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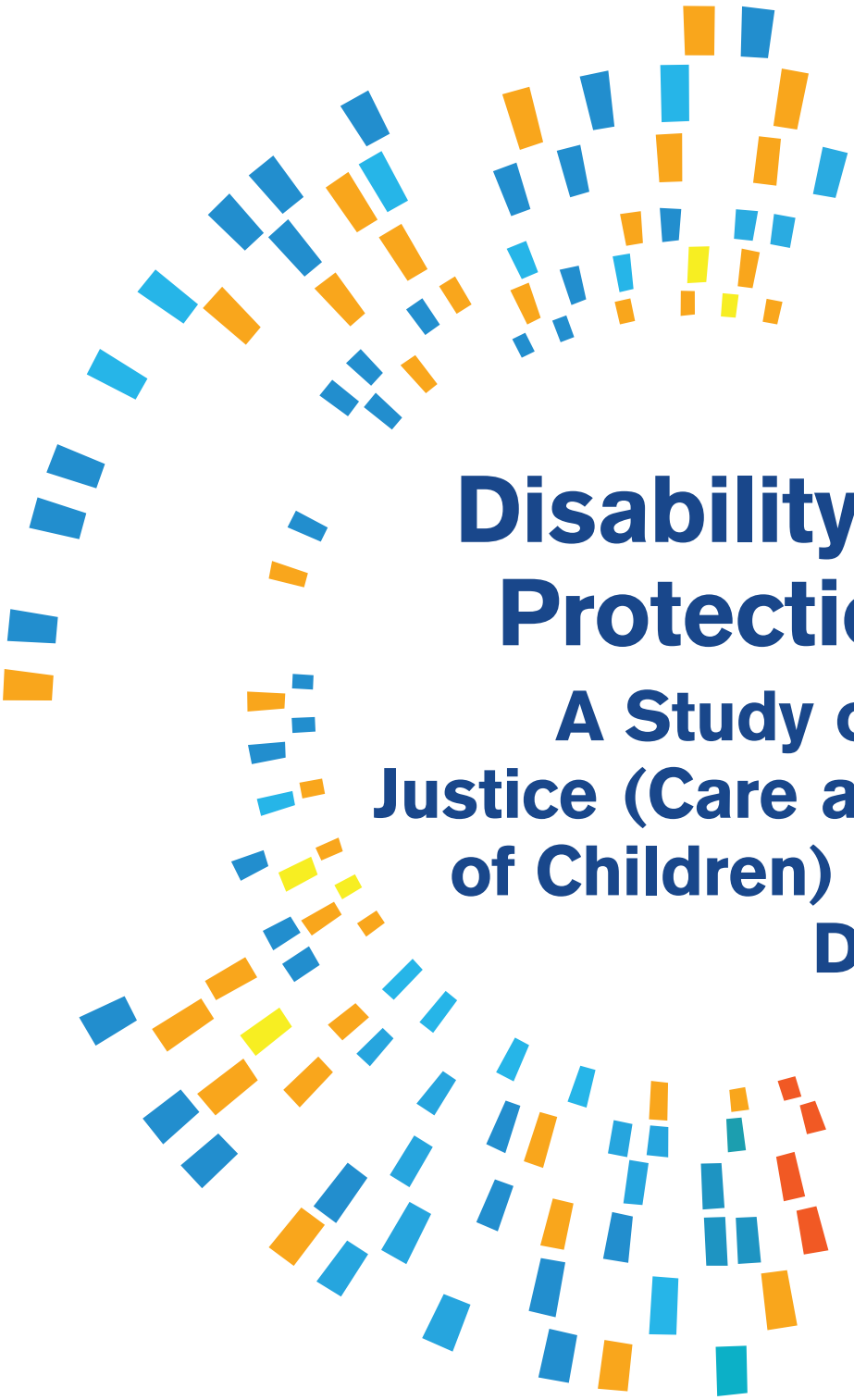
Disability and Child Protection in India

A Study of the Juvenile Justice (Care and Protection of Children) Act 2015 and Disability Laws



Disability and Child Protection in India

A Study of the Juvenile Justice (Care and Protection of Children) Act 2015 and Disability Laws

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General Disclaimers

The research contained in the report has been undertaken by the authors. While all reasonable precautions have been taken by them to verify the information, Keystone Human Services International and Keystone Human Services India Association cannot be held responsible for any errors or omissions. Any correspondence regarding this report should be directed to info@khsia.org.

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ERRATA

Following publication, two errors were identified in the citation of statutory provisions under the Juvenile Justice (Care and Protection of Children) Act, 2015 (JJA). These errors are limited to footnote references and do not affect the substantive analysis, interpretation, or conclusions of the study. The corrections are set out below.

Corrections

1. **Footnote 53 (Page 11):** The footnote incorrectly cites **Section 27(8), JJA**. The correct provision is **Section 27(1), JJA**.
2. **Footnote 244 (Page 54):** In the section on offences, while the substantive text correctly refers to **Section 85, JJA**, the corresponding footnote incorrectly cites **Section 75, JJA**. The correct provision is **Section 85, JJA**.

All other references and citations in the study remain accurate and unchanged. These corrections have been incorporated into the revised online version of the report. For printed copies, this errata should be read together with the original publication.

Date of Errata: January 2026

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LIST OF ABBREVIATIONS

CCI	Child Care Institution
CCL	Child in Conflict with Law
CCPD	Chief Commissioner for Persons with Disabilities
CNCP	Child in Need of Care and Protection
CRC	Convention on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
CWC	Child Welfare Committee
DCPU	District Child Protection Unit
DM	District Magistrate
ICDS	Integrated Child Development Services
JJA	Juvenile Justice (Care and Protection of Children) Act 2015
JJB	Juvenile Justice Board
JJR	Juvenile Justice (Care and Protection of Children) Model Rules 2016
MHCA	Mental Healthcare Act 2017
MHCA Rules	Mental Healthcare (Rights of Persons with Mental Illness) Rules 2018
MHE	Mental Health Establishment
MHRB	Mental Health Review Board
NCPCR	National Commission for Protection of Child Rights
NCT	National Capital Territory
NGO	Non-Governmental Organization
NTA	National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act 1999
PIL	Public Interest Litigation
PWD Act	Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act 1995
RCI	Rehabilitation Council of India
RPWD Act	Rights of Persons with Disabilities Act 2016
RPWD Rules	Rights of Persons with Disabilities Rules 2017
SCPD	State Commissioner for Persons with Disabilities
SCPS	State Child Protection Society
SFCAC	Sponsorship and Foster Care Approval Committee
SIR	Social Investigation Report
SJPU	Special Juvenile Police Unit
UNESCO	United Nations Educational, Scientific and Cultural Organization
UOI	Union of India

FOREWORD

Children with disabilities are first and foremost, children. They have the same right to grow in safe, nurturing, and loving family environment where they are supported to achieve their highest potential. Yet, within the child protection ecosystem, children with disabilities have too often remained unseen. This invisibility is rooted in long-standing medicalized views of disability that reduce children to diagnoses instead of recognizing their individuality, strengths and potential.

Over the past decade, India has made commendable strides towards inclusion. Several significant legislative and policy milestones have created pathways for greater inclusion of children and persons with disabilities in mainstream society. This includes the Rights of Persons with Disabilities Act 2016, the Mental Healthcare Act 2017, and the Accessible India Campaign, among others. In the same time span, there has been similar progress within the child protection space including the Juvenile Justice (Care and Protection of Children) Act 2015, and Mission Vatsalya 2022. Today, we see a stronger push towards ensuring that all children grow up with families and in their communities, and not institutions.

However, these two streams of progress have largely evolved independently. The absence of meaningful intersections between disability and child protection laws has resulted in gaps, inconsistencies and, ultimately, children with disabilities falling between multiple unaligned legal frameworks.

This dissonance between the child protection laws and the disability laws became evident when we initiated work on inclusive child protection. This was also highlighted during the landmark consultation convened by the Juvenile Justice Committee of the Supreme Court of India in September 2024 to highlight the need to strengthen the responsiveness of the juvenile justice system to the needs of children with disabilities. Building on this, Keystone Human Services International and Keystone Human Services India Association decided to undertake an analysis of the Juvenile Justice Act 2015 with the disability legislations, primarily the Rights of Persons with Disabilities Act 2016. This task, while enriching, unveiled the magnitude of work that lies ahead of us as we embark on a collective journey to make India an inclusive country, particularly when it comes to children with disabilities in need of care and protection.

At the heart of this work is the recognition that children with disabilities and their families must have access to the services and supports that help prevent separation, promote family-based care, and ensure access to education, healthcare, leisure, and community life on an equal basis with their peers. The way forward is not the expansion of institutions; rather, it is a decisive shift toward community-based services and family strengthening. For children currently in institutions, we must prioritize safe, supported pathways back to families and communities. Services and support should move out of institutions and reach children where they are – in their families and communities.

The analyses and recommendations in this report, therefore, must be read as a study of existing laws as they stand today with an aim to promote steps that prevent and address immediate and present harm

that children with disabilities who need care and protection face. They are by no means the last word. Rather, this report is the first step towards highlighting the need for more in-depth study of not just the Juvenile Justice Act but all child protection laws on how they include children with disabilities. Achieving meaningful change will require coordinated action across sectors, especially among ministries and departments responsible for child development and disability inclusion. Above all, it requires a sustained commitment to amplifying the national conversation on inclusive child protection.

As we mark ten years of the Juvenile Justice Act and enter the tenth year of the Rights of Persons with Disabilities Act, we stand on a decade of progress that has laid the foundation for a more inclusive future. The promise of the next ten years is to build on this foundation - moving from intent to implementation. It is our hope that the insights in this report contribute to that journey, guiding us towards a country where every child, without exception, is cared for, protected, and included.

1. INTRODUCTION

India is home to one of the largest children and adolescent[1] populations of the world. Of this, a significant number would be children with disabilities. According to the Census of 2011, there are 7.86 million children with disabilities in India. The Census data also shows that one in every hundred children under the age of 6 years has a disability. A majority of children with disabilities - around 71 percent, live in rural areas[2] and only 61 percent attended educational institutions. According to UNESCO's 2019 State of Education Report for India, three out of four children with disabilities aged five and above do not attend any formal educational institution. Even those who are enrolled often face segregation, inaccessibility, bullying, and poor retention.[3] There is a critical gap in data on children with disabilities in India. Going by global estimates, children with disabilities are 25 percent more likely to be wasted, 34 percent more likely to be stunted, and twice as likely to die from malnutrition during childhood. They are also 17 times more likely to be institutionalized, and one in three children in institutions is likely to be a child with disabilities.[4] Children with disabilities, therefore, are one of the most marginalized and vulnerable populations, often facing staggering neglect, abuse, discrimination, and systemic violence as compared to their peers without disabilities.

