

Institutional Care for Vulnerable Children

The Law, Present Scenario, and Way Ahead

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ABOUT CSA

Catalysts for Social Action is an Indian Non-Profit organization that creates sustainable impact for children in need of care and protection. CSA has been working since 2002 to act as catalysts by leveraging existing institutions and empowering them to improve child outcomes and enhance the quality of care to children. This is achieved by partnering with like-minded institutions, individuals and corporates. Over the last 18 years we have been enabled by our generous donors, supporting partners and volunteers to create visible impact in the lives of 20000+ children.

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List of Abbreviations

1. **AIDS** – Acquired Immune Deficiency Syndrome
2. **CARA** – Central Adoption Resource Authority
3. **CCI** – Child care institution
4. **CCL** – Children in conflict with law
5. **CNCP** – Children in need of care and protection
6. **CPS** – Child Protection Services
7. **CSA** – Catalysts for Social Action
8. **CWC** – Child Welfare Committee
9. **HIV** – Human Immunodeficiency Virus
10. **ICPS** – Integrated Child Protection Scheme
11. **MWCD** – Ministry of Woman and Child Development
12. **NCPCR** – National Commission for Protection of Child Rights
13. **NGO** – Non-governmental organization
14. **UNICEF** – United Nations Children’s Fund
15. **UNCRC** – United Nations Convention on the Rights of the Child

Executive Summary

This paper explores the existing scenario with respect to care and protection of vulnerable children and recommends ways in which better support can be provided to the huge population of children in difficult circumstances in India. It focuses on institutional care as one of the means of rehabilitation of children in need of care and protection (CNCP), and analyses the crucial role which child care institutions (CCIs) play and the challenges which they face in course of their work. This analysis is in light of the increased global attention towards the so called 'harmful' effects of institutional care, and the recent action undertaken by national and state child welfare bodies in India towards rapid and large-scale restoration of children in institutional care. The paper argues that institutional care and family-based care options are complementary, and both are required at scale to be able to meet the needs of vulnerable children in India. The paper presents an analysis of the current scenario and closes with recommendations for care and protection of vulnerable children in India.

India is home to 440 million children, and the Ministry of Women and Child Development (MWCD) estimates 170 million children, or 40 per cent of the total number to be "vulnerable or experiencing difficult circumstances". Taking data from the 2011 census, UNICEF and Childline, we can safely conclude that at least 20 million out of the 170 million vulnerable children in India could be in situations of extreme risk and vulnerability, needing immediate support from the system.

Children in India enjoy rights and entitlements guaranteed by the Constitution of India and the United Nations Convention on the Rights of the Child (UNCRC). The Juvenile Justice (Care and Protection of Children) Act, 2015 (JJ Act) provides the law, standards, and procedure with respect to CNCP and children in conflict with law (CCL) for their rehabilitation and reintegration into the society. It is evident from a perusal of these that India has a robust legal framework and well-defined processes for rehabilitation of CNCP and that the

same is aligned to the UNCRC and other international conventions.

Institutional care has been one of the mainstays of child care, protection and rehabilitation in India. CNCP [as defined by Section 2(14) the JJ Act] may be placed in CCIs in course of their rehabilitation and social integration by the district Child Welfare Committee (CWC). As per a recent report of the National Commission for Protection of Child Rights, more than 2.5 lakh children are growing up in 7163 CCIs. Children may be placed in CCIs for short-term, medium-term, or long-term care, till suitable means of rehabilitation are found for them. They may continue to be in institutional care till they reach the age of 18 years. The same 2018 study by MWCD found almost 33% of the children in CCIs to be those with single parents, 15% being orphan / abandoned / surrendered children, and about 9% being victims of child sexual abuse, victims of trafficking, child labour, runaway / missing children, victims of child marriage, children affected and infected by HIV and AIDS, victims of man-made and natural disasters, homeless children, and children who are mentally and/or physically challenged. The above categories form about 57% of the child population in CCIs. Most of the remaining children were placed in institutional care because the parents / guardians of the child were incapable of caring for them.

The background of children placed in institutional care explains why CCIs play such a crucial role in child care and protection in India. While there is no doubt that a child grows up best with a family and family-based care should be preferred for every child, for some children, CCIs may not be the last resort, but instead, the primary resort for care and safety for varying durations. Other factors such as the large number of vulnerable children in India, limited success of adoption and foster care, and lack of monitoring and support services at the grassroots makes it imperative for greater support to be provided to CCIs for them to be able to give better care and facilities to children.

Institutional care and family-based care options are complementary, and both are required at scale to be able to meet the needs of vulnerable children in India.

The reality, however, is that only about 45% CCIs receive some funding from the Government, which also is intermittent and in arrears. This means that CCIs are dependent on private donations, which is often hard to come by. Many CCIs are small and located in semi-rural areas. They lack the facilities, management capability and “knowhow” of managing a wellrun home. These factors - lack of funds and management knowhow - directly impacts the quality of care they are able to provide to children. They also face excessive scrutiny from the Government and suffer negative perception due to media coverage focussing on isolated incidents of abuse and neglect of children in CCIs, resulting in demotivation to run CCIs. An alarming trend that we are seeing is that many CCIs are either closing down or converting into hostels due to these reasons.

We firmly believe that CCIs, when adequately supported and monitored, can provide family-like care to CNCP. The services of CCIs will continue to be needed in the near future, given the socioeconomic realities of India and huge number of vulnerable children. In this context, in our view, the current capacity of institutional care must be maintained even while family strengthening programs are scaled up and family-based care options are promoted. Both strategies of care and protection must be followed in parallel. Institutional care and family-based care are not competing alternatives, but complementary programs and both are required in our country.

