

**THE UNITED NATIONS CONVENTION ON
THE RIGHTS OF THE CHILD (UNCRC)
&
INDIAN LEGISLATIONS,
JUDGEMENTS & SCHEMES**

A Comparative Study by NHRC

2019



राष्ट्रीय मानव अधिकार आयोग , भारत
NATIONAL HUMAN RIGHTS COMMISSION, INDIA





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FOREWORD

Justice H. L. Dattu
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Foreword

The National Human Rights Commission in its 25 years of journey, has relentlessly endeavoured to fulfil its mandate of the protection and promotion of human rights as enunciated in the Protection of Human Rights Act, 1993. It has been 27 years since India ratified the United Nations Convention on the Rights of the Child (UNCRC) on December 11, 1992. During this period, several comprehensive laws protecting the rights of children have been passed. However, the child rights experts are of the view that even today the ineffective implementation of the laws, schemes and policies still continues in the society.

NHRC is of the view that in order to ensure effective implementation of UNCRC, India should invest in enhancing its quantitative as well as qualitative body of knowledge on issues pertaining to the child i.e. education, health, violence, child labour etc. ensuring that every child survives and thrives in a safe and clean environment and is protected from all kinds of violence and exploitation and lastly, has a fair and equal chance to all the opportunities.

In furtherance of the same, NHRC undertook a comparative study on United Nations Conventions on the Rights of the Child and Indian Legislations, Judgements and Schemes. This study will enhance quantitative as well as qualitative body of knowledge concerning child issues. In this endeavour, I would like to compliment to all the Sub-Committee Members who have contributed and provided full cooperation, enabling the Commission to publish a comprehensive comparative study on UNCRC and Indian legislations


Justice H.L.Dattu



PREFACE

Preface

The Convention on the Rights of the Child (CRC) was approved by the General Assembly of the United Nations on 20 November 1989. The Convention was formally opened for ratification on 26 January, 1990. The Government of India ratified the same on 11 December, 1992. The CRC is the most comprehensive statement of child rights ever made, it takes the ten principles of the 1959 Declaration of the Rights of the Child, and expands them to 54 articles, of which 41 relate specifically to the rights of children, covering almost every aspect of a child's life.

The Protection of Human Rights Act, 1993 mandates the Commission to study Treaties and other International instruments on Human Rights and to make recommendations for their effective implementation through domestic legislations as well as programmes and policies. Accordingly a ten member Committee under the Chairperson, NHRC was constituted on 03 February, 2017 to advise the Commission on this. The first meeting of this Committee was held on 24 May, 2017 under the chairmanship of Hon'ble Chairperson of the Commission Justice H.L. Dattu. The Committee made a recommendation to explore the possibility of setting up specialized thematic sub-committee on child rights to assist the Committee in its work. This sub-committee was expected to make recommendations on the gaps between the international convention and the domestic legislations. The meeting of the Committee held on 16 November, 2017 constituted a Sub Committee on the Convention on the Rights of the Child (CRC) under the chairmanship of Hon'ble Member of the Commission, Smt. Jyotika Kalra.

Under the chairmanship of Smt. Jyotika Kalra, ten meetings of the Sub-Committee were held, between December, 2017 to February, 2019. During the meetings, valuable contribution was made by subject experts Shri Sudhir Kumar, Special Rapporteur, NHRC, and Ms. Bharti Ali, Co-Director, HAQ, Centre for Child Rights, who were the members of the Committee. Apart from meetings, the inputs were given the members through emails, text, WhatsApp etc. During deliberations, the Sub-Committee considered not only the provisions of Laws but also the Judgements and the Schemes of the Government of India. It was felt by the Sub-committee that the comparison should be short and easy to comprehend.

This document on UNCRC, has been divided in six sub-headings i.e. Child in Family Environment, Children Deprived of Family Environment/Alternative Care, Child Labour, Educational, Social Security, Religious and Economic Rights, Kidnapping, Trafficking, and Violence against Children, and Non-Discrimination. The comparison has been given in tabular form, first column contains articles of UNCRC in bullet points, second column mentions corresponding legal provisions, Judgements and Schemes of Government, for reference, the details of the provisions have been end noted. After comparing both the columns, the gaps have been identified and numbered, each gap has its corresponding recommendation, the justification where ever required has also been given in brackets.

I hope that in the best interest of the children of India, the harmonization of Indian legislations with the UNCRC, sees light of the day at the earliest.

Jyotika Kalra
Jyotika Kalra

FROM THE DESK OF THE SECRETARY GENERAL

जयदीप गोविन्द, पाठ्यसे
हामधिव
Jaideep Govind, IAS
Secretary General



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From the Desk of the Secretary General

The evolution of the Convention on the Rights of the Child (CRC) was one of the most significant steps taken in the protection and interest of the child after the "Declaration of Geneva" which was promulgated in 1924 by the "Save the Children Fund International Union". The Convention was designed to elevate the nations' political and humanitarian obligations towards their children. This Convention recognises the special vulnerability of children and addresses their civil, political, economic, social and cultural rights as elements of inter dependent or mutually reinforcing set of provisions. The concern for children which initially started as part of the concern for the future of individual nation States, has spilled over the boundaries of the nation States and become a universal concern.

In this spirit, the comparative study on Indian Laws and legislations to the United Nation Convention on the Rights of the Child has identified areas where the Government can look at the situation of child rights and work towards effectively implementing the recommendations of the Committee of the Rights of the Child. Mr. Justice H L Dattu, Chairperson, National Human Rights Commission took a meeting on 24 May 2017, wherein he directed that the Sub Committee on Convention on Rights of Child would examine the gap between UNCRC and Indian Laws.

In this endeavour, I express my sincere gratitude to the Hon'ble Member of the Commission, Smt. Jyotika Kalra, who headed this Sub-Committee and completed this painstaking and time consuming work. I extend my special thanks to the subject experts Shri Sudhir Kumar, Special Rapporteur, NHRC, and Ms. Bharti Ali, Co-Director, HAQ, Centre for Child Rights, who gave valuable national & international insights on the complexities of subject. During the entire process, the inputs were also provided by Shri Ambuj Sharma, Former Secretary General, NHRC, Shri Surajit Dey, Registrar (Law), Shri Prabhat Singh, DG (I), Shri Dilip Kumar JS (T &R), Ms. Chhaya Sharma, DIG and Shri M.D.S. Tyagi, JD(R). The report was compiled and edited with the research assistance of Jitmanyu Sahoo, Mujataba Noorul Hussain, Ms. Vartika Anand, Junior Legal and Research Consultant and Ms. Ridhima Puri, Junior Research Consultant. Although they all are part of the NHRC family, still I will be failing in my duty, if don't appreciate their valuable contributions in preparation of this Report. The Commission intends to follow it up with all the stakeholders to ensure complete harmonization of legislations with UNCRC. Accordingly, the recommendations made by the Sub-Committee, have been sent to the concerned Ministries of Government of India for taking necessary actions.


Jaideep Govind





List of Abbreviations

- CARA- Central Adoption Resource Authority
- CLPRA- The Child Labour (Prohibition and Regulation) Amendment Act, 2016)
- CCIs- Child Care Institutions
- G-1 – Gap (identified) -1
- HAMA- The Hindu Adoption and Maintenance Act of 1956
- ICDS- Integrated Child Development Services
- ICPS- The Integrated Child Protection Scheme
- IPC- Indian Penal Code, 1860
- JJA, 2015- Juvenile Justice (Care and Protection of Children) Act, 2015
- OBC- Other Backward Class
- SC- Scheduled Caste
- ST- Scheduled Tribe
- POCSO-The Protection of Children from Sexual Offences Act, 2012
- R-1- Recommendation (suggested)- 1
- UNCRC- United Nations Convention on the Rights of the Child

Report of the Sub-Committee on UN Convention on Rights of the Child (UNCRC)

INTRODUCTION

The Convention on the Rights of the Child (CRC) was approved by the General Assembly of the United Nations on 20 November 1989. The Convention was formally opened for ratification on 26 January, 1990, the Government of India ratified the CRC on 11 December, 1992. It, however, has signed the Convention, thereby indicating general support for its principles and an intention not to take actions that would actively undermine those principles. The CRC is the most complete statement of child rights ever made. It takes the ten principles of the 1959 Declaration of the Rights of the Child, and expands them to 54 articles, of which 41 relate specifically to the rights of children, covering almost every aspect of a child's life.

The Protection of Human Rights Act, 1993 mandates the Commission to study Treaties and other International instruments on Human Rights and to make recommendations for their effective implementation through domestic legislations as well as programmes and policies. Accordingly a ten member Committee under the Chairperson, NHRC was constituted on 03rd February, 2017 to advise the Commission. The first meeting of this Committee was held on 24 May, 2017 under the chairmanship of Justice H.L Dattu. The Committee made a recommendation to explore the possibility of setting up specialized thematic sub-committees, such as on child rights, disability, women, etc to assist the Committee in its work. These sub-committees were to make recommendations on the gaps between the relevant international convention and the pertinent domestic legislation. The meeting of the Committee held on

16 November, 2017 constituted a Sub Committee on the Convention on the Rights of the Child (CRC) under the chairmanship of Hon'ble Member, Smt. Jyotika Kalra.

Under the chairmanship of Hon'ble Member Smt. Jyotika Kalra, ten meetings of the Sub-Committee were held, between December, 2017 to February 2019 with subject experts Shri Sudhir Kumar, Special Rapporteur, NHRC, and Ms. Bharti Ali, Co-Founder & Executive Director, HAQ-Centre for Child Rights, apart from meetings, the inputs were given through mails also. During deliberations, the Sub-Committee considered not only the provisions of Laws but also the Judgements and the Schemes of Govt, it was felt that comparison should be short and easy to comprehend. The Convention has been divided in six subheadings i.e. Child in Family Environment, Children Deprived of Family Environment/ Alternative Care, Child Labour, Educational, Social Security, Religious and Economic Rights, Kidnapping, Trafficking, and Violence against Children, and Non-Discrimination. The comparison has been given in tabular form, first column contains articles of UNCRC in bullet points, second column mentions corresponding legal provisions, Judgements and Schemes of Government, for reference, the details of the provisions have been foot noted. After comparing both the columns, the gaps have been identified and numbered, each gap has its corresponding recommendation, the justification for the same has also been given in brackets.





MEMBERS OF THE SUB-COMMITTEE

The Sub-Committee, under the chairmanship of Smt. Jyotika Kalra, Hon'ble Member, NHRC, constituted of subject experts Shri Sudhir Kumar, Special Rapporteur, NHRC, and Ms. Bharti Ali, Co-Founder & Executive Director, HAQ-Centre for Child Rights. During the entire process of deliberations, inputs were provided by Shri Ambuj Sharma, Former Secretary General, NHRC, Shri Jaideep Govind, Secretary General, NHRC, Shri Surjit Dey, Registrar (Law), Shri Prabhat Singh, DG (I), Shri Dilip Kumar JS (T &R), Ms. Chhaya Sharma, DIG and Shri M.D.S. Tyagi, JD(R). The report was compiled and edited with the research assistance of Jitmanyu Sahoo, Mujataba Noorul Hussain and Ms. Vartika Anand, Junior Legal and Research Consultant and Ms. Ridhima Puri, Junior Research Consultant.



CHILD IN FAMILY ENVIRONMENT

<p>United Nations Convention on the Rights of the Child(UNCRC)</p>	<p>Provisions in the Constitution of India and Domestic Legislation/Policy Measures in Consonance with UNCRC</p>	<p>Gaps between UNCRC & Indian Laws (G) and Recommendations(R)</p>
<ul style="list-style-type: none"> • Article 3¹ : Best Interests of the Child to be the primary consideration for all actions of: • public or private social welfare institutions • courts of law • administrative authorities • legislative bodies • States parties shall ensure that the institution, services responsible for the care of children shall conform with standards prescribed. <ul style="list-style-type: none"> • Article 5² States Parties shall respect the responsibilities, rights and duties of parents or persons legally responsible for the child and to provide appropriate directions and guidance in consistence with the evolving capacities of the child. 	<p>Legislations:</p> <ol style="list-style-type: none"> 1. The Hindu Minority and Guardianship Act, 1956 <ol style="list-style-type: none"> a) Section 6 (a)⁸ States father is the natural guardian of a minor boy or unmarried girl. b) Section 13⁹: Welfare of the minor to be of paramount consideration in the appointment and declaration of any person as guardian of a Hindu minor by the court. 2. The Hindu Adoption and Maintenance Act of 1956 (HAMA, 1956) <ol style="list-style-type: none"> a) Section 20 (1)¹⁰ : Hindu is bound to maintain his/her legitimate or illegitimate children. b) Section 20 (2) states a child may claim maintenance from his or her father or mother so long as the child is a minor. 3. Juvenile Justice (Care and Protection of Children) Act, 2015 <ol style="list-style-type: none"> a) Section 75¹¹ whoever having actual charge or control over the child: <ul style="list-style-type: none"> - Assaults - Abandons - Abuses - Exposes - Wilfully neglects the child 	<p>G1: Only father (not mother) is the natural guardian as per section 6 of The Hindu Minority and Guardianship Act, 1956.</p> <p>R1: <i>Mother should also be a natural guardian as is father under the HAMA, 1956.</i></p> <p>G2¹⁸: There is an anomaly in section 56 , 57, 58, 60 of Juvenile Justice Act and HAMA, 1956.</p> <p>R2: <i>Independent Legislation with regard to adoption of children (in addition to HAMA, 1956) should be enacted regardless of the ethnic and religious affiliation. (Because provisions of adoption in JJ Act 2015 do not serve the purpose of adopting children who are not in need of care and protection).</i></p> <p>G3: All personal laws regarding adoption, maintenance and guardianship are not codified.</p>

<p>United Nations Convention on the Rights of the Child(UNCRC)</p>	<p>Provisions in the Constitution of India and Domestic Legislation/Policy Measures in Consonance with UNCRC</p>	<p>Gaps between UNCRC & Indian Laws (G) and Recommendations(R)</p>
<ul style="list-style-type: none"> • Article 6³ Every child has inherent right to <ul style="list-style-type: none"> • life, • survival and • development • Article 9⁴ Children shall not be separated from their parents against their will except by competent authority if such separation is necessary for the best interest of the child. • Article 10⁵ (Family Reunification) Children whose parents live in different countries should be allowed to move between those countries so that parents and children can stay in contact. • Article 18⁶ Both parents to have common responsibility for upbringing and development their children. 	<p>Shall be punishable with the imprisonment for a term of three years</p> <p>First provision- In case it is found that abandonment of a child by biological parent was due to circumstances beyond their control, the penal provisions shall not apply in such case.</p> <p>b) Section 87¹² dealing with abetment in its explanation makes abetment with in pursuance of conspiracy, in consequence of instigation etc. This makes the act of abetment more difficult to prove even as compared to Section 107 of IPC.</p> <p>CARA Guidelines In furtherance of Section 68¹³ of JJ Act, Central Adoption Resource Authority (CARA) the nodal body for adoption of Indian children and is mandated to monitor and regulate in-country and inter-country adoptions.</p> <p>4.Criminal Procedure Code, 1973 Section 125¹⁴ provides that any person having sufficient means needs to provide maintenance of his legitimate or illegitimate minor children unable to maintain themselves.</p> <p>5. The Guardianship and Wards Act, 1890 Section 24¹⁵:Duties of the guardian is to look to the support, health and education, and such other matters of the child.</p>	<p>R3: All personal laws regarding adoption, <i>maintenance and guardianship should be codified (As directed under Art. 44 of Constitution Of India-Uniform Civil Code)</i></p> <p>G4: The first proviso of Section 75 of JJ Act 2015 creates a scope of being misused by parents abandoning their unwanted children. (First proviso of Section 75 of JJ Act is a violation of child's right to protection and family environment.)</p> <p>R4: <i>The first proviso of Section 75 of JJ Act 2015 should be removed (as the same is in conflict with S. 317 of IPC)</i></p> <p>G5: Section 87 relating to abetment, defines in its explanation abetment to be in pursuance of conspiracy, in consequence of instigation etc.</p>