Over the last two decades and particularly in the last 10 years, India has made tremendous progress in advancing the rights of children and persons with disabilities. India was one of the first countries to have ratified the UN Convention on the Rights of Persons with Disabilities (CRPD) and to have brought in a national legislation aligned with the Convention. The Rights of Persons with Disabilities Act 2016 (RPWD Act), has been called a game changer and has provided the country with a strong legislative foundation on which an inclusive India can be built. Similarly, to fulfil India's commitment to the United Nations Convention on the Rights of the Child (CRC), India enacted the Juvenile Justice (Care and Protection of Children) Act 2015[5] (JJA). This together with the government's flagship program Mission Vatsalya launched in 2022, addresses the care and protection of all children – which includes children with disabilities. Both the JJA and the RPWD Act have a strong focus on children growing up in their families and in their communities, with institutionalization of children being the last resort and even then, a temporary option. Mission Vatsalya has further reinforced this move towards deinstitutionalization.

Given this, it is imperative that both the JJA and the RPWD Act are aligned and that they together advance a coherent and cohesive framework that protects the rights of children with disabilities in

1 Press Information Bureau. (2024, July 25). *Union Health Secretary reiterates India's unequivocal commitment to adolescents on the occasion of the launch of "Economic Case for Investment in the Well-being of Adolescents in India" report*. Ministry of Health and Family Welfare, Government of India. https://www.pib.gov.in/PressReleaseIframePage.aspx?PRID=2036749

2 Effects of malnutrition on child development: Evidence from a backward district of India
De, Partha et al. Clinical Epidemiology and Global Health, Volume 7, Issue 3, 439 – 445. Retrieved in August 15 2025 from https://doi.org/10.1016/j.cegh.2019.01.014

3 India Today Web Desk. (2019, July 4). *UNESCO report says 75% 5-year-old children with disabilities don't attend schools in India*. India Today. https://www.indiatoday.in/education-today/news/story/unesco-report-says-75-5-year-old-children-with-disabilities-don-t-attend-schools-in-india-1561722-2019-07-04

4 UNICEF (August 2022). *UNICEF Fact Sheet Children with Disabilities*. https://www.unicef.org/sites/default/files/2022-10/GIP02115_UNICEF_Children-with-Disabilities-Factsheet-final%20-%20accessible.pdf

5 JJ Act was first enacted in 1986, but the United Nations Convention on the Rights of the Child compliant version of the legislation was enacted in the year 2000. The Act was later amended and is now known as JJ Act 2015

need of care and protection. Similarly, the JJA and the systems and processes emerging from it must also speak to other disability related legislations, namely the Mental Healthcare Act 2017 and the National Trust Act for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities 1999 (NTA).

While the JJA and the RPWD Act are robust frameworks in their scope and structure, there is significant incongruence between the two laws, such as variation in definition and terminology, procedure for institutionalization of children, and guardianship. These inconsistencies have led to fragmented execution of the provision of these laws when it comes to children with disabilities in need of care and protection. This study strives to highlight the gaps between the child protection system and disability laws. To that extent, the study would limit its scope to *'children in need of care and protection'* (CNCP), as defined under Section 2(14) of the JJA. The given definition specifies that CNCP are those children who are vulnerable to abuse, neglect, or exploitation and require intervention and support to ensure their safety and development.

The susceptibility of harm inflicted on children with disabilities within the already marginalized segment of CNCPs is exacerbated due to the unique intersectionality of their position. Not all children with disabilities are CNCPs. As per Section 2(14) (iv) of the JJA, only those children who are *"mentally ill or mentally or physically challenged"*[6] or suffering from terminal or incurable disease with no one to support or look after or with parents or guardians unfit to take care or who have a parent or guardian found to be unfit or incapacitated, are CNCPs. As this study will reveal, these terminologies are not aligned with the current understanding of disability, including as enshrined in the RPWD Act. This, together with many other inconsistencies and a deeply entrenched medicalized approach to disability, has led to the needs of children with disabilities being inadequately addressed within child protection leading to their systemic invisibility.

As Indian child protection system moves away from institutionalization as a default and towards family based alternative care, the first step towards making this trajectory inclusive of children with disabilities is to identify these inconsistencies and address them. This report is an attempt to start a conversation to build a momentum that ensures that children with disabilities are not the ones left behind in institutions and that they are also supported to grow up in safe, secure and nurturing environments.

This report presents a critical analysis of the provisions, identifying systemic gaps, areas of divergence and provides concrete recommendations to ensure a more rights-based framework for children with disabilities within the child protection system.

6 These are terms used in the law and not endorsed by Keystone Human Services International or Keystone Human Services India Association

2. METHODOLOGY

This analysis is informed by a review of India's key legislative and policy frameworks concerning child protection and disability rights. The main legislative sources reviewed for this report are: Juvenile Justice (Care and Protection of Children) Act 2015 and Juvenile Justice (Care and Protection of Children) Model Rules 2016 - the primary legislation for child protection; Rights of Persons with Disabilities Act 2016 and Rights of Persons with Disabilities Rules 2017 - India's core disability rights legislation; Mental Healthcare Act 2017 - mental health services legislation; and National Trust Act 1999 - legislation covering four specific disabilities. In addition, our review also considers other policies relevant to CNCPs such as the Mission Vatsalya Guidelines 2022, Adoption Regulations 2022 and Model Foster Care Guidelines 2024, which help implement the legislative mandate enshrined in the JJA.

Previous scholarships indicate that there is a tendency for these frameworks and policies to develop parallelly without much intersection, leading to siloed systems that do not adequately address children with disabilities who require both protection and specialized support services.

This study primarily relies on the doctrinal legal research methodology, which means analyzing statutory texts, rules, policies, and similar primary and secondary legal sources in a systematic manner to identify gaps, overlaps and inconsistencies in the legal landscape of children with disabilities who are in need of care and protection in India. This took place in a qualitative, desk-based manner.

The research also undertook a comparative legal analysis framework - analyzing how laws define and categorize children with disabilities, particularly relevant to CNCPs. It has utilized systematic textual analysis of relevant legal provisions with focus on institutional mandate, mechanisms of service delivery and rights frameworks across child protection and disability legislations, to highlight areas where the existing laws are contradictory and not aligned with current understanding of disability and deinstitutionalization resulting in significant gaps. Overall, the doctrinal legal research methodology employed helped in suggesting the best approach for understanding what sort of changes might be necessary to create a more integrated and coherent framework for the delivery of protective services to children with disabilities who are part of the care system.

The draft analysis was presented to a group of experts from both the disability and the child protection movement through one online and one in-person consultation. The feedback received through this consultative process further strengthened both the analysis and the recommendations.

3. TERMINOLOGIES

In the context of the legislative framework examined here, the laws and policies use different and often conflicting terminologies to refer to the same group of vulnerable population. An illustrative table providing variant terms used across these key legislations and guidelines is provided as Annexure 1.

Confusion in terminology has concrete consequences that create barriers for accessing different types of services, jurisdictional dilemmas and continue to perpetuate systemic exclusion of children with disabilities from accessing the protections afforded by these legislations.

i. Juvenile Justice (Care and Protection of Children) Act 2015 and Juvenile Justice (Care and Protection of Children) Model Rules 2016

The JJA refers to at least eleven different terminologies for children with disabilities, without providing any clear definition for most of them. For example, Section 75 of JJA uses three undefined terms, such as, *"physically incapacitated"*, children who *"develop a mental illness"*, and children who "*are rendered mentally unfit to perform regular tasks*".[7] Furthermore, the Act also uses terms such as *"mentally or physically challenged"*,[8] *"children with special needs"*,[9] and *"disabled"*[10]. This inconsistency can also be seen in the JJR which uses terms like *"disabled friendly toilets"*[11] without defining the term 'disabled', referring to children with *"physical or mental health problems"*,[12] mentioning *"mental ailment"*[13] when stating the procedure to be adopted at the time of receiving the child, and using the term *"serving disabled children"*[14] in the context of community service.

The forms used for assessment and case documentation under the JJA further reinforce this confusion in definitions. For instance, Form 22 - the Social Investigation Report, includes a question whether a child is *"differently abled,"* and then divides this section into *"hearing impairment, speech impairment, physically disabled, mentally disabled, and others,"* which are neither defined nor are they aligned with the definitions in the RPWD Act.[15] Form 43, the Case History documentation, tracks separately *"physical and mental handicap"*, which, along with the inherent medical categorization, is in a language that reflects an archaic thinking of disability not reflecting the principles of a rights-based approach that is enshrined in the CRPD and the RPWD Act.[16] The term "*special needs of children*"[17] is used in Form 7 - Individual Care Plan, which has a much broader connotation and when left undefined forces practitioners to make their

7 Section 75, JJA
8 Section 2(14)(iv), JJA
9 Section 50(2) & Section 53(1)(ii), JJA
10 Section 85, JJA
11 Rule 29(9), JJR
12 Rule 80(2), JJR
13 Rule 69(F)(1)(iv), JJR
14 Rule 2(vi), JJR
15 Form 22, JJR
16 Form 43, JJR
17 Rule 2(ix)(a), JJR

own determination about whether the term will include all disabilities, special support requirements, or only some conditions.

One of the most significant inconsistencies within the JJA when it comes to children with disabilities is that it continues to refer to the defunct Persons with Disabilities Act 1995 (PWD Act). This aggravates the problems associated with definitions as it tries to link contemporary child protection efforts with an outdated legislation that predates India's ratification of the CRPD. The RPWD Act 2016 that repealed the 1995 law has a much broader definition of disability, more provisions and its Schedule lists 21 conditions as specified disabilities as opposed to the seven in the older law.

The terminological and definitional disharmony increases when considering the interaction between the JJA and other legislations addressing the needs of persons with disabilities. While the JJA uses terms like *"mental illness"*[18] and *"mentally ill"*[19] without defining it or referring to any other legislation for explanation, the RPWD Act and the MHCA define the term *"mental illness"* and also go on to distinguish between mental illness and intellectual and developmental disabilities.[20]

The RPWD Act remains the definitional authority for all matter of rights, protection and care of children with disabilities. Given this, it is critical that the terminologies used in the JJA when it comes to children with disabilities are aligned with that in the RPWD Act.

ii. The National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act 1999

The National Trust Act of 1999 was promulgated primarily because the Persons with Disabilities Act 1995 (PWD Act) did not include sufficient provisions for persons with autism, intellectual and developmental disabilities and multiple disabilities. It also came about as a way of addressing the question that parents and families had *'what will happen to our children/family members after we are no more?'*. The NTA is a service law that runs programs on community inclusion and support services for persons with high support needs from the four disability groups it caters. The NTA also has a provision for legal guardianship. Given that the NTA predates the ratification of the CRPD, the legislation presents several inconsistencies. For instance, the NTA defines *"autism"*[21] as *"a condition of uneven skill development primarily affecting the communication and social abilities of a person, marked by repetitive and ritualistic behaviour,"* while the RPWD Act's Schedule elaborates on *"autism spectrum disorder,"* as *"typically diagnosed between 0 to 3 years of life"* and as a *"neuro-developmental disorder"*. This is more than just a semantic distinction as it can lead to inadequacy of services. We find similar differences in how the NTA refers to *"cerebral palsy"*[22] with reference to *"brain insult or injuries that occurred in the pre-natal, peri-natal or infant period,"* while the RPWD Act when discussing cerebral palsy describes injuries that occurred *"before, during or shortly after"*.