The need for progressively replacing institutionalization with family and community-based care options as against undertaking rapid and large-scale deinstitutionalization has been acknowledged by the United Nations in its 2019 Resolution on the Rights of the Child was adopted on 18 December 2019. The resolution calls for adequate resources are allocated to family and community-based care, training and support for caregivers, and robust screening and oversight mechanisms to be set up. It does not call for a closure of CCIs as seems to be the impression created in some media reports.

In the media, some cases of child abuse at CCIs have been reported in the recent past. Unfortunately, these create an impression that abuse is rampant in child care institutions across the country. We believe it is easier to manage this risk in the institutional context as compared to continuing abuse in domestic or child labour contexts. Hence while strict punitive action must be taken against CCIs where cases of abuse are detected, it should not be allowed to tarnish the image of thousands of CCIs which provide excellent care and protection to children, or to drive policy that may turn out to be infructuous and indeed damaging to the best interest of CNCP.

Our policy actions must adopt data-driven and evidence-based approaches. The data of children in CCIs should be available in real-time and the district and state must have a complete database and dashboard about children in institutional care. Standardised methodologies should be used to conduct regular social audits of CCIs to collect not just data on JJ Act compliance but also development indicators of the child, such health and education data. This standardised data should be used to analyse outcomes. With regular data collection and analysis, the risks in CCIs can be mitigated, improvements can be made, and good outcomes achieved in CCIs. All of this is very achievable in a short time frame.

Looking ahead, considering the scale and ground reality of vulnerable children in India, the following are our recommendations for better care and protection of vulnerable children:

1. An ongoing process to identify vulnerable children is required so that more children in need can come into the purview of care and protection system and be supported.
2. The mechanism of family strengthening and gatekeeping at entry and exit of institutional care needs to be improved.
3. Periodic evaluation of CCIs should be carried out and the result made available both to the CCI management as well as government authorities so that specific areas for improvement can be identified.

We firmly believe that CCIs, when adequately supported and monitored, can provide family-like care to CNCP.

4. CCIs should be provided with adequate support to reduce risks for children, improve outcomes and make them places that provide family-like care.
5. Better awareness regarding adoption and foster care needs to be created in order to promote the same. Foster parenting should be piloted with caution, and its best practices identified before large scale implementation.
6. Proper rehabilitation of care leavers should be ensured. Aftercare support should be enhanced and made accessible to all.

The sheer number of children facing difficult circumstances in India requires a coordinated effort between the government and civil society organizations to address the situation adequately. What is also required is a well-thought through strategy which is suited to the Indian context, rather than replicating models which may have worked in the west. Only then would we be able to achieve the common objective that all of us share – better care and protection for vulnerable children!

1. Introduction: Vulnerable children in India

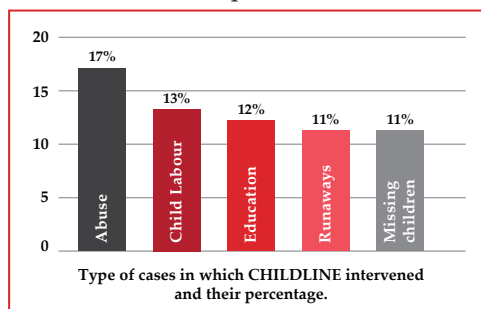
India is home to 440 million children, which is about 37% of its total population¹. The term 'child' here refers to any person who has not completed 18 years of age. Several studies and reports indicate that a substantial number of children in India are growing up in difficult circumstances. The 2015-16 Annual Report of the Ministry of Women and Child Development states that around 170 million or 40 per cent of India's children are "vulnerable or experiencing difficult circumstances characterized by their specific social, economic and geopolitical situations, and that all these children need special attention."² The vulnerabilities being faced by these children could be ranging from malnutrition and lack of education, to child labour, abuse and exploitation. The 2011 Census data provides the number of child-labour in India to be 10.13 million children between 5-14 years³ and 33 million children between the ages of 5-18 years. The UNICEF India Annual Report 2018 estimates that 1.5 million girls are married before attaining 18 years of age⁴. The UNICEF State of the World's Children 2016 report estimates the number of orphans in India to be 29.6 million⁵.

10.3 Million

children between 5-14 years of age in India are victims of child labour.

Children found in difficult circumstances are usually identified by concerned citizens, social organizations, or police, and reported to the Government authorities for taking suitable action for their well-being. Government of India has set up a national helpline – CHILDLINE - where children found to be in distress can be reported. The sheer number of vulnerable children in India can also be estimated from the fact that in 2018-19, the helpline received a total of 6.2 million calls, which were converted into 300,000 cases. The largest number of phone calls were made to seek

intervention for abuse cases, which were at 53,696 or 17% of the total cases. This category of complaints was followed by those pertaining to child labour (13%), education (12%), runaways (11%) and missing children (11%)⁶. The number of calls requiring intervention has only increased after the pandemic⁷.



While these numbers help to get some understanding about the scale of the problem, it is widely accepted that are many more children in need of care and protection who are not brought to the attention of the authorities due to gaps in vulnerability mapping. Taking these estimates into account, we can safely conclude that at least 20 million out of the 170 million vulnerable children in India could be in situations of extreme risk and vulnerability, needing immediate support from the system. This is a huge number and is important to keep in mind while thinking about the appropriate strategies to take care of vulnerable children.

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2. Law related to care, protection and rehabilitation of vulnerable children

2.1. Children's rights and entitlements

Children in India derive their rights primarily from the Constitution of India and the United Nations Convention on the Rights of the Child (UNCRC)⁸ which was ratified by India in 1992. The UNCRC prescribes the minimum rights and entitlements that nations who have ratified the convention must provide to every person below the age of 18. These rights can be broadly classified into the following:

1. **Right to Survival** – to life, health, nutrition, name, nationality;
2. **Right to Development** – to education, care, leisure, recreation, cultural activities;
3. **Right to Protection** – from exploitation, abuse, neglect;
4. **Right to Participation** – to expression, information, thought, religion;



Rights of children under the Constitution of India are the same ones which are available to every citizen under Part III - Fundamental Rights of the Constitution. These include:

1. **Right to equality** - Article 14,
2. **Right to freedom** - Article 19,
3. **Right to life and personal liberty** - Article 21,
4. **Right to education** - Article 21A,
5. **Right against exploitation** - Article 23, and
6. **Right against child labour** - Article 24.