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<p>The best interests of the child will be their basic concern.</p> <ul style="list-style-type: none"> • Article 19 ⁷ State to take legislative, administrative, social and educational measures to protect from all forms of: violence-physical or mental • injury or abuse • neglect • mal-treatment or exploitation, including sexual abuse. <p>While in the care of parents or any other person who has the care of the child.</p>	<p>6. Hindu Marriage Act, 1955 Section 26 ¹⁶ : Custody, maintenance and education of minor children during pendency at the time of passing of the case.</p> <p>7. The Maternity Benefit Amendment Act, 2017 Section 5(3) ¹⁷ have increased the period of childcare leave from 12 weeks to 26 weeks) Paternity leave has also been provided to male employees in the Government sector Child care leave is admissible in respect of central/state Government/s</p> <p style="text-align: center;">Judgements</p> <p>1. Ms Githa Hariharan and another v. Reserve Bank of India and another (AIR 1999, 2SCC 228) where the Supreme Court has said that an unwed mother in India can become the sole legal guardian of a child.</p> <p>2. Harshala D/O Kishore Govind v The Bombay Municipal Corporation: The Bombay High Court directed the Brihan Mumbai Municipal Corporation (BMC) to issue new birth certificates for a girl child born through the test tube process without mentioning her biological father’s name. A bench of Justices AS Oka and RI Chagla also directed the civic body to recall the birth certificates bearing the name of the girl’s father on them.</p>	<p>R5: <i>Abetment under explanation to S. 87 of JJ Act should be read as defined under S. 107 of IPC and instigation and conspiracy should either be removed or defined.</i></p>

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	<p>Unmarried daughter is entitled for maintenance even after attaining majority</p> <p>3. Agnes Lily Irudaya v Irudaya Kani Arsan (W.P.No.2872 of 2017)- held that a major daughter is entitled for maintenance under section 125 of Cr.P.C.</p> <p>4. R. Jagdish Jugtawat v. Smt. Manjulata & Ors. [(2002) 5 SCC 422] –held that the right of minor girl for maintenance from parents after attaining majority is recognized under Section 20(3) of HAMA.</p> <p>Second Periodic Report of GOI In the Second Periodic Report, submitted before the CRC Committee, the GOI States that migration of parent or sibling to a foreign country due to economic survival, affects the vulnerable groups of people. The report also acknowledges that families that migrate for economic reasons have to deal with social and psychological problems created for the children left behind at home as well as the problem of dealing with tensions in the new place of work.</p>	



**CHILDREN DEPRIVED OF FAMILY ENVIRONMENT /
ALTERNATIVE CARE**

<p>United Nations Convention on the Rights of the Child(UNCRC)</p>	<p>Provisions in the Constitution of India and Domestic Legislation/Policy Measures in Consonance with UNCRC</p>	<p>Gaps between UNCRC & Indian Laws (G) and Recommendations(R)</p>
<ul style="list-style-type: none"> • Article 20¹⁹ (Children deprived of family environment) Children who cannot be looked after by their own family have a right to special care and must be looked after properly, by people who respect their ethnic group, religion culture and language. • Article 21²⁰ (Adoption) Children have the right to care and protection if they are adopted or in foster care. The first concern must be what is best for them. The same rules should apply whether they are adopted in the country where they were born, or if they are taken to live in another country. • Article 25²¹ (Review of Treatment in Care) The Convention recognizes the right of a child who has been placed by the authorities for the purposes of care, protection or treatment of his or her physical or mental health. 	<ol style="list-style-type: none"> 1. Juvenile Justice (Care and Protection of Children) Act, 2015 <ol style="list-style-type: none"> a) Section 2(14)²³ defines the child in need of care and protection. b) Section 41²⁴ provides for mandatory registration of CCIs c) Section 42²⁵ provides for penalty for non registration of CCIs d) Section 44 (Foster Care), 43 (Shelter by State), 45 (Sponsorship through State), 46 (After Care through support from State), 37 (c) (Long Term Care by State)²⁶. e) Section 57²⁷ states that prospective adoptive parents shall be physically and mentally fit. In case of a couple, the consent of both the spouses shall be required for adoption. <p>Guidelines</p> <ul style="list-style-type: none"> • In furtherance of Section 68²⁸ of JJ Act, Central Adoption Resource Authority (CARA) is a nodal body for adoption of Indian children and is mandated to monitor and regulate in-country and inter-country adoptions. 2. The Hindu Adoption and Maintenance Act of 1956 <ol style="list-style-type: none"> a) Section 2(a)²⁹ allows only Hindus, Sikhs, Jains, and Buddhists to adopt. 	<p>G6³²: Many of the CCIs are not registered but still no effective action is being taken. (As per NCPCR's data around 1300 CCIs are un-registered)</p> <p>R6: State as well as Central Government should run a drive (on periodic basis) to identify and register CCIs so as to ensure no child is deprived of minimum standards of care and protection (as provided under Chapter 6 of JJ Model Rules).</p> <p>G7: Certain CCIs are still being registered under the Women and Children's Institution (Licensing) Act 1956. (This Act has been repealed by Section 31 of The Orphanages And Other Charitable Home (Supervision and Control) Act 1960)</p> <p>R7: The registration of CCIs should only be under JJ Act and the Act of 1960 should be amended to cover only such charitable institutions that do not cater to children in need of care and protection as defined in</p>

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<ul style="list-style-type: none"> • Article 39 ²²(Rehabilitation of child victims) Children who have been neglected, abused or exploited should receive special help to physically and psychologically recover and reintegrate into society. 	<p>b) Section 7 ³⁰ (Capacity of a male Hindu to take in adoption) c) Section 8 ³¹ (Capacity of a female Hindu to take in adoption)</p>	<p><i>the JJ Act (If the Act of 1960 is not amended, there would remain two enactments under which CCIs can be registered, leading to confusion in both implementation and monitoring of standards of care and protection in child care institutions). To ensure minimum standards of care and protection for all children deprived of family environment, it is imperative to have one single procedure for registration of CCIs.</i></p> <p>G8: There is no comprehensive foster care, sponsorship and adoption policy/ Regulation either of the Central Government or State Governments.</p> <p>R8: A comprehensive model foster care and sponsorship Guidelines should be framed by Central Government/State Government, in line with UNCRC and UN guidelines (on Alternative Care of Children).</p> <p>G9: Poor database on CARA website, there is no State-wise</p>

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		<p>information on number of children and parents in waiting.</p> <p>R9: <i>The State wise data on number of children in waiting and number of parents in waiting should be available on the website of CARA.</i></p> <p>G10: <i>Poor monitoring and followup of both inter-country and domestic adoptions as provided under Section 58 (5), 59 (11) and 62 of JJ Act.</i></p> <p>R10: <i>Data about monitoring and follow-up (with special focus on inter-country adoptions and adoption of disabled children) as required under Section 58(5), 59(11) and 62 of JJ Act should be made available on the CARA website for monitoring and follow-up of inter country and domestic adoption in order to ensure greater transparency and streamling of adoption and also to prevent misuse of adoption regulations and procedures.</i></p>



CHILD LABOUR

<p>United Nations Convention on the Rights of the Child(UNCRC)</p>	<p>Provisions in the Constitution of India and Domestic Legislation/Policy Measures in Consonance with UNCRC</p>	<p>Gaps between UNCRC & Indian Laws (G) and Recommendations(R)</p>
<p>Article 32 ³³(Child Labour) The government should protect children from:</p> <ul style="list-style-type: none"> • Dangerous work. • Harmful to health, education and right to play. • Business which is unsafe and unsuited for their development (physical, mental, spiritual, moral and social). 	<p>1. Constitution of India a) Article 24 ³⁴: No child below the age of 14 shall be employed to work in any factory or mine or engage in any hazardous employment. (Dangerous work) a) Article 21A -makes free and compulsory education a Fundamental Right for all Children of the age of 6-14 years. b) Article 23- Prohibition of traffic in human being and forced labour c) Article 39(e)- Principle or policy to be followed by states towards securing health and strength of workers, men and women and children of tender age are not abused Article 39(f)- Children are given an opportunity to develop in a healthy manner</p> <p>2. The Child and Adolescent Labour (Prohibition and Regulation) Act, 1986 a) An Act to prohibit the engagement of children in certain employments and to regulate the conditions of work of children in other employments.</p> <p>3. The Child Labour (Prohibition and Regulation) Amendment Act, 2016) (CLPRA) a) Section 2(i) states ‘adolescents’ means a person between age 14-18 years.</p>	<p>G11: There is no Vigilance and Monitoring Committee under Child Labour (P & A) Act for identification, rescue and rehabilitation on the lines of Bonded Labour Abolition Act.</p> <p>R11: <i>CLPR Act should specifically provide for prevention, identification, rescue and rehabilitation of Child labour or adolescent on the lines of Bonded Labour System Abolition Act 1976</i></p> <p>G12: There is no provision of contribution for each child rescued in CLPR Act as provided under Bonded Labour Abolition Act.</p> <p>R12: <i>Contribution amount be created in CLPR Act as provided under Bonded Labour Abolition Act.</i></p> <p>G13: When a child is rescued, it may involve many legal provisions which have to be invoked, the police official for want of professional</p>

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	<p>b) Section 3(2) ³⁵of the amendment act of 2016 states that the Act shall not apply where the child helps his family or family enterprise in non-hazardous occupations or processes after school hours or during vacations, or works in the audio-visual entertainment industry and sports industry under safe conditions and without compromising on school.</p> <p>4) Bonded Labour System (Abolition) Act 1976 5) SC/ST (Prevention of Atrocities) Act 1989 6) Juvenile Justice (Care and Protection of Children) Act 2015</p> <p>Government Policies/Schemes</p> <p>7) Ministry of Labour and Employment- Protocol on prevention, rescue, repatriation, and rehabilitation of trafficked and migrant children- which provides practical guidelines to key stakeholders on crucial issues relating to prevention, rescue, repatriation, and rehabilitation of trafficked and migrant child labour.</p> <p>8) ‘Scheme for Welfare of Working Children in Need of Care and Protection’ ³⁶ and the National Child Labour Programme (NCLP) ³⁷ is suffering from low allocation ³⁸ and huge under spending. ³⁹</p>	<p>acumen, may not invoke all the legal provisions.</p> <p>R13: <i>A check list be prepared so as to ensure, when a child is rescued, all the legal provisions are invoked.</i></p> <p>G14: <i>The CLPRA Sec. 3(2) (a) allows children below the age of 14 years to work in non-hazardous, family enterprises and entertainment industry and sports industry after school hours. This casts an additional burden on the child and deprives the child the right to development.</i></p> <p>R14: <i>Children below the age of 14 years may be allowed to work only in the nuclear family enterprises and entertainment industry in a manner conducive to their growth, development and safety and with all prescribed legal safeguards including Right of Children to Free and Compulsory Education Act 2009.</i></p>

<p>United Nations Convention on the Rights of the Child(UNCRC)</p>	<p>Provisions in the Constitution of India and Domestic Legislation/Policy Measures in Consonance with UNCRC</p>	<p>Gaps between UNCRC & Indian Laws (G) and Recommendations(R)</p>
	<p>Judgements</p> <p>9) M C Mehta vs the State of Tamil Nadu and others (W.P. (C) 465/1986) is a historic judgement on child labour, which elaborated the situation of child labour in India. . The judgement highlighted the relation between poverty and child labour and also shed light on how the state has failed to eradicate child labour, and its lack of zeal to deal with it. The court reiterated that there should be regular survey of child labour.</p>	<p>G15: Many hazardous occupations have been removed from the list given in the Part A of the Schedule to CLPRA.</p> <p>R15: <i>Ministry of Labour and Emploment should review and update the list of “Hazardous occupations and processes” at regular intervals, based on the emerging global commitments and trends.</i></p> <p>G16: Regular surveys of prevalence of child labour as mandated by the Supreme Court are not being conducted and as such, the practice of child labour is continuing and there is no data (including sector/industry wise) available which takes away the scope of targeted interventions to eliminate child labour.</p>

<i>United Nations Convention on the Rights of the Child(UNCRC)</i>	<i>Provisions in the Constitution of India and Domestic Legislation/Policy Measures in Consonance with UNCRC</i>	<i>Gaps between UNCRC & Indian Laws (G) and Recommendations(R)</i>
		<p>R16: Ministry of Labour and Employment should review and update data collection mechanisms on child labour (sector/industry wise) to enable better planning and targeting of initiatives for protection of children.</p> <p>G17: As per Census 2011, the number of working children in the age group of 5-14 years is 43.53 lakh.</p> <p>R17: To ensure the protection under Art 21 A and Art 23 of the COI available to the children below the age of 14 years, monitoring mechanism in Child and adolescent labour (Prohibition and Regulation) Act 2016 should be developed at the State level by making necessary provision in the Rules/Regulation</p>