Additionally, the NTA defines *"severe disability"*[23] as disability with *"eighty percent or more of one or more multiple disabilities"*, which establishes a threshold proportional to disability, while the RPWD Rules defines persons with *"high support needs"* as those having a benchmark disability of sixty percent

18 Section 75, JJA
19 Section 2(14)(iv), JJA
20 It should be noted that in making this distinction, the RPWD Act and MHCA use terms such as 'retardation' 'arrested or incomplete development of mind', 'sub normality of intelligence' that are no longer in alignment with the social and human rights model of disability and can reinforce further stigma and stereotypes
21 Section 2(a), NTA
22 Section 2 (c), NTA
23 Section 2 (o), NTA

and above.[24] These contradictions could further complicate the situation for children with disabilities within the child protection system.

iii. Mission Vatsalya Guidelines

Mission Vatsalya is one of the primary policy instruments helping in the operationalization of the JJA. The inconsistencies in terminologies evident in the JJA can also be found in Mission Vatsalya. For example, Mission Vatsalya uses *"child with special needs"*[25] within multiple sections in an unqualified manner with no reference to the RPWD Act when talking about children with disabilities. The guidelines incorporate additional undefined terms, *"special need children"*[26] and *"Special Unit for Children with Special Needs"*,[27] and *"child with disabilities"*,[28] establishing a lexicon that exists outside the legal definitions under the RPWD Act or the JJA.

Furthermore, whilst discussing the role of Child Care Institutions (CCI) for CNCP, the Guidelines state that special provisions must be made in such CCIs where services are provided by *"special educators"*,[29] but there is no definition or qualification outlined for them, nor linkages made to the Rehabilitation Council of India Act 1992, which deals with human resource development for disability related services. Additionally, Mission Vatsalya's use of *"physical/mental disabilities"*[30] is not aligned with the RPWD Act. At an operational level, it means that disability is often not accurately identified, or that children with disabilities have to go through multiple assessments which can be a stressful process, and that even after identification of the disability there may not be access to the appropriate protections, security and services.

iv. Adoption Regulations

The 2022 Adoption Regulations provide a few instances where the adoption process is linked in some ways to the comprehensive disability framework of the RPWD Act. There is a connection made between the processes associated with adoption and the vocabulary around disability as specified in various Schedules[31] of the Adoption Regulations, which is not otherwise seen in other child protection frameworks. These Regulations, for example, define *"special needs child"* as one *"suffering from any disability as provided in the Rights of Persons with Disabilities Act 2016"*. However, the definitional consistency of the Adoption Regulations does not translate into its operationalization. For instance, the Adoption Regulations utilize *"mentally or physically challenged children"*[32] in reference to the functions of the State Adoption Resource Agency, *"children having special needs"*[33] in procedural contexts, *"children in the category of special needs"*[34] in relation to the responsibilities of the agency, and *"children having suspected special needs conditions"*[35] in relation to medical assessments. These undefined variations, all within a single regulatory framework, illustrate that definitional consistency requires much more coordination especially while drafting these legal frameworks, and cross-referencing with well-established disability rights frameworks. This lack of coordination reflects a historical and systemic othering of disability, and the continued lack of recognition of disability as a cross-cutting issue.

24 RPWD Rules https://timesofindia.indiatimes.com/india/new-rules-to-help-persons-with-high-support-needs/articleshow/68446090.cms
25 Sections 3.1.1, 4.1 & 4.2, Mission Vatsalya Guidelines, 2022
26 Section 3.1(1)(i), Mission Vatsalya Guidelines, 2022
27 Id
28 Section 4.1 & 4.2, Mission Vatsalya Guidelines, 2022
29 Section 3.1, Mission Vatsalya Guidelines, 2022
30 Annexure IV Part B, Mission Vatsalya Guidelines, 2022
31 Regulation XVIII and Schedule III (Part E), Adoption Regulations, 2022
32 Regulation 35(2)(g), Adoption Regulations, 2022
33 Regulations 9, 30, 37, 51, Adoption Regulations, 2022
34 Regulation 35(2)(p), Adoption Regulations, 2022
35 Regulation 36(3)(8), Adoption Regulations, 2022

v. Model Foster Care Guidelines

The Model Foster Care Guidelines 2024 employs six different terms, none of which have been defined. The Guidelines use *"children having special needs"*[36] when discussing certain eligibility requirements, *"disability"*[37] when discussing certain assessments, *"special needs child"*[38] in relation to decisions concerning placement, *"category of special needs"*[39] in relation to accessing the portal, *"mental illness"*[40] in the context of health screenings, and *"mentally unsound"*[41] in relation to criteria for disqualifying foster parents. Practitioners could then grapple with questions regarding whether one of these terms could be applied to the same group of children, if there exist any overlapping groups, or whether these are entirely different categories of children.

The inclusion of *"mentally unsound"*[42] as a disqualifying characteristic for prospective foster parents demonstrates how the outdated and stigmatizing language still exists in Indian contemporary policy documents. This language in the 2024 Guidelines is incongruous with the rights-based framework brought in by the RPWD Act and the MHCA – which recognize the legal capacity of persons with psychosocial disabilities and their right to parenthood and family. While *"mentally unsound"* is nowhere defined under the Act, it also exists alongside the term *"mental illness"*[43] which is undefined in the Foster Care Guidelines. This terminology takes on a discriminatory dimension by bringing in a blanket exclusion for persons with mental health conditions based on an assumption of incapacity to provide care for children.

These inconsistencies in terminologies and definitions mean that policies do not provide a clear understanding of how to identify and find appropriate placements for different children. For instance, an autistic child may fall within the scope of any of the six terms in the Foster Care Guidelines, and all of which may determine the placement priority or prerequisites for training foster families or the associated and/or level of community support services required for that child. Without clear definitional criteria in these six terms, practitioners will not be able to establish a body of consistent practice for any child with a specific condition.

The real-world ramifications of this confusion are both grave and multilayered and go beyond the practical inconvenience as it becomes systemic, whereby children are also denied the fundamental right to protection and family life. Confusion with assessment is the first, which thereafter results in the inability of front line staff to reliably and consistently assess the legitimate needs for a child or the most appropriate placement for them. Arguably, an autistic child for example, may be classified as *"special needs"* under Mission Vatsalya guidelines, identified as *"differently abled"*[44] in the JJR, and assigned as having *"mental health problems"* under the Foster Care Guidelines, with all of these categories leading to potentially different pathways to service, placement options, and levels of support available to them.

Another fall out of inconsistencies in terminology is that if different authorities are following different standards, it can lead to failure in cross-agency coordination and a deliberate compartmentalization where children with disabilities are perceived as a homogenous group instead of whole persons with interrelated needs. This lack of integration becomes even more significant for children in need of care and protection who, by definition, require integrated protection and support services across India's different legislative frameworks.

36 Guideline 4(2), Model Foster Care Guidelines, 2024
37 Guideline 4(4)(d)(i), Model Foster Care Guidelines, 2024
38 Guideline 12(1)(c), Model Foster Care Guidelines, 2024
39 Guideline 16(4), Model Foster Care Guidelines, 2024
40 Guideline 17(4)(b), Model Foster Care Guidelines, 2024
41 Guideline 2(3), Model Foster Care Guidelines, 2024
42 Guideline 2(3), Model Foster Care Guidelines, 2024
43 Guideline 17(4)(b), Model Foster Care Guidelines, 2024
44 Form 22, JJR

Importantly, the terminological distinctions reflects the underlying conceptual confusion in our overall approach to disability. The charity and medicalized approach to disability is evident in the continued use of problematic terms such as *“retardation”*, *“handicapped”*, *“mentally unsound”*, among others. These are not merely technical terms but reflect competing world views about whether disability is something medical (pathology), something that is sociological (to be accommodated) or something administrative (to be managed).

Summary & Recommendations

Adopting a CRPD-aligned definition of disability	For all legislative and policy harmonization, the definition of disability as enshrined in the RPWD Act must be the baseline. There must be a move towards ensuring definitions and assessments focus on identifying barriers and individual support needs rather than solely on medical diagnoses.
Amending Section 85 of the JJA in line with the RPWD Act	Section 85's reliance on the defunct PWD Act 1995 creates a gap where children with many different conditions missing from the 1995 law may not receive enhanced protections under the JJA. While the RPWD Act includes a rights-based definition of persons with disabilities and currently includes 21 specified conditions in its Schedule, the 1995 law had a very limited medical based definition covering only 7 conditions. Section 85 must be amended to explicitly reference RPWD Act 2016 as the definitional anchor.
Replacing variant terminologies across the JJA in line with the RPWD Act	The JJ Act currently uses 11 variant terms (including *"physically incapacitated," "mentally ill," "special needs,"* and *"differently abled"*) without definitions, creating assessment confusion and service access barriers for children with disabilities. All such terms must be replaced with *“children with disabilities”* (per RPWD Act), eliminating medical-model language. This must also be accompanied by guidelines that emphasize assessing functional limitations and environmental barriers, ensuring no child is excluded due to a narrow, categorical interpretation.
Replacing variant terminologies across the JJR & case management in line with RPWD Act	Case management resources under the JJA must be reviewed for disability inclusion, particularly to move away from stigmatizing terms like *"handicapped," "differently abled,"* and *"mentally disabled"* without definitions, creating categorization inconsistent with rights-based frameworks. All such terms must be replaced with *"children with disabilities"* (per RPWD Act). This must also be accompanied by guidelines that emphasize assessing functional limitations and environmental barriers, ensuring no child is excluded due to a narrow, categorical interpretation.
Aligning terminologies in Mission Vatsalya Guidelines with the RPWD Act	Mission Vatsalya uses undefined terms like *"children with special needs," "special need children,"* and *"physical/mental disabilities"* disconnected from the RPWD Act. All such terms must be replaced with *"children with disabilities"* (per RPWD Act). Qualifications must also be included when referencing *"special educators"*.
Aligning terminologies in the Foster Care Guidelines 2024 with the RPWD Act	The Foster Care Guidelines use six undefined terms including stigmatizing language such as *"mentally unsound"* for disqualifying foster parents. All such terms must be replaced with *"children with disabilities"* (per RPWD Act) and reference to *“mentally unsound”* must be removed to prevent blanket disqualification based on an assumption of incapacity.

Aligning terminologies in the Adoption Regulations 2022 with the RPWD Act	The Adoption Regulations use terms like *"mentally or physically challenged children," "children having special needs,"* and *"suspected special needs conditions"* across different sections without maintaining definitional consistency. Multiple variant terms in Sections 35, 36, and 37 need to be aligned with the reference to the RPWD Act in Regulation 2(25).
Harmonizing the NTA with the RPWD Act	The NTA's definitions of autism, cerebral palsy, and *"severe disability"* need to be aligned with those in the RPWD Act to prevent eligibility confusion to access schemes and programs.
Enhancing Inter-Ministerial Coordination	An Inter-Ministerial Committee must be established with representation from the Ministry of Women and Child Development, Ministry of Social Justice & Empowerment, and the Ministry of Health and Family Welfare to review all child-related legislations in line with the RPWD Act. Additionally, compliance checks must be mandated for all new policies/guidelines before notification, so that there are no parallel definitions, structures and processes created when addressing the needs of children with disabilities.
Transforming the disability certification process	There must be a move towards a rights-based certification framework that replaces deficit-focused tools. The new process should, among others: (i) Focus on functional assessment of a child's abilities and support needs (ii) Be intersectional, considering how gender, caste, poverty, and location compound disabling barriers; and (iii) Remove stigmatizing language and practices, aligning with the ethos of the CRPD

4. AUTHORITIES

The incorporation of a designated authority within any statute lends legitimacy and functionality within its framework. Not only is such an authority responsible for the implementation and enforcement of the statute, but it also ensures the appointment of structures that carry out the functions of the Act, thereby facilitating accountability and transparency in its implementation. The authorities also play a crucial role in providing a framework of rules and regulations to protect individual and community interests by creating standards and instituting mechanisms of conduct and preventing disputes. A clear demarcation of authorities in any Act also fosters trust by showing that there is a system in place for the redressal of issues and challenges and enforcement of compliance.

Given the disproportionate risk of marginalization faced by children with disabilities, the authorities entrusted with securing their rights play a critical role in coordinating support across sectors, promoting awareness of rights, resolving disputes, managing and allocating resources and funds, monitoring and implementing policies, amongst other obligations. The effective execution of these responsibilities demands a more streamlined process that reduces the number of mechanisms one has to navigate to access rights and services in relation to children with disabilities. When laws are harmonious, the work of the authorities emerging from these legislative frameworks would be better coordinated, symbolizing accountability and reducing the risk of neglect.

The need to address the dissonance between the existing legislative frameworks in India, when it comes to the rights of children with disabilities is underscored by the significant role that these authorities play. The lack of coordination leads to fragmented authorities and gaps in delivery of services, creating numerous overlaps and inconsistencies. Streamlining functions and cohesion in authority structures across laws can enable consistency in addressing the needs of children with disabilities and ensuring their well-being. It is, therefore, important to understand and address the impact of multiple authorities that operate in silos without coordination on children with disabilities in need of care and protection.

i. Juvenile Justice (Care & Protection of Children) Act 2015

In India, the JJA is the primary legislation addressing care, protection and rehabilitation of children. The Act marks a distinction between children in conflict with the law (CCL) and children in need of care and protection (CNCP), which includes children who lack a home or fixed place of residence, are engaged in work violating labour laws, or live with individuals who neglect, exploit, or abuse them. CNCP could also include children with disabilities who face these vulnerabilities.[45]

As provided under Section 2(22) read with Section 27, the State government is responsible for constituting one or more Child Welfare Committees (CWCs) for every district. Under the JJA, the CWC is entrusted with the care, protection, treatment, development and rehabilitation of CNCPs and the provision of their basic

45 Section 2(14), JJA

needs. The functions of the CWCs are multifarious.[46] The CWC takes cognizance of children in need of care and receives those presented to it. It conducts an inquiry into all issues relating to and affecting the safety and well-being of children under this Act. It directs the Child Welfare Officers or probation officers or District Child Protection Unit (DCPU) or non-governmental organizations (NGOs) to conduct a social investigation and submit a report before the Committee. It is also responsible for directing placement of children in institutional and alternative care like foster care. In case of any complaint, the CWC is equipped to conduct an inquiry and give directions to the police or the DCPU.

Any child who is a CNCP must be produced before the CWC as soon as possible, and within 24 hours of being found or rescued.[47] On production of the child, the CWC holds an inquiry and may pass an order to send the child to a children's home or a fit facility or a fit person. The CWC submits quarterly reports to the District Magistrate (DM) detailing the disposal of cases, enabling a review of pending cases.[48] The DM may direct the CWC to take necessary remedial measures to address the pendency, if necessary.[49]

The Act also provides for the setting up of a DCPU which, under the supervision of the DM, ensures the implementation of this Act and other child protection measures in the district. The DCPU coordinates with various official and non-official agencies concerned in the district. Similarly, the State Child Protection Society (SCPS) takes up matters relating to children with a view to ensuring the implementation of the JJA in the State.[50] The DCPU also maintains a database of medical and counselling centres, deaddiction centres, hospitals, open schools, education facilities, apprenticeship and vocational training programs.[51] To that end, the DCPU has to ensure that all relevant services for children with disabilities are mapped, enabling consistencies in service delivery and uniformity in policy monitoring. The State government is supposed to constitute Special Juvenile Police Units (SJPUs) in each district. The District Child Protection Officer is the nodal officer in the district for the implementation of the JJA and the JJR.[52]

The State government is responsible for appointing inspection committees for the State and the district. The committees are supposed to submit the report of their findings to the DM.[53] Within the Act, the DM is bestowed with numerous powers, from conducting quarterly reviews of the functioning of the CWCs to acting as the grievance redressal authority[54] and evaluating the functioning of the SPJUs and registered institutions.

The State government is entrusted with establishing and maintaining a children's home in every district.[55] These homes should be established for the placement of children in need of care and protection, providing for their care, treatment, education, training, development and rehabilitation.

The legislation also provides for a comprehensive framework for the adoption of children who are orphans, abandoned and surrendered, to ensure their right to a family.[56] It is the responsibility of the State government to recognize one or more institutions or organizations in each district as a Specialized Adoption Agency (SAA).[57] The SAA looks after the rehabilitation of orphan, abandoned or surrendered children, through adoption and non-institutional care. Further, the State Adoption Resource Agency (SARA) is also set up by the State government for dealing with adoptions and related matters in the State under the guidance of the Central Adoption Resource Authority (CARA).[58] The functions of CARA include: [59]

46 Section 30, JJA
47 Section 31, JJA
48 Section 36(4), JJA
49 Section 36(5), JJA
50 Section 106, JJA
51 Rule 85 (xix), JJR
52 Rule 85(2), JJR
53 Section 27(1), JJA
54 Section 27(10)
55 Section 50(1), JJA
56 Section 56(1), JJA
57 Section 65(1), JJA
58 Section 67(1), JJA
59 Section 68, JJA

- Promotion of in-country adoptions and facilitation of inter-State adoptions in coordination with the State Agency
- Regulation of inter-country adoptions
- Framing regulations on adoption and related matters from time to time
- Carrying out the functions of the Central Authority under the Hague Convention on Protection of Children and Cooperation in respect of Inter-country Adoption

While CARA serves as a national regulatory authority for adoption, SARA functions as a State-level authority acting as a bridge between CARA and SAA. Under the JJA, adoption is recognized as a fundamental right enabling orphaned, abandoned, or surrendered children to be permanently integrated into families.

CARA uses Schedule III for categorizing children as "*special needs*" and Schedule XVIII for medical examination protocols to assess adoptability. These frameworks currently lack alignment with the RPWD Act, creating a significant gap in rights-based and inclusive evaluation.

ii. Rights of Persons with Disabilities Act 2016

The RPWD Act makes provisions for the appointment of the Chief Commissioner[60] by the Central government and the State Commissioner[61] by the State government. The Commissioner is entrusted with:

- Identifying provisions of law and policy inconsistent with the RPWD Act
- Inquiring into the deprivation of rights
- Reviewing safeguards
- Studying treaties
- Promoting research and awareness, and
- Monitoring implementation of the Act and utilization of funds

Under Section 77, the Commissioner is also empowered to:

- Summon and enforce the attendance of the witness
- Discovery and production of any documents
- Requisition of public records, and
- Receive evidence and issue commissions for the examination of witnesses or documents

Section 77 vests the Chief Commissioner with the same powers as those of a civil court under the Code of Civil Procedure 1908 (5 of 1908). The State Commissioner performs analogous functions at the State level.

The RPWD Act also provides for the establishment of a Central[62] and State Advisory Board[63] on disability, respectively, to:

- Advise the government on policies, programs and legislation on disability
- Develop a national policy to address issues concerning persons with disabilities
- Coordination with all departments of the government, governmental organizations and non-governmental organizations

60 Section 74, RPWD Act
61 Section 79(1), RPWD Act
62 Section 60(1), RPWD Act
63 Section 66(1), RPWD Act

- Recommending steps to ensure accessibility, and non-discrimination, monitoring and evaluating the impact of laws and policies on disability

On the lines of the State and Central Advisory Board, the State government is responsible for constituting a district-level committee on disability to perform such functions as may be prescribed by it.[64] The Act and the corresponding Rules are otherwise silent on the functions and structure of the district-level committee. Moreover, the Act does not designate any authority to lead or head the committee.

iii. Mental Healthcare Act 2017

The MHCA was enacted to repeal the Mental Health Act of 1987 to protect, promote and fulfil the rights of persons during the delivery of mental healthcare and services. One of the key mandates of this law is the constitution of the Central Mental Health Authority,[65] a State Mental Health Authority[66] and the Mental Health Review Boards (MHRBs).[67]

Under this Act, the Central Mental Health Authority has to:[68]

- Register all mental health establishments (MHEs) under the Central government and maintain a record of all such establishments in the country based on information shared by the State Mental Health Authorities
- Develop quality and service provision norms for different types of mental health establishments under the Central Government
- Supervise their functioning and receive complaints about any deficiencies in services
- Maintain a national register of clinical psychologists, mental health nurses, and psychiatric social workers based on the information shared by the State Authorities
- Train law enforcement and health professionals on the provisions of MHCA
- Advise the Central government on all matters relating to mental healthcare and services

Similarly, the State Mental Health Authority, operating under the auspices of the State government, is entrusted with performing analogous functions such as registration and supervision of MHEs, development of their quality and service provision norms, training and maintaining registrations of such establishments, along with performing an advisory role for the State government on allied matters.[69]

MHRBs are to be constituted by the State Mental Health Authority for a district or group of districts in a State. It is responsible for:[70]

- Registration, review, alteration, modification or cancellation of an advance directive, appointment of nominated representatives
- Adjudication of complaints regarding deficiencies in care and services
- Visitations and inspections of prisons and jails, and seeking clarifications from medical officers, conducting inspections
- Inquiry when a mental health establishment violates the rights of persons with mental illness and imposition of penalty on non-compliant mental health establishments

64 Section 72, RPWD Act
65 Section 33, MHCA
66 Section 45, MHCA
67 Section 73, MHCA
68 Section 43, MHCA
69 Section 55, MHCA
70 Section 82, MHCA

The advance directive[71] here refers to the decision of a person who is not a minor, specifying the way the person wishes to be cared for or not to be cared for and treated for a mental illness, and individuals in order of precedence who may be appointed as their nominated representatives.

Another critical role of the MHRB is to dispose of complaints regarding the appointment of a nominated representative, which, in the case of minors, is the legal guardian, and to challenge the admission of a minor. This has implications for children with disabilities in need of care and protection. On one hand, children with intellectual and developmental disabilities in the care system often can be misdiagnosed with mental illness and can be admitted into mental health establishments. On the other hand, children with mental health conditions in the care system may need treatment in an institutional setting. In both scenarios, the JJA intersects with the MHCA.

iv. National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act 1999

The National Trust Act 1999 (NTA) was enacted in India to empower and support individuals with autism, cerebral palsy, mental retardation[72]and multiple disabilities. Its primary goal is to establish the National Trust as a statutory body to support programs that promote independent living in the community, to provide services that enable persons with these disabilities to live with their families, to address issues of persons with disabilities who do not have family support; and to promote measures for the care and protection of persons with disabilities in the event of death of their parents or guardians.

The Board of the National Trust is entitled to receive a one-time contribution[73] from the Central government and bequests of movable property[74] from any person for enhancing the adequate standard of living of persons with disabilities and for furtherance of the objectives of the Trust, respectively. The Board can also receive funds from the Central Government to assist registered organizations[75] in their functioning.[76] The Board is bound by the directions of the Central government on matters of policy.[77]

The Act allows for the setting up of residential centres,[78] establishes a framework to support caregivers and enables the appointment of legal guardians to make decisions on behalf of individuals who lack the capacity to do so themselves.[79]

The management of this Trust is vested in the Board that includes the Chairperson,[80] and the Chief Executive Officer (CEO)[81] who is of the rank of a Joint Secretary, among other members. The Chairperson presides over the meetings of the Board and is responsible for the proper functioning of the Trust.[82] The CEO oversees the management of the Trust and exercises such powers in respect of the affairs of the Trust as may be delegated to them by the Chairperson from time to time.[83]

The NTA provides for the constitution of a Local Level Committee (LLC) at the district level, consisting of an officer not below the rank of a District Magistrate.[84] The LLC is responsible for receiving applications

71 Section 5, MHCA
72 This is the term used in the language of the law. Keystone Human Services does not endorse this term.
73 Section 11(1)(a), NTA
74 Section 11(1)(b), NTA
75 A registered organization under NTA means an association of persons with disabilities or an association of parents of persons with disabilities or a voluntary organization, as the case may be, registered under Section 12 of the NTA
76 Section 11(1)(c), NTA
77 Section 28, NTA
78 Section 11, NTA
79 Section 14, NTA
80 Section 3(4)(a), NTA
81 Section 3(4)(e), NTA
82 Rule 6(1) and (2), NTR
83 Rule 15, NTA
84 Section 13, NTA

for the appointment and removal of guardians and making decisions on the same.[85] The LLC has to send a quarterly report to the Board on the applications it receives.

However, LLCs established under the NTA are now largely inactive with most interventions and operations being inadequately implemented, leading to a system that struggles to achieve its intended purpose.[86] Experts consulted during this study emphasized the need for systemic strengthening and accountability mechanisms to enhance the operation of LLCs for them to be more responsive. Given the impact of their role on family separation and family preservation, the work of the LLC must be coordinated with authorities under JJA.

Summary & Recommendations

While the JJA enshrines provisions to safeguard the rights of all children, the RPWD Act is the overarching framework that specifically addresses the rights of children with disabilities. The MHCA temporarily intersects to safeguard the rights of children with disabilities needing mental health services in an institutional or medical setting. The role of NTA in providing support services to families of children with disabilities is critical to prevent family separation.

Given that each of these legislations has been drafted with a specific purpose and a rationale, the absence of interaction between the Acts has contributed to the dissonance on the ground.

The primary point of entry for children in need of care and protection should be the JJA and its mechanisms, and this applies to children with disabilities who are CNCP. There is a need for coordination and harmonization between the authorities of the JJA and those in the RPWD primarily, and as relevant with those in the MHCA and the NTA.

CWCs under the JJA, though mandated to include a woman member, do not require a disability expert, which limits their ability to make informed decisions for children with disabilities. It is also important here to specify who would qualify as a 'disability expert' in this scenario for administrative efficiency. While professional standards are regulated by the Rehabilitation Council of India (RCI), the current framework is insufficient to produce the required range and number of personnel to address the various types of disabilities. Even where institutions employ special educators, these professionals are rarely trained to work across different disabilities, which limits effective inclusion and support for children with diverse needs.

Further, the existing complaint and referral systems within the RPWD Act, MHCA and NTA are largely adult-focused, with very few mechanisms accessible to children. Complaint bodies rarely receive cases concerning children, and families often lack awareness or face barriers in navigating these processes.[87] The legislative frameworks, including the RPWD Act and NTA, were originally designed with services for adults in mind, such as employment, independent living, and rehabilitation. As a result, the care and protection needs of children with disabilities remain somewhat insufficiently addressed.

85 Rule 16 and 17, NTA
86 Experiences shared by experts consulted for feedback and inputs to this study through an online and one in person consultation
87 Ibid

Bringing a focus on children in the RPWD Act, MHCA and NTA	Children with disabilities risk slipping through the gaps created by the multiple authorities operating under these legislations. While the Central and State Advisory Boards under the RPWD Act include secretaries from the Ministry or Department of Women and Child Development, this level of coordination needs to be mirrored across all related legislative bodies. Likewise, the legislative institutions under RPWD Act and MHCA, including at the district level, must include a focus on child rights and have on board representation from child rights experts, CWC and DCPUs as applicable.
Linkages to the JJA in disability related authorities	The RPWD Act and the MHCA do not provide specific provisions for the times when CNCPs under JJA interact with the authorities under their ambit. Likewise, the RPWD Act and MHCA do not require the authorities under them to also include specific expertise on child protection. There is therefore a need for the RPWD Act and the MHCA to bring in linkages to the JJA where children with disabilities in need of care and protection are concerned.
Including disability expertise in JJA authorities	There is currently no provision for disability experts at the CWC or the DCPU level to enable them to address the needs of children with disabilities. Steps to ensure that the authorities under the JJA include disability expertise must be undertaken.
Increasing coordination between district level committee (RPWD Act) and LLCs (NTA)	Under the NTA, there are Local Level Committees (LLCs) and the RPWD Act includes provision for establishment of district level committees. However, there is no guidance on how they coordinate between themselves, and with district level bodies under the JJA. The current mechanisms under both the RPWD and NTA are seemingly more adult-focused with very few provisions for children with disabilities. Specific guidance must be provided to ensure that the district level disability committees and the LLCs are linked to district level authorities under the JJA.

General Recommendations

- There is a need for training and sensitization of all stakeholders, especially the CWCs, involved in protecting and securing the rights of children with disabilities.
- Additionally, all the legislative authorities must engage in a more participatory, multi-agency approach wherein best practices are shared and harmonized to ensure that children with disabilities do not fall through the gaps. This framework must include Integrated Child Development Services (ICDS) officers as they are closely linked with community and child development work.
- Bodies such as the National Commission for Protection of Child Rights (NCPCR) should be explicitly mentioned within interlinking frameworks, as they play a critical role in oversight and child protection monitoring.
- Addressing the wide-ranging needs of children with disabilities requires integrated, multi-sectoral teams at both district and State levels. Such teams should include disability specialists, educators, and persons with disabilities themselves. Furthermore, children with disabilities should be actively represented within these teams, ensuring that their perspectives and voices inform decision-making, planning and implementation of services.
- When CCIs are merged, closed, or children are shifted between different facilities, children with disabilities are often not accepted, documented, or properly tracked.[88] This lack of accountability and follow-up increases the risk of children being lost within the system or entirely overlooked. Experts consulted during this study stressed the urgent need to establish a clear, systematic, and transparent process to ensure that every child with a disability is identified, monitored and provided with appropriate support during such transitions.
- Legislations like the RPWD and NTA must be made child-sensitive, ensuring that statutory provisions, programs and services are tailored to the realities and rights of children with disabilities.

88 Experience shared by a young person with a disability with lived experience of care during the consultation organized on October 28, 2025 to review and receive feedback on the draft report of this study

Specific Recommendations

JJA

- The DM is entrusted with overall oversight at the district level under the JJA. A provision can be inserted under Chapter VI to state that it is recommended to also vest them with the responsibility of coordinating on disability issues.
- The issue of children with disabilities needs to be specifically mentioned in the roles and responsibilities of the District Child Welfare and Protection Committee as listed in Mission Vatsalya Guidelines.
- A panel of experts and organizations on various disabilities should be available to advise and provide case to case support to the DCPU and CWC.

RPWD Act

- State Governments must include coordination with the CWC and DCPU under the functions of the district level committees.
- Under Sections 75 and 80 of the RPWD Act, the Chief Commissioner for Persons with Disabilities (CCPD), while screening the complaints relating to CNCPs who have a disability, may refer the complaint to the State Commissioners (SCPD). The SCPD, after perusing the contents of the complaint, can then refer it to the DM, who can in turn send it to the district level committee for resolution in consultation with the CWC.
- Additionally, a thorough review and redesign of referral and redressal mechanisms at district and State levels must be incorporated to ensure they are child-sensitive, accessible, and capable of responding effectively to the rights and needs of children with disabilities.
- Child rights experts must be included on advisory boards in the RPWD Act under Sections 60 and 66.

MHCA

- Child rights experts must be included in the Central and State Mental Health Authorities, and the Mental Health Review Boards under the MHCA.

NTA

- The district-level committees under RPWD Act and the Local Level Committees (LLCs) under the NTA can be brought directly under the purview of the DM to provide support to children with disabilities.
- There is a need for systemic strengthening and accountability mechanisms to make LLCs operational and responsive.

5. GENERAL PRINCIPLES AND NON-DISCRIMINATION

The core of any legislation addressing the rights and needs of marginalized and vulnerable sections of society would always embody the principles of equality and non-discrimination. Indian laws in relation to the rights of the child and rights of persons with disabilities are no different. The JJA, RPWD Act and the MHCA all reinforce this commitment to equality and non-discrimination.

i. Juvenile Justice (Care & Protection of Children) Act 2015

This principle of equality and non-discrimination is enshrined within the JJA where the Act calls for elimination of all kinds of discrimination against children on grounds including sex, caste, ethnicity, place of birth, and disability.[89] However, the provision does not account for discrimination based on parentage,[90] i.e., the discrimination based on the parents' or legal guardian's race, colour, sex, language, religion or disability, among others. This is a critical gap as parents with disabilities, particularly those with intellectual and psychosocial disabilities, may be considered unfit parents or guardians merely on the basis of their disability, which goes against their right to family as enshrined in the RPWD Act.

ii. Rights of Persons with Disabilities Act 2016

The RPWD Act makes an explicit reference to equality and non-discrimination at the very beginning of the Act, which is reinforced in Section 3. Where RPWD defines discrimination in relation to disability,[91] the duties of the government include ensuring that persons with disabilities enjoy the right to equality, life with dignity and respect.[92] Section 3(3) of the Act prevents discrimination on the grounds of disability but includes an exception that states "unless it is shown that the impugned act is a proportionate means of achieving a legitimate aim". The Act remains silent on the nature of support that is to be provided in cases of discrimination. The Act prioritizes personal liberty by prohibiting its deprivation only on the basis of disability.[93] The Act also calls for protection from cruelty and inhuman treatment[94] and protection from abuse, violence and exploitation.[95]

Section 9 of the RPWD Act prohibits the separation of children with disability from their parents except on the order of a competent court.[96] This provision of the law also states that where parents are unable to take care of a child with disability, the competent court shall pass orders to alternatively place the child

89 Section 3(x), JJA
90 The Convention on the Rights of the Child (CRC) under Article 2(1) states that State Parties shall respect and ensure the rights set forth in the 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. As the JJA was re-enacted pursuant to India acceding to the CRC, it becomes imperative for India to abide by the provision
91 Section 2(h), RPWD Act
92 Section 3(1), RPWD Act
93 Section 3(4), RPWD Act
94 Section 6, RPWD Act
95 Section 7, RPWD Act
96 Section 9(1), RPWD

with their near relations or within the community first. However, this Section does not link to the JJA and the circumstances that would render the parents unfit to take care of a child are not mentioned in the provision.

iii. Mental Healthcare Act 2017

Like the JJA and RPWD, the MHCA also includes the principles of equality at the forefront[97] and prohibits all forms of discrimination[98] during the provision of mental health care services. Focusing on the rights of persons with psychosocial disabilities to live with their families, MHCA states that where persons with mental illness cannot live with their families or relatives or have been abandoned by them, it would lie on the government to support them with legal aid and to facilitate the exercise of their right to live in the family home.[99]

The MHCA emphasizes on principles of equality and non-discrimination, specifying that any person with mental illness shall be treated as equal to persons with physical illness in the provision of all healthcare. Section 21(2) and (3) protect children under the age of three years from being forcibly removed from their mother receiving treatment in a mental health establishment unless there is a risk of harm to the child. If separation is needed, it will only be temporary, and the mother will continue to have access to the child under supervision, and the decision of separation will be reviewed every 15 days.

Summary & Recommendations

First and foremost, it is important to recognize that children with disabilities are children before anything else. Yet current systems often treat them as fundamentally different or "*special*," emphasizing how to compensate for perceived deficiencies and placing the responsibility on the child to adapt to inaccessible environments rather than on systems to remove barriers. This approach reinforces their othering and contributes to their exclusion from mainstream child protection and welfare services.

While all three legislations place their focus on equality and non-discrimination, the difference lies in the manner in which discrimination is recognized by the laws and how the structures under them address it.

JJA	JJA protects children against discrimination but stays silent on the aspect of parentage, thus exposing a gap in its adherence to the CRC and the CRPD. Article 2 of the CRC states that States Parties shall respect and ensure the rights 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. CRC also strives to ensure that the child is protected against all forms of discrimination or punishment based on the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members. Article 23 of the CRPD mandates that States Parties shall take effective and appropriate measures to eliminate discrimination against persons with disabilities in all matters relating to marriage, family, parenthood and relationships, on an equal basis with others. It goes on to underscore that States Parties must ensure the rights and responsibilities of persons with disabilities, with regard to guardianship, wardship, trusteeship, adoption of children or similar institutions, where these concepts exist in national legislation and in the best interests of the child.

97 Section 21(1), MHCA
98 Section 21(1)(a), MHCA
99 Section 19(2), MHCA

RPWD Act	While the RPWD Act makes explicit references to equality and non-discrimination, Section 3(3) of the Act opens the door for discrimination as a proportionate means of achieving a legitimate end. This does not fully reflect Article 4 of the CRPD that calls for States Parties to ensure and promote the full realization of all human rights and fundamental freedoms for all persons with disabilities without discrimination of any kind on the basis of disability. When juxtaposed with General Principles of the CRPD, there is lack of clarity in the RPWD Act on how it operationalizes evolving capacities of children with disabilities. However, the RPWD Act, like the CRPD, recognizes the denial of reasonable accommodation as a form of discrimination which has implications for children with disabilities particularly when they have to access child protection mechanisms.
MHCA	The MHCA looks at equality and discrimination from the perspective of persons with psychosocial disabilities undergoing treatment in mental health establishments. The Act prohibits separating a child from their mother undergoing treatment for mental health conditions, and when separation is needed, the Act ensures that the mother continues to have access to the child under supervision and that the decision to separate is reviewed every 15 days. This stands to have critical implications in preventing family separation under the JJ Act.

General Recommendations

The CRPD's principles, particularly the recognition of children's evolving capacities and their status as active rights-holders, should guide all child protection and disability frameworks.

Specific Recommendations

JJA

- The JJA must be adapted to align with Section 4(2) of the RPWD Act that requires authorities to ensure that children with disabilities have the right to express their views on all matters that affect them, and they must be provided with age and disability-appropriate support. The procedure and the nature of support that are needed to be provided to children with disabilities in line with Section 4(2) must be specified in the JJA, including the provision of accessibility and reasonable accommodation.
- The JJA must prohibit discrimination based on disability of parents, in alignment with Article 2 of the CRC and Article 23 of the CRPD.

RPWD Act

- Prohibition of discrimination based on disability of parents must be included and reinforced under Section 9 of RPWD Act.
- Prohibition of discrimination based on parentage under Section 3(x) of JJA must be added and cross-referenced with Section 9 of RPWD in accordance with Article 2 of the CRC and Article 23 of the CRPD. This must also cross-reference Section 3 of the MHCA that prevents blanket separation of children from women undergoing treatment at a mental health establishment.

MHCA

- The principles enshrined under Section 19(2), which calls for appropriate governments to support persons with mental illness who have been abandoned by their family or relatives, must be amended to include children as well.

6. GUARDIANSHIP

Guardianship plays a pivotal role in ensuring the well-being, development, and protection of children, in cases where the parents are unable to care for them. For children with disabilities who may also need care and protection, the guardianship mechanism must guarantee that their unique needs are met through the provision of tailored support.

It is imperative to have clear and precise guidelines on how guardianship of the child would be determined. The three legislations under consideration contain provisions for guardianship drafted in line with the objectives and purpose of the respective Acts but have different processes which could create potential conflicts.

i. Juvenile Justice (Care & Protection of Children) Act 2015

The JJA defines a guardian[100] as a natural guardian or any other person having, in the opinion of the Child Welfare Committee, the actual charge of the child, and recognized by the CWC as a guardian in the course of proceedings. The Act also describes a fit person as one prepared to own the responsibilities of a child for a specific purpose.[101]

In the case of *Smt. Lavanya Anirudh Verma v. State of NCT of Delhi*,[102] the Delhi High Court looked at the appointment of a guardian *ad litem* for a minor child victim whose father was accused of sexual assault and whose mother had abandoned the family and remarried. By the order of the CWC, the child was placed under the custody of "Samarpan Home for Girls". When challenged in the High Court, the Court affirmed the CWC's authority to appoint such guardians in the absence of natural parents and mandated the trial court to facilitate the child's representation without further delay. The court noted that while a regular "guardian", such as a parent or institution, acts in the child's welfare generally, the "guardian *ad litem*" has a focused duty when the child's natural guardians are absent, conflicted, or unwilling.

It is crucial to mention here that the JJA empowers the CWC to pass orders for the restoration of the child to parents or guardian, or family, thus affirming child-centric and family-oriented solutions that are in the best interest of CNCPs.[103]

ii. Rights of Persons with Disabilities Act 2016

The RPWD Act does not have specific measures on guardianship in relation to children with disabilities. However, for adults with disabilities, it gives way to the concept of limited guardianship, where it refers to a system of joint decision-making that operates on mutual understanding and trust between the guardian

100 Section 2(31), JJA
101 As per section 2(28), JJA
102 CRL.M.C. 301/2017
103 Section 37 (1)(b), JJA

and the person with disability. This is limited to a specific period and for a specific decision and situation and operates in accordance with the will of the person with disability.[104] Every guardian appointed under this provision of any other law for the time being in force, for a person with disability, shall be deemed to function as a limited guardian.[105]

Within the Act, the concept of limited guardianship is outlined in relation to persons with disabilities who have been provided with adequate and appropriate support but are unable to make legally binding decisions.[106] The Act does not refer to guardianship for children with disabilities who may be without parental care. The RPWD Act, however, prohibits the separation of a child from their parents on the grounds of disability except on an order of the court, in the best interest of the child.[107]

iii. Mental Healthcare Act 2017

The concept of guardianship in relation to children with disabilities under the MHCA is limited to access to treatment in a mental health establishment. The MHCA does not have a definition of a legal guardian but refers to it in relation to the rights of minors seeking treatment for mental health conditions. The legal guardian has the right to make an advance directive[108] on behalf of the minor and be their nominated representative.[109] The Act makes an exception to this rule in cases where the legal guardian is not acting in the best interest of the minor[110] or is otherwise not fit to act as the nominated representative. In such cases, the Mental Health Review Board (MHRB) may appoint any suitable individual as the nominated representative of the minor.[111] In case no individual is available for appointment as a nominated representative, the Board shall appoint the Director of the Department of Social Welfare of the State, or their nominee, as one. In cases where a nominated representative is appointed, a minor shall be given treatment with the informed consent of the nominated representative.[112]

In the case of children in Child Care Institutions (CCIs), the institution is their guardian. In cases where children from CCIs need to access mental health care in an institutional setting, the CCI can also become their nominated representative.

iv. National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act 1999

One of the objectives behind the formation of the National Trust Act was to put in place measures for the care and protection of persons with disabilities in the event of death of their parents or guardians. The Trust is also entrusted with the responsibility of evolving and developing the procedures for the appointment of a guardian for persons with disabilities requiring such protection. Guardianship under NTA is limited to persons with disabilities who are adults, for the purposes of their care, and for maintenance of their property.

Section 14, read with Rule 16 of the NTA, details the procedure for the appointment of guardianship. The Local Level Committees (LLCs) are responsible for receiving and considering such applications.

104 Section 14(1), RPWD Act
105 Section 14(2), RPWD Act
106 Section 14(1), RPWD Act
107 Section 9, RPWD Act
108 Section 11(4), MHCA
109 Section 15(1), MHCA
110 Section 15(2)(a), MHCA
111 Section 15(2)(b), MHCA
112 Section 87(7), MHCA

Regulations 11 and 12 entail the eligibility of people who may apply or be indicated by application as a guardian, respectively. Both parents can jointly, or, in the event of the absence of one, can singly apply for guardianship. Section 15 talks about the duties of such a guardian.

Section 17, along with Rule 17, discusses the removal of a guardian by the committee when they are found to be abusing or neglecting a person with disability, or misappropriating their property.

Summary & Recommendations

The concept of guardianship within these Acts is not cohesive or connected to each other. The JJA constructs a nuanced and protective idea of who a guardian should be, whereas the RPWD Act and NTA talks about limited guardianship for adults with disabilities but have not conceptualized a situation where children and adolescents with disabilities may require a legal guardian to be appointed.

There are multiple authorities concerned with guardianship across the different laws. While courts and administrative bodies are empowered to make case-specific judgments, they lack integrated guidelines across statutes, which may hinder consistent protection and representation of children with disabilities who are in need of care.

RPWD Act	While the concept of limited guardianship is applied to persons with disabilities, there is no clear guidance nor references made to the JJA with regards to legal guardianship of children with disabilities without natural guardians and who may also be considered CNCP under the JJA. In operational context, the institution where the child with a disability is housed becomes the legal guardian.
MHCA and JJA	The MHCA does not provide for the appointment of a legal guardian but expands on the role of the legal guardian of minors requiring treatment in a mental health establishment, including acting as the minor's nominated representative for medical treatment related decisions. Only when it is found that the legal guardian is not acting in the best interest of the child, the Mental Health Review Board can appoint another individual as the nominated representative. This could potentially create an overlap between the legal guardianship under JJA or the NTA for any child, including children with disabilities, who are also CNCP and are in need of mental health treatment.
NTA	Under the JJA, the CWC is responsible for restoring a child in need of CNCP to their parent or guardian. Under the NTA, the Local Level Committee is the authority for appointing and removing guardians, including for minors.

General Recommendations

- There is a need for a more coordinated approach to the issue of guardianship between the legislations and the authorities responsible. There is a risk that children with disabilities will slip through the gaps as they enter the child protection system, especially when they fall across multiple authorities.
- The RPWD Act and the NTA must be adapted to include the concept of guardianship for children with disabilities who do not have parents or natural guardians and are in need of care and protection, and link to existing mechanisms that apply to children without disabilities in such circumstances.
- All children without family care, including those with disabilities, should be under the purview of the CWC by default. The process should not differ based on disability status.
- For all CNCPs, including children with disabilities, guardianship decisions should follow the same process as under the CWC within the JJA framework to ensure uniformity and accountability.
- The JJA must cross-reference with the RWPD Act on issues concerning children with disabilities in need of care and protection.

Specific Recommendations

JJA

- Section 2(d) (iii) when defining children with disabilities in need of care and protection must refer to correct terminologies and link to Section 9 of the RPWD Act.
- JJA must include references and clarity on the issue of nominated representative under MHCA for children with need of care and protection seeking mental health treatment in situations where the legal guardian is not the nominated representative.

RPWD Act

- The RPWD Act should reconcile the guardianship of children with disabilities with Section 2(31) of the JJA and 37(1)(b) of the JJA and Rule 18(4).
- A provision may also be added under the RPWD Act cross-referencing nominated representative under Section 15 of the MHCA in situations where the legal guardian is not the nominated representative of the minor with a disability.
- Section 9 of the RPWD on separation of children with disabilities from their families must cross-reference with Section 2(14)(iv) of the JJA defining children in need of care and protection.
- Competent authority under Section 9(2) of the RPWD Act must be defined as the CWC so that separation of children with disabilities from their families, when deemed necessary, goes through the provisions of the JJA.

MHCA

- The JJA does not have clarity on the issue of nominated representative of CNCP in the event the nominated representative is not the same as the legal guardian. Section 15 of MHCA can be harmonized with Section 2(31) of the JJA so that, in case of CNCPs, reference may be made to the CWC for all matters concerning guardianship and nominated representative.

NTA

- Section 14 read with Rule 16 and Section 17 read with Rule 17 of the NTA should be amended to add a provision requiring the Local Level Committee to consult with the CWC on any application for appointment or removal of a guardian in cases involving a CNCP.

7. INSTITUTIONALIZATION OF CHILDREN

This chapter explores institutionalization under the ambit of the JJA, the RPWD Act, and MHCA. The MHCA is cited only for its limited relevance to situations in which children in need of care and protection (CNCP), with or without disabilities, may require mental health treatment in an institutional setting. Although the NTA provides schemes for institutional care for persons with intellectual disabilities, autism, cerebral palsy, and multiple disabilities, these schemes primarily target adults. The study has not looked at those schemes.

The JJA and the RPWD Act both define institutions differently with different processes for registration, monitoring and accountability. The RPWD Act mentions institutions as those established for "the reception, care, protection, education, training, rehabilitation and any other activities for persons with disabilities". These are registered under competent authorities within the RPWD Act. The law does not make a distinction between institutions providing such services in residential setting to children with disabilities or institutions where children with disabilities without parental or family care are housed.

The Acts do not interact with each other, either regarding coordination between placement and registration authorities or in ensuring that standards are applied cohesively in institutions serving children with disabilities. Consequently, there is no reliable data on the number of children with disabilities placed in institutions, since such facilities may fall under two different laws with separate accountability systems. This further increases the vulnerability of children with disabilities in institutions.

A stark example of this can be seen in the case of *Rescue Sham Vs. The State of Maharashtra* before the High Court of Bombay.[113] This suo motu Public Interest Litigation (PIL), was initiated based on a report in the Daily Mumbai Mirror about the inhuman conditions of a children's home in Thane, Mumbai. The children's home was set up specifically for the placement of "*mentally deficient children*".[114,115] It was reported that five children in the said home died due to starvation and malnutrition. The newspaper report shed light on concerns regarding the condition of the children's homes in the State established under Section 34 of the Juvenile Justice (Care and Protection of Children) Act 2000, and in particular the Homes for Mentally Deficient Children. The court noted the lack of implementation of the law in terms of registration, inspection of homes, and coordination amongst different bodies under the JJA. The issue of the lack of implementation of the Acts and coordination was recently highlighted in the case of *Smt. Sangeeta Sandeep Punekar v. State of Maharashtra & Ors.*,[116] before the Bombay High Court and the case of *Dr. Vijay Verma v. UOI & Ors*.[117] before the Uttarakhand High Court. Both petitions highlighted the lack of safety, basic facilities, and health infrastructure for children with intellectual and psychosocial disabilities in children's homes. Further, the case of *Vijay Verma (supra) Prashant Kumar v. Government of*

113 Article in Mumbai Mirror 24.08.2010, Rescue Sham Vs. The State of Maharashtra, 2017(6)ABR356
114 This is a term used in the report and not endorsed by Keystone Human Services International or Keystone Human Services India Association
115 This is a term used in the report. Keystone Human Services International or Keystone Human Services India Association do not subscribe to such terminologies
116 High Court of Bombay, Public Interest Litigation No. 70 of 2014
117 High Court of Uttarakhand at Nainital, Writ Petition (PIL) No.17 of 2018

NCT of Delhi & Ors.[118] highlighted the sexual abuse that children with disabilities risk facing in such homes. In the Delhi High Court case of *Prashant Kumar (supra)*, the Amicus, in his recommendations to the court, also highlighted the need for the RPWD Act to include provisions on institutions housing persons with disabilities. Recently, the Delhi High Court in a PIL filed by *Samadhan Abhiyan* regarding the death of 14 children in Asha Kiran Home, also observed the plight of persons with disabilities in shelter homes with dire shortage of services, infrastructure and staff.[119] These cases highlight the need for urgent coordination between the laws to ensure that children with disabilities in institutions are not overlooked and forgotten.

A plethora of studies have found that institutionalization of children hinders their physical, cognitive and psychological development. There is now a global movement towards deinstitutionalization.[120] Further, children with disabilities and other marginalized groups are vastly over-represented among those living in institutions, putting them at further risk.[121] Both the JJA and the CRC consider institutionalization as a last resort, and the guidance from the Committee on the Rights of Persons with Disabilities (CRPD Committee) via the Guidelines on Deinstitutionalization[122] call for an immediate moratorium on the institutionalization of all persons with disabilities including children. Both the CRC and the CRPD aim to achieve an end to institutionalization. Given this context, while this section offers recommendations for harmonizing institutionalization processes across various laws, it does so from the perspective of preventing and addressing the immediate harms that children with disabilities may face under the current legal framework in India. It is also important to recognize that our foremost recommendation is that the system must endeavour to focus on non-institutional forms of alternative care and prevent family separation so that institutionalization can truly become a temporary mechanism in the rarest of cases where an alternative is not immediately available.

Further, there is a critical need for investing in support services so that these services reach children with disabilities where they are - either in their homes or alternative care mechanisms such as foster care, rather than placing children in CCI's or in institutions set up for persons with disabilities, including MHEs. There is also an urgent need for the State to create mechanisms for intervention and support services with adequate budget allocation within family setups to prevent the institutionalization of children and persons with disabilities, while simultaneously developing plans for deinstitutionalization for those currently in institutions.[123]

i. Institutional Set-up

a. Juvenile Justice (Care & Protection of Children) Act 2015

The JJA provides a robust institutional setup for both children in conflict with the law (CCL) and children in need of care and protection (CNCP) under the ambit of Child Care Institutions (CCIs)[124]. The CCIs set up for CNCPs are:

Children's homes:[125] Set up for care, treatment, education, training, development, and rehabilitation of CNCPs. While the JJA or JJR do not talk about homes specifically for children with disabilities, which is in line with the principle of not creating segregated spaces, the JJA under Section 50(2)

118 High Court of Delhi, W.P.(C) 8003/2017
119 Samadhan Abhiyan v. Government of NCT of Delhi & Ors., W.P.(C) 10790/2024, High Court of Delhi
120 UNICEF. (2024, October). *In Focus: Ending the institutionalization of children and keeping families together.* UNICEF Europe & Central Asia. https://www.unicef.org/eca/reports/focus-ending-institutionalization-children-and-keeping-families-together
121 id
122 Committee on the Rights of Persons with Disabilities Guidelines on Deinstitutionalization, including in Emergencies, October 2022 https://digitallibrary.un.org/record/3990185?ln=en&v=pdf
123 In Focus: Ending the institutionalization of children and keeping families together, UNICEF, October 2024
124 Section 2(21), JJA
125 Section 2(19), JJA

says that the "State government shall designate any children's home as a home fit for children with special needs, delivering specialized services, depending on the requirement". Mission Vatsalya also provides for the setting up of "*Special Unit for Children with Special Needs*" for 10 in a CCI for 50 children, and 5 in a CCI for 25 children, which are to be equipped with special educators, therapists, nurses etc. Mission Vatsalya further states that separate homes based on age, gender or special needs of children could be established.[126]

Fit facilities:[127] Set up to have temporary responsibility of a particular child for a specific purpose such as deaddiction, group foster care, witness protection etc.[128] One of the purposes of a fit facility may also be for medical care treatment and specialized treatment or psychiatric and mental health care. This could apply to all children requiring mental health treatment, including those with psychosocial disabilities. Further, if a CNCP is found to have a condition requiring prolonged medical treatment, the CWC may send the child to a fit facility for the period requiring in-patient treatment.[129]

Open shelters:[130] Set up to function as a community-based facility for children in need of residential support, on a short-term basis, to protect them from abuse or wean them or keep them away from a life on the streets. There is no specific provision for children with disabilities specified under this.

Specialized Adoption Agencies:[131] Established by the State government or by a voluntary organization or an NGO, and recognized for housing orphaned, abandoned and surrendered children under the age of six years, placed there for adoption based on order of the CWC. There is no specific provision for children with disabilities under this.

Additionally, the DCPU is charged with maintaining a database of medical and counselling centres, deaddiction centres, hospitals, open schools, education facilities, apprenticeship and vocational training programs and centres, recreational facilities such as performing arts, fine arts, and facilities for "*children with special needs*", and other such facilities at the district level,[132] with the State Child Protection Society required to do the same at the State Level.[133]

b. Rights of Persons with Disabilities Act 2016

While the Act defines institutions[134] and requires registration of institutions catering to persons and children with disabilities, it does not – by itself, set these up. While there may be instances where institutions registered under the RPWD Act may house children in need of care and protection (CNCP) and these could then be designated as fit facility; there is no specific mention of CCIs or the JJA under the RPWD Act. There is therefore a need to amend the Acts in a way that they interact with each other.

Another critical lacuna that was highlighted by experts consulted during the drafting of this report was that there are hostels and residential facilities that are maintained by private organizations and NGOs which house children with disabilities away from parental care for a variety of reasons. Some of them may fall under the definition of a CCI but are currently outside the monitoring mechanisms of the JJA. It is essential that a mapping of such facilities is undertaken by the Department of Empowerment of Persons with Disabilities and the Ministry of Women and Child Development to ensure that children with disabilities do not slip through the gaps. In most cases, such institutions only come to light when there are instances of abuse and exploitation.

126 Guideline 3.1.1, Mission Vatsalya
127 Section 2(27), JJA
128 Rule 27(10), JJR
129 Section 92, JJA
130 Section 2(41), JJA
131 Section 2(57), JJA
132 Rule 85 (xix), JJR
133 Rule 84(xi), JJR
134 Section 2(o), RPWD Act

Some State Commissions for Protection of Child Rights (SCPCR) also conduct mapping of all institutions in the State housing children in any capacity and regularly inspect them.[135] DCPUs can also assist SCPCRs in this endeavour as under the JJR, they have the responsibility to periodically and regularly map all child-related services at the district level for creating a resource directory.[136] This mandate can be extended across the country and may be carried out in coordination with DCPUs and CWCs.

c. Mental Healthcare Act 2017

The MHCA oversees mental health establishments (MHEs) for persons with mental illness, where they are admitted or kept for care, treatment, convalescence, and rehabilitation either temporarily or otherwise.[137] It includes both general hospitals or nursing homes, as well as ayurveda, yoga, naturopathy, siddha, homeopathy and other such establishments – either government or private, that provide care of persons with mental illness.

MHEs, however, exclude a family residential place where a person with mental illness resides with their relatives or friends. The MHCA also provides for less restrictive community-based establishments, including half-way homes and group homes to be set up by the government for persons who no longer require treatment in more restrictive MHEs such as long stay mental hospitals.[138] While group homes and other such set ups are not defined under the Act or Rules, half-way homes are defined as a transitional living facility for persons with mental illness who are discharged as inpatient from a MHE, but are not fully ready to live independently on their own or with the family.

The JJA under Section 93 speaks to transfer of children with mental illness and still refers to the now repealed Mental Health Act of 1987 and not the MHCA 2017. It refers to children who are "mentally ill persons" being transferred to a "psychiatric hospital" or "psychiatric nursing home". The explanation to the Section states that "psychiatric hospital" or "psychiatric nursing home" shall have the same meaning assigned to it under the now defunct Mental Health Act 1987. Despite an amendment being made to the JJA in 2021, the MHCA has not replaced the Mental Health Act 1987 and "psychiatric hospital" or "psychiatric nursing home" have not been replaced by mental health establishments.

Further, Section 93(2) of the JJA states that if the child is discharged from such a hospital or nursing home, then they may be transferred to an Integrated Rehabilitation Centre for Addicts or similar centres maintained by the State government for persons with mental illness. The MHCA, however, makes provision under Section 19(3) for such transitional living in the form of half-way homes, group homes, and the likes. Rule 80 of the JJR also provides for transferring children affected by disease, mental health conditions or addiction issues in need of prolonged medical treatment, to fit facilities. The Rule lacks clarity on what such fit facilities would be considering the changes brought in by the MHCA.

It also needs to be reiterated that the language used to refer to children with mental illness in the JJA is not in line with either the RPWD Act or the MHCA.

135 This was flagged by a SCPCR member as a best practice during the consultation with stakeholders on October 28, 2025
136 Rule 85(1)(ix), JJR
137 Section 2(p), MHCA
138 Section 19(3), MHCA

Summary & Recommendations

JJA & the RPWD Act	There is no specific mention of CCIs in the RPWD Act and no mention in the JJA on how CCIs that fall under the ambit of both laws will be monitored.
JJA & the MHCA	Section 93 of the JJA still refers to the now repealed Mental Health Act 1987. The Section refers to children who are "mentally ill persons" being transferred to a "psychiatric hospital" or "psychiatric nursing home". This is not in line with new definitions brought in by the MHCA. Section 93(2) of the JJA states that persons with mental illness after discharge from a psychiatric facility may be transferred to an Integrated Rehabilitation Centre for Addicts or similar centres maintained by the State government. This does not consider the transition mechanisms under MHCA. Under Rule 80 of the JJR, children with a physical or mental health condition in need of prolonged medical treatment can be transferred to fit facilities, but this has not been adapted to link with the MHCA.

General Recommendations

- There should be a deliberate and concerted effort to prevent family separation of children with disabilities, and when separation is unavoidable, it is critical to prioritize family based alternative care. Additionally, for children with disabilities already in care, it is important to look for pathways out of institutions to non-institutional care.
- The government should conduct a mapping of all institutions housing children in any capacity and ensure that these are monitored regularly and prepared to transition away from institutional care. This must also include those institutions housing children with disabilities.

Specific Recommendations

JJA

- Section 93 and Rule 80 of the JJA and JJR respectively should be amended to harmonize definitions of mental illness as well as mental health establishments.
- Amend Section 92(2) to remove reference to transferring a child with mental illness to a rehabilitation centre for addicts or similar centers maintained by the State government. This must be replaced with fit facility in line with Section 19(3) of the MHCA.

RPWD Act

- Steps must be taken to bring institutions registered under Chapter IX of the RPWD Act that provide institutional care to children with disabilities who are also CNCPs under the ambit of the JJA.

ii. Authorities in charge of placement

a. Juvenile Justice (Care & Protection of Children) Act 2015

Under the JJA, the CWC is responsible for the placement of CNCPs in CCIs as well as their rehabilitation.[139] Information about the child is collected through different forms prescribed by the JJR at various stages - from production of the child in front of the CWC to the child's rehabilitation or restoration. However, these

139 Section 36(1), JJA

forms either do not collect any information on disability (Form 17 for example, filled when the child is produced before the CWC) or collect very limited and incomplete information which may not be enough to make an informed decision about the child. For instance, Form 43 or Case History Form filled when the child enters the CCI, asks about neurological disorders, "*mental handicap*" and "*physical handicap*" in Section 14 and asks about details of disability in Section 19 without providing any definition or guidance.

The CWC, while making their decision on long term placement of a child in a CCI, will consider the circumstances of the child's home and family as captured in the Social Investigation Report (SIR)[140] and the child's wishes if they are of sufficient maturity. The SIR under Form 22 notes whether the child is "*differently abled*" under column 13 and details whether the child has a "hearing impairment, speech impairment, physical disability, or mental disability". While disability is factored in - albeit in an archaic manner, there is no guidance on how the social worker or case worker would conduct the assessment for disability. Form 22 needs to be adapted to bring the understanding and definition of disability in line with the RPWD Act, and the guidance for assessing a possible disability must be laid out. Likewise, the Individual Care Plan (ICP) or Form 7 of the JJR does not capture any specialized interventions for a child with disabilities to be provided in the CCI even though the JJA in Section 53 mentions specialized services that must be available for "*children with special needs*", and Rule 29 of the JJR mentions special infrastructural facilities and equipment for "*differently abled children*".

b. Rights of Persons with Disabilities Act 2016

The RPWD Act does not expand on how placements in institutions would be made for persons with disabilities. However, the Act states that no child with a disability shall be separated from their parents on the ground of disability except on the orders of the competent court, if required, in the best interest of the child.[141] It further expands on this to highlight that the competent court shall first attempt to place the child with their near relations and failing that within the community in a family setting.[142]

In case the child has no one to look after them, they would be a CNCP under the JJA and hence would need to be produced before the CWC. In such a case, a process for surrendering the child under Section 35 may also be initiated by the child's parents/guardians and thereafter the child may either be placed in foster care, put up for adoption or be placed in a CCI.

The "competent court" under the RPWD Act does not refer to the child protection systems set up under the JJA, particularly the CWC and its role in the placement of CNCPs in alternate care. There is therefore a need to bring in amendments to the RPWD Act to this effect.

It is important to emphasize that institutionalization should be actively discouraged, and only to be explored as a last resort and not as a default. There is an urgent need for the State to provide support services to families of children with disabilities to assist them in providing care, reducing the chances of surrendering and family separation.

c. Mental Healthcare Act 2017

The admission of any person with mental illness into a mental health establishment (MHE) is based on the decision and opinion of the medical officer in charge of the MHE. Under Section 87, the Act lays down specific procedures for placement of a minor. The legal guardian of a minor, who is also the nominated representative, must apply for admission to the medical officer in charge of the MHE. Thereafter two psychiatrists, or one psychiatrist and one mental health professional, or one psychiatrist

140 Section 37(1), JJA
141 Section 9(1), RPWD Act
142 Section 9(2), RPWD Act

and one medical practitioner have to independently examine the minor and decide whether they need admission.

Additionally, such a minor must be accommodated separately from adults[143] and a nominated representative or an attendant appointed by the nominated representative must mandatorily be with the minor throughout their stay. If the minor is a girl and such nominated representative is male, then a female attendant must be appointed.[144] Further, the nominated representative can also decide on removal of the child from the MHE.[145]

As a second layer of review, the Mental Health Review Board (MHRB) has to be informed of the admission of the child within 72 hours, and they must at a minimum, review the clinical records of the minor, and visit and interview them if necessary. The MHRB has to be informed if admission goes beyond 30 days, and it has to undertake a mandatory review every 30 days in such cases.[146]

There is inconsistency between the JJA and the MHCA, particularly since the JJA still refers to the defunct Mental Health Act 1987. For instance, the JJA does not make any reference to a nominated representative, and there is also no provision of an attendant to stay with the child in need of care and protection receiving mental health treatment in an institutional setting. Further, there is also no linkage made to the MHRB when such placement is made either under Section 36, 92, 93 of the JJA, or when such placements go beyond 30 days.

The endeavour of CWCs and CCIs must always be to bring support services to children rather than sending them to MHEs. That should truly be used as a last resort.

It should also be encouraged to have a deinstitutionalization plan in place for all children entering institutions to ensure that children do not remain in CCIs, MHEs or institutions set up under the RPWD indefinitely.

Summary & Recommendations

JJA	All case management forms given in the JJR need to have questions on disability which are compliant with the RPWD Act. The information currently being captured by the forms is limited and based on an archaic understanding of disability. This is insufficient to assist the CWC in making an informed decision about the needs and rehabilitation of the child. Additionally, there is no guidance on how the social worker or case worker would conduct the assessment of the disability of the child.
JJA and the RPWD Act	Section 9 of the RPWD Act must be in line with procedures outlined in the JJA when family separation and institutionalization of a child with disability is unavoidable. In such a scenario, the child would need to be produced before the CWC.
JJA and the MHCA	The JJA does not make any reference to nominated representative, or the MHRB for review of placement of CNCPs needing mental health and psychosocial care in an institutional setting.

143 Section 87(4), MHCA
144 Section 87(5) and 87(6), MHCA
145 Section 87(8), MHCA
146 Section 87(11) and 87(12), MHCA

General Recommