressed.</li> <li>• Percentage of complaints received by the JJBs in the State related to right not to be tortured and CIDT including corporal punishment in the OH and responded to effectively.</li> </ul>

	<b>Physical and Mental Integrity of Children detained in the OH</b>	<b>Conditions of detention</b>	<b>Redress Mechanisms</b>
			<ul style="list-style-type: none"> <li>• Percentage of complaints received by Person-in-charge and Management Committees in all OHs relating to right not to be tortured and CIDT including corporal punishment and responded to effectively.</li> <li>• Percentage of complaints about unnatural death, cruelty, torture, abuse or violence brought to the notice of concerned authorities by anyone without delay.</li> <li>• Percentage of girls reporting forms of violence (physical, sexual, or psychological).</li> </ul>

	<b>Physical and Mental Integrity of Children detained in the OH</b>	<b>Conditions of detention</b>	<b>Redress Mechanisms</b>
<b>Outcome</b>	<ul style="list-style-type: none"> <li>• Percentage of ICPS funds spent on trainings for Person-in-charge and staff of the OH on torture against children and positive disciplining.</li> <li>• Incidence of death and/or physical injury resulting from use of torture, cruel, inhuman or degrading treatment or punishment, including corporal punishment in the OH.</li> <li>• Percentage of children who experienced torture, cruel, inhuman or degrading treatment or punishment including corporal punishment in the OH.</li> <li>• Reported cases of torture, cruel, inhuman or degrading treatment or punishment including corporal punishment perpetrated by the person-in-charge or employees of the OH.</li> <li>• Percentage of children held in prolonged solitary confinement.</li> <li>• Percentage of complaints about unnatural death, cruelty, torture, abuse or violence brought to the notice of concerned authorities without delay</li> <li>• Reported cases of torture or CIDT perpetrated by the staff of CCI or any other person acting under their authority or with complicity, tolerance, or acquiescence, but without any due judicial process.</li> <li>• Percentage of child victims of torture or CIDT in the OH who received compensation and rehabilitation.</li> </ul>		
<p><b>All indicators should be disaggregated by age, sex, language, religion, caste, disability, and nature of offence.</b></p>			

### 4.2.2. Tool to Monitor the Right not to be subjected to Sexual Abuse

Children in the custody of the State must be protected against sexual violence and it is the role of internal and external monitoring bodies to identify the extent of sexual abuse in CCIs and take steps to redress the situation.

Sexual abuse is not uncommon within CCIs. This abuse is facilitated and perpetuated by the failure to segregate homes as prescribed on the basis of age and gender,<sup>33</sup> the absence of inspection committees, and effective oversight, absence of a child protection policies and mechanisms to detect and respond to sexual abuse within the CCI.

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33 JJ MR, 2016, Rule 40.



**Table No. 8: Summary of Normative Legal Framework Relevant to the Rights of ACLs not to be subjected to sexual abuse**

Domestic Framework	
<b>Constitution of India, 1950</b>	<p>Article 39 (f) of the Constitution requires the State to direct its policies to secure “that childhood and youth are protected against exploitation and against moral and material abandonment.” In <i>Sakshi v. Union of India</i>,<sup>226</sup> the petitioner argued that limiting the understanding of “rape” to abuse by penile/vaginal penetration only, denies majority of women and children access to adequate redress in violation of Article 14 and 21 of the Constitution. This arbitrary and narrow interpretation renders the effectiveness of redress meaningless, in violation of Article 15(3) of the Constitution of India. The Court disposed of the writ petition by laying down guidelines over and above those laid down in laws, stating that during a trial of child sex abuse or rape, a screen or some such arrangements could be made to prevent the victim from seeing the accused, the questions in cross examination of the victim should be given to the Judge in advance and should not be unclear or embarrassing, and that while testifying, victims should be allowed sufficient breaks.</p>

<b>Indian Penal Code, 1860</b>	According to Section 376(1)(d), if a man on the management or on the staff of a children’s institution, commits rape on any inmate of such institution, he shall be punished with rigorous imprisonment for a minimum of ten years and a maximum of life, and shall be liable to pay a fine.
<b>JJ Act, 2015</b>	All authorities and persons responsible for implementing the JJ Act should take measures to ensure that the child is safe and is not subjected to any harm, abuse or maltreatment while in contact with the care and protection system. <sup>227</sup>
<b>JJ Model Rules, 2016</b>	OH’s are required to establish a system to ensure that there is no abuse, neglect and maltreatment and create awareness among staff about what constitutes such abuse and how to respond to it. <sup>228</sup> In case of physical, sexual or emotional abuse, the incident should be reported by any staff member immediately to the Person-in-charge. <sup>229</sup> The Person-in-charge should place the report before the JJB and the JJB should take due cognizance, and order a special investigation, directing the local police station or SJPU to register the case, and conduct necessary investigation. <sup>230</sup>

The JJB should also transfer the child to another institution, place of safety, or fit person.<sup>231</sup> The JJB should provide legal aid and counselling to the child victim and also ensure completion of the inquiry.<sup>232</sup>

The Person-in-charge of the institution should inform the Chairperson of the Management Committee about the incident and place a copy of the report of the incident and action taken in the next meeting.<sup>233</sup> The JJB could also consult the Children's Committee to inquire into the abuse and exploitation and also take assistance from voluntary organisations, child rights experts, mental health experts or crisis intervention centres while dealing with such matters.<sup>234</sup>

The JJB can order tests for pregnancy or diseases for victims of sexual offences, if required.<sup>235</sup> The DCPU should facilitate the procedures under the Medical Termination of Pregnancy Act, 1971, if necessary.<sup>236</sup>

People associated with the OH should not have been convicted of offences or involved in an act of child abuse or involved in an immoral act or an offence involving moral turpitude. Police verification is mandatory before appointing a person in a Child Care Institution.<sup>237</sup>

**Protection of Children from Sexual Offences Act, 2012**

Penetrative sexual assault<sup>238</sup> by a person on the management or staff of an OH constitutes aggravated penetrative sexual assault under Section 5(d), Protection of Children from Sexual Offences Act, 2012 and is punishable with fine and rigorous imprisonment for a minimum term of 10 years which can extend to life imprisonment.

Sexual assault by a person on the management or staff of an OH constitutes aggravated sexual assault under Section 9(d), Protection of Children from Sexual Offences Act, 2012 and is punishable with fine and imprisonment for a minimum term of five years which can extend to seven years.

Section 19(1), POCSO Act requires a person who has the knowledge about the commission of a sexual offence or an apprehension that it is likely to be committed to report it to the local police or SJPU. Failure to report the commission of a sexual offence is an offence under Section 21 and attracts a punishment of imprisonment of upto one year and fine if the failure is on the part of a person-in-charge of an institution.

Section 33(8) of the POCSO Act provides for payment of compensation to the child by the State Government “for any physical or mental trauma caused to him or for immediate rehabilitation.”

<p><b>Rights of Persons with Disabilities, Act</b></p>	<p>Section 92 (d) punishes a person who is in a position to dominate the will of a child or woman with disability and uses that position to exploit her sexually. Section 7 requires the appropriate Government to take measures to protect persons with disabilities from all forms of abuse, violence and exploitation.</p>
<p><b>National Policy on Children, 2013</b></p>	<p>Clause 4.9 entrusts the State with the responsibility to protect children from abuse, harm, violence and sexual exploitation.</p>
<p><b>International Framework</b></p>	
<p><b>UN Convention on the Rights of the Child, 1989</b></p>	<p>Article 19(1) requires States Parties to implement all suitable measures to protect children from sexual abuse. Article 19(2) further elaborates that adequate and appropriate safety measures must include procedures for setting up social programmes to ensure protection to the child. Further, it requires the States Parties to adopt effective measures to identify, report, refer, investigate, treat and follow-up cases of child maltreatment.</p> <p>Article 34 of the Convention requires States Parties to ensure protection to the child from all forms of sexual exploitation and sexual abuse.<sup>239</sup></p>

	<p>Sexual abuse and exploitation has been defined to include, “(a) The inducement or coercion of a child to engage in any unlawful or psychologically harmful sexual activity; (b) The use of children in commercial sexual exploitation; and (c) The use of children in audio or visual images of child sexual abuse; (d) Child prostitution, sexual slavery, sexual exploitation in travel and tourism, trafficking (within and between countries) and sale of children for sexual purposes and forced marriage.”<sup>240</sup> According to the CRC, many children experience sexual victimization which is not accompanied by physical force or restraint but which is nonetheless psychologically intrusive, exploitive and traumatic.<sup>241</sup></p>
<p><b>Convention on the Elimination of All forms of Discrimination against Women, 1979</b></p>	<p>Article 2 requires State Parties to ensure that public authorities and institutions refrain from engaging in any act or practice of discrimination against women.</p>
<p><b>UN Convention on the Rights of People with Disabilities, 2006</b></p>	<p>Article 16 requires States Parties to take appropriate measures to protect persons with disabilities from sexual abuse. When there is violence and abuse, it must be identified, investigated, prosecuted and measures to promote recovery must be instituted.<sup>242</sup></p>

**United Nations  
Rules for the  
Protection  
of Juveniles  
Deprived of their  
Liberty, 1990  
(Havana Rules)**

Rule 87(d) stipulates that the staff must ensure the absolute protection of the physical and mental well-being of children. This specifically includes protection from physical, sexual and emotional abuse and exploitation.<sup>243</sup>

Based on the normative framework, the following are the key attributes of the right not to be subjected to sexual abuse:

- **Physical and Mental Integrity of Children living in the OH:** Action taken against errant staff is necessary to ensure physical and mental integrity of children. Screening of children for STIs and pregnancy is also necessary to ensure that children are not being subjected to sexual abuse.
- **Conditions of detention:** The legal mandate with respect to the conditions within the OH should be met and internal monitoring mechanisms should be functional.
- **Redress Mechanisms:** Systems and mechanisms should be in place to identify cases of sexual abuse, for children to complain, and for authorities to respond to them effectively.

The indicators below have been developed based on the above attributes for use by the JJB, SCPCR, NCPCR, NHRC, State Governments through Inspection Committees, Central Government, and the High Court-Juvenile Justice Committee (HC-JJC).

Certain indicators require sensitive information-gathering techniques to be used such that children and their families are not endangered or subjected to reprisals. Monitoring authorities

will have to interact with children, their families, as well as civil society organisations and individuals who provide legal and psycho-social services to CACLs. The information should be collected in a manner such that the children are not identifiable. In addition to the below-mentioned indicators, the following should also be assessed:

- Measures to identify children who have been subjected to sexual abuse.
- Type of action taken against the management or staff of OH who has subjected a child to sexual abuse.
- Measures taken to rehabilitate a child who has been subjected to sexual abuse in the OH.
- Time within which such action has been taken against the management or staff of OH.
- Measures taken to educate children and staff about safe sexuality, natural expressions of sexuality among children, and dealing with children who exhibit harmful sexual behaviour.



## INDICATORS FOR MONITORING THE RIGHT NOT TO BE SUBJECTED TO SEXUAL ABUSE<sup>34</sup>

	<b>Physical and Mental Integrity of Children detained in the OH</b>	<b>Conditions of detention</b>	<b>Redress Mechanisms</b>
<b>Structural</b>	<ul style="list-style-type: none"> <li>• Functional Management Committee and Children’s Committee in every OH.</li> <li>• Date on which the State Rules came into force.</li> <li>• Number and location of Children’s Suggestion Boxes in OHs.</li> <li>• Child Protection Policy and the date on which it was issued.</li> <li>• Code of conduct for staff of the OH and service providers, including rules for appropriate conduct and behaviour with children.</li> <li>• Date on which the system to ensure no abuse or maltreatment takes places within the OH came into existence.</li> <li>• Sex profile of the staff of the OH.</li> </ul>		
<b>Process</b>	<ul style="list-style-type: none"> <li>• Percentage of received complaints of sexual offences within the OH received, and special investigations ordered by the JJB, inquiries by the NCPCR, SCPR, NHRC, or SHRC and percentage of these responded to effectively by the State Government.</li> <li>• Number of cases in which registration of FIR was directed against the management/ staff of the OH for alleged commission of a sexual offence.</li> </ul>		

<sup>34</sup> Indicators for this tool have been drawn from the illustrative indicators on the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment (UDHR) Human Rights Indicators, (2012), p. 91.

	<b>Physical and Mental Integrity of Children detained in the OH</b>	<b>Conditions of detention</b>	<b>Redress Mechanisms</b>
	<ul style="list-style-type: none"> <li>• Number of cases in which registration of FIR was directed against a child or children of the OH for alleged commission of a sexual offence.</li> <li>• Number of reports received from the Person-in-charge pertaining to sexual offences and action taken.</li> <li>• Percentage and category of staff within the OH trained in rules of conduct concerning behaviour with children.</li> <li>• Percentage and category of staff within the OH trained in recognizing child sexual abuse and responding.</li> <li>• Number of times the Children’s Committee was consulted in cases of sexual offences within the OH.</li> <li>• Percentage of suggestions in the Children’s Suggestion Box related to sexual offences and effectively addressed.</li> <li>• Number of cases in which pregnancy tests and screening for sexually transmitted diseases tests were carried out for children living in the OH.</li> <li>• Percentage of staff whose police verification has been completed.</li> </ul>		

	<b>Physical and Mental Integrity of Children detained in the OH</b>	<b>Conditions of detention</b>	<b>Redress Mechanisms</b>
	<ul style="list-style-type: none"> <li>• Percentage of the OH staff formally investigated for allegations of sexual offences against the detained children.</li> <li>• Percentage of formal investigation of the OH staff resulting in disciplinary action or prosecution.</li> <li>• Percentage of employees convicted for sexual offences.</li> <li>• Percentage of children found pregnant while living in the OH.</li> <li>• Percentage of children diagnosed with STI while residing in the OH.</li> </ul>	<ul style="list-style-type: none"> <li>• Actual occupancy as a proportion of the capacity of the OH.</li> <li>• Number of staff per inmate.</li> <li>• Percentage of OHs with facilities to segregate children alleged to be in conflict with law by sex, age, nature of offence, etc.</li> </ul>	<ul style="list-style-type: none"> <li>• Percentage of complaints in the Complaints Box in all OHs in the State related to sexual offences and effectively addressed.</li> <li>• Percentage of complaints received by the JJBs in the State related to sexual offences in the OH and responded to effectively.</li> <li>• Percentage of complaints received by Person-in-charge and Management Committees in all OHs relating to sexual offences and responded to effectively.</li> <li>• Percentage of complaints about sexual offences brought to the notice of concerned authorities by anyone without delay.</li> </ul>

	<b>Physical and Mental Integrity of Children detained in the OH</b>	<b>Conditions of detention</b>	<b>Redress Mechanisms</b>
			<ul style="list-style-type: none"> <li>• Percentage of girls and boys within the OH reporting sexual offences.</li> </ul>
<b>Outcome</b>	<ul style="list-style-type: none"> <li>• Percentage of ICPS funds spent on trainings for Person-in-charge and staff of the OH on the POCSO Act, 2012, and prevention of sexual abuse within the OH.</li> <li>• Percentage of children who experienced sexual abuse in the OH.</li> <li>• Reported cases of sexual offences perpetrated by the person-in-charge or employees of the OH.</li> <li>• Percentage of complaints about sexual offences brought to the notice of concerned authorities without delay.</li> <li>• Cases of sexual offences perpetrated by the staff of CCI or any other person acting under their authority or with complicity, tolerance, or acquiescence, brought to attention but not reported.</li> <li>• Percentage of children OH who received compensation and rehabilitation.</li> <li>• Incidence of death and physical injury resulting from sexual abuse in the OH.</li> </ul>		
<p><b>All indicators should be disaggregated by age, sex, language, religion, caste, disability, and nature of offence.</b></p>			

## CONCLUSION

Monitoring the rights of children alleged to be in conflict with law provides a unique and valuable opportunity to mobilize and effect change in the lives of vulnerable children. Authentic and effective monitoring of the implementation of the Act and Rules

will help to vividly demonstrate that India is seriously committed to fulfil its obligation under Article 4 of the UNCRC, which requires States Parties to undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. These monitoring tools provide mechanisms to help identify whether all measures are being taken to ensure realization of these select rights under the Act as specifically required under Article 25, UNCRC, which, states -

States Parties recognize the right of a child who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health, to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement.

The JJ Act 2015 and the JJ Model Rules, 2016 have not only paved the way for greater linkages, co-ordination and involvement of the voluntary sector in service delivery to aid in the effective implementation of the law, but more importantly to also contribute to independent evaluation of structures.<sup>35</sup> The Act provides the means through which the State in its' *parens patriae* role, and adopting a rights based approach, demonstrates its responsibility for (*and to*) children, who for various reasons cannot be looked after by their parent/s/guardian, ensuring that their constitutional right to a life, with dignity is respected. Independent evaluations envisaged in the Act and Rules is one important way in which 'we the people', can exercise vigilance on how the State performs this vital role.

In this regard, Article 12 enables a radical paradigm shift by ordaining that children mandatorily be recognized as persons

35 JJ Act, 2015, Section 55(1) and JJ MR, 2016, Rule 42.

with agency, who have a right to participate in matters concerning them, and this includes the review of the way they are treated in the juvenile justice system.

Children and adolescents within the system, and those who have been discharged, should be engaged as partners in monitoring processes, designed scientifically and under the guidance of Ethics Committees so as to not place such children at further risk of harm, due to reprisal.

Child rights actors and duty bearers are therefore encouraged to use this toolkit to trigger processes aimed at developing interagency management information systems that track important indicators of service and system performance, as part of a strong evaluation strategy. Such an evaluation strategy should naturally include comprehensive strategic plans, principles, tools and collaborative partnerships, etc., all aimed at triggering attitudinal and systemic change. This could enable effective data collection on children in their District/State, and to use it constructively in order to seek accountability from duty bearers in the implementation of the law. It is hoped that the state moves towards making a greater commitment to invest in child protection, and in social auditing of the implementation of the JJ Act. This can effectively be undertaken through a constructive and collaborative approach, engaging with and enabling academic institutions, non-governmental organizations and children to audit the way in which justice, care, protection, treatment, development, rehabilitation and re-integration services are being delivered to children under this Act, and take necessary action in case of deprivation of or violation of children's rights<sup>36</sup>. In this regard, the JJ Model Rules, also provide for the

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36 See Arlene Manoharan, Recommendations related to Social Audit on Juvenile Justice for inclusion in the XII Plan, available at <https://www.nls>.

State Government to take action against any officer/institution, statutory body, etc., who fails to comply with the provisions of the Act and the Rules framed thereunder, after due inquiry and simultaneously make alternative arrangements for discharge of functions for effective implementation of the Act.<sup>37</sup>

Hon'ble Mr. Justice Madan B. Lokur, in his Concluding Remarks at the National Consultation on The Effective Implementation of the Juvenile Justice (Care and Protection of Children) Act, 2015 - Focus on Rehabilitation Services and Effective Linkages with the POCSO Act, 2012, raised a clarion call to all stakeholders to "sustain their efforts in mission mode, in order to help realize the vision of the Constitution and the rehabilitative goal of the JJ Act".<sup>38</sup> Efforts in this area can not only hold the State to account and positively impact the effective implementation of the JJ Act, 2015, but in a more concrete and meaningful way - enhance the quality of life vulnerable children and families while building a greater trust and faith in the juvenile justice system as a whole.

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ac.in/ccl/jjdocuments/jjsocialaudit2015.pdf

37 JJ MR, 2016, Rule 93.

38 The Effective Implementation of the Juvenile Justice (Care and Protection of Children) Act, 2015 - Focus on Rehabilitation Services and Effective Linkages with the POCSO Act, 2012, p.17, available at [http://unicef.in/Uploads/Publications/Resources/pub\\_doc147.pdf](http://unicef.in/Uploads/Publications/Resources/pub_doc147.pdf)

## Annexure 1: Checklists on Select Rights of CACL in Observation Homes

### 1. Checklist on the Right to Legal Aid

Name of Observation Home:

Address:

Name and contact details of Person-in-charge:

Monitoring Period:

Total number of children:

S. No.	Particulars	Remarks
1.	Number of Legal Aid Lawyers (LAL) attached to jurisdictional JJB.	
2.	Average number of weekly visits by LAL to OH.	
3.	Physical arrangements in OH for meetings between child and lawyer.	
4.	Restrictions, if any, place on number of meetings between child and lawyer.	
5.	Timings of meetings between child and lawyer.	
6.	Percentage of children in the OH represented by LALs.	
7.	Percentage of children in the OH represented by private lawyers.	
8.	Distribution of cases among the LALs	



9.	Percentage of children/families paying for legal services provided by a LAL be it in the form of 'fees', in cash or in kind.	
10.	Complaints received about payment demanded or made to LALs by CACLs to JJBs, Management Committee, or State Legal Services Authority and redressed.	
11.	Percentage of children appearing before the JJB without legal representation at the first hearing.	
12.	Number of children residing in the OH, who are required to be produced before a JJB located in another district and their access to legal aid.	
13.	Percentage of children appearing before the JJB without legal representation for two or more hearings.	
14.	Average time taken for a LAL to be assigned to a CACL from the date of apprehension.	
15.	Number of complaints received by JJBs, SCPCR, SLSAs about the services provided by LALs and redressed.	
16.	Nature of action taken on complaints against LALs.	

17.	Number of formal inquiries or disciplinary action against LALs providing services to CACL living in the OH.	
18.	Percentage of defence lawyers including legal aid lawyers with specialized training on the JJ Act, 2015.	
19.	Number and frequency of training programs held for LALs representing CACL.	
20.	Number and frequency of training programs held for JJBs, SJPU, police, DCPU, and staff of the OH in which the CACL's right to legal aid is addressed.	
21.	Number and frequency of awareness campaigns held for CACL and their families on the right to legal aid.	
22.	Number and nature of media campaigns on the right to legal aid of CACL.	
23.	Number and percentage of children living in the OH represented by LAL.	
24.	Number and percentage of children living in OHs who were not represented before the JJB on all dates of the hearings.	
25.	Reported cases of misconduct by LALs to State or District Legal Services Authority.	

## Disaggregated Data based on Identity

	Total	Male	Female	Caste (Male; Female)	Religion (Male; Female)	Disability (Male; Female)	Tribe (Male; Female)	Offence (Petty, Serious, Heinous)	Language	Education (Male; Female; Caste/ Tribe)	Family Income (Male; Female; Caste/ Tribe)
7-12 years											
Number of children represented by LAL											
Number of children represented by private lawyers											
Number of children with no legal representation on the first hearing											
Number of children with no legal representation on two or more hearings.											

	Total	Male	Female	Caste (Male; Female)	Religion (Male; Female)	Disability (Male; Female)	Tribe (Male; Female)	Offence (Petty, Serious, Heinous)	Language	Education (Male; Female; Caste/ Tribe)	Family Income (Male; Female; Caste/ Tribe)
Number of children not represented at all.											
Number of children whose families had to pay fees in cash or kind to LAL.											
How often did the lawyer/ LAL explain procedures & consequences? [1. Never 2. Rarely 3. Often 4. Very Often]											
How often did the lawyer seek opinion on cases strategy or steps? [1. Never 2. Rarely 3. Often 4. Very Often]											

	Total	Male	Female	Caste (Male; Female)	Religion (Male; Female)	Disability (Male; Female)	Tribe (Male; Female)	Offence (Petty, Serious, Heinous)	Language	Education (Male; Female; Caste/ Tribe)	Family Income (Male; Female; Caste/ Tribe)
13-15 years											
Number of children represented by LAL											
Number of children represented by private lawyers											
Number of children with no legal representation on the first hearing											
Number of children with no legal representation on two or more hearings.											

	Total	Male	Female	Caste (Male; Female)	Religion (Male; Female)	Disability (Male; Female)	Tribe (Male; Female)	Offence (Petty, Serious, Heinous)	Language	Education (Male; Female; Caste/ Tribe)	Family Income (Male; Female; Caste/ Tribe)
Number of children not represented at all.											
Number of children whose families had to pay fees in cash or kind to LAL.											
How often did the lawyer/LAL explain procedures & consequences? [1. Never 2. Rarely 3. Often 4. Very Often]											
How often did the lawyer seek opinion on cases strategy or steps? [1. Never 2. Rarely 3. Often 4. Very Often]											

	Total	Male	Female	Caste (Male; Female)	Religion (Male; Female)	Disability (Male; Female)	Tribe (Male; Female)	Offence (Petty, Serious, Heinous)	Language	Education (Male; Female; Caste/ Tribe)	Family Income (Male; Female; Caste/ Tribe)
16-18 years											
Number of children represented by LAL											
Number of children represented by private lawyers											
Number of children with no legal representation on the first hearing											
Number of children with no legal representation on two or more hearings.											

	Total	Male	Female	Caste (Male; Female)	Religion (Male; Female)	Disability (Male; Female)	Tribe (Male; Female)	Offence (Petty, Serious, Heinous)	Language	Education (Male; Female; Caste/ Tribe)	Family Income (Male; Female; Caste/ Tribe)
Number of children not represented at all.											
Number of children whose families had to pay fees in cash or kind to LAL.											
How often did the lawyer/ LAL explain procedures & consequences? [1. Never 2. Rarely 3. Often 4. Very Often]											
How often did the lawyer seek opinion on cases strategy or steps? [1. Never 2. Rarely 3. Often 4. Very Often]											



## 2. Checklist on the Right to Education

Name of Observation Home:

Address:

Name and contact details of Person-in-charge:

Monitoring Period:

Total number of children:

S. No.	Particulars	Remarks
1.	Number of school's close to the OH	
2.	Number of qualified teachers appointed to impart education to children within the OH	
3.	Number of special educators providing services to children with special needs in the OH.	
4.	Facilities for special education provided to children in the OH with special needs, within the institution and outside.	
5.	Provision of classrooms, vocational training labs, playground, indoor games, computer lab, number of computers in every OH.	
6.	Percentage of children living in the OH who have never received formal education.	
7.	Percentage of children who had to discontinue schooling after coming to the OH.	

8.	Percentage of children identified as having special educational needs.	
9.	Percentage of children provided with coaching and/or tuitions to assist in their education.	
10.	Percentage of children attending mainstream inclusive schools, bridge school, or open schooling	
11.	Number and type of short-term vocational training courses offered in OH	
12.	Number of suggestions in the Children's Suggestion Box related to education and manner in which it was addressed.	
13.	Number of books procured on an annual basis and the languages.	
14.	Number of magazines and newspapers subscribed to on an annual basis (which adhere to the use and interests of the children).	
15.	Number of children accessing the library and issuing book, magazines, etc.	
16.	Percentage of attendance in educational programmes outside the OH.	
17.	Percentage of attendance in educational programmes held inside the OH.	

## Disaggregated Data based on Identity

	Total	Male	Female	Caste (Male; Female)	Religion (Male; Female)	Disability (Male; Female)	Tribe (Male; Female)	Offence (Petty, Serious, Heinous)	Language	Education (Male; Female; Caste/ Tribe)	Family Income (Male; Female; Caste/ Tribe)
7-12 years											
Number of children attending school											
Number of children receiving vocational training											
Number of children receiving coaching classes											
Number of children receiving special education											

	Total	Male	Female	Caste (Male; Female)	Religion (Male; Female)	Disability (Male; Female)	Tribe (Male; Female)	Offence (Petty, Serious, Heinous)	Language	Education (Male; Female; Caste/ Tribe)	Family Income (Male; Female; Caste/ Tribe)
Number of children receiving education within the OH											
Number of children denied admission in school											
How often do children access the library services/ computer rooms [1. Never 2. Rarely 3. Often 4. Very Often]											

	Total	Male	Female	Caste (Male; Female)	Religion (Male; Female)	Disability (Male; Female)	Tribe (Male; Female)	Offence (Petty, Serious, Heinous)	Language	Education (Male; Female; Caste/ Tribe)	Family Income (Male; Female; Caste/ Tribe)
How often do children miss school/ classes [1. Never 2. Rarely 3. Often 4. Very Often]											
13-15 years											
Number of children attending school											
Number of children receiving vocational training											
Number of children receiving coaching classes											

	Total	Male	Female	Caste (Male; Female)	Religion (Male; Female)	Disability (Male; Female)	Tribe (Male; Female)	Offence (Petty, Serious, Heinous)	Language	Education (Male; Female; Caste/Tribe)	Family Income (Male; Female; Caste/Tribe)
Number of children receiving special education											
Number of children receiving education within the OH											
Number of children denied admission in school											
How often do children access the library services/ computer rooms [1. Never 2. Rarely 3. Often 4. Very Often]											

	Total	Male	Female	Caste (Male; Female)	Religion (Male; Female)	Disability (Male; Female)	Tribe (Male; Female)	Offence (Petty, Serious, Heinous)	Language	Education (Male; Female; Caste/Tribe)	Family Income (Male; Female; Caste/Tribe)
How often do children miss school/ classes [1. Never 2. Rarely 3. Often 4. Very Often]											
16-18 years											
Number of children attending school											
Number of children receiving vocational training											
Number of children receiving coaching classes											

	Total	Male	Female	Caste (Male; Female)	Religion (Male; Female)	Disability (Male; Female)	Tribe (Male; Female)	Offence (Petty, Serious, Heinous)	Language	Education (Male; Female; Caste/ Tribe)	Family Income (Male; Female; Caste/ Tribe)
Number of children receiving special education											
Number of children receiving education within the OH											
Number of children denied admission in school											
How often do children access the library services/ computer rooms [1. Never 2. Rarely 3. Often 4. Very Often]											



	Total	Male	Female	Caste (Male; Female)	Religion (Male; Female)	Disability (Male; Female)	Tribe (Male; Female)	Offence (Petty, Serious, Heinous)	Language	Education (Male; Female; Caste/ Tribe)	Family Income (Male; Female; Caste/ Tribe)
How often do children miss school/ classes [1. Never 2. Rarely 3. Often 4. Very Often]											

### 3. Checklist on the Right to Recreation

Name of Observation Home:

Address:

Name and contact details of Person-in-charge:

Monitoring Period:

Total number of children:

S. No.	Particulars	Remarks
1.	Does the OH have a playground?	
2.	Does the OH provide space for gardening?	
3.	Does the OH have a library?	
4.	Does the OH comply with the building norms for recreation rooms?	
5.	Is the OH linked to a cultural centre?	
6.	Number of personnel, NGOs, institutions, voluntary organizations and individuals formally involved in ensuring the right to recreation.	
7.	Number of picnics and outings conducted on an annual basis.	
8.	Number of cultural events conducted	
9.	Number of sports competitions conducted on an annual basis	
10.	Number and type of classes such as music, yoga, and dance held on a weekly basis.	

11.	Number of picnics and outings conducted on an annual basis.	
12.	Number of books procured on an annual basis and the languages.	
13.	Number of magazines and newspapers subscribed to on an annual basis.	
14.	Number of children accessing the library and issuing book, magazines, etc.	
15.	Proportion of unstructured play time in the daily schedule of children.	
16.	Proportion of suggestions in the Children's Suggestion Box related to recreation and effectively addressed.	

## Disaggregated Data based on Identity

	Total	Male	Female	Caste (Male; Female)	Religion (Male; Female)	Disability (Male; Female)	Tribe (Male; Female)	Offence (Petty, Serious, Heinous)	Language	Education (Male; Female; Caste/ Tribe)	Family Income (Male; Female; Caste/ Tribe)
7-12 years											
Number of children participating in any recreational activity.											
Number of children participating in cultural events in the community											
Number of children participating in sporting events and competitions											

	Total	Male	Female	Caste (Male; Female)	Religion (Male; Female)	Disability (Male; Female)	Tribes (Male; Female)	Offence (Petty, Serious, Heinous)	Language	Education (Male; Female; Caste/ Tribe)	Family Income (Male; Female; Caste/ Tribe)
Number of children participating in cultural events outside their community											
Number of children with disabilities participating in sporting and cultural events											
Number of children attending Yoga, dance, music classes											

	Total	Male	Female	Caste (Male; Female)	Religion (Male; Female)	Disability (Male; Female)	Tribe (Male; Female)	Offence (Petty, Serious, Heinous)	Language	Education (Male; Female; Caste/Tribe)	Family Income (Male; Female; Caste/Tribe)
How often do children use the playground [1. Never 2. Rarely 3. Often 4. Very Often]											
How often do children use the recreational services [1. Never 2. Rarely 3. Often 4. Very Often]											
13-15 years											
Number of children participating in any recreational activity.											

	Total	Male	Female	Caste (Male; Female)	Religion (Male; Female)	Disability (Male; Female)	Tribe (Male; Female)	Offence (Petty, Serious, Heinous)	Language	Education (Male; Female; Caste/ Tribe)	Family Income (Male; Female; Caste/ Tribe)
Number of children participating in cultural events in the community											
Number of children participating in sporting events and competitions											
Number of children participating in cultural events outside their community											

	Total	Male	Female	Caste (Male; Female)	Religion (Male; Female)	Disability (Male; Female)	Tribes (Male; Female)	Offence (Petty, Serious, Heinous)	Language	Education (Male; Female; Caste/ Tribe)	Family Income (Male; Female; Caste/ Tribe)
Number of children with disabilities participating in sporting and cultural events											
Number of children attending Yoga, dance, music classes											
How often do children use the playground [1. Never 2. Rarely 3. Often 4. Very Often]											



	Total	Male	Female	Caste (Male; Female)	Religion (Male; Female)	Disability (Male; Female)	Tribe (Male; Female)	Offence (Petty, Serious, Heinous)	Language	Education (Male; Female; Caste/ Tribe)	Family Income (Male; Female; Caste/ Tribe)
How often do children use the recreational services [1. Never 2. Rarely 3. Often 4. Very Often]											
16-18 years											
Number of children participating in any recreational activity.											
Number of children participating in cultural events in the community											

	Total	Male	Female	Caste (Male; Female)	Religion (Male; Female)	Disability (Male; Female)	Tribe (Male; Female)	Offence (Petty, Serious, Heinous)	Language	Education (Male; Female; Caste/ Tribe)	Family Income (Male; Female; Caste/ Tribe)
Number of children participating in sporting events and competitions											
Number of children participating in cultural events outside their community											
Number of children with disabilities participating in sporting and cultural events											

	Total	Male	Female	Caste (Male; Female)	Religion (Male; Female)	Disability (Male; Female)	Tribe (Male; Female)	Offence (Petty, Serious, Heinous)	Language	Education (Male; Female; Caste/ Tribe)	Family Income (Male; Female; Caste/ Tribe)
Number of children attending Yoga, dance, music classes											
How often do children use the playground [1. Never 2. Rarely 3. Often 4. Very Often]											
How often do children use the recreational services [1. Never 2. Rarely 3. Often 4. Very Often]											

#### 4. Checklist on the Right to be free from Torture, Cruel or Inhuman Treatment and Corporal Punishment

Name of Observation Home:

Address:

Name and contact details of Person-in-charge:

Monitoring Period:

Total number of children:

S. No.	Particulars	Remarks
1.	Percentage of complaints received on the right not to be tortured and corporal punishment received, and special investigations ordered by the JJB, inquiries by the NCPCR, SCPR, NHRC, or SHRC and percentage of these responded to effectively by the State Government.	
2.	Number of cases in which registration of FIR was directed against the management/ staff of the OH.	
3.	Number of reports received from the Person-in-charge pertaining to the right not to be tortured including corporal punishment and nature of the action taken.	
4.	Percentage and category of staff within the OH trained in rules of conduct concerning proportional use of force and detention.	
5.	Percentage and category of staff within the OH trained in recognizing torture and dealing with it, and in positively disciplining children.	

6.	Number of times the Children's Committee was consulted in cases of right not to be tortured including corporal punishment.	
7.	Mention in minutes of the management committee and verified through minutes maintained by the children's committee of reports of unnatural death, abuse, torture, violence and action taken.	
8.	Number of corporal punishment complaints reported by the District Child Protection Unit to Judicial Magistrates of the First Class.	
9.	Percentage of suggestions in the Children's Suggestion Box related to the right not to be tortured and effectively addressed.	
10.	Percentage of the OH staff formally investigated for allegations of physical and/or non- physical abuse, corporal punishment or crime against the detained children.	
11.	Percentage of formal investigation of the OH staff resulting in disciplinary action or prosecution.	
12.	Percentage of employees convicted for subjecting a child to corporal punishment and dismissed from employment.	
13.	Percentage of the OH staff formally investigated for allegations of physical and/or non- physical abuse, corporal punishment or crime against the detained children.	
14.	Number of staff per inmate.	
15.	Percentage of OHs with facilities to segregate children alleged to be in conflict with law by sex, age, nature of offence, etc.	

## Disaggregated Data based on Identity

	Total	Male	Female	Caste (Male; Female)	Religion (Male; Female)	Disability (Male; Female)	Tribe (Male; Female)	Offence (Petty, Serious, Heinous)	Language	Education (Male; Female; Caste/ Tribe)	Family Income (Male; Female; Caste/ Tribe)
7-12 years											
Percentage of girls reporting forms of violence (physical, sexual, or psychological).											
Percentage of complaints about unnatural death, cruelty, torture, abuse or violence brought to the notice of concerned authorities by anyone without delay.											

	Total	Male	Female	Caste (Male; Female)	Religion (Male; Female)	Disability (Male; Female)	Tribes (Male; Female)	Offence (Petty, Serious, Heinous)	Language	Education (Male; Female; Caste/Tribe)	Family Income (Male; Female; Caste/Tribe)
Incidence of death and/or physical injury resulting from use of torture, cruel, inhuman or degrading treatment or punishment, including corporal punishment in the OH.											
Number of children given formal warnings, assigned house-keeping tasks, given imposition writing, and whose privileges have been forfeited for unacceptable behavior.											

	Total	Male	Female	Caste (Male; Female)	Religion (Male; Female)	Disability (Male; Female)	Tribe (Male; Female)	Offence (Petty, Serious, Heinous)	Language	Education (Male; Female; Caste/Tribe)	Family Income (Male; Female; Caste/Tribe)
Reported cases of torture, cruel, inhuman or degrading treatment or punishment including corporal punishment perpetrated by the person-in-charge or employees of the OH.											
Percentage of children held in prolonged solitary confinement.											



	Total	Male	Female	Caste (Male; Female)	Religion (Male; Female)	Disability (Male; Female)	Tribe (Male; Female)	Offence (Petty, Serious, Heinous)	Language	Education (Male; Female; Caste/Tribe)	Family Income (Male; Female; Caste/Tribe)
How often are surprise inspections conducted [1. Never 2. Rarely 3. Often 4. Very Often]											
How often are trainings conducted for staff and inmates on what constituted torture, cruel, inhuman treatment and corporal punishment [1. Never 2. Rarely 3. Often 4. Very Often]											

	Total	Male	Female	Caste (Male; Female)	Religion (Male; Female)	Disability (Male; Female)	Tribes (Male; Female)	Offence (Petty, Serious, Heinous)	Language	Education (Male; Female; Caste/Tribe)	Family Income (Male; Female; Caste/Tribe)
13-15 years											
Percentage of girls reporting forms of violence (physical, sexual, or psychological).											
Percentage of complaints about unnatural death, cruelty, torture, abuse or violence brought to the notice of concerned authorities by anyone without delay.											

	Total	Male	Female	Caste (Male; Female)	Religion (Male; Female)	Disability (Male; Female)	Tribes (Male; Female)	Offence (Petty, Serious, Heinous)	Language	Education (Male; Female; Caste/Tribe)	Family Income (Male; Female; Caste/Tribe)
Incidence of death and/or physical injury resulting from use of torture, cruel, inhuman or degrading treatment or punishment, including corporal punishment in the OH.											
Number of children given formal warnings, assigned house-keeping tasks, given imposition writing, and whose privileges have been forfeited for unacceptable behavior.											

	Total	Male	Female	Caste (Male; Female)	Religion (Male; Female)	Disability (Male; Female)	Tribe (Male; Female)	Offence (Petty, Serious, Heinous)	Language	Education (Male; Female; Caste/Tribe)	Family Income (Male; Female; Caste/Tribe)
Reported cases of torture, cruel, inhuman or degrading treatment or punishment including corporal punishment perpetrated by the person-in-charge or employees of the OH.											
Percentage of children held in prolonged solitary confinement.											

	Total	Male	Female	Caste (Male; Female)	Religion (Male; Female)	Disability (Male; Female)	Tribe (Male; Female)	Offence (Petty, Serious, Heinous)	Language	Education (Male; Female; Caste/Tribe)	Family Income (Male; Female; Caste/Tribe)
How often are surprise inspections conducted [1. Never 2. Rarely 3. Often 4. Very Often]											
How often are trainings conducted for staff and inmates on what constituted torture, cruel, inhuman treatment and corporal punishment [1. Never 2. Rarely 3. Often 4. Very Often]											

	Total	Male	Female	Caste (Male; Female)	Religion (Male; Female)	Disability (Male; Female)	Tribe (Male; Female)	Offence (Petty, Serious, Heinous)	Language	Education (Male; Female; Caste/Tribe)	Family Income (Male; Female; Caste/Tribe)
16-18 years											
Percentage of girls reporting forms of violence (physical, sexual, or psychological).											
Percentage of complaints about unnatural death, cruelty, torture, abuse or violence brought to the notice of concerned authorities by anyone without delay.											

	Total	Male	Female	Caste (Male; Female)	Religion (Male; Female)	Disability (Male; Female)	Tribes (Male; Female)	Offence (Petty, Serious, Heinous)	Language	Education (Male; Female; Caste/Tribe)	Family Income (Male; Female; Caste/Tribe)
Incidence of death and/or physical injury resulting from use of torture, cruel, inhuman or degrading treatment or punishment, including corporal punishment in the OH.											
Number of children given formal warnings, assigned house-keeping tasks, given imposition writing, and whose privileges have been forfeited for unacceptable behavior.											

	Total	Male	Female	Caste (Male; Female)	Religion (Male; Female)	Disability (Male; Female)	Tribe (Male; Female)	Offence (Petty, Serious, Heinous)	Language	Education (Male; Female; Caste/Tribe)	Family Income (Male; Female; Caste/Tribe)
Reported cases of torture, cruel, inhuman or degrading treatment or punishment including corporal punishment perpetrated by the person-in-charge or employees of the OH.											
Percentage of children held in prolonged solitary confinement.											



	Total	Male	Female	Caste (Male; Female)	Religion (Male; Female)	Disability (Male; Female)	Tribe (Male; Female)	Offence (Petty, Serious, Heinous)	Language	Education (Male; Female; Caste/Tribe)	Family Income (Male; Female; Caste/Tribe)
How often are surprise inspections conducted [1. Never 2. Rarely 3. Often 4. Very Often]											
How often are trainings conducted for staff and inmates on what constituted torture, cruel, inhuman treatment and corporal punishment [1. Never 2. Rarely 3. Often 4. Very Often]											

## 5. Checklist on the Right not to be subjected to Sexual Abuse

Name of Observation Home:

Address:

Name and contact details of Person-in-charge:

Monitoring Period:

Total number of children:

S. No.	Particulars	Remarks
1.	Number and location of Complaint Boxes in OHs.	
2.	Date on which the system to ensure no abuse or maltreatment takes places within the OH came into existence.	
3.	Percentage of received complaints of sexual offences within the OH received, and special investigations ordered by the JJB, inquiries by the NCPCR, SCPR, NHRC, or SHRC and percentage of these responded to effectively by the State Government.	
4.	Number of cases in which registration of FIR was directed against the management/ staff of the OH.	
5.	Number of cases in which registration of FIR was directed against a child or children of the OH.	
6.	Number of reports received from the Person-in-charge pertaining to sexual offences and action taken.	

7.	Percentage and category of staff within the OH trained in rules of conduct concerning behaviour with children.	
8.	Percentage and category of staff within the OH trained in recognizing child sexual abuse and responding.	
9.	Number of times the Children's Committee was consulted in cases of sexual offences within the OH.	
10.	Percentage of suggestions in the Children's Suggestion Box related to sexual offences and effectively addressed.	
11.	Number of cases in which pregnancy tests and screening for sexually transmitted diseases tests were carried out for children living in the OH.	
12.	Percentage of staff whose police verification has been completed.	
13.	Percentage of the OH staff formally investigated for allegations of sexual offences against the detained children.	
14.	Percentage of formal investigation of the OH staff resulting in disciplinary action or prosecution.	
15.	Percentage of employees convicted for sexual offences.	
16.	Percentage of OHs with facilities to segregate children alleged to be in conflict with law by sex, age, nature of offence, etc	
17.	Reported cases of sexual offences perpetrated by the person-in-charge or employees of the OH.	

## Disaggregated Data based on Identity

	Total	Male	Female	Caste (Male; Female)	Religion (Male; Female)	Disability (Male; Female)	Tribe (Male; Female)	Offence (Petty, Serious, Heinous)	Language	Education (Male; Female; Caste/ Tribe)	Family Income (Male; Female; Caste/ Tribe)
7-12 years											
Percentage of children found pregnant while living in the OH.											
Percentage of children diagnosed with STI while residing in the OH.											
Percentage of children who experienced sexual abuse in the OH.											

	Total	Male	Female	Caste (Male; Female)	Religion (Male; Female)	Disability (Male; Female)	Tribe (Male; Female)	Offence (Petty, Serious, Heinous)	Language	Education (Male; Female; Caste/ Tribe)	Family Income (Male; Female; Caste/ Tribe)
Incidence of death and physical injury resulting from sexual abuse in the OH.											
Number of children complaining of sexual abuse from other inmates											
Number of children receiving counseling for trauma from sexual abuse											

	Total	Male	Female	Caste (Male; Female)	Religion (Male; Female)	Disability (Male; Female)	Tribe (Male; Female)	Offence (Petty, Serious, Heinous)	Language	Education (Male; Female; Caste/ Tribe)	Family Income (Male; Female; Caste/ Tribe)
How often are surprise inspections conducted [1. Never 2. Rarely 3. Often 4. Very Often]											
How often are sex education classes undertaken [1. Never 2. Rarely 3. Often 4. Very Often]											
13-15 years											
Percentage of children found pregnant while living in the OH.											

	Total	Male	Female	Caste (Male; Female)	Religion (Male; Female)	Disability (Male; Female)	Tribe (Male; Female)	Offence (Petty, Serious, Heinous)	Language	Education (Male; Female; Caste/ Tribe)	Family Income (Male; Female; Caste/ Tribe)
Percentage of children diagnosed with STI while residing in the OH.											
Percentage of children who experienced sexual abuse in the OH.											
Incidence of death and physical injury resulting from sexual abuse in the OH.											

	Total	Male	Female	Caste (Male; Female)	Religion (Male; Female)	Disability (Male; Female)	Tribe (Male; Female)	Offence (Petty, Serious, Heinous)	Language	Education (Male; Female; Caste/ Tribe)	Family Income (Male; Female; Caste/ Tribe)
Number of children complaining of sexual abuse from other inmates											
Number of children receiving counseling for trauma from sexual abuse											
How often are surprise inspections conducted [1. Never 2. Rarely 3. Often 4. Very Often]											



	Total	Male	Female	Caste (Male; Female)	Religion (Male; Female)	Disability (Male; Female)	Tribe (Male; Female)	Offence (Petty, Serious, Heinous)	Language	Education (Male; Female; Caste/ Tribe)	Family Income (Male; Female; Caste/ Tribe)
How often are sex education classes undertaken [1. Never 2. Rarely 3. Often 4. Very Often]											
16-18 years											
Percentage of children found pregnant while living in the OH.											
Percentage of children diagnosed with STI while residing in the OH.											

	Total	Male	Female	Caste (Male; Female)	Religion (Male; Female)	Disability (Male; Female)	Tribe (Male; Female)	Offence (Petty, Serious, Heinous)	Language	Education (Male; Female; Caste/ Tribe)	Family Income (Male; Female; Caste/ Tribe)
Percentage of children who experienced sexual abuse in the OH.											
Incidence of death and physical injury resulting from sexual abuse in the OH.											
Number of children complaining of sexual abuse from other inmates											
Number of children receiving counseling for trauma from sexual abuse											

	Total	Male	Female	Caste (Male; Female)	Religion (Male; Female)	Disability (Male; Female)	Tribe (Male; Female)	Offence (Petty, Serious, Heinous)	Language	Education (Male; Female; Caste/ Tribe)	Family Income (Male; Female; Caste/ Tribe)
How often are surprise inspections conducted [1. Never 2. Rarely 3. Often 4. Very Often]											
How often are sex education classes undertaken [1. Never 2. Rarely 3. Often 4. Very Often]											

## Chapter 4: Table Endnotes

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- 1 Human Rights Indicators, (2012), p. 34.
- 2 Human Rights Indicators, (2012), p. 36.
- 3 Human Rights Indicators, (2012), p. 36.
- 4 See the Tool to Monitor the Right to Education.
- 5 Human Rights Indicators, (2012), p. 36.
- 6 Human Rights Indicators, (2012), p. 37.
- 7 Human Rights Indicators, (2012), p. 39.
- 8 Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston, Addendum, Summary of Cases Transmitted to Governments and Replies Received, 29 May 2009, para 5, <http://www2.ohchr.org/english/bodies/hrcouncil/docs/11session/A.HRC.11.2.Add.1.pdf>
- 9 Human Rights Indicators, (2012), p. 53.

### Endnotes: Tool to Monitor the Right to Legal Aid

- 10 Legal Services Authorities Act, 1987, Sections 12(c) and 13.
- 11 JJ Act, 2015, Section 3(iii).
- 12 It is the duty of the JJB under Section 8(3)(c) to ensure that a child in conflict with the law who is unable to engage the services of a private lawyer is defended by a legal aid lawyer. This naturally translates to an entitlement for all children alleged to be in conflict with law in Observation Homes to have access to legal aid, and the right to be heard in any matter concerning them. The duty has also been imposed on the police officer who apprehends a child alleged to be in conflict with law, under Rule 8(3) (vii) of the JJ M R, 2016, to - “inform the DSLSA for providing free legal aid to the child”. It is also the duty of CCIs, including OHs, under Section 53(1)(viii) to ensure the availability of legal aid for children in conflict with the law. Rule 61(3) (xxxi) of the JJ Model Rules 2016 requires the Person in Charge of a CCI to - “co-ordinate with the legal cum Probation Officer in the DCPU or the DSLSA to ensure that every child is legally represented and provided free legal aid and other necessary support.
- 13 JJ Act, 2015, Section 108(a).
- 14 JJ Act, 2015, Section 108(b).
- 15 JJ MR, 2016, Rule 8(3)(vii).
- 16 JJ MR, 2016, Rule 61(3)(xxxi).

- 17 RPD, 2016, Sections 12(1 and 2).
- 18 RPD, 2016, Section 12(3).
- 19 RPD, 2016, Section 7(4)(c).
- 20 Committee on the Rights of the Child, General Comment No. 12 on The Right of the *Child to be Heard* (2009). *para 58*.
- 21 UNCRC, 1989, Article 4 (2)(b)(ii).
- 22 Beijing Rules, 1985, Rule 7.1.
- 23 Beijing Rules, 1985, Rule 15.1.
- 24 Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September, 1990.
- 25 Basic Principles on the Role of Lawyers, 1990, Clause 6.
- 26 Basic Principles on the Role of Lawyers, 1990, Clause 7.

## Endnotes: Tool to Monitor the Right to Education

- 27 (1992) 3 SCC 666.
- 28 (1993) 1 SCC 645.
- 29 JJ Act, 2015, Section 53 (1)(iv).
- 30 JJ Act, 2015, Section 53 (1)(v).
- 31 JJ Act, 2015, Section 53 (1)(ix).
- 32 JJ MR, 2016, Rule 7(1)(iii).
- 33 JJ MR, 2016, Rule 36(1).
- 34 JJ MR, 2016, Rule 36(2).
- 35 JJ MR, 2016, Rule 36(3).
- 36 JJ MR, 2016, Rule 36(4).
- 37 JJ MR, 2016, Rule 36(4).
- 38 JJ MR, 2016, Rule 36(5).
- 39 JJ MR, 2016, Rule 36(6).
- 40 JJ MR, 2016, Rule 32(2).
- 41 JJ MR, 2016, Rule 62(6)(v).
- 42 JJ MR, 2016, Rule 69 H(4).

- 43 JJ MR, 2016, Rule 65 (3)(ix).
- 44 JJ MR, 2016, Rule 38(5).
- 45 RTE Act, 2009, Section 3(1).
- 46 RTE Act, 2009, Section 3(2).
- 47 RTE Act, 2009, proviso to Section 3(2).
- 48 RTE Act, 2009, Section 4.
- 49 RPD Act, 2016, Section 16.
- 50 RPD Act, 2016, Section 17(a).
- 51 RPD Act, 2016, Section 17 sub clauses (b, c, d, e, and f).
- 52 RPD Act, 2016, Section 17(i).
- 53 National Policy for Children, 2013, Clause 4
- 54 National Policy for Children, 2013, Clause 4.6
- 55 UDHR, 1948, Article 26.
- 56 UNCRC, 1989, Article 28(1).
- 57 UNCRC, 1989, Article, 28(1)(d).
- 58 UNCRC, 1989, Article, 28(1)(e).
- 59 UNCRC, 1989, Article 23(3).
- 60 UNCRC, 1989, Article, 29(1)(a).
- 61 UNCRC, 1989, Article 29(1)(b).
- 62 UNCRC, 1989, Article 29(1)(c).
- 63 UNCRC, 1989, Article 29(e).
- 64 UNCRC, 1989, Article 29(1)(d).
- 65 Committee on the Rights of the Child, General Comment No.1 (2001) Article 29(1): The aims of education, CRC/GC/2001/1, 17 April 2001, para 2.
- 66 CRC, GC 10, Para 7.
- 67 ICESCR, 1966, Article 13(1).
- 68 ICESCR, 1966, Article 13(2)(a).
- 69 ICESCR, 1966, Article 13 (2)(b).
- 70 ICESCR, 1966, Article 13 (2)(c).
- 71 ICESCR, 1966, Article 13 (2)(d).

- 72 ICESCR, 1966, General Comment No. 13 on the Right to Education (Art. 13), 1999, Clause 1. See [http://www.ohchr.org/EN/Issues/Education/Training/Compilation/Pages/dGeneralCommentNo13Therighttoeducation\(article13\)\(1999\).aspx](http://www.ohchr.org/EN/Issues/Education/Training/Compilation/Pages/dGeneralCommentNo13Therighttoeducation(article13)(1999).aspx) .
- 73 UNCRPD, 2006, Article 24.1.
- 74 UNCRPD, 2006, Article 24.3.
- 75 UNCRPD, 2006, Article 24.4.
- 76 UNCRPD, 2006, Article 24.5.
- 77 Beijing Rules, 1985, Rule 24.1.
- 78 Beijing Rules, 1985, Rule 13.5.
- 79 Beijing Rules, 1985, Rule 26.6.
- 80 Havana Rules, 1990, para 38.
- 81 Havana Rules, 1990, para 38.
- 82 Havana Rules, 1990, para 41.
- 83 Havana Rules, 1990, para 45.
- 84 Havana Rules, 1990, para 46.
- 85 Guidelines for Action on Children in the Criminal Justice System, 1997, (Vienna Guidelines), Para 15.

## Endnotes: Tool to Monitor the Right to Health

- 86 (1996) 4 SCC 37.
- 87 Constitution of India, Article 39(e).
- 88 JJ Act, 2015, Section 53(1)(vi).
- 89 JJ Act, 2015, Section 53(1)(ii).
- 90 JJ Act, 2015, Section 53(1)(ix).
- 91 JJ Act, 2015, Section 92.
- 92 JJ Act, 2015, Section 93(1).
- 93 JJ MR, 2016, Rule 8(3)(iv).
- 94 JJ MR, 2016, Rule 26(7).
- 95 JJ MR, 2016, Rule 29(6).
- 96 JJ MR, 2016, Rule 33(1)(iii).

- 97 JJ MR, 2016, Rule 34(3)(i)(ii).
- 98 JJ MR, 2016, Rule 34(3) (v).
- 99 JJ MR, 2016, Rule 34(3)(xi)(xii).
- 100 JJ MR, 2016, Rule 35(1)(4)(5).
- 101 RPD Act, 2016, Section 26.
- 102 National Policy for Children, 2013, Clause 4.1.
- 103 National Policy for Children, 2013, Clause 4.2.
- 104 UNCRC, 1989, Article 25.
- 105 CRC, GC No. 4 para 18.
- 106 CRC, GC No. 4 para 30.
- 107 CRC, GC No. 4 para 40.
- 108 CRC, GC No. 4 para 38.
- 109 CRC, GC No. 15, para 38.
- 110 CRC, GC No. 4, para 25.
- 111 International Covenant on Economic, Social and Cultural Rights, 1966, Article 12(1).
- 112 Committee on Economic, Social and Cultural Rights, General Comment No. 14 of the on the Right to the Highest Attainable Standard of Health Adopted at the Twenty-second Session on 11 August 2000 para 43 a)
- 113 UNCRPD, 2006, Article 24 (a).
- 114 UNCRPD, 2006, Article 24 (b).
- 115 UNCRPD, 2006, Article 24, sub clauses (d, e, and f).
- 116 Havana Rules, 1990, Rule 1.
- 117 Havana Rules, 1990, Rule 31.
- 118 Havana Rules, 1990, Rule 49.
- 119 Havana Rules, 1990, Rule 51.
- 120 Havana Rules, 1990, Rule 55.
- 121 Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1982.



- 122 Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1982, available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/MedicalEthics.aspx> Principle 1
- 123 UN Standard Minimum Rules for the Administration of Juvenile Justice, 1985, (Beijing Rules), Rule 13.5.
- 124 UN Standard Minimum Rules for the Administration of Juvenile Justice, 1985, (Beijing Rules), Rule 26.2.
- 125 The Maastricht Guidelines on Violation of Economic, Social and Cultural Rights, 1997, Article 6 available at <http://hrlibrary.umn.edu/instreet/Maastrichtguidelines.html>

## Endnotes: Tool to Monitor the Right to Food

- 126 1981 SCR (2) 516.
- 127 Constitution, Article 47.
- 128 PUCL vs Union of India and others, Civil Writ Petition 196 of 2001.
- 129 JJ Act, 2015, Section 53(1)(i).
- 130 JJ Rules, 2016, Rule 61(3)(xv).
- 131 JJ MR, 2016, Rule 33(1)(i).
- 132 JJ MR, 2016, Rule 33(2).
- 133 JJ MR, 2016, Rules 33(3) and 33(8)(ii).
- 134 JJ MR, 2016, Rule 33 (1)(ii).
- 135 JJ MR, 2016, Rule 33(8)(iii).
- 136 JJ MR, 2016, Rule 33(4).
- 137 JJ MR, 2016, Rule 33(5).
- 138 JJ MR, 2016, Rule 33(6).
- 139 JJ MR, 2016, Rule 33(6).
- 140 JJ MR, 2016, Rule 33(8)(i).
- 141 JJ MR, 2016, Rule 33(6)(v).
- 142 National Policy for Children, 2013, Clause 4.1.
- 143 International Covenant on Economic, Social and Cultural Rights, Article 11(2).

- 144 Committee on Economic, Social and Cultural Rights, General Comment No. 12 (Twentieth session, 1999) The Right to Adequate Food (Art. 11) E/C.12/1999/5 12 May 1999, para 4.
- 145 UNCRC, 1989, Article 27(3).
- 146 CRC, General Comment No. 13 (2011), The right of the child to freedom from all forms of violence, para 20 (a).
- 147 UNCRPD, 2006, Article 25(f).
- 148 UNCRPD, 2006, Article 28.
- 149 Universal Declaration on the Eradication of Hunger and Malnutrition, 1974, Article 1.
- 150 Riyadh Guidelines, 1990, Guideline 45.
- 151 Havana Rules, 1990, Rule 37.

## Endnotes: Tool to Monitor the Right to Recreation

- 152 JJ MR, 2016, Rule 38(1).
- 153 JJ MR, 2016, Rule 32(2).
- 154 JJ MR, 2016, Rule 38(3).
- 155 JJ MR, 2016, Rule 38 (6).
- 156 JJ MR, 2016, Rule 38(2).
- 157 JJ MR, 2016, Rule 38(8).
- 158 JJ MR, 2016, Rule 39(4)(x).
- 159 RPD, 2016, Section 16(i).
- 160 RPD, 2016, Section 29.
- 161 National Policy on Children, 2013, Clause, 4.6 (xiii).
- 162 Committee on the Rights of the Child, General comment No. 17 (2013) on the right of the child to rest, leisure, play, recreational activities, cultural life and the arts (art. 31), CRC/C/GC/17 (17 April 2013).
- 163 CRC, GC No.17, para 14(d).
- 164 CRC, GC No.17, para 51.
- 165 CRC, GC No.17, para 42.
- 166 CRC, GC No.17, para 28.
- 167 UNCRPD, 2006, Article 30.

168 Havana Rules, 1990, Rule 47.

169 Havana Rules, 1990, Rule 47.

## Endnotes: Tool to Monitor the Right to Maintain Contact with Family

170 JJ Act, 2015, Section 3 (iv).

171 JJ Act, 2015, Section 3 (v).

172 JJ Act, 2015, Section 3 (xiii).

173 JJ MR, 2016, Rule 64(3)(vi).

174 RPD Act, 2016, 13(2)(c).

175 National Policy for Children, 2013, Clause 3 (viii).

176 National Policy for Children, 2013, Clause 5.2.

177 UNCRC, 1989, Article 9(3).

178 UNCRC, 1989, Article 37(c).

179 UN Standard Minimum Rules for the Administration of Juvenile Justice, 1985, (Beijing Rules) Article 26 (5)

180 UN Standard Minimum Rules for the Administration of Juvenile Justice, 1985, (Beijing Rules), Article 10(1)

181 UN Standard Minimum Rules for the Administration of Juvenile Justice, 1985,(Beijing Rules), Rule 15(2)

182 UN Standard Minimum Rules for the Administration of Juvenile Justice, 1985,Beijing Rules, Rule 18(2).

183 Havana Rules, 1990, Rule 60.

184 Havana Rules, 1990, Rule 59.

185 UN General Assembly Resolution 64/142 on Guidelines for the Alternative Care of Children, para 11 available at [https://www.unicef.org/protection/alternative\\_care\\_Guidelines-English.pdf](https://www.unicef.org/protection/alternative_care_Guidelines-English.pdf)

186 UN General Assembly Resolution 64/142 on Guidelines for the Alternative Care of Children, para 81.

## Endnotes: Tool to Monitor the Right not to be subjected to Torture or other Cruel, Inhuman or Degrading Treatment or Punishment

187 AIR 1980 SC 1535.

188 AIR 2001 Delhi 212, para 13.

189 AIR 1990 SC 513.

190 JJ Act, 2015, Section 3(vi).

191 JJ Act, 2015, Section 85.

192 JJ Act, 2015, Section 82(2).

193 JJ Act, 2015, Section 82(3).

194 JJ MR, 2016, Rule 76(1).

195 JJ MR, 2016, Rule 76(2)(i).

196 JJ MR, 2016, Rules 76(2)(ii) and (iii).

197 JJ MR, 2016, Rule 76(2)(v).

198 JJ MR, 2016, Rule 76(2)(iv).

199 JJ MR, 2016, Rule 76(2)(vi).

200 JJ MR, 2016, Rule 76(2)(viii).

201 JJ MR, 2016, Rules 60(2) and (3).

202 JJ MR, 2016, Rule 60(4).

203 JJ MR, 2016, Rule 60(5).

204 JJ MR, 2016, Rule 60(7).

205 JJ MR, 2016, Rule 60(8 and 9).

206 JJ MR, 2016, Rule 60(10).

207 RTE Act, 2009, Section 17(2).

208 NCPCR, Guidelines for *Eliminating Corporal Punishment in Schools*, 1.1 (2009).

209 NCPCR, Guidelines for *Eliminating Corporal Punishment in Schools*, 7.2 (2009).

210 UN General Comment No. 10, Children's rights in juvenile justice, para 89.

211 Committee on the Rights of the Child in General Comment No. 8 (2007), *The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment*, para 2

- 212 CRC, General Comment No.8 (2006), The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (arts. 19; 28, para.2; and 37, inter alia, CRC/C/GC/8 (2 March 2007), para 21.
- 213 CRC, GC 10, para 89.
- 214 General Comment 13 (2011), *The right of the child to freedom from all forms of violence*.
- 215 Human Rights Committee, General Comment No.20: Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment) 10 March 1992, para 5.
- 216 HRC, GC 20, para 10.
- 217 HRC, GC 20, para 11.
- 218 HRC, GC 20, para 14.
- 219 UN Convention Against Torture and other Inhuman or Degrading Treatment or Punishment, 1984, (CAT), Article 1(1).
- 220 Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, 1984 (CAT), Article 16(1).
- 221 Committee against Torture, General Comment No. 2, Implementation of article 2 by States parties, para 15, available at <http://www.refworld.org/docid/47ac78ce2.html>
- 222 Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1975, available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/DeclarationTorture.aspx>
- 223 United Nations Rules for the Protection of Juveniles Deprived of their Liberty, Rule 87(d).
- 224 UN Rules for Juveniles Deprived of their Liberty, 1990, Havana Rules, Rule 67.
- 225 UN Rules for Juveniles Deprived of their Liberty, 1990, Havana Rules, Rule 67.

## Endnotes: Tool to Monitor the Right not to be subjected to Sexual Abuse

- 226 Sakshi v. Union of India, AIR 2004 SC 3566.
- 227 JJ Act, 2015, Section 3(vi).
- 228 JJ MR, 2016, Rule 76(1).

- 229 JJ MR, 2016, Rule 76(2)(i).
- 230 JJ MR, 2016, Rules 76(2)(ii) and (iii).
- 231 JJ MR, 2016, Rule 76(2)(v).
- 232 JJ MR, 2016, Rule 76(2)(iv).
- 233 JJ MR, 2016, Rule 76(2)(vi).
- 234 JJ MR, 2016, Rule 76(2)(viii).
- 235 JJ MR, 2016, Rule 34(5).
- 236 JJ MR, 2016, Rule 34(5).
- 237 JJ MR, 2016, Rules 26 (5) and (6).
- 238 POCSO Act, 2012, Section 3 – Penetrative sexual assault. – A person is said to commit “penetrative sexual assault” if – (a) he penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a child or makes the child to do so with him or any other person; or (b) he inserts, to any extent, any object or a part of the body, not being the penis, into his vagina, the urethra or anus of the child or makes the child to do so with him or any other person; or (c) he manipulates any part of the body of the child so as to cause penetration into the vagina, urethra, anus or any part of body of the child or makes the child to do so with him or any other person; or (d) he applies his mouth to the penis, vagina, anus, urethra of the child or makes the child to do so to such person or any other person.
- 239 UNCRC, 1989, Article 34.
- 240 General Comment No. 13 ((2011), *The right of the child to freedom from all forms of violence*).
- 241 UNCRC, GC 13.
- 242 UNCRPD, 2006, Article 16 sub clauses (2) and (3).
- 243 United Nations Rules for the Protection of Juveniles Deprived of their Liberty, 1990, (Havana Rules), para 87(d).