EDUCATION, SOCIAL SECURITY, RELIGIOUS AND ECONOMIC RIGHTS

<p>United Nations Convention on the Rights of the Child(UNCRC)</p>	<p>Provisions in the Constitution of India and Domestic Legislation/Policy Measures in Consonance with UNCRC</p>	<p>Gaps between UNCRC & Indian Laws (G) and Recommendations(R)</p>
<p>Article 6 ⁴⁰(Survival and Development): Children have the right to live. Governments should ensure that children survive and develop healthily.</p> <p>Article 12 ⁴¹ Child who is capable of forming his/her own views shall have the right to express those views and views of the child to be given due weight.</p> <p>Article 13 ⁴² Child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas.</p> <p>Article 14 ⁴³States Parties shall respect the right of the child to freedom of thought, conscience and religion. Rights and duties of parents and legal guardians to provide directions to the child according to their evolving capacity</p> <p>Article 15 ⁴⁴ States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly.</p>	<p>1. Constitutional Provisions on Education</p> <p>a) Article 21 Right to life and personal liberty.</p> <p>b) Article 21A ⁵²makes free and compulsory education a Fundamental Right for all Children of the age of 6-14 years.</p> <p>c) Article 28 ⁵³ Freedom as to attendance at religious instruction or religious worship in certain educational institutions.</p> <p>d) Article 29 ⁵⁴ No citizen shall be denied admission into any educational institution maintained by the State on grounds only of religion, race, caste, language or any of them.</p> <p>e) Article 30 ⁵⁵ Right of minorities to establish and administer educational institutions.</p> <p>f) Article-39 Stateshall direct its policies towards securing; the tender ages of children are not abused due to any economic necessity.</p> <p>g) Article 39(f) ⁵⁶Children are given opportunities and facilities to develop in a healthy manner. Children are protected against exploitation and abandonment.</p> <p>h) Article 45 Provision for early childhood care and education to children below the age of six years.</p> <p>i) Article-243G (item 25 of Schedule 11). ⁵⁷ Provides for implementation of child care measures by seeking to entrust programmes of women and child development to Panchayats.</p>	<p>G18: Apparently with the legislations and Schemes as mentioned in the second column, in India there are no gaps in the UNCRC and the existing Indian laws. However, there are implementation challenges that need to be overcome.</p> <p>R18: <i>Awareness programmes should be carried out to popularise the welfare schemes so that the benefits reach all the intended beneficiaries. For effective implementation; trained manpower, dedicated funds and consistent efforts are needed.</i></p>

<p>United Nations Convention on the Rights of the Child(UNCRC)</p>	<p>Provisions in the Constitution of India and Domestic Legislation/Policy Measures in Consonance with UNCRC</p>	<p>Gaps between UNCRC & Indian Laws (G) and Recommendations(R)</p>
<p>Article 16 ⁴⁵ No child shall be subjected to arbitrary or unlawful interference with his or her privacy.</p> <p>Article 17 ⁴⁶ States Parties shall ensure that the child has access to information and material aimed at promotion of his or her social, spiritual and moral well being and physical and mental health.</p> <p>Article 23 Recognizes special needs of a children with disabilities.</p> <p>Article 24 State shall take appropriate measure to combat disease and malnutrition, provide for adequate nutritious food and clean drinking water. Ensure appropriate pre natal and post natal health care for mothers.</p> <p>Article 26 ⁴⁷ (Social Security): Children – either through their guardians or directly – have the right to benefit from the social security schemes of the Government.</p>	<p>j) Article 350A ⁵⁸ directs states to provide adequate facilities for instruction in the mother-tongue at the primary stage of education to children belonging to linguistic minority groups.</p> <p>2. Rights of Persons with Disabilities Act, 2016</p> <p>a) Section 3 ⁵⁹ : Government shall ensure that the person with disability enjoys the right to equality, life with dignity and respect for his/her integrity equally with others.</p> <p>b) Section 4 (1)⁶⁰ : Government shall take measures to ensure that children with disability enjoy their life equally with others.</p> <p>3. The Indian Majority Act, 1875</p> <p>a) Section 3(1) ⁶¹: every person domiciled in India shall attain the age of majority on his completing the age of eighteen years and not before.</p> <p>4. The Indian Partnership Act, 1932</p> <p>a) Section 30 ⁶²: Minor can be a partner for benefit of the partnership.</p> <p>5. The Right of Children to Free and Compulsory Education Act (RTE), 2009 The Act describes the modalities of the importance of</p>	<p>G19: Many of the schools in India do not have disabled friendly infrastructure as required to ensure the right guaranteed to children with disability under section 3 (3) of Right To Education Act.</p> <p>R19: Full compliance of the provisions of the Rights of Persons With Disabilities Act 2016 regarding access should be ensured to provide disabled friendly infrastructure in all places required to be accessed by disabled children.</p> <p>G20: Many children in CCIs do not have identity proof and the date of birth which deprives them of benefits of all Govt. Schemes including Aadhaar.</p> <p>R20: Children in CCIs who do not have date of birth or any other identification, it should be the responsibility of CCIs to ensure the <i>identity proof for such children.</i></p>

<p>United Nations Convention on the Rights of the Child(UNCRC)</p>	<p>Provisions in the Constitution of India and Domestic Legislation/Policy Measures in Consonance with UNCRC</p>	<p>Gaps between UNCRC & Indian Laws (G) and Recommendations(R)</p>
<p>Article 27 ⁴⁸: Children have the right to a standard of living that is adequate for child physical, mental, spiritual, moral and social development.</p> <p>Article 28 ⁴⁹: State shall ensure free and compulsory primary education and encourage development of different forms of secondary education. Make higher education accessible to all on the basis of capacity. Make educational and vocational information and guidance available and accessible to all children. Encourage regular attendance at schools. State shall ensure school discipline is administered in a manner consistent with the child's human dignity.</p> <p>Article 29 ⁵⁰: State shall ensure education of the child is directed to the development of the child's personality, talents and abilities.</p>	<p>free and compulsory education for children between the age of 6 to 14 years in India.</p> <p>a) Section (12)(1)(c) ⁶³ mandates 25 percent reservation for children from economically and socially disadvantaged sections, in private unaided schools.</p> <p>b) Section 16 mandates that “no child admitted in a school shall be held back in any class or expelled from school till completion of elementary education”.</p> <p>c) Section 17 (1) prohibits physical punishment and mental harassment of children in schools.</p> <p>d) Section 18 ⁶⁴: No school to be established without obtaining certificate of recognition and Section 19 ⁶⁵ of RTE Act 2009. Explanation ⁶⁶.</p> <p>6. The National Food Security Act, 2013 (concerning children below 14 yrs).</p> <p>Government policies/ programmes/schemes</p> <p>7. National Early Childhood Care and Education (ECCE) Policy, 2013 deals with development and learning of child in first six years of child.</p> <p>8. National Plan Of Action For Children, 2016 It assures a safe, dignified and a life full of growth opportunities to all children.</p>	<p><i>(As provided under JJ Act especially under Sec 94 or any other law as may be applicable)</i></p> <p>G21: Many children in CCIs are often unable to access their right to education and development because they need special services to help bridge the age and education gap or they may be too old for school admission, or may not be interested in school education given their past life experiences and circumstances.</p> <p>R21: <i>Special coaching should be provided in every CCI for children (who join the Formal School system in order to help them cope with the school curriculum and bring them at par academically with other children in their class). At the same time viable vocational training and skill development programmes should be promoted for children who can neither be linked to the Formal Schools nor the National Open School system.</i></p>

<p>United Nations Convention on the Rights of the Child(UNCRC)</p>	<p>Provisions in the Constitution of India and Domestic Legislation/Policy Measures in Consonance with UNCRC</p>	<p>Gaps between UNCRC & Indian Laws (G) and Recommendations(R)</p>
<p>Article 31 ⁵¹: State parties shall recognize right of the child to rest and leisure and to engage in play and recreational activities.</p>	<p>9. Integrated Child Development Services (ICDS) Scheme by the State and the Central Government. For children upto 6 months under mother’s care, 6 months to 3 years under mother’s care, 3-6 years at the Anganwadi Centre, 6-14 years under Mid Day Meal Scheme in schools.</p> <p>10. Creches are being run under Rajiv Gandhi National Creche Scheme for the Children of Working Mothers.</p> <p>11. Various Labour Laws provide for crèches for children of the female workers at their workplace.</p> <p>12. In respect of ST children the Ashram residential schools in tribal areas are being run by the Governments.</p> <p>13. Jawahar Navodaya Vidyalayas (residential schools) for rural meritorious students are being run by the Government.</p> <p>14. Reservation for SC/ST and OBC students in educational institutions.</p> <p>15. Pre-matric and post-matric Scholarships for</p>	

<i>United Nations Convention on the Rights of the Child(UNCRC)</i>	<i>Provisions in the Constitution of India and Domestic Legislation/Policy Measures in Consonance with UNCRC</i>	<i>Gaps between UNCRC & Indian Laws (G) and Recommendations(R)</i>
	<p>SC/ST/OBC Means-cum-Merit Scholarships for minorities.</p> <p>Governments also give scholarships to meritorious students for instance National Talent Search Examination and other schemes. Child Care Institutions are being run for orphan children, who are connected to mainstream formal schools or the National Open School system and various vocational training programmes.</p>	



KIDNAPPING, TRAFFICKING AND VIOLENCE AGAINST CHILDREN

<p>United Nations Convention on the Rights of the Child(UNCRC)</p>	<p>Provisions in the Constitution of India and Domestic Legislation/Policy Measures in Consonance with UNCRC</p>	<p>Gaps between UNCRC & Indian Laws (G) and Recommendations(R)</p>
<p>Article 11 ⁶⁷ (Kidnapping) Governments should take steps to stop illicit transfer and non return of children abroad. State to promote bilateral or multi –lateral agreements.</p> <p>Article 19 ⁶⁸ Article 24(3) ⁶⁹ State to take all measures to abolish traditional practices prejudicial to the health of children.</p> <p>Article 33 ⁷⁰ (Drug Abuse) State shall take all measures to protect the child from harmful drugs and psychotropic substances.</p> <p>Article 34 ⁷¹ State to protect the child from:</p> <ul style="list-style-type: none"> • Sexual exploitation • Inducement to engage in any unlawful sexual activity • Use of children in prostitution • Use of children in pornographic performances. 	<p>1. Constitution of India</p> <p>a) Article 23 prohibits trafficking in human beings and forced labour</p> <p>b) Article 39(e) states that the tender age of children are not abused</p> <p>c) Article 39(f) states that 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.</p> <p>2. The Prohibition of Child Marriage Act, 2006</p> <p>a) Section 12(c) deals with sale of children for the purpose of marriage, such marriage shall be null and void.</p> <p>3. The Protection of Children from Sexual Offences (POCSO) Act, 2012 It's a special law dealing exclusively with sexual offences against children (including boys, girls and third gender) by perpetrators (men as well as women and third gender).</p> <p>Section 21 ⁷⁹ deals with punishment for failure to report or record a commission of offence.</p> <p>Section 28 ⁸⁰ Special Courts have been designated for the purpose of this Act.</p> <p>Section 29 ⁸¹ - at the stage of prosecution, the Special Court has to presume that the accused has committed the offence.</p>	<p>G22: There is confusion under POCSO Act, 2012, with respect to presumption of guilt in case of child accused as to whether he/she shall be treated at par with an adult perpetrator.</p> <p>R22: <i>Proviso should be added to Section 29 and 30 of the POCSO Act so as to ensure that child accused is not dealt at par with the adult perpetrator.</i></p>

<p>United Nations Convention on the Rights of the Child(UNCRC)</p>	<p>Provisions in the Constitution of India and Domestic Legislation/Policy Measures in Consonance with UNCRC</p>	<p>Gaps between UNCRC & Indian Laws (G) and Recommendations(R)</p>
<p>Article 35 ⁷²: The Government should take all measures possible to make sure that children are not abducted, sold or trafficked.</p> <p>Article 36 ⁷³: The State shall protect the child from all forms of exploitation prejudicial to their welfare.</p> <p>Article 37 ⁷⁴:The State to ensure that no child be subjected to torture or punishment. Neither capital punishment nor life imprisonment shall be imposed for offences committed by child.</p> <p>Article 39 ⁷⁵:The State shall take all measures to promote physical and psychological recovery and social reintegration of child victim.</p> <p>Article 40 ⁷⁶: The State to recognise the right of every child accused of having infringed the penal laws to be treated in a manner consistence with the promotion of child’s sense of dignity.</p>	<p>4. The Indian Penal Code, 1860</p> <p>1) Section 361 ⁸² deals with kidnapping of children (16 years if male, and 18 years if female), or a person of unsound mind from lawful guardianship.</p> <p>2) Section 363 (A) ⁸³ deals with kidnapping or maiming a minor for purposes of begging.</p> <p>3) Section 366 (A) ⁸⁴ deals with procurement of minor girls for the purpose of illicit intercourse with another person</p> <p>4) Section 366 (B) ⁸⁵ deals with imputation of a girl from foreign country under the age of 21 years of age.</p> <p>5) Section 369 ⁸⁶ deals with kidnapping or abducting child under 10 years with intent to steal from its person.</p> <p>6) Section 370 ⁸⁷ deals with exploitation of children for the purpose of recruitment, transportation, harbouring and transfers</p> <p>7) Section 370 (A) ⁸⁸ deals with exploitation of a trafficked person who is engaged for sexual exploitation</p> <p>8) Section 372 ⁸⁹ and 373 deals with selling and buying minors for the purpose of prostitution or illicit intercourse, unlawful and immoral purpose.</p> <p>9) Section 376 deals with rape of a girl (rape has been extensively and broadly defined) and special provisions have been made for rape of girls below the age of 12 years and 16 years of age.</p> <ul style="list-style-type: none"> • Special provisions have been made for rape by the 	<p>Sec 29 postulates when a person is prosecuted for committing or abetting an offence, the Court shall presume the guilt. The said Act only defines Child under Sec. 2(d) whereas no definition of person is given, the reasonable inference would be that all JCL are not person and excluded. In addition to that Sec 34 also precludes the children in conflict with law the special Court shall not presume guilt of a child between age 16 to 18 years for the reason that section 3(i) of the JJ Act presumes all children upto the age of 18 years innocent of any malafide or criminal intent.</p>

<p>United Nations Convention on the Rights of the Child(UNCRC)</p>	<p>Provisions in the Constitution of India and Domestic Legislation/Policy Measures in Consonance with UNCRC</p>	<p>Gaps between UNCRC & Indian Laws (G) and Recommendations(R)</p>
<p>Optional Protocols</p> <ul style="list-style-type: none"> India signed the optional protocol on Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography⁷⁷ on 15 Nov and ratified it on the 16th August. India has yet to submit a report. It recognizes the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development. India signed the optional protocol ⁷⁸ on 15 nov and ratified it on th 16th august. India has yet to submit the report. 	<p>person who has given the responsibility of custody of the girl.</p> <ul style="list-style-type: none"> Any child marriage by way of kidnapping is null and void. <p>5. Juvenile Justice (Care and Protection of Children) Act, 2015 This Act deals with children with conflict with law and with children in need of care and protection taking into consideration the standards prescribed in the UN CRC. (Preamble of the Act)</p> <p>1) Section 3 ⁹⁰ deals with general principles to be followed in the administration of the Act (covering almost all the articles of UN CRC).</p> <p>2) Section 15 ⁹¹ deals with heinous offences alleged against a child who has completed 16 years of age, board conducts preliminary assessment to decide whether or not the child should be tried as an adult and accordingly transfer the case to the Children's Court.</p> <p>3) Section 18 (3) ⁹² - Board after enquiry decides whether the child between the age of 16-18 years has to be tried as an adult (In cases of heinous crimes).</p> <p>4) Section 21 ⁹³ - No child in conflict with law shall be sentenced to death or life imprisonment without possibility of release.</p> <p>5) A provision has been made under Section 27 ⁹⁴ constituting a CWC for every district.</p>	<p>G23: Although it is mandated under Section 39 of JJA that the process of rehabilitation and social integration would be based on individual care plan of the child, however, on the ground individual care plans are not being prepared for the children in need of care and protection and in conflict with law.</p> <p>R23: Individual care plans should be prepared for all the children produced before the JJBs and CWCs, based on social investigation report and psycho- social assessments.</p> <p>G24: As per proviso to section 15(1) of the JJ Act, 2015 for assessing whether the child has to be tried as an adult, the JJ Board may take assistance of experienced psychologists or psycho social worker or other experts. (Practically, their services are not being utilized for the reasons (i) such trained persons</p>

<p>United Nations Convention on the Rights of the Child(UNCRC)</p>	<p>Provisions in the Constitution of India and Domestic Legislation/Policy Measures in Consonance with UNCRC</p>	<p>Gaps between UNCRC & Indian Laws (G) and Recommendations(R)</p>
	<p>6) Section 30 ⁹⁵ - Any child in need of care and protection will be produced before the committee and the committee will decide to which forum the child has to be sent.</p> <p>7) Section 37 ⁹⁶ - Child welfare officer will declare the child in need of care and protection and would make necessary protection for temporary care, foster care or sponsorship, etc.</p> <p>8) Section 39 ⁹⁷ - State shall take all measures to rehabilitate and socially integrate the child based on individual care plans.</p> <p>9) Section 75 ⁹⁸ - Cruelty to child.</p> <p>10) Section 76 ⁹⁹ - Employment of child for begging.</p> <p>11) Section 77 ¹⁰⁰ - Penalty for giving intoxicating liquor or psychotropic substance to child.</p> <p>12) Section 78 ¹⁰¹ - Using a child for peddling or smuggling etc.</p> <p>13) Section 79 ¹⁰² -Exploitation of child employee.</p> <p>14) Section 80 ¹⁰³ -Punitive measures for adoption without following prescribed procedures.</p> <p>15) Section 81 ¹⁰⁴- Sale and procurement of children for any purpose.</p> <p>16) Section 82 ¹⁰⁵ - Corporal punishment with the aim of disciplining the child.</p> <p>17) Section 83 ¹⁰⁶ -Use of child by militant groups.</p> <p>18) Section 84 ¹⁰⁷ - Kidnapping and abduction of children</p>	<p>are not available and (ii) the JJ Board has no funds to pay such experts.In absence of participation of socio psychological experts for assessment of children, most of the children are being ordered to be tried as adults).</p> <p>R24: <i>For enquiry whether the juvenile has to be treated as an adult, it must be ensured that the expert advice is obtained from experienced psychologists, psycho social worker or other experts (panels of names and details of such experts with allocated fees should be prepared at the State level which should be widely accessible to all stakeholders).</i></p> <p>G25: Repatriation of victims from within the country to the home countries and from other countries back to India continues to be a gap area for want of proper and early acting mechanism between the</p>

<p>United Nations Convention on the Rights of the Child(UNCRC)</p>	<p>Provisions in the Constitution of India and Domestic Legislation/Policy Measures in Consonance with UNCRC</p>	<p>Gaps between UNCRC & Indian Laws (G) and Recommendations(R)</p>
	<p>19) Section 85 ¹⁰⁸ -Crimes against disabled children.</p> <p>6. SC/ST (POA) Act, 1989</p> <p>1) This Acts deals with atrocities upon Scheduled Castes and Scheduled Tribes (including children).</p> <p>2) The Act provides for the special packages including compensation and rehabilitation for victims who have suffered physical, mental, psychological emotional or monetary harm.</p> <p>3) Special provisions have been made dealing with sexual assault on girls belonging to SC/STs</p> <p>4) Forced or bonded labour has been penalised.</p> <p>7. The Integrated Child Protection Scheme (ICPS)</p> <p>Objectives of the Scheme-</p> <p>1) To institutionalize essential services and strengthen structures.</p> <p>2) To enhance capacities at all systems and persons involved in service delivery.</p> <p>3) To create database and knowledge base for child protection services.</p> <p>4) To strengthen child protection at family and community level.</p> <p>5) To coordinate and network with government institutions and non-government institutions to ensure effective implementation of the scheme.</p> <p>6) To raise public awareness about child rights, child vulnerability and child protection services.</p>	<p>countries.</p> <p>R25: <i>The Ministry of Home Affairs should in consultation with the Ministry of External Affairs prepare and prescribe a proper and early acting mechanism between the countries for repatriation of victims from within the country to the home countries and from other countries back to India to ensure their safe return and reintegration.</i></p>



NON-DISCRIMINATION

<p>United Nations Convention on the Rights of the Child(UNCRC)</p>	<p>Provisions in the Constitution of India and Domestic Legislation/Policy Measures in Consonance with UNCRC</p>	<p>Gaps between UNCRC & Indian Laws (G) and Recommendations(R)</p>
<p>Article 2 ¹⁰⁹(Non Discrimination, Protection Against Punishment) States Parties shall ensure Rights set forth in the CRC- irrespective of the child's or parent's or legal guardian's</p> <ul style="list-style-type: none"> • race, • colour, • sex, • language • religion • political opinion • national/ethnic or social origin • property • disability • birth • or other status <p>States Parties shall take all measures to ensure:</p> <ul style="list-style-type: none"> • child is protected against discrimination or punishment on the basis of the above. 	<p>Constitution of India</p> <ol style="list-style-type: none"> 1) Article 14 ¹¹⁰ : Right to Equality 2) Article 15 ¹¹¹: Prohibition of discrimination on the grounds of - religion, race, caste, sex, Place of birth and by implication 3) Article 15 covers colour also. 4) Article 17 ¹¹² : Practice of untouchability has been abolished. 5) Article 18 ¹¹³ has abolished all titles conferring status. 6) Article 21 ¹¹⁴No person to be deprived of his life or personal liberty except according to procedure established by law. 7) Article 25 ¹¹⁵: Freedom of conscience and free profession, practice and propagation of religion. 8) Article 29(1) ¹¹⁶ states No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds, on grounds only of religion, race, caste, language or any of them. 9) Article 30 ¹¹⁷: Rights of Minorities 	<p>G26: There is no enabling legislation to prohibit discrimination in private and unorganised sector on ground of religion, sex, ethnicity and language.</p> <p>R26: <i>There should be legislation to prohibit discrimination in private and unorganised sector on ground of religion, sex, ethnicity and language.</i></p>

MAJOR RECOMMENDATIONS BY THE SUB- COMMITTEE

1

Mother should also be a natural guardian as is father under the HAMA, 1956.

Action by the Ministry of Law and Justice/ Ministry of Women and Child Development.

2

Independent Legislation with regard to adoption of children (in addition to HAMA, 1956) should be enacted regardless of the ethnic and religious affiliation. (Because provisions of adoption in JJ Act 2015 do not serve the purpose of adopting children who are not in need of care and protection).

Action by the Ministry of Law and Justice/ Ministry of Women and Child Development.

3

All personal laws regarding adoption, maintenance and guardianship should be codified (As directed under Art. 44 of Constitution of India- Uniform Civil Code).

Action by the States /UTs)/MHRD/Department of Empowerment of Persons with Disabilities, Ministry of Social Justice.

4

The first proviso of Section 75 of JJ Act 2015 should be removed (as the same is in conflict with S. 317 of IPC)

Action by the States /UTs)/MHRD/Department of Empowerment of Persons with Disabilities, Ministry of Social Justice.

5

Abetment under explanation to S. 87 of JJ Act should be read as defined under S. 107 of IPC and instigation and conspiracy should be either removed or defined.

Action by MWCD and the States /UTs.

6

State as well as Central Government should run a drive (on periodic basis) to identify and register CCIs so as to ensure no child is deprived of minimum standards of care and protection (as provided under Chapter 6 of JJ Model Rules).

Action by the States /UTs)/MHRD/Department of Empowerment of Persons with Disabilities, Ministry of Social Justice.

7

The registration of CCIs should only be under JJ Act and the Act of 1960 should be amended to cover only such charitable institutions that do not cater to children in need of care and protection as defined in the JJ Act (If the Act of 1960 is not amended, there would remain two enactments under which CCIs can be registered, leading to confusion in both implementation and monitoring of standards of care and protection in child care institutions). To ensure minimum standards of care and protection for all children deprived of family environment, it is imperative to have one single procedure for registration of CCIs.

Action by Ministry of Women and Child Development.

8

A comprehensive model foster care and sponsorship Guidelines should be framed by Central Government/State Government, in line with UNCRC and UN guidelines (on Alternative Care of Children).

Action by Ministry of Women and Child Development.

9

The State wise data on number of children in waiting and number of parents in waiting should be available on the website of CARA.

Action by Ministry of Women and Child Development.

10

Data about monitoring and follow-up (with special focus on inter-country adoptions and adoption of disabled children) as required under Section 58 (5), 59 (11) and 62 of JJ Act should be made available on the CARA website (to make it public) for monitoring and follow-up of inter country and domestic adoption in order to ensure greater transparency and streamlining of adoption and also to prevent misuse of adoption regulations and procedures.

Action by Ministry of Women and Child Development.

11

CLPR Act should specifically provide for prevention, identification, rescue and rehabilitation of Child labour or adolescent on the lines of Bonded Labour System Abolition Act 1976.

Action by Ministry of Women and Child Development/ Ministry of Labour and Employment.

12

Contribution amount be created in CLPR Act as provided under Bonded Labour Abolition Act.

Action by Ministry of Women and Child Development/ Ministry of Labour and Employment.

13

A check list be prepared so as to ensure, when a child is rescued, all the legal provisions are invoked.

Action by Ministry of Women and Child Development.

14

Children below the age of 14 years may be allowed to work only in the nuclear family enterprises and entertainment industry in a manner conducive to their growth, development and safety and with all prescribed legal safeguards including Right of Children to Free and Compulsory Education Act 2009.

Action by Ministry of Labour and Employment.

15

Ministry of Labour and Employment should review and update the list of “Hazardous occupations and processes” at regular intervals, based on the emerging global commitments and trends.***Action by Ministry of Labour and Employment.***

16

Ministry of Labour and Employment should review and update data collection mechanisms on child labour (sector/industry wise) to enable better planning and targeting of initiatives for protection of children.

Action by Ministry of Labour and Employment/ Ministry of Women and Child Development.

17

To ensure the protection under Art 21 A and Art 23 of the COI available to the children below the age of 14 years, monitoring mechanism in Child and adolescent labour (Prohibition and Regulation) Act 2016 should be developed at the State level by making necessary provision in the Rules/Regulation.

Action by Ministry of Labour and Employment.

18

Awareness programmes should be carried out to popularise the welfare schemes so that the benefits reach all the intended beneficiaries. For effective implementation; trained manpower, dedicated funds and consistent efforts are needed.

Action by Ministry of Labour and Employment.

19

Full compliance of the provisions of the Rights of Persons With Disabilities Act 2016 regarding access should be ensured to provide disabled friendly infrastructure in all places required to be accessed by disabled children. (Action by the States /UTs)/ MHRD/Department of Empowerment of Persons with Disabilities, Ministry of Social Justice) accessed by disabled children.

Action by the States /UTs)/MHRD/Department of Empowerment of Persons with Disabilities, Ministry of Social Justice.

20

Children in CCIs who do not have date of birth or any other identification, it should be the responsibility of CCIs to ensure the identity proof for such children. (As provided under JJ Act especially Sec.94 or any other law as may be applicable).

Action by the States /UTs)/MHRD/Department of Empowerment of Persons with Disabilities, Ministry of Social Justice.

21

Special coaching should be provided in every CCI for children (who join the Formal School system in order to help them cope with the school curriculum and bring them at par academically with other children in their class). At the same time viable vocational training and skill development programmes should be promoted for children who can neither be linked to the Formal Schools nor the National Open School system. ***Action by the States /UTs)/ MHRD/Department of Empowerment of Persons with Disabilities, Ministry of Social Justice.***

22

Proviso should be added to Section 29 and 30 of the POCSO Act so as to ensure that child accused is not dealt at par with the adult perpetrator.

Action by the Ministry of Law and Justice/ Ministry of Women and Child Development.

23

Individual care plans should be prepared for all the children produced before the JJBs and CWCs, based on social investigation report and psycho- social assessments.

Action by Ministry of Women and Child Development

24

For enquiry whether the juvenile has to be treated as an adult, it must be ensured that the expert advice is obtained from experienced psychologists, psycho social worker or other experts (panels of names and details of such experts with allocated fees should be prepared at the State level which should be widely accessible to all stakeholders).

Action by Ministry of Women and Child Development.

25

The Ministry of Home Affairs should in consultation with the Ministry of External Affairs prepare and prescribe a proper and early acting mechanism between the countries for repatriation of victims from within the country to the home countries and from other countries back to India to ensure their safe return and reintegration.

Action by Ministry of Home Affairs/Ministry of External Affairs/MHRD/Ministry of Social Justice.

26

There should be legislation to prohibit discrimination in private and unorganised sector on ground of religion, sex, ethnicity and language.

Action by the States /UTs)/MHRD/Department of Empowerment of Persons with Disabilities, Ministry of Social Justice.





REFERENCES

¹ Article 3

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.
2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.
3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

² Article 5

States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights

recognized in the present Convention.

³ Article 6

1. States Parties recognize that every child has the inherent right to life.
2. States Parties shall ensure to the maximum extent possible the survival and development of the child.

⁴ Article 9

1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.
2. In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.
3. States Parties shall 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.
4. Where such separation results from any action

initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned.

⁵ Article 10 of the Child Rights Convention

1. In accordance with the obligation of States Parties under article 9, paragraph 1, applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner. States Parties shall further ensure that the submission of such a request shall entail no adverse consequences for the applicants and for the members of their family.
2. A child whose parents reside in different States shall have the right to maintain on a regular basis, save in exceptional circumstances personal relations and direct contacts with both parents. Towards that end and in accordance with the

obligation of States Parties under article 9, paragraph 1, States Parties shall respect the right of the child and his or her parents to leave any country, including their own, and to enter their own country. The right to leave any country shall be subject only to such restrictions as are prescribed by law and which are necessary to protect the national security, public order (ordre public), public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in the present Convention.

⁶ Article 18

1. States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.
2. For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.
3. States Parties shall take all appropriate measures to ensure that children of working parents have

the right to benefit from child-care services and facilities for which they are eligible.

⁷ Article 19 of the Child Rights Convention

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.
2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

⁸ Section 6 of The Hindu Minority and Guardianship Act, 1956.

Natural guardians of a Hindu minor.—The natural guardian of a Hindu minor, in respect of the minor's person as well as in respect of the minor's property (excluding his or her undivided interest in joint family property), are—

- (a) in the case of a boy or an unmarried girl—the father, and after him, the mother: provided that the

custody of a minor who has not completed the age of five years shall ordinarily be with the mother;

- (b) in case of an illegitimate boy or an illegitimate unmarried girl—the mother, and after her, the father;
- (c) in the case of a married girl—the husband: Provided that no person shall be entitled to act as the natural guardian of a minor under the provisions of this section—
 - (a) if he has ceased to be a Hindu, or
 - (b) if he has completely and finally renounced the world by becoming a hermit (vanaprastha) or an ascetic (yati or sanyasi). Explanation.—In this section, the expression “father” and “mother” do not include a step-father and a step-mother.

⁹ Section 13 of The Hindu Minority and Guardianship Act, 1956: Welfare of minor to be paramount consideration.- (1) In the appointment of declaration of any person as guardian of a Hindu minor by a court, the welfare of the minor shall be the paramount consideration. (2) No person shall be entitled to the guardianship by virtue of the provisions of this Act or of any law relating to guardianship in marriage among Hindus, if the court is of opinion that his or her guardianship will not be for the welfare of the minor.

¹⁰ Section 20 The Hindu Adoption and Maintenance Act, 1956: Maintenance of children and aged parents- (1) Subject to the provisions of this

section a Hindu is bound, during his or her lifetime, to maintain his or her legitimate or illegitimate children and his or her aged or infirm parents.

(2) A legitimate or illegitimate child may claim maintenance from his or her father or mother so long as the child is a minor.

¹¹ Section 75 of JJ Act: Punishment for cruelty to child

Whoever, having the actual charge of, or control over, a child, assaults, abandons, abuses, exposes or willfully neglects the child or causes or procures the child to be assaulted, abandoned, abused, exposed or neglected in a manner likely to cause such child unnecessary mental or physical suffering, shall be punishable with imprisonment for a term which may extend to three years or with fine of one lakh rupees or with both: PROVIDED that in case it is found that such abandonment of the child by the biological parents is due to circumstances beyond their control, it shall be presumed that such abandonment is not willful and the penal provisions of this section shall not apply in such cases:

Provided further that if such offence is committed by any person employed by or managing an organisation, which is entrusted with the care and protection of the child, he shall be punished with rigorous imprisonment which may extend up to five years, and fine which may extend up to five lakhs rupees:

Provided also that on account of the aforesaid

cruelty, if the child is physically incapacitated or develops a mental illness or is rendered mentally unfit to perform regular tasks or has risk to life or limb, such person shall be punishable with rigorous imprisonment, not less than three years but which may be extended up to ten years and shall also be liable to fine of five lakhs rupees.

¹² Section 87 of JJ Act: Whoever abets any offence under this Act, if the act abetted is committed in consequence of the abetment, shall be punished with the punishment provided for that offence.

¹³ Section 68 of JJ Act, 2015: The Central Adoption Resource Agency existing before the commencement of this Act, shall be deemed to have been constituted as the Central Adoption Resource Authority under this act to perform the following functions, namely:- a) to promote in-country adoptions and to facilitate inter-State adoptions in co-ordination with State Agency; b) to regulate inter-country adoptions; c) to frame regulations on adoption and related matters from time to time as may be necessary; d) to carry out the functions of the Central Authority under the Hague Convention on Protection of Children and Cooperation in respect of Inter-country Adoption; e) any other function as may be prescribed.

¹⁴ Section 125 of Criminal Procedure Code, 1973: Order for maintenance of wives, children and parents.

(1) If any person having sufficient means neglects or refuses to maintain-

- (a) his wife, unable to maintain herself, or
- (b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or
- (c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or..

¹⁵ Section 24 of Guardianship and Wards Act, 1890: Duties of guardian of the person

A guardian of the person of a ward is charged with the custody of the ward and must look to his support, health and education, and such other matters as the law to which the ward is subject requires.

¹⁶ Section 26 of The Hindu Marriage Act, 1955: Custody of children

In any proceeding under this Act, the Court may, from time to time, pass such interim orders and make such provisions in the decree as it may deem just and proper with respect to the custody, maintenance and education of minor children, consistently with their wishes, wherever possible, and may, after the decree, upon application by petition for the purpose, make from time to time,

all such orders and provisions with respect to the custody, maintenance and education of such children as might have been made by such decree or interim orders in case the proceedings for obtaining such decree were still pending, and the Court may also from time to time revoke, suspend or vary any such orders and provisions previously made.

¹⁷ **The Maternity Benefit Amendment Act, 2017** has increased the duration of paid maternity leave available for women employees from the existing 12 weeks to 26 weeks. Under the Maternity Benefit Amendment Act, this benefit could be availed by women for a period extending up to 8 weeks before the expected delivery date and remaining 18 weeks can be availed post childbirth. For women who are expecting after having 2 children, the duration of paid maternity leave shall be 12 weeks (i.e., 6 weeks pre and 6 weeks post expected date of delivery)

¹⁸ **Section 56 of JJ Act, 2015:** (1) Adoption shall be resorted to for ensuring right to family for the orphan, abandoned and surrendered children, as per the provisions of this Act, the rules made thereunder and the adoption regulations framed by the Authority.
(2) Adoption of a child from a relative by another relative, irrespective of their religion, can be made as per the provisions of this Act and the adoption

regulations framed by the Authority.

(3) Nothing in this Act shall apply to the adoption of children made under the provisions of the Hindu Adoption and Maintenance Act, 1956 (78 of 1956).

(4) All inter-country adoptions shall be done only as per the provisions of this Act and the adoption regulations framed by the Authority.

(5) Any person, who takes or sends a child to a foreign country or takes part in any arrangement for transferring the care and custody of a child to another person in a foreign country without a valid order from the Court, shall be punishable as per the provisions of section 80.

Section 57 of JJ Act, 2015: Eligibility of prospective adoptive parents.

(1) The prospective adoptive parents shall be physically fit, financially sound, mentally alert and highly motivated to adopt a child for providing a good upbringing to him.

(2) In case of a couple, the consent of both the spouses for the adoption shall be required.

(3) A single or divorced person can also adopt, subject to fulfilment of the criteria and in accordance with the provisions of adoption regulations framed by the Authority.

(4) A single male is not eligible to adopt a girl child.

(5) Any other criteria that may be specified in the adoption regulations framed by the Authority.

Section 58 of JJ Act, 2015: Procedure for adoption by Indian prospective adoptive parents living in India.

(1) Indian prospective adoptive parents living in India, irrespective of their religion, if interested to adopt an orphan or abandoned or surrendered child, may apply for the same to a Specialised Adoption Agency, in the manner as provided in the adoption regulations framed by the Authority.

(2) The Specialised Adoption Agency shall prepare the home study report of the prospective adoptive parents and upon finding them eligible, will refer a child declared legally free for adoption to them along with the child study report and medical report of the child, in the manner as provided in the adoption regulations framed by the Authority.

(3) On the receipt of the acceptance of the child from the prospective adoptive parents along with the child study report and medical report of the child signed by such parents, the Specialised Adoption Agency shall give the child in pre-adoption foster care and file an application in the court for obtaining the adoption order, in the manner as provided in the adoption regulations framed by the Authority.

(4) On the receipt of a certified copy of the court order, the Specialised Adoption Agency shall send immediately the same to the prospective adoptive parents.

Section 60 of JJ Act, 2015: Procedure for inter-country

relative adoption.

(1) A relative living abroad, who intends to adopt a child from his relative in India shall obtain an order from the court and apply for no objection certificate from Authority, in the manner as provided in the adoption regulations framed by the Authority.

(2) The Authority shall on receipt of the order under sub-section (1) and the application from either the biological parents or from the adoptive parents, issue no objection certificate under intimation to the immigration authority of India and of the receiving country of the child.

¹⁹ Article 20 of The United Nations Convention on the rights of the child

1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.

2. States Parties shall in accordance with their national laws ensure alternative care for such a child.

3. Such care could include, inter alia, foster placement, kafalah of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.

²⁰ Article 21 of The United Nations Convention on the rights of the child

States Parties that recognize and/or the system of adoption shall insure that the best interest of the child shall be the paramount consideration and they shall:

- a) Insure that the adoption of a child is authorised only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption of the basis of such counselling as maybe necessary;
- b) Recognize that inter-country adoption maybe considered as an alternative means of child care ,if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin;
- c) Ensure that the child concerned by inter- country adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption;
- d) Take all appropriate measures to ensure that, in inter-country adoption, the placement does not result in improper financial gain for those involved in it;
- e) Promote, wear appropriate, the objectives of the present article by concluding bilateral or

multilateral arrangements or agreements, and endeavour, within this framework to ensure that the placement of the child in another country is carried out by competent authorities or organs.

²¹ Article 25 of The United Nations Convention on the rights of the child

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.

²² Article 39 of The United Nations Convention on the rights of the child

States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

²³ Section 2(14) of JJ Act,2015 "child in need of care and protection" means a child— (i) who is found without any home or settled place of abode and without any ostensible means of subsistence; or (ii) who is found working in contravention of labour

laws for the time being in force or is found begging, or living on the street; or (iii) who resides with a person (whether a guardian of the child or not) and such person—

- (a) has injured, exploited, abused or neglected the child or has violated any other law for the time being in force meant for the protection of child; or
- (b) has threatened to kill, injure, exploit or abuse the child and there is a reasonable likelihood of the threat being carried out; or
- (c) has killed, abused, neglected or exploited some other child or children and there is a reasonable likelihood of the child in question being killed, abused, exploited or neglected by that person; or
- (iv) who is mentally ill or mentally or physically challenged or suffering from terminal or incurable disease, having no one to support or look after or having parents or guardians unfit to take care, if found so by the Board or the Committee; or
- (v) who has a parent or guardian and such parent or guardian is found to be unfit or incapacitated, by the Committee or the Board, to care for and protect the safety and well-being of the child; or
- (vi) who does not have parents and no one is willing to take care of, or whose parents have abandoned or surrendered him; or
- (vii) who is missing or run away child, or whose parents cannot be found after making reasonable inquiry in such manner as may be prescribed; or
- (viii) who has been or is being or is likely to be abused, tortured or exploited for the purpose of

sexual abuse or illegal acts; or
 (ix) who is found vulnerable and is likely to be inducted into drug abuse or trafficking; or
 (x) who is being or is likely to be abused for unconscionable gains; or
 (xi) who is victim of or affected by any armed conflict, civil unrest or natural calamity; or
 (xii) who is at imminent risk of marriage before attaining the age of marriage and whose parents, family members, guardian and any other persons are likely to be responsible for solemnisation of such marriage;

²⁴ Section 41 of JJ Act (Registration of CCIs)

(1) Notwithstanding anything contained in any other law for the time being in force, all institutions, whether run by a State Government or by voluntary or non-governmental organisations, which are meant, either wholly or partially, for housing children in need of care and protection or children in conflict with law, shall, be registered under this Act in such manner as may be prescribed, within a period of six months from the date of commencement of this Act, regardless of whether they are receiving grants from the Central Government or, as the case may be, the State Government or not:
 Provided that the institutions having valid registration under the Juvenile Justice (Care and Protection of Children) Act, 2000 on the date of commencement of this Act shall be deemed to have

been registered under this Act.

(2) At the time of registration under this section, the State Government shall determine and record the capacity and purpose of the institution and shall register the institution as a Children's Home or open shelter or Specialised Adoption Agency or observation home or special home or place of safety, as the case may be.

(3) On receipt of application for registration under sub-section- (1), from an existing or new institution housing children in need of care and protection of children in conflict with law, the State Government may grant provisional registration, within one month from the date of receipt of application, for a maximum period of six months, in order to bring such institution under the purview of this Act, and shall determine the capacity of the Home which shall be mentioned in the registration certificate: Provided that if the said institution does not fulfill the prescribed criteria for registration, within the period specified in sub-section (1), the provisional registration shall stand cancelled and the provisions of sub-section (5) shall apply.

(4) If the State Government does not issue a provisional registration certificate within one month from the date of application, the proof of receipt of application for registration shall be treated as provisional registration to run an institution for a maximum period of six months.

(5) If the application for registration is not disposed of within six months by any officer or officers of

any State Government, it shall be regarded as dereliction of duty on their part by their higher controlling authority and appropriate departmental proceedings shall be initiated.

(6) The period of registration of an institution shall be five years, and it shall be subject to renewal in every five years.

(7) The State Government may, after following the procedure as may be prescribed, cancel or withhold registration, as the case may be, of such institutions which fail to provide rehabilitation and reintegration services as specified in section 53 and till such time that the registration of an institution is renewed or granted, the State Government shall manage the institution.

(8) Any child care institution registered under this section shall be duty bound to admit children, subject to the capacity of the institution, as directed by the Committee, whether they are receiving grants from the Central Government or, as the case may be, the State Government or not.

(9) Notwithstanding anything contained in any other law for the time being in force, the inspection committee appointed under section 54, shall have the powers to inspect any institution housing children, even if not registered under this Act to determine whether such institution is housing children in need of care and protection.

²⁵ **Section 42 of JJ Act,2015: Penalty for non-**

registration of Child Care Institutions

Any person, or persons, in-charge of an institution housing children in need of care and protection and children in conflict with law, who fails to comply with the provisions of sub-section (1) of section 41, shall be punished with imprisonment which may extend to one year or a fine of not less than one lakh rupees or both: Provided that every thirty days delay in applying for registration shall be considered as a separate offence.

²⁶ **Section 44 of JJ Act,2015: Foster care.**—(1) The children in need of care and protection may be placed in foster care, including group foster care for their care and protection through orders of the Committee, after following the procedure as may be prescribed in this regard, in a family which does not include the child's biological or adoptive parents or in an unrelated family recognised as suitable for the purpose by the State Government, for a short or extended period of time.

(2) The selection of the foster family shall be based on family's ability, intent, capacity and prior experience of taking care of children.

(3) All efforts shall be made to keep siblings together in foster families, unless it is in their best interest not to be kept together.

(4) The State Government, after taking into account the number of children, shall provide monthly funding for such foster care through District Child Protection Unit after following the procedure, as

may be prescribed, for inspection to ensure well being of the children. (5) In cases where children have been placed in foster care for the reason that their parents have been found to be unfit or incapacitated by the Committee, the child's parents may visit the child in the foster family at regular intervals, unless the Committee feels that such visits are not in the best interest of the child, for reasons to be recorded therefor; and eventually, the child may return to the parent's homes once the parents are determined by the Committee to be fit to take care of the child. (6) The foster family shall be responsible for providing education, health and nutrition to the child and shall ensure the overall well being of the child in such manner, as may be prescribed. (7) The State Government may make rules for the purpose of defining the procedure, criteria and the manner in which foster care services shall be provided for children. (8) The inspection of foster families shall be conducted every month by the Committee in the form as may be prescribed to check the well-being of the child and whenever a foster family is found lacking in taking care of the child, the child shall be removed from that foster family and shifted to another foster family as the Committee may deem fit. (9) No child regarded as adoptable by the Committee shall be given for long-term foster care.

²⁷ **Section 57 of JJAct,2015: Eligibility of prospective adoptive parents.**

1. The prospective adoptive parents shall be physically fit, financially sound, mentally alert and highly motivated to adopt a child for providing a good upbringing to him.
2. In case of a couple, the consent of both the spouses for the adoption shall be required.
3. A single or divorced person can also adopt, subject to fulfillment of the criteria and in accordance with the provisions of adoption regulations framed by the Authority.
4. A single male is not eligible to adopt a girl child.
5. Any other criteria that may be specified in the adoption regulations framed by the Authority.

²⁸ **Section 68 of JJ Act, 2015:** The Central Adoption Resource Agency existing before the commencement of this Act, shall be deemed to have been constituted as the Central Adoption Resource Authority under this Act to perform the following functions, namely:— (a) to promote in-country adoptions and to facilitate inter-State adoptions in co-ordination with State Agency; (b) to regulate inter-country adoptions; (c) to frame regulations on adoption and related matters from time to time as may be necessary; (d) to carry out the functions of the Central Authority under the Hague Convention on Protection of Children and Cooperation in respect of Inter-country Adoption; (e) any other function as may be prescribed.

²⁹ **Section 2 of The Hindu Adoption and Maintenance**

Act, 1956

Application of Act- (1) This Act applies:-

- (a) to any person, who is a Hindu by religion in any of its forms or developments, including a Virashaiva, a Lingayat or a follower of the Brahmo, Prarthana or Arya Samaj,
- (b) to any person who is a Buddhist, Jaina or Sikh by religion, and
- (c) to any other person who is not a Muslim, Christian, Parsi or Jew by religion unless it is proved that any such person would not have been governed by the Hindu law or by any custom or usage as part of that law in respect of any of the matters dealt with herein if this Act had not been passed.

³⁰ **Section 7 of the Hindu Adoption and Maintenance Act, 1956**

Capacity of a male Hindu to take in adoption- Any male Hindu who is of sound mind and is not a minor has the capacity to take a son or a daughter in adoption. Provided that, if he has a wife living, he shall not adopt except with the consent of his wife unless the wife has completely and finally renounced the world or has ceased to be a Hindu or has been declared by a court of competent jurisdiction to be of unsound mind. Explanation- If a person has more than one wife living at the time of adoption, the consent of all the wives is necessary unless the consent of any one of them is unnecessary for any of the reasons specified in the

preceding proviso.

³¹ **Section 8 of the Hindu Adoption and Maintenance Act, 1956**

Capacity of a female Hindu to take in adoption- Any female Hindu- (a) who is of sound mind, (b) who is not a minor, and (c) who is not married, or if married, whose marriage has been dissolved or whose husband is dead or has completely and finally renounced the world or has ceased to be a Hindu or has been declared by a court of competent jurisdiction to be of unsound mind, has the capacity to take a son or daughter in adoption.

³² **Firstpost, Retrieved from <https://www.firstpost.com/india/ncpcr-data-shows-over-1300-unregistered-child-care-institutions-in-india-1165-alone-in-kerala-4746071.html>**

³³ **Article 32 of The United Nations Convention on the rights of the child**

1. States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.
2. States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant

provisions of other international instruments, States Parties shall in particular:

- (a) Provide for a minimum age or minimum ages for admission to employment;
- (b) Provide for appropriate regulation of the hours and conditions of employment;
- (c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.

³⁴ Article 24 of the Constitution of India: Prohibition of employment of children in factories, etc

No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment Provided that nothing in this sub clause shall authorise the detention of any person beyond the maximum period prescribed by any law made by Parliament under sub clause (b) of clause (7); or such person is detained in accordance with the provisions of any law made by Parliament under sub clauses (a) and (b) of clause (7)

³⁵ Section 3(2) of the amendment act of 2016

- (1) No child shall be employed or permitted to work in any occupation or process.
- (2) Nothing in sub-section (1) shall apply where the child,— (a) helps his family or family enterprise, which is other than any hazardous occupations or processes set forth in the Schedule, after his school hours or during vacations; (b) works as an

artist in an audio-visual entertainment industry, including advertisement, films, television serials or any such other entertainment or sports activities except the circus, subject to such conditions and safety measures, as may be prescribed: Provided that no such work under this clause shall effect the school education of the child. Explanation.— For the purposes of this section, the expression, (a) “family” in relation to a child, means his mother, father, brother, sister and father’s sister and brother and mother’s sister and brother; (b) “family enterprise” means any work, profession, manufacture or business which is performed by the members of the family with the engagement of other persons; (c) “artist” means a child who performs or practices any work as a hobby or profession directly involving him as an actor, singer, sports person or in such other activity as may be prescribed relating to the entertainment or sports activities falling under clause (b) of sub-section (2).”

³⁶This scheme is implemented by the Ministry of Women and Child Development.

³⁷ This scheme is implemented by the Ministry of Labour and Employment and is the only scheme by the MLOE concerned with rehabilitation of child labour.

³⁸ In 2008-2009 NCLP received an allocation of ₹156.06 Crore and over the period of six years it has seen decrease in allocation. In 2013-2014 the

allocation reduced to only ₹131.2 Crore (“Budget for Children in India: 2008-09 to 2013-14”; HAQ: Centre for Child Rights; <http://haqrc.org/new-at-haq/budget-children-india-2008-2009-2013-2014-2/>)

³⁹The “Scheme for Welfare of Working Children in Need of Care and Protection” has witnessed heavy under expenditure with an average under expenditure of 15% between 2011-12 to 2013-14. (“Budget for Children in India: 2008-09 to 2013-14”; HAQ: Centre for Child Rights; <http://haqrc.org/new-at-haq/budget-children-india-2008-2009-2013-2014-2/>)

⁴⁰ Article 6 of The United Nations Convention on the rights of the child

1. States Parties recognize that every child has the inherent right to life.
2. States Parties shall ensure to the maximum extent possible the survival and development of the child.

⁴¹ Article 12 of The United Nations Convention on the rights of the child

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

⁴² Article 13 of The United Nations Convention on the rights of the child

1. The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.

2. The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

- (a) For respect of the rights or reputations of others; or
- (b) For the protection of national security or of public order (ordre public), or of public health or morals.

⁴³ Article 14 of The United Nations Convention on the rights of the child

1. States Parties shall respect the right of the child to freedom of thought, conscience and religion.

2. States Parties shall respect the rights and duties of the parents and, when applicable, legal

guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.

⁴⁴ Article 15 of The United Nations Convention on the rights of the child

1. States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly.

2. No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

⁴⁵ Article 16 of The United Nations Convention on the rights of the child

1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.

2. The child has the right to the protection of the law against such interference or attacks.

⁴⁶ Article 17 of The United Nations Convention on the rights of the child

States Parties recognize the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health.

To this end, States Parties shall:

- (a) Encourage the mass media to disseminate information and material of social and cultural benefit to the child and in accordance with the spirit of article 29;
- (b) Encourage international co-operation in the production, exchange and dissemination of such information and material from a diversity of cultural, national and international sources;
- (c) Encourage the production and dissemination of children's books;
- (d) Encourage the mass media to have particular regard to the linguistic needs of the child who belongs to a minority group or who is indigenous;
- (e) Encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being, bearing in mind the provisions of articles 13 and 18.

⁴⁷ Article 26 of The United Nations Convention on the rights of the child

1. States Parties shall recognize for every child the right to benefit from social security, including social insurance, and shall take the necessary measures to achieve the full realization of this right in accordance with their national law.
2. The benefits should, where appropriate, be granted, taking into account the resources and the circumstances of the child and persons having responsibility for the maintenance of the child, as well as any other consideration relevant to an application for benefits made by or on behalf of the child.

⁴⁸ Article 27 of The United Nations Convention on the rights of the child

1. States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.
2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development.
3. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.

4. States Parties shall take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child, both within the State Party and from abroad. In particular, where the person having financial responsibility for the child lives in a State different from that of the child, States Parties shall promote the accession to international agreements or the conclusion of such agreements, as well as the making of other appropriate arrangements.

⁴⁹ Article 28 of The United Nations Convention on the rights of the child

1. States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:
 - (a) Make primary education compulsory and available free to all;
 - (b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;
 - (c) Make higher education accessible to all on the basis of capacity by every appropriate means;
 - (d) Make educational and vocational information and guidance available and accessible to all children;

- (e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.
2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.
3. States Parties shall promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.

⁵⁰ Article 29 of The United Nations Convention on the rights of the child

1. States Parties agree that the education of the child shall be directed to:
 - (a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;
 - (b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;
 - (c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;

(d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;

(e) The development of respect for the natural environment.

2. No part of the present article or article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principle set forth in paragraph 1 of the present article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

⁵¹ Article 31 of The United Nations Convention on the rights of the child

1. States Parties recognize 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 arts.

2. States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

⁵² Article 21-A of Constitution of India: provide free and compulsory education of all children in the age

group of six to fourteen years as a Fundamental Right in such a manner as the State may, by law, determine.

⁵³ Article 28 of Constitution of India: Freedom as to attendance at religious instruction or religious worship in certain educational institutions

(1) No religion instruction shall be provided in any educational institution wholly maintained out of State funds

(2) Nothing in clause (1) shall apply to an educational institution which is administered by the State but has been established under any endowment or trust which requires that religious instruction shall be imparted in such institution

(3) No person attending any educational institution recognised by the State or receiving aid out of State funds shall be required to take part in any religious instruction that may be imparted in such institution or to attend any religious worship that may be conducted in such institution or in any premises attached thereto unless such person or, if such person is a minor, his guardian has given his consent thereto Cultural and Educational Rights

⁵⁴ Article 29 of Constitution of India

(1) Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same

⁵⁵ Article 30: Right of minorities to establish and administer educational institutions

(1) All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice

(1A) In making any law providing for the compulsory acquisition of any property of an educational institution established and administered by a minority, referred to in clause (1), the State shall ensure that the amount fixed by or determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under that clause

(2) The state shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language

⁵⁶ Article 39 (f) of the Constitution of India: that 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.

⁵⁷ Article 243G of Constitution of India: Powers, authority and responsibilities of Panchayats Subject to the provisions of this Constitution the Legislature of a State may, by law, endow the Panchayats with such powers and authority and may be necessary

to enable them to function as institutions of self government and such law may contain provisions for the devolution of powers and responsibilities upon Panchayats, at the appropriate level, subject to such conditions as may be specified therein, with respect to

- (a) the preparation of plans for economic development and social justice;
- (b) the implementation of schemes for economic development and social justice as may be entrusted to them including those in relation to the matters listed in the Eleventh Schedule.

⁵⁸ **Article 350A Facilities for instruction in mother tongue at primary stage.**- It shall be the endeavour of every State and of every local authority within the State to provide adequate facilities for instruction in the mother-tongue at the primary stage of education to children belonging to linguistic minority groups; and the President may issue such directions to any State as he considers necessary or proper for securing the provision of such facilities.

⁵⁹ **Section 3 of Rights of Persons with Disabilities Act, 2016: Equality and Non-Discrimination**

- (1) The appropriate Government shall ensure that the persons with disabilities enjoy the right to equality, life with dignity and respect for his or her integrity equally with others.
- (2) The appropriate Government shall take steps to

utilise the capacity of persons with disabilities by providing appropriate environment.

(3) No person with disability shall be discriminated on the ground of disability, unless it is shown that the impugned act or omission is a proportionate means of achieving a legitimate aim.

(4) No person shall be deprived of his or her personal liberty only on the ground of disability.

(5) The appropriate Government shall take necessary steps to ensure reasonable accommodation for persons with disabilities.

⁶⁰ **Section 4 (1) Rights of Persons with Disabilities Act, 2016: Women and Children with Disabilities**

The appropriate Government and the local authorities shall take measures to ensure that the women and children with disabilities enjoy their rights equally with others.

⁶¹ **Section 3(1) of The Indian Majority Act, 1875**

Age of majority of persons domiciled in India.-Every person domiciled in India shall attain the age of majority on his completing the age of eighteen years and not before.

⁶² **Section 30 of the Indian Partnership Act, 1932: Minors Admitted to the benefits of Partnership**

(1) A person who is a minor according to the law to which he is subject may not be a partner in a firm, but, with the consent of all the partners for the time being, he may be admitted to the benefits of

partnership.

(2) Such minor has a right to such share of the property and of the profits of the firm as may be agreed upon, and he may have access to and inspect and copy any of the accounts of the firm.

(3) Such minor's share is liable for the acts of the firm but the minor is not personally liable for any such act.

(4) Such minor may not sue the partners for an account or payment of his share of the property or profits of the firm, save when severing his connection with the firm, and in such case the amount of his share shall be determined by a valuation made as far as possible in accordance with the rules contained in section 48:

PROVIDED that all the partners acting together or any partner entitled to dissolve the firm upon notice to other partners may elect in such suit to dissolve the firm, and thereupon the Court shall proceed with the suit as one for dissolution and for settling accounts between the partners and the amount of the share of the minor shall be determined along with the shares of the partners.

(5) At any time within six months of his attaining majority, or of his obtaining knowledge that he had been admitted to the benefits of partnership, whichever date is later, such person may give public notice that he has elected to become or that he has elected not to become a partner in the firm, and such notice shall determine his position as regards the firm:

PROVIDED that, if he fails to give such notice, he shall become a partner in the firm on the expiry of the said six months.

(6) Where any person has been admitted as a minor to the benefits of partnership in a firm, the burden of proving the fact that such person had no knowledge of such admission until a particular date after the expiry of six months of his attaining majority shall lie on the person asserting that fact.

(7) Where such person becomes a partner - (a) his rights and liabilities as a minor continue upto the date on which he becomes a partner, but he also becomes personally liable to third parties for all acts of the firm done since he was admitted to the benefits of partnership, and (b) his share in the property and profits of the firm shall be the share to which he was entitled as a minor.

(8) Where such person elects not to become a partner, - (a) his rights and liabilities shall continue to be those of a minor under the section upto the date on which he gives public notice; (b) his share shall not be liable for any acts for the firm done after the date of the notice; and (c) he shall be entitled to sue the partners for his share of the property and profits in accordance with sub-section (4).

(9) Nothing in sub-sections (7) and (8) shall affect the provisions of section 28.

⁶³ **Section 12(1)(c) of The Right of Children to Free and Compulsory Education Act, 2009**

All State Rules outline provision of 25% reservation in all private-unaided schools, the definition of the category of EWS, their explicit entitlements and reimbursement policies tend to vary across states. Although inter-state differences are an expected, and indeed a necessary, consequence in a federal system, the varying levels of the articulation of this specific provision give root to ambiguity in the implementation of such provisions at the state-level. For instance, with regard to the definition of a neighbourhood, while some states have explicitly defined its meaning, other states such as MP have only loosely described what is meant by a neighbourhood, thereby leaving the definition of the area from which EWS children are to be selected, open to interpretation. Regarding the reimbursement policies as well, some states have extensively detailed the basis for calculation, the process of reimbursement and the actors involved in this process; in contrast, several others have limited their Rules to describing the procedure for calculating per-child expenditure. Therefore, in states where the process for reimbursement is not clearly spelled out (e.g., Bihar, Maharashtra, HP), the manner in which such complicated provisions are to be implemented on the ground remains nebulous.

⁶⁴ **Section 18 of The Right of Children to Free and Compulsory Education Act:** No school to be established without obtaining certificate of

recognition

(1) No school, other than a school established, owned or controlled by the appropriate Government or the local authority, shall, after the commencement of this Act, be established or function, without obtaining a certificate of recognition from such authority, by making an application in such form and manner, as may be prescribed.

(2) The authority prescribed under sub-section (1) shall issue the certificate of recognition in such form, within such period, in such manner, and subject to such conditions, as may be prescribed: PROVIDED that no such recognition shall be granted to a school unless it fulfils norms and standards specified under section 19.

(3) On the contravention of the conditions of recognition, the prescribed authority shall, by an order in writing, withdraw recognition: PROVIDED that such order shall contain a direction as to which of the neighbourhood school, the children studying in the derecognised school, shall be admitted:

PROVIDED FURTHER that no recognition shall be so withdrawn without giving an opportunity of being heard to such school, in such manner, as may be prescribed.

(4) With effect from the date of withdrawal of the recognition under sub-section (3), no such school shall continue to function.

(5) Any person who establishes or runs a school

without obtaining certificate of recognition, or continues to run a school after withdrawal of recognition, shall be liable to fine which may extend to one lakh rupees and in case of continuing contraventions, to a fine of ten thousand rupees for each day during which such contravention continues.

⁶⁵ Section 19 of The Right of Children to Free and Compulsory Education Act, 2009

Norms and standards for school. —

- (1) No school shall be established, or recognised, under Section 18, unless it fulfils the norms and standards specified in the Schedule.
- (2) Where a school established before the commencement of this Act does not fulfil the norms and standards specified in the Schedule, it shall take steps to fulfil such norms and standards at its own expenses, within a period of three years from the date of such commencement.
- (3) Where a school fails to fulfil the norms and standards within the period specified under sub-section (2), the authority prescribed under sub-section (1) of Section 18 shall withdraw recognition granted to such school in the manner specified under sub-section (3) thereof.
- (4) With effect from the date of withdrawal of recognition under sub-section (3), no school shall continue to function.
- (5) Any person who continues to run a school after the recognition is withdrawn, shall be liable to

fine which may extend to one lakh rupees and in case of continuing contraventions, to a fine of ten thousand rupees for each day during which such contravention continues.

⁶⁶ **The pernicious S.19** which requires parents-chosen private budget schools to comply with the norms prescribed in the Schedule of the Act and “to fulfill such norms and standards at its own expenses” within the three-year window which closed on March 31 apart, there are several other provisions of the RTE Act which are likely to adversely impact school education countrywide. S.18 (1) which clearly has private budget schools in its sights, requires all non-government schools to obtain a recognition certificate from the local or state government, failing which they will not be allowed to conduct classes (**s. 18(4)**). School promoters who continue to dispense education without a recognition certificate are obliged to pay a fine of up to Rs.1 lakh and Rs.10,000 per day during which such contravention continues. Significantly, such recognition is mandatory only for schools “other than a school established, owned or controlled by the appropriate government”. Therefore, since government schools are not required to obtain a recognition certificate, it follows that they cannot be shut down under s. 19 if they fail to comply with the infrastructure and norms prescribed by the Schedule of the Act — a blatant inequity.

⁶⁷ Article 11 of The United Nations Convention on the rights of the child

1. States Parties shall take measures to combat the illicit transfer and non-return of children abroad.
2. To this end, States Parties shall promote the conclusion of bilateral or multilateral agreements or accession to existing agreements.

⁶⁸ Supra Note, viii: Article 19 of The United Nations Convention on the Rights of the Child.

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.
2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

⁶⁹ Article 24 (3) of The United Nations Convention on the rights of the child :

States Parties shall take all effective and appropriate measures with a view to abolishing

traditional practices prejudicial to the health of children.

⁷⁰ Article 33 of The United Nations Convention on the rights of the child

States Parties shall take all appropriate measures, including legislative, administrative, social and educational measures, to protect children from the illicit use of narcotic drugs and psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the illicit production and trafficking of such substances.

⁷¹ Article 34 of The United Nations Convention on the rights of the child

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

- (a) The inducement or coercion of a child to engage in any unlawful sexual activity;
- (b) The exploitative use of children in prostitution or other unlawful sexual practices;
- (c) The exploitative use of children in pornographic performances and materials.

⁷² Article 35 of The United Nations Convention on the rights of the child

States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the

abduction of, the sale of or traffic in children for any purpose or in any form.

⁷³ Article 36 of The United Nations Convention on the rights of the child - States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.

⁷⁴ Article 37 of The United Nations Convention on the rights of the child

States Parties shall ensure that:

- (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;
- (b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;
- (c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her

family through correspondence and visits, save in exceptional circumstances;

(d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

⁷⁶ Article 40 of The United Nations Convention on the rights of the child

1. States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which 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.
2. To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:
 - (a) No child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed;
 - (b) Every child alleged as or accused of having

infringed the penal law has at least the following guarantees:

- (i) To be presumed innocent until proven guilty according to law;
- (ii) To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;
- (iii) To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;
- (iv) Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;
- (v) If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;
- (vi) To have the free assistance of an interpreter if the child cannot understand or speak the language used;
- (vii) To have his or her privacy fully respected at all

stages of the proceedings.

3. States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular:

- (a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;
- (b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.

4. A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.

⁷⁷ **Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography.**

⁷⁸ **Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography.**

⁷⁹ **Section 21 of POCSO Act, 2012: Punishment for failure to report or record a case.-**

1. Any person, who fails to report the commission of an offence under sub-section (1) of section 19 or

section 20 or who fails to record such offence under sub-section (2) of section 19 shall be punished with imprisonment of either description which may extend to six months or with fine or with both.

2. Any person, being in-charge of any company or an institution (by whatever name called) who fails to report the commission of an offence under sub-section (1) of section 19 in respect of a subordinate under his control, shall be punished with imprisonment for a term which may extend to one year and with fine.

3. The revisions of sub-section (1) shall not apply to a child under this Act.

⁸⁰ **Section 28 of POCSO Act, 2012: Designation of Special Courts -**

1. For the purposes of providing a speedy trial, the State Government shall in consultation with the Chief Justice of the High Court, by notification in the Official Gazette, designate for each district, a Court of Session to be a Special Court to try the offences under the Act:

Provided that if a Court of Session is notified as a children's court under the Commissions for Protection of Child Rights Act, 2005 or a Special Court designated for similar purposes under any other law for the time being in force, then, such court shall be deemed to be a Special Court under this section.

2. While trying an offence under this Act, a Special

Court shall also try an offence [other than the offence referred to in sub-section (1)], with which the accused may, under the Code of Criminal Procedure, 1973, be charged at the same trial.

3. The Special Court constituted under this Act, notwithstanding anything in the Information Technology Act, 2000, shall have jurisdiction to try offences under section 67B of that Act in so far as it relates to publication or transmission of sexually explicit material depicting children in any act, or conduct or manner or facilitates abuse of children online.

⁸¹ **Section 29 of POCSO Act,2012: Presumption as to certain offences-** Where a person is prosecuted for committing or abetting or attenuating to commit any offence under sections 3,5,7 and section 9 of this Act, the Special Court shall presume, that such person has committed or abetted or attempted to commit the offence, as the case may be unless the contrary is proved.

⁸² **Section 361 of Indian Penal Code,1860: Kidnapping from lawful guardianship**
Whoever takes or entices any minor under 155[sixteen] years of age if a male, or under 156[eighteen] years of age if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian, is

said to kidnap such minor or person from lawful Guardianship.

Explanation- The words "lawful guardian" in this section include any person lawfully entrusted with the care of custody of such minor or other person.

Explanation- This section does not extend to the act of any person who in good faith believes himself to be the father of an illegitimate child, or who in good faith believes himself to be entitled to lawful custody of such child, unless such act is committed for an immoral or unlawful purpose

⁸³ **Section 363A of Indian Penal Code,1860: Kidnapping or maiming a minor for purposes of begging**

(1) Whoever Kidnap any minor or, not being the lawful guardian of a minor, obtains the custody of the minor, in order that such minor may be employed or used for the purpose of begging shall be punishable with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

(2) Whoever maims any minor in order that such minor can be employed or used for the purposes of begging shall be punishable with imprisonment for life, and shall also be liable to fine.

(3) Where any person, not being the lawful guardian of a minor, employs or uses such minor for the purposes of begging, it shall be presumed, unless the contrary is proved, that he kidnapped or otherwise obtained the custody of that minor in

order that the minor might be employed or used for the purposes of begging.

(4) In this section,-

(a) "begging," means-

(i) soliciting or receiving, alms in a public place, whether under the pretence of singing, dancing, fortune-telling, performing tricks or selling articles or otherwise;

(ii) entering on any private premises for the purpose of soliciting or receiving alms;

(iii) exposing or exhibiting, with the object of obtaining or extorting alms, any sore, wound, injury, deformity or disease, whether of himself or of any other person or of an animal; .

(iv) using a minor as an exhibit for the purpose of soliciting or receiving alms;

(b) "minor" means-

(i) in the case of a male, a person under sixteen years of age; and

(ii) in the case of a female, a person under eighteen years of age.

⁸⁴ **366A of Indian Penal Code, 1860: Procurement of minor girl**

Whoever, by any means whatsoever, induces any minor girl under the age of eighteen years to go from any place or to do any act with intent that such girl may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall be punishable with

imprisonment which may extend to ten years, and shall also be liable to fine.

⁸⁵ Section 366B of Indian Penal Code, 1860:

Importation of girl from foreign country

Whoever imports into [India] from any country outside India [or from the State of Jammu and Kashmir] any girl under the age of twenty-one years with intent that she may be, or knowing it to be likely that she will be, forced or seduced to illicit intercourse with another person, [***] shall be punishable with imprisonment which may extend to ten years and shall also be liable to fine.

⁸⁶ Section 369 of Indian Penal Code, 1860: Kidnapping or abducting child under ten years with intent to steal from its person

Whoever kidnaps or abducts any child under the age of ten years with the intention of taking dishonestly any movable property from the person of such child, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

⁸⁷ Section 370 of Indian Penal Code, 1860: Buying or disposing of any person as a slave

Whoever imports, exports, removes, buys, sells or disposes of any person as a slave, or accepts, receives or detains against his will any person as a slave, shall be punished with imprisonment of

either description for a term which may extend to seven years, and shall also be liable to fine.

⁸⁸ Section 370A of Indian Penal Code, 1860: -

Exploitation of Trafficked person-

1) Whoever, knowingly or having reason to believe that a minor has been trafficked, engages such minor for sexual exploitation in any manner, shall be punished with rigorous imprisonment for a term which shall not be less than five years, but which may extend to seven years, and shall also be liable to fine.

2) Whoever, knowingly by or having reason to believe that a person has been trafficked, engages such person for sexual exploitation in any manner, shall be punished With rigorous imprisonment for a term which shall not be less than three years, but which may extend to five years, and shall also be liable to fine.

⁸⁹ Section 372 of Indian Penal Code, 1860: Selling minor for purposes of prostitution, etc

Whoever sells, lets to hire, or otherwise disposes of any [person under the age of eighteen years with intent that such person shall at any age be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such person will at any age be] employed or used for any such purpose, shall be punished with imprisonment of either description for a term

which may extend to ten years, and shall be liable to fine.

Explanation I- When a female under the age of eighteen years is sold, let for hire, or otherwise disposed of to a prostitute or to any person who keeps or manages a brothel, the person so disposing of such female shall, until the contrary is proved, be presumed to have disposed of her with the intent that she shall be used for the purpose of prostitution.

Explanation II-For the purposes of this section 'illicit intercourse" means sexual intercourse between persons not united by marriage or by any union or tie which, though not amounting to a marriage, is recognized by the personal law or custom of the community to which they belong or, where they belong to different communities, of both such communities, as constituting between them a quasi-marital relation.

⁹⁰ Section 3 of JJ Act, 2015

The Central Government, the State Governments, the Board, and other agencies, as the case may be, while implementing the provisions of this Act shall be guided by the following fundamental principles, namely:-- (i) Principle of presumption of innocence: 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: All human beings shall be treated with equal dignity and rights. (iii) Principle

of participation: Every child shall have 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. (iv) Principle of best interest: All decisions regarding the child shall be based on the primary consideration that they are in the best interest of the child and to help the child to develop full potential. (v) Principle of family responsibility: The primary responsibility of care, nurture and protection of the child shall be that of the biological family or adoptive or foster parents, as the case may be. (vi) Principle of safety: All measures shall be taken 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, and thereafter. (vii) Positive measures: All resources are to be mobilised including those of family and community, for promoting the well-being, facilitating development of identity and providing an inclusive and enabling environment, to reduce vulnerabilities of children and the need for intervention under this Act. (viii) Principle of non-stigmatising semantics: Adversarial or accusatory words are not to be used in the processes pertaining to a child. (ix) Principle of non-waiver of rights: No waiver of any of the right of the child is permissible or valid, whether sought by the child or person acting on behalf of the child, or a Board or a Committee and any non-exercise of a fundamental right shall not amount to waiver.

(x) Principle of equality and non-discrimination: There shall be no 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. (xi) Principle of right to privacy and confidentiality: Every child shall have a right to protection of his privacy and confidentiality, by all means and throughout the judicial process. (xii) Principle of institutionalisation as a measure of last resort: A child shall be placed in institutional care as a step of last resort after making a reasonable inquiry. (xiii) Principle of repatriation and restoration: Every child in the juvenile justice system shall have the right to be re-united with his family at the earliest and to be restored to the same socio-economic and cultural status that he was in, before coming under the purview of this Act, unless such restoration and repatriation is not in his best interest. (xiv) Principle of fresh start: All past records of any child under the Juvenile Justice system should be erased except in special circumstances. (xv) Principle of diversion: Measures for dealing with children in conflict with law without resorting to judicial proceedings shall be promoted unless it is in the best interest of the child or the society as a whole. (xvi) Principles of natural justice: Basic procedural standards of fairness shall be adhered to, including the right to a fair hearing, rule against bias and the right to review, by all persons or bodies, acting in a judicial capacity under this Act.

⁹¹ **Section 15 of JJ Act, 2015**

(1) In case of a heinous offence alleged to have been committed by a child, who has completed or is above the age of sixteen years, the Board shall conduct a preliminary assessment with regard to his mental and physical capacity to commit such offence, ability to understand the consequences of the offence and the circumstances in which he allegedly committed the offence, and may pass an order in accordance with the provisions of subsection (3) of section 18: Provided that for such an assessment, the Board may take the assistance of experienced psychologists or psycho-social workers or other experts. Explanation.—For the purposes of this section, it is clarified that preliminary assessment is not a trial, but is to assess the capacity of such child to commit and understand the consequences of the alleged offence. (2) Where the Board is satisfied on preliminary assessment that the matter should be disposed of by the Board, then the Board shall follow the procedure, as far as may be, for trial in summons case under the Code of Criminal Procedure, 1973: Provided that the order of the Board to dispose of the matter shall be appealable under sub-section (2) of section 101: Provided further that the assessment under this section shall be completed within the period specified in section 14.

⁹² Section 18(3) of JJ Act, 2015

Where the Board after preliminary assessment under section 15 pass an order that there is a need for trial of the said child as an adult, then the Board may order transfer of the trial of the case to the Children's Court having jurisdiction to try such offences.

⁹³ Section 21 of JJ Act, 2015

No child in conflict with law shall be sentenced to death or for life imprisonment without the possibility of release, for any such offence, either under the provisions of this Act or under the provisions of the Indian Penal Code or any other law for the time being in force.

⁹⁴ Section 27 of JJ Act, 2015

(1) The State Government shall by notification in the Official Gazette constitute for every district, one or more Child Welfare Committees for exercising the powers and to discharge the duties conferred on such Committees in relation to children in need of care and protection under this Act and ensure that induction training and sensitisation of all members of the committee is provided within two months from the date of notification. (2) The Committee shall consist of a Chairperson, and four other members as the State Government may think fit to appoint, of whom at least one shall be a woman and another, an expert on the matters concerning children. (3) The District Child Protection Unit shall provide a Secretary and other

staff that may be required for secretarial support to the Committee for its effective functioning.

(4) No person shall be appointed as a member of the Committee unless such person has been actively involved in health, education or welfare activities pertaining to children for at least seven years or is a practicing professional with a degree in child psychology or psychiatry or law or social work or sociology or human development. (5) No person shall be appointed as a member unless he possesses such other qualifications as may be prescribed. (6) No person shall be appointed for a period of more than three years as a member of the Committee. (7) The appointment of any member of the Committee shall be terminated by the State Government after making an inquiry, if— (i) he has been found guilty of misuse of power vested on him under this Act; (ii) he has been convicted of an offence involving moral turpitude and such conviction has not been reversed or he has not been granted full pardon in respect of such offence; (iii) he fails to attend the proceedings of the Committee consecutively for three months without any valid reason or he fails to attend less than three-fourths of the sittings in a year. (8) The District Magistrate shall conduct a quarterly review of the functioning of the Committee. (9) The Committee shall function as a Bench and shall have the powers conferred by the Code of Criminal Procedure, 1973 on a Metropolitan Magistrate or, as the case may be, a Judicial Magistrate of First Class.

(10) The District Magistrate shall be the grievances redressal authority for the Child Welfare Committee and anyone connected with the child, may file a petition before the District Magistrate, who shall consider and pass appropriate orders.

⁹⁵ Section 30 of the JJ Act, 2015. The functions and responsibilities of the Committee shall include— (i) taking cognizance of and receiving the children produced before it; (ii) conducting inquiry on all issues relating to and affecting the safety and wellbeing of the children under this Act; (iii) directing the Child Welfare Officers or probation officers or District Child Protection Unit or non-governmental organisations to conduct social investigation and submit a report before the Committee; (iv) conducting inquiry for declaring fit persons for care of children in need of care and protection; (v) directing placement of a child in foster care; (vi) ensuring care, protection, appropriate rehabilitation or restoration of children in need of care and protection, based on the child's individual care plan and passing necessary directions to parents or guardians or fit persons or children's homes or fit facility in this regard; (vii) selecting registered institution for placement of each child requiring institutional support, based on the child's age, gender, disability and needs and keeping in mind the available capacity of the institution; (viii) conducting at least two inspection visits per month of residential facilities for children

in need of care and protection and recommending action for improvement in quality of services to the District Child Protection Unit and the State Government; (ix) certifying the execution of the surrender deed by the parents and ensuring that they are given time to reconsider their decision as well as making all efforts to keep the family together; (x) ensuring that all efforts are made for restoration of abandoned or lost children to their families following due process, as may be prescribed; (xi) declaration of orphan, abandoned and surrendered child as legally free for adoption after due inquiry; (xii) taking suo motu cognizance of cases and reaching out to children in need of care and protection, who are not produced before the Committee, provided that such decision is taken by at least three members; (xiii) taking action for rehabilitation of sexually abused children who are reported as children in need of care and protection to the Committee by Special Juvenile Police Unit or local police, as the case may be, under the Protection of Children from Sexual Offences Act, 2012; (xiv) dealing with cases referred by the Board under sub-section (2) of section 17; (xv) co-ordinate with the police, labour department and other agencies involved in the care and protection of children with support of the District Child Protection Unit or the State Government; (xvi) in case of a complaint of abuse of a child in any child care institution, the Committee shall conduct an inquiry and give directions to the police or the

District Child Protection Unit or labour department or childline services, as the case may be; (xvii) accessing appropriate legal services for children; (xviii) such other functions and responsibilities, as may be prescribed.

⁹⁶ **Section 37 of the JJ Act, 2015. (1)** The Committee on being satisfied through the inquiry that the child before the Committee is a child in need of care and protection, may, on consideration of Social Investigation Report submitted by Child Welfare Officer and taking into account the child's wishes in case the child is sufficiently mature to take a view, pass one or more of the following orders, namely:— (a) declaration that a child is in need of care and protection; (b) restoration of the child to parents or guardian or family with or without supervision of Child Welfare Officer or designated social worker; (c) placement of the child in Children's Home or fit facility or Specialised Adoption Agency for the purpose of adoption for long term or temporary care, keeping in mind the capacity of the institution for housing such children, either after reaching the conclusion that the family of the child cannot be traced or even if traced, restoration of the child to the family is not in the best interest of the child; (d) placement of the child with fit person for long term or temporary care; (e) foster care orders under section 44; (f) sponsorship orders under section 45; (g) directions to persons or institutions or facilities in whose care the child is placed,

regarding care, protection and rehabilitation of the child, including directions relating to immediate shelter and services such as medical attention, psychiatric and psychological support including need-based counselling, occupational therapy or behaviour modification therapy, skill training, legal aid, educational services, and other developmental activities, as required, as well as follow-up and coordination with the District Child Protection Unit or State Government and other agencies; (h) declaration that the child is legally free for adoption under section 38. (2) The Committee may also pass orders for — (i) declaration of fit persons for foster care; (ii) getting after care support under section 46 of the Act; or (iii) any other order related to any other function as may be prescribed.

⁹⁷ **Section 39 of JJ Act, 2015**

(1) The process of rehabilitation and social integration of children under this Act shall be undertaken, based on the individual care plan of the child, preferably through family based care such as by restoration to family or guardian with or without supervision or sponsorship, or adoption or foster care: Provided that all efforts shall be made to keep siblings placed in institutional or noninstitutional care, together, unless it is in their best interest not to be kept together. (2) For children in conflict with law the process of rehabilitation and social integration shall be undertaken in the observation homes, if the child

is not released on bail or in special homes or place of safety or fit facility or with a fit person, if placed there by the order of the Board. (3) The children in need of care and protection who are not placed in families for any reason may be placed in an institution registered for such children under this Act or with a fit person or a fit facility, on a temporary or long-term basis, and the process of rehabilitation and social integration shall be undertaken wherever the child is so placed. (4) The Children in need of care and protection who are leaving institutional care or children in conflict with law leaving special homes or place of safety on attaining eighteen years of age, may be provided financial support as specified in section 46, to help them to re-integrate into the mainstream of the society.

⁹⁸ Section 75 of JJ Act, 2015

. Whoever, having the actual charge of, or control over, a child, assaults, abandons, abuses, exposes or wilfully neglects the child or causes or procures the child to be assaulted, abandoned, abused, exposed or neglected in a manner likely to cause such child unnecessary mental or physical suffering, shall be punishable with imprisonment for a term which may extend to three years or with fine of one lakh rupees or with both: Provided that in case it is found that such abandonment of the child by the biological parents is due to circumstances beyond their control, it shall be

presumed that such abandonment is not wilful and the penal provisions of this section shall not apply in such cases: Provided further that if such offence is committed by any person employed by or managing an organisation, which is entrusted with the care and protection of the child, he shall be punished with rigorous imprisonment which may extend up to five years, and fine which may extend up to five lakhs rupees: Provided also that on account of the aforesaid cruelty, if the child is physically incapacitated or develops a mental illness or is rendered mentally unfit to perform regular tasks or has risk to life or limb, such person shall be punishable with rigorous imprisonment, not less than three years but which may be extended up to ten years and shall also be liable to fine of five lakhs rupees.

⁹⁹ Section 76 of JJ Act, 2015

(1) Whoever employs or uses any child for the purpose of begging or causes any child to beg shall be punishable with imprisonment for a term which may extend to five years and shall also be liable to fine of one lakh rupees: Provided that, if for the purpose of begging, the person amputates or maims the child, he shall be punishable with rigorous imprisonment for a term not less than seven years which may extend up to ten years, and shall also be liable to fine of five lakh rupees. (2) Whoever, having the actual charge of, or control over the child, abets the commission of an offence

under sub-section (1), shall be punishable with the same punishment as provided for in sub-section (1) and such person shall be considered to be unfit under sub-clause (v) of clause (14) of section 2: Provided that the said child, shall not be considered a child in conflict with law under any circumstances, and shall be removed from the charge or control of such guardian or custodian and produced before the Committee for appropriate rehabilitation.

¹⁰⁰ Section 77 of JJ Act, 2015

Whoever gives, or causes to be given, to any child any intoxicating liquor or any narcotic drug or tobacco products or psychotropic substance, except on the order of a duly qualified medical practitioner, shall be punishable with rigorous imprisonment for a term which may extend to seven years and shall also be liable to a fine which may extend up to one lakh rupees.

¹⁰¹ Section 78 of JJ Act, 2015

Whoever uses a child, for vending, peddling, carrying, supplying or smuggling any intoxicating liquor, narcotic drug or psychotropic substance, shall be liable for rigorous imprisonment for a term which may extend to seven years and shall also be liable to a fine up to one lakh rupees.

¹⁰² Section 79 of JJ Act, 2015

Notwithstanding anything contained in any law for the time being in force, whoever ostensibly engages a child and keeps him in bondage for the purpose of employment or withholds his earnings or uses such earning for his own purposes shall be punishable with rigorous imprisonment for a term which may extend to five years and shall also be liable to fine of one lakh rupees. Explanation.— For the purposes of this section, the term “employment” shall also include selling goods and services, and entertainment in public places for economic gain.

¹⁰³ **Section 80 of JJ Act, 2015**

If any person or organisation offers or gives or receives, any orphan, abandoned or surrendered child, for the purpose of adoption without following the provisions or procedures as provided in this Act, such person or organisation shall be punishable with imprisonment of either description for a term which may extend upto three years, or with fine of one lakh rupees, or with both: Provided in case where the offence is committed by a recognised adoption agency, in addition to the above punishment awarded to the persons in-charge of, and responsible for the conduct of the day-to-day affairs of the adoption agency, the registration of such agency under section 41 and its recognition under section 65 shall also be withdrawn for a minimum period of one year.

¹⁰⁴ **Section 81 of JJ Act, 2015**

Any person who sells or buys a child for any purpose shall be punishable with rigorous imprisonment for a term which may extend to five years and shall also be liable to fine of one lakh rupees: Provided that where such offence is committed by a person having actual charge of the child, including employees of a hospital or nursing home or maternity home, the term of imprisonment shall not be less than three years and may extend up to seven years.

¹⁰⁵ **Section 82 of JJ Act, 2015**

(1) Any person in-charge of or employed in a child care institution, who subjects a child to corporal punishment with the aim of disciplining the child, shall be liable, on the first conviction, to a fine of ten thousand rupees and for every subsequent offence, shall be liable for imprisonment which may extend to three months or fine or with both. (2) If a person employed in an institution referred to in sub-section (1), is convicted of an offence under that sub-section, such person shall also be liable for dismissal from service, and shall also be debarred from working directly with children thereafter. (3) In case, where any corporal punishment is reported in an institution referred to in sub-section (1) and the management of such institution does not cooperate with any inquiry or comply with the orders of the Committee or the Board or court or State Government, the person in-charge of the management of the institution shall be liable for

punishment with imprisonment for a term not less than three years and shall also be liable to fine which may extend to one lakh rupees.

¹⁰⁶ **Section 83 of JJ Act, 2015**

(1) Any non-State, self-styled militant group or outfit declared as such by the Central Government, if recruits or uses any child for any purpose, shall be liable for rigorous imprisonment for a term which may extend to seven years and shall also be liable to fine of five lakh rupees. (2) Any adult or an adult group uses children for illegal activities either individually or as a gang shall be liable for rigorous imprisonment for a term which may extend to seven years and shall also be liable to fine of five lakh rupees.

¹⁰⁷ **Section 84 of JJ Act, 2015**

For the purposes of this Act, the provisions of sections 359 to 369 of the Indian Penal Code, shall mutatis mutandis apply to a child or a minor who is under the age of eighteen years and all the provisions shall be construed accordingly.

¹⁰⁸ **Section 85 of JJ Act, 2015**

Whoever commits any of the offences referred to in this Chapter on any child who is disabled as so certified by a medical practitioner, then, such person shall be liable to twice the penalty provided for such offence. Explanation.— For the purposes of this Act, the term “disability” shall have

the same meaning as assigned to it under clause (i) of section 2 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.

¹⁰⁹ Article 2 of The United Nations Convention on the rights of the child

1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

¹¹⁰ Article 14 of the Constitution of India: Equality before law

The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.

¹¹¹ Article 15 of the Indian Constitution: Prohibition of

discrimination on grounds of religion, race, caste, sex or place of birth

(1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them

(2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to

(a) access to shops, public restaurants, hotels and palaces of public entertainment; or

(b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public

(3) Nothing in this article shall prevent the State from making any special provision for women and children

(4) Nothing in this article or in clause (2) of Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.

¹¹² Article 17 of the Indian Constitution: Abolition of Untouchability

Untouchability is abolished and its practice in any form is forbidden The enforcement of any disability arising out of Untouchability shall be an offence punishable in accordance with law

¹¹³ Article 18 of the Indian Constitution: Abolition of titles

No title, not being a military or academic distinction, shall be conferred by the State No citizen of India shall accept any title from any foreign State No person who is not a citizen of India shall, while he holds any office of profit or trust under the State, accept without the consent of the President any title from any foreign State No person holding any office of profit or trust under the State shall, without the consent of the President, accept any present, emolument, or office of any kind from or under any foreign State Right to Freedom

¹¹⁴ Article 21 of the Indian Constitution: Protection of life and personal liberty

No person shall be deprived of his life or personal liberty except according to procedure established by law

¹¹⁵ Article 25 of the Indian Constitution: Freedom of conscience and free profession, practice and propagation of religion

(1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion

(2) Nothing in this article shall affect the operation

of any existing law or prevent the State from making any law

(a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;

(b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus

¹¹⁶ Article 29(1) of the Indian Constitution:

(1) Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same.

¹¹⁷ Article 30 of the Indian Constitution: Right of minorities to establish and administer educational institutions

- (1) All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice
- (1A) In making any law providing for the compulsory acquisition of any property of an educational institution established and administered by a minority, referred to in clause (1), the State shall ensure that the amount fixed by or determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under that clause.
- (2) The state shall not, in granting aid to educational institutions, discriminate against any educational

institution on the ground that it is under the management of a minority, whether based on religion or language.

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