The primary law in India concerning rights and entitlements of vulnerable children is the Juvenile Justice (Care and Protection of Children) Act, 2015⁹ (JJ Act). It is a comprehensive legislation relating to children alleged and found to be in conflict with law (CCL), and children in need of care and protection (CNCP). The statement of objectives of the JJ Act states that it is a law catering to children's "basic needs through proper care, protection, development, treatment, social re-integration, by adopting a child-friendly approach in the adjudication and disposal of matters in the best interest of children and for their rehabilitation...". The Act establishes bodies of child welfare, enumerates procedures to be followed and standards to be maintained by authorities and other stakeholders for ensuring CCL and CNCP receive proper care, protection, development, treatment, and are rehabilitated into the society.

The administration of the JJ Act is supposed to be carried out in accordance with 16 guiding principles mentioned in Section 3 of the Act. As per these principles, institutionalization of a child, post reasonable enquiry, is meant to be a measure of the last resort, and every child living in an institution has a right to restoration and repatriation with family, unless it is not in the best interest of the child. The best interest of a child can be said to be an overarching principle of the JJ Act, since it covers all decisions taken regarding the child under the Act. It reads thus:

The best interest of a child can be said to be an overarching principle of the JJ Act.

“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.”

Section 2(14) of the JJ Act defines CNCP through ten sub clauses. They can be broadly classified and grouped as:

1. Homeless children;
2. Victims of child labour;
3. Child residing with an abusive or exploitative person;
4. Child residing with someone who is unfit or incapable of taking care of the child;
5. Child who either does not have parents or the parents have surrendered the child;
6. Child who is a victim of an armed conflict or natural calamity, and;
7. Child who is a victim or is in the imminent danger of child marriage.

2.2. Rehabilitation of children in need of care and protection

The JJ Act provides for rehabilitation and social integration of CNCP on the basis of the individual care plan and with due consideration to the best interests of the child¹⁰. As mentioned above, the Act provides for a clear preference to family-based care, with institutional care as being considered the “last resort”¹¹ where family of the child cannot be traced or where restoration of the child to the family is not in the best interest of the child¹². The decision of what intervention is best suited for CNCP rests with the Child Welfare Committee (CWC), including exit and entry into institutional care¹³. The decision is taken on the basis of the Social Investigation Report submitted by Child Welfare Officer. The CWC also takes into account the child’s wishes in case the child is sufficiently mature to take a view¹⁴.

Various rehabilitation options recognized by the JJ Act are:

- a. **Restoration of the child to parents or guardian** – This is preferred for children who are in contact with the family on determining the suitability, safety of the child, and capacity of the family to care for the child. This can be carried out with or without supervision of Child Welfare Officer or designated social worker¹⁵.
- b. **Placement of the child in a Child Care Institution (CCI)** – Also known as ‘Institutional Care’, this involves placement of the child in a Children’s Home, fit facility, or Specialised Adoption Agency for the purpose of adoption (depending on the eligibility of the child), or for long term or temporary care. This is preferred when it is determined that the family of the child cannot be traced, or even if the family is in contact, restoration of the child to the family is not in the best interest of the child¹⁶.
- c. **Placement of the child with fit person for long term or temporary care** – A “fit person” is defined as any person identified as fit to own the responsibility of a child for a specific purpose by the CWC upon enquiry¹⁷. A child may be placed in long term or temporary care with a fit person by the CWC¹⁸.
- d. **Adoption** – Adoption can be an option for rehabilitation of children who are orphan, abandoned, surrendered and have been declared legally free for adoption. The primary aim of adoption is to provide a permanent family for such children. The JJ Act defines the term as the process through which the adopted child is permanently separated from his biological parents and becomes the lawful child of the adoptive parents with all the rights, privileges and responsibilities that are attached to a biological child¹⁹.
- e. **Foster care** - The JJ Act defines ‘foster care’ as placement of a child by the CWC for the purpose of alternate care in the domestic environment of a family other than

the child's biological family, that has been selected, qualified, ap-proved and supervised for providing such care²⁰. On placement, the foster family is supposed to be responsible for providing education, health and nutrition to the child, and ensure the overall well-being of the child.

f. Sponsorship – This is defined by the JJ Act as provision of supplementary support, financial or otherwise, to families to meet the medical, educational and developmental needs of the child²¹. The Act empowers the State Government to make rules for the purpose of undertaking programmes of sponsorship of children, such as individual to individual sponsorship, group sponsorship or community sponsorship²².



2.3 Procedure under the JJ Act with respect to rehabilitation of CNCP

As mentioned above, the CWC has the exclusive authority to decide on all cases regarding rehabilitation of children in need of care and protection, and to provide for their basic needs and protection, within its district. The procedure followed by the CWC for this, as enumerated in Section 36 and 37 of the JJ Act, is as follows:

Step 1: Child is brought before the CWC for suitable decision / action / rehabilitation by the police, Childline, NGO or any concerned citizen, or the child presents himself or herself before the CWC;

Step 2: Child may be taken in safe custody and admitted to government registered child care institution, if deemed necessary by the CWC;

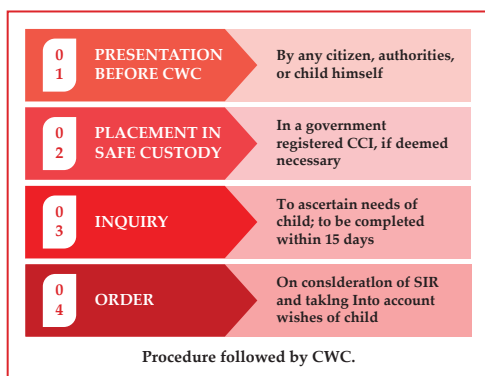
Step 3: CWC holds an inquiry in a manner as it deems fit to ascertain the need of care and support for the child. This enquiry is supposed to be completed within fifteen days so as to enable CWC to pass the final order within four months of first production of the child;

Step 4: On completion of the inquiry, if CWC is of the opinion that the child has no family or ostensible support, or is in continued need of care and protection, it 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:

- i. Declaration that the child is in need of care and protection;
- ii. Restoration of the child to parents or guardian or family with or without supervision of Child Welfare Officer or designated social worker;
- iii. Placement of the child in Children's Home or fit facility or Specialised Adoption Agency;
- iv. Placement of the child with fit person for long term or temporary care;
- v. Placement of the child under foster care;
- vi. Order for sponsorship of the child under Section 45 of the JJ Act;
- vii. 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 and / or therapy;

- viii. Declaration that the child is legally free for adoption in case of orphan and abandoned child after making all efforts for tracing the parents or guardians of the child.



Children in need of care and protection are thus children who have been identified and rescued from conditions of great risk. They are deprived of basic rights and are either destitute orphans or children whose parents are unfit or incapable of taking care of them. It must be noted that in India, the scale of such children is huge – much, much larger than any country in the world. At the same time, as one can deduce in this section, India has a robust legal framework and well-defined processes for rehabilitation in place that are aligned to the UNCRC and other international conventions.

3. Institutional care

The JJ Act recognizes institutional care as one of the modes of rehabilitation of children in need of care and protection. Children for whom institutional care is found to be the most suitable form of rehabilitation are placed in a child care institution (CCI) for short-term, medium term, or long term care. The term “Child Care Institution” is defined in Section 2 (21) the JJ Act as:

“...Children Home, open shelter, observation home, special home, place of safety, Specialized Adoption Agency and a fit facility recognized under this Act for providing care and protection to children, who are in need of such services;”

Section 40 (1) of the JJ Act states that the restoration and protection of a child is the prime objective of any Children’s Home, Specialized Adoption Agency or open shelter. As mentioned in the previous section, children in need of care and protection are placed in child care institutions through an order of the district Child Welfare Committee, initially during pendency of the inquiry, and post inquiry if members are of the opinion that the child has no family or ostensible support, or is in continued need of care and protection till suitable means of rehabilitation are found for the child, or till the child attains the age of eighteen years.

A recent report of the National Commission for Protection of Child Rights (NCPCR)²³ puts the total number child care institutions (CCIs) in India as 7163, of which 5977 are Children’s Home, and the number of children residing in CCIs as 2.56 lakh. This is a sharp fall, both in the number of CCIs and number of children in institutional care, when compared with figures of 2018 published in a study of the MWCD, which put the number of CCIs at 9589, and number of children at 3.7 lakh.

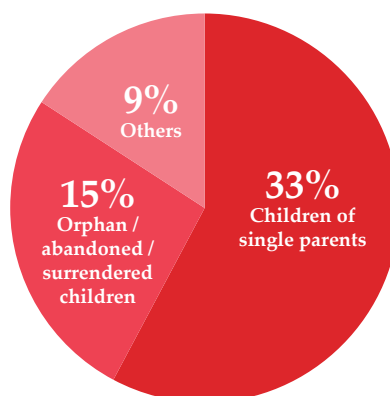
As per the NCPCR report, 88% CCIs are run by private non-profit organizations while only 12% are run by the Government. Most CCIs run by the Government are Observation Homes or Special Home. Hence it is noteworthy that the responsibility of CNCP has been

largely left by the Government to the non-governmental organizations.

3.1. Profile of children in CCIs

Children in need of care and protection may be placed in child care institutions because of any of the reasons mentioned in Section 2 (14) of the Act, in course of their rehabilitation and social integration. As per a 2018 study by Ministry of Women and Child Development, Government of India²⁴, of the total number of children living in institutional care, almost 33% are children of single parents, 15% are orphan / abandoned / surrendered children, and about 9% are children who are either victims of child sexual abuse, victims of trafficking, child labour, runaway / missing children, victims of child marriage, children affected and infected by HIV and AIDS , victims of man-made and natural disasters, homeless children and children mentally and/or physically challenged children.

The above categories form about 57% of the child population in child care institutions. Most of the remaining children are placed in institutional care because the parents / guardians of the child are incapable / unfit of caring for them. The reason for parents placing these children at CCIs could be domestic violence, extreme poverty, broken marriage, child belonging to an unwed mother, mother being a sex worker, or either parent is no more, and the living parent has to go out for work and is hence unable to take care of the child given lack of community day care facilities, and similar situations.



Profile of children in CCIs.

India has a robust legal framework and well-defined processes for rehabilitation in place that are aligned to the UNCRC and other international conventions.

Total number child care institutions (CCIs) in India as 7163, of which 5977 are Children’s Home, and the number of children residing in CCIs as 2.56 lakh.

3.2. Role of institutional care

The profile of children placed in institutional care specified above makes it clear that most children in CCIs come from traumatic backgrounds. Given the backgrounds and the lack of social services in most part, it is very difficult to imagine where children will be placed for their need of short term, or medium term, or long-term care, if CCIs are not available to them. For them, CCIs may not only be the last resort, but the PRIMARY resort. For all these children, CCIs provide care and protection to them until they turn 18 years, or until the CWC determines that it is safe for them to be restored back with their family, or any other suitable means of rehabilitation has been found for them.

Thus, the role that CCIs play is multifold:

1. They act as **temporary shelters or “holding” institutions** for children requiring a safe place for a short period of time. This could be for children who are lost or rescued till such time that parents can be traced and children restored to them.
2. They provide **medium term care** for children where the family environment poses an ongoing risk to the child, e.g. children of sex workers, children who face the risk of child-marriage, child labour, domestic violence, and abuse.
3. They provide **long term care** for children who are orphans, abandoned, or surrendered, and have not been adopted; those with little parental contact; or where the parent is unfit to take care of the child.

Thus, CCIs presently play a crucial role in providing a safe space for vulnerable children and children without family support to grow up. Assuming that District Child Welfare Committees adhere to the guiding principles of the JJ Act, the National Policy for Children, 2013²⁵, and other national and international policies and guidelines related to the protection of children, one can deduce that for the 2.56 lakh odd children who were residing in child care institutions as per the NCPCR report, either living in an institution has been

found to be in their best interest, or the authorities have been unable to make family or community based care arrangements for the child. An indicator of the latter is the data in the 2018 MWCD report stating there are 56,198 children without parental contact in child care institutions, with 89% of these children being in the age group of 6-18 years. For these children and others who have spent a sizeable portion of their childhood in an institution, CCIs are effectively a ‘home’ that provides them a safe place to grow up in, without which they could have continued to be at risk. They literally have no alternative at present. For children who are placed in institutional care due to the incapacity of their parents to care for them, restoration with family may be possible, but only after careful analysis of each individual case, proper social investigation, and employing thoughtful measures to rehabilitate the family and ensure safety of the child.

Other factors which make the role of institutional care critical in the space of child protection in India include:

1. **Large number of vulnerable children in India:** As mentioned earlier, the number of orphans in India is estimated by UNICEF to be 29.6 million. The 2015-16 Annual Report of the MWCD states that around 170 million or 40 per cent of India's children are vulnerable or experiencing difficult circumstances. Considering the fact the only 2.56 lakh children reside in CCIs as per the 2020 NCPCR report, which is just about 1% of the UNICEF estimate, it is possible that a substantially large number of children continue to be at risk and may not have any immediate access to protection within their family or community.
2. **Limited success of adoption as an option for children without family:** There have been only between 3500-4500 adoptions in India through the Central Adoption Resource Authority (CARA) over the last 5 years²⁶. Statistics show prospective parents prefer healthy children younger than 2 years of age, and this has resulted in more than 50,000 children without parental contact living in CCIs across India above the age of 6.

Given the backgrounds and the lack of social services in most part, it is very difficult to imagine where children will be placed for their need of short term, or medium term, or long-term care, if CCIs are not available to them.

The 2018 MWCD report states that there are 56,198 children without parental contact in child care institutions, with 89% of these children being in the age group of 6-18 years.

The 2015-16 Annual Report of the MWCD states that around 170 million or 40 per cent of India's children are vulnerable or experiencing difficult circumstances.

3. **Other family-based care options, such as foster care, are resource intensive and may be available to only few children:** The concept of foster parenting has been recently introduced as an option by few states. Capacity of NGOs and Government authorities are slowly being built to facilitate and promote foster care. While foster care could be a great alternative for children, particularly if it leads to adoption, it can only be a safe option for few children and is very resource intensive in terms of trained social workers and counsellors. Proceeding with caution is advised, because the experience even from the west, where excellent social services infrastructure exists, does not demonstrate it to be free from risk of abuse.
4. **Restoration with family may not always be a safe alternative given the lack of monitoring and support services at the grassroots:** While restoration back with the family is a good alternative and one that ensures that child has the emotional support of the family, it is important that it is carried out only after careful study of the situation of the family and coupled with adequate support to the family and periodic monitoring of the children. It is an unfortunate fact that there are many families unfit or unable to provide loving care to their child. Examples are a child in a family who is a victim of domestic abuse, a child 'sold' by parents into child labour or marriage, a child with a single parent who is left at risk alone at home, a child whose mother is a victim of sex trade herself, etc. Unless necessary need-based support (e.g. financial support / rehabilitation / counselling / community care, etc.) is provided to such families and monitoring mechanisms are made functional, institutional care is in all probability a better alternative than restoration with a family where the children have the continuing risk of abuse and exploitation.

3.3. Services made available to children at a child care institution

The process of rehabilitation and reintegration of children in institutional care involves several services which CCIs are required to provide to children to fulfil their need holistic and integral development. A list of such services which may be provided is listed under Section 53 of the JJ Act. These include:

1. Basic requirements such as food, shelter, clothing and medical attention as per the prescribed standards;
2. Equipment such as wheelchairs, prosthetic devices, hearing aids, braille kits, or any other suitable aids and appliances as required, for children with special needs;
3. Appropriate education, including supplementary education, special education, and appropriate education for children with special needs;
4. Skill development;
5. Occupational therapy and life skill education;
6. Mental health interventions, including counselling specific to the need of the child;
7. Recreational activities including sports and cultural activities; etc.

Even though the JJ Act prescribes procedure for placement of children in CCIs, standards of care which CCIs are expected to maintain, and facilities which CCIs have to provide, it does not make it mandatory for the Government to provide financial support to CCIs.

3.4. Challenges faced by CCIs

1. **Lack of funding** - Lack of funding for needs beyond basics is one of the biggest challenges faced by CCIs and this directly and indirectly affects the ability of CCIs to provide quality care. Even though the JJ Act prescribes procedure for placement of children in CCIs, standards of care which CCIs are expected to maintain, and facilities which CCIs have to provide, it does not make it mandatory for the Government to provide financial support to CCIs. Thus:

- a. While 88% of CCIs are run by private non-profit organizations, and the remaining are run by the Government. The government run homes are mostly observation homes for children in conflict with the law. Thus the government has largely delegated the responsibility of care of CNCP to private NGOs.
- b. Only 45% of the CCIs receive Government funding under the Child Protection Services (CPS) Scheme (erstwhile Integrated Child Protection Scheme; as per the 2018 MWCD report), which is supposed to be Rs. 2160 per child per month. More than half of the total number of CCIs do not receive any support.
- c. The amount provided under the CPS scheme differs from state to state, depending on budgetary allocations. Many CCIs do not get the full amount they are entitled to.
- d. The timing and process of disbursement is very uncertain, and is in most cases paid in arrears, making it very difficult for CCIs to plan their fund flow. CCIs therefore have to depend on donations from private sources, which may not be forthcoming for many.

In summary, while 'outsourcing' the care of CNCP to private NGOs, the government is not upholding its role in providing funds even to the extent and manner specified in the Child Protection Services Scheme.

2. **Lack of capabilities and management 'know-how'** - CCIs do not have access to knowledge and expertise in areas of child care and protection, such as JJ Act compliance, best practices of caregiving, providing remedial education and addressing needs of mental well-being of children. CCIs fail to capture data on development indicators of the child and to use the same to plan

for the child's future. They are also unable to prepare children for exit on turning 18, prepare Aftercare plans for the child, and set up linkages with institutions for higher studies or vocational training which would enable the young adult to live independently outside the CCI.

The lack of adequate and dependable funding, and capabilities and management know-how of CCIs results in:

1. **Issues with cleanliness and hygiene of premises:** CCIs not being able to invest in maintenance of infrastructure facilities results in lack properly maintained living areas, lack of proper sanitation facilities, lack of clean drinking water, unhygienic kitchens, unhygienic mattresses, lack of lockers for children, lack of proper lighting, and lack of any recreational areas and sports facility for children residing.
2. **Inability to provide development and education services:** CCIs are unable to hire trained teachers and counsellors to provide adequate support for development needs of a child. This leads to children residing not getting any academic support after school hours, no access to remedial education, no training in life skills, no career awareness, no focus on employability, and no digital literacy for the children.
3. **Inability to hire trained staff or invest in capacity building of staff:** Staff taking care of children and the CCI management very often lack knowledge of child safety and youth development practices, especially those which are relevant to children coming from difficult circumstances and who have suffered from trauma. Their focus remains at making basic food and clothing available to the children and not much thought is put into the child's emotional needs, need for counselling, and need of preparing the child for life outside the CCI after he/she turns 18.

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In addition to this, CCIs also face struggles due to:

- 1. Excessive documentation** - CCIs face excessive scrutiny and inspection from the Government, especially when they are registered under the JJ Act. This acts as a deterrent for many from getting registered because while registration does not guarantee any monetary support from the Government, it does add to their documentation work. The request for information is also often repetitive, without notice, and frequent because of poor record keeping by the Government officials and the data not being maintained in digitised format by the CCI.
- 2. Public perception** - CCIs suffer negative perception from people in general due to negative media coverage and campaigns to 'close down CCIs'. Isolated instances of abuse and neglect are highlighted while the good work done by so many others hardly gets covered. This is very demotivating to the organisations that run CCIs.
- 3. Impractical expectations from CCIs** - CCIs are often expected to carry out functions beyond their capacity. Most of them are not equipped to provide Aftercare services or services of monitoring children post restoration, tasks which are often imposed on them. Their focus should be restricted to providing good quality care to children within the institution. Other specialised NGOs should be assigned tasks of Aftercare and monitoring and support to families rehabilitation of family with schemes post restoration of child, follow-up visits, etc.

4. Our viewpoint vis-à-vis institutional care

The good news is that CCIs, when adequately supported and monitored, can provide family-like care to CNCP. CCIs play a critical role in care and protection of children in the Indian context, and their services will continue to be needed in the near future, given the socioeconomic realities of India and huge number of vulnerable children. In this context, the following is our viewpoint on aspects of institutional care for children:

1. Minimum capacity of institutional care must be maintained: An analysis of the data around estimated number of vulnerable children in India (which is between 20-25 million) and the estimated capacity of CCIs in country (approximately 400,000 across 9000 institutions) shows that CCIs presently have capacity to cater to just 2% of the total number of potential vulnerable children. If an extensive vulnerability mapping exercise was carried out, there would be more children requiring intervention, including institutional care, for varying periods of time. At the same time, efforts made towards restoration of children in institutional care with their family or their placement in other family-based care options would ensure more exits will take place of children presently in institutional care. Thus, in our view, 2% is the minimum “holding capacity” required in our country to ensure sufficient and appropriate care mechanisms are available for all children in need of care and protection. We suggest that a scientific survey and modelling be done, and it might reveal that an even higher capacity is required than currently available. This capacity will be required for many years, until the underlying conditions such as poverty, malnutrition, homelessness, lack of women empowerment etc. are addressed and family and community based care mechanisms are adequately developed in India.

2. Deinstitutionalization driven by targets or ideology can lead to adverse consequences: Over the last two years, we have seen large scale deinstitutionalisation taking place and many CCIs closing down. This is evident from a comparison of data from the MWCD 2019 (9589 CCIs, 3.7 lakh children) and NCPCR 2020 (7163 CCIs, 2.5 lakh children) reports. Similarly, media reports indicate that about 1.45 lakh children have been sent home since the outbreak of the pandemic started. A recent letter from NCPCR to District Magistrates of 8 states (which created considerable controversy) asked for immediate time bound restoration of children with their families. There is also an argument that is often made in forums that unless institutions are closed down first, community and family based alternatives cannot emerge. The argument extends to saying that trained resources in CCIs should be diverted towards family strengthening and family based care, away from institutional care.

We do not agree. On the contrary, we believe until community and family-based care emerges as a viable alternative, it will be highly unsafe to close down existing child care institutions. Further, if we deinstitutionalise children driven by targets or ideology, we will put the children back at risk, leading to the revolvingdoor syndrome where the child will again and again emerge as a vulnerable child in need of care and protection.

We agree with United Nations 2019 Resolution on the Rights of the Child adopted on 18 December 2019. The resolution calls for adequate resources to be allocated to family and community-based care, training and support for caregivers, and robust screening and oversight mechanisms to be set up. Family and community-based care must be strengthened as a parallel strategy

Thus, in our view, 2% is the minimum “holding capacity” required in our country to ensure sufficient and appropriate care mechanisms are available for all children in need of care and protection.

Family and community based care must be strengthened as a parallel strategy and need for institutional care gradually reduced to only to those cases where there is no alternative.

and need for institutional care gradually reduced to only to those cases where there is no alternative. Institutional care and family based care should not be competing for funds and resources; rather both are required in our country, given the scale of the problem and complex socioeconomic issues involved.

Our big concern is that in a haste to adopt a utopian policy of only family-based care, we may destroy (maybe, inadvertently) the existing social infrastructure network of CCIs in the country and stop efforts to strengthen and improve the quality of care and outcomes in the institutions. By doing so we will do great harm to the few and limited rehabilitation means available to CNCP. 'DO NO HARM' has to be the mantra and this requires that family and community based care is adequately built up and strengthened to cater to large number of vulnerable children before we think about large scale deinstitutionalisation, closure, or stopping of support to institutions.

- 3. Mitigating risk of abuse of children in CCIs:** In India, CCIs operate under the ambit and as per guidelines provided in the JJ Act. The Act and corresponding rules require CCIs to maintain high standards of care for children, and are monitored by authorities established by the Act for the same. The risk of systemic abuse in CCIs can be further minimised by training of care givers, creating awareness among children, setting up of Children's Committees etc. There are ample examples of best practices in this area that can be replicated. It is easier to manage this risk in the institutional context compared to abuse in domestic or child labour contexts. Hence while strict punitive action must be taken against CCIs where cases of systemic abuse are detected, the exceptions should not be allowed to drive policy or tarnish the image of thousands of CCIs which provide excellent care and protection to children.
- 4. Negative campaigns against institutional care:** We have noticed a disturbing trend of negative

campaigns against institutional care driven mostly by ideologies of some western organisations. This takes the form of "bad mouthing" all institutional care as impersonal, exploitative and abusive, highlighting some limited studies on mental development, pointing to the success of shutting down a few institutions in some countries whose context may be very different from India. Even amongst Indian authorities there is a tendency to highlight the shortcomings and be silent on the achievements of child care institutions. The point we wish to make is simple - we should be open to learn from others and pick up best practices where relevant, but our policy in India must be guided by our ground reality, and be pragmatic to serve the best interest of our children. We cannot be over influenced by negative campaigns, but respect and strengthen what we have even as we fill in the gaps in our care and protection of vulnerable children.

- 5. Using data to reduce risk and promote quality care:** Continuing the above argument, we strongly believe that decisions – whether they are regarding policies or delivery of services, must be driven by evidence and data. Good outcomes for children in institutional care are not only very much possible, they can be measured and tracked using data. To make data collection and analysis effective, standardised methodology and tools should be used to ensure compliance with JJ Act and identify specific areas of concern. Individual child health and educational data should be used to drive better outcomes in these areas. This data can be used at CCI level to understand their current level of care and outcomes and plan improvements. At a district and state level, it can be used to guide policy implementation. Data can be used for both for reducing risk and also recognising the good work that many CCIs are doing. The objective should be to ensure that every CCI follows laid down minimum standards of care and most of them achieve outcomes similar or better than 'family-like care'.

Standardised methodology and tools should be used to ensure compliance with JJ Act and identify specific areas of concern.

5. Recommendations and way forward

The following are our suggestions and recommendations on the way forward for care and protection of vulnerable children in India. These are in the context to the scale and ground reality of vulnerable children in India.

1. **More intensive vulnerability mapping**

– As mentioned above, a very small percentage of 20-25 million vulnerable children in India presently receive support in any form from the Government. An effective way of ensuring more children are identified and supported can be to train frontline workers (like Anganwadi and Asha workers as well as social workers of NGOs) on provisions of the JJ Act so that they can identify children in need of care and protection. CSA has trained Anganwadi workers to conduct a vulnerability mapping exercise in 4 districts in MP and we can share our methodology and study. Other organisations may also have done community based mapping exercises and have learnings that can be shared. We recommend a special Working Group be formed to identify best practices in vulnerability mapping and a focused large scale program be launched to implement the same across the country.

2. **Better gatekeeping at entry and exit of institutional care, and strengthening families**

– Where the child has a family, the option to enable the family to support the child should be explored before considering institutional care. Even if the child is required to be moved to a CCI at that point in time, the option of family restoration should be evaluated from time to time in a periodic predefined frequency. To ensure this, it is necessary that the CWC and DCPU on the ground have the capacity to evaluate the situation of the child and family by conducting social investigation, and have resources to link the family to social welfare schemes and monitor the child periodically.

The reality, however, is that the Child Welfare Committee and other Government authorities in most districts do not have adequate resources (both financial and in terms of trained social workers) for the same. Not only does this result in children who could have received other support being placed in institutional care, it also results in unsafe restoration of children with the family. Hence the mechanism of family strengthening and gatekeeping at entry and exit of institutional care needs to be improved and adequate attention and resources need to be provided for this.

We recommend that better gatekeeping becomes a focus area of intervention and adequate resources and training is provided to CWC/DCPU and other stakeholders in the process. A panel of social workers who can carry out social investigation and follow-up visits must be identified by each CWC. NGOs who can provide prevention or family restoration/rehabilitation services must be identified and resourced to undertake this work. Post restoration follow-up and rehabilitation should not be the responsibility of the CCI, but of specialised NGOs that can be empanelled by the CWCs in each area.

3. **Digitisation and standardisation of data collection and collation**

– All CCIs are not the same and should not be painted with a broad brush stroke. We must have a data-driven methodology to evaluate institutions as per compliance with JJ Act as well as outcomes in terms children's right to health, education, participation, exposure to life skills education and vocational training, and other parameters of performance. This data must be collected on a regular basis and available both to the CCI Management as well as government authorities so that specific areas for improvement can be identified. In this way, good work can be recognised and rewarded, improvement

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encouraged, and action taken against those institutions who are not compliant with the laws and where there is a systemic risk of neglect or abuse.

We recommend that the government set up a task force to standardise the methodology and tools to evaluate compliance with JJ Act as well as collection of child data outcomes in key areas like health, hygiene, education, life skills, etc. The methodology and collation of data should be standard and digitalised so that data is available to different stakeholders in updated and realtime manner. This project should aim at reducing paperwork and data duplication while providing accurate and updated data to all stakeholders in real time for purposes of evaluation and analysis.

- 4. Institutions must be supported to reduce risks, improve outcomes and make them places that provide “family-like care”** – Our experience is that institutions with good and sincere intent can significantly improve outcomes if they are provided not only some funds, but training and support. This can be done by a concerted plan by the Government and supported by other NGOs who have adequate knowledge and experience in the sector. Digitisation has made this easier and such efforts must be stepped up. Our goal must be that every single CCI in the country becomes a place of safety, nurture and development so that our children can grow up to become happy and contributing members of society. At CSA, we have set up processes by which outcomes on health, hygiene, nutrition, education, mental health, life skills, and livelihoods can be measured with objective data. Other organisations who have endorsed this paper are also doing excellent work with children in institutional care. We are happy to share our learnings which can be used to replicate and scale such efforts.

We recommend that a Special Interest Group comprising of NGOs working in the space along with some representatives from Government be set up to share knowledge and best

practices and work towards encouraging and supporting all CCIs to provide ‘family like care’.

- 5. Building adoption and foster care capability and capacity** – Despite the large number of orphan children in India, it is disheartening that the number of children being adopted is very low. Illegal adoptions also continue to be a reality. Better awareness regarding adoption and foster care needs to be created in order to promote the same. It is also essential to build capacity at all levels to enable better monitoring and support to adoptive / foster parents, and reduce cases of disruption. Counselling and support is required for both parents and children for many years as they go through the journey to adulthood.

We recommend that Government set up a task force to look at current adoption and foster parenting processes and benchmark with best practices across the world to see how processes can be simplified and made more “adoption friendly”. We believe that adoption is the best possible outcome for a child without parental care and numbers can be increased manifold.

- 6. Enhancing Aftercare for Care Leavers who exit institutions at the age of 18** – Support for youth who leave institutional care has been a huge gap in the system. They find it difficult to find accommodation for themselves, given then disproportionately few Aftercare homes run by the Government. Very few of them receive the monetary support from the Government which they are entitled to until the age of 21. Without career guidance, support for higher studies or vocational training, and support for living expenses, they are forced to take up low paying jobs and never be able to realize their potential, and remain in the cycle of poverty. Hence for proper rehabilitation of care leavers, it is essential that Aftercare support is enhanced and made accessible to all.

We recommend that Aftercare becomes a focus area for the Government and CCIs, and every care

Our goal must be that every single CCI in the country becomes a place of safety, nurture and development so that our children can grow up to become happy and contributing members of society.

We recommend that Aftercare becomes a focus area for the Government and CCIs, and every care leaver is given the opportunity and support to become independent and a contributing member of society.

leaver is given the opportunity and support to become independent and a contributing member of society. Specialized NGOs are required to provide the services required by care leavers and successful models and best practices can be replicated without too much cost. CSA probably runs the largest NGO-run Aftercare program in the country, and other organizations who have endorsed this paper also work in this field. We would be happy to share our learnings and methodology.

- 7. Government funding** – The CPS scheme, Sponsorship scheme, and Aftercare support scheme being implemented by central and state Governments are supposed to provide for funding of CCIs, families in need of support, and care leavers respectively. In practice however, only a small number of rightful beneficiaries, are actually able to benefit from these schemes. Even though the Government mainly relies on private institutions to provide safety and care to children, it does not take responsibility of providing funding to all institutions. The situation on the ground varies state by state, but in most cases, the implementation of these schemes is marred by poor budgeting, unavailability of funds, and in some cases, lack of awareness of implementing officers.

The process of funding needs to be improved and digitised. It should be made transparent and predictable. For example, for every CNCP approved by CWC for placement in a registered CCI, Rs 2000 per month (or any other predetermined sum of money) should be deposited into the CCI's bank account with no further questions asked. If the data of children in a CCI is accurate and real time, the funds can be made available without risk of misappropriation. Further, if the continuity of these funds flow is made contingent on the CCI's reaching and maintaining certain outcomes in terms of JJ Act compliance or health / educational outcomes, it will provide an incentive to the CCI to improve its standards of child care.

The above is a suggestion but we recommend a high-power task force to examine how to reform the funds disbursement mechanism and make it a transparent, corruption free and predictable process linked to child care outcomes. This move has the potential to transform the entire process and systems for children in need of care and protection.

Conclusion

The scale of the problems in India do not allow for a one-track or simplistic solution that can be "imported" from the West. We need to pursue a multipronged solution that fits in with our reality and is practical, yet forward looking. This can only happen if all stakeholders to work together and not in their respective silos. Each of us have valuable learnings and experiences. At the same time all of us have constraints and limitations. Only by working together not only with Government but also with all other stakeholders in the space can we achieve the common objective that all of us share – better care and protection for vulnerable children!

CSA and all organizations who have endorsed this paper are committed to share, partner, learn and work with all stakeholders and this note is a step in that direction.

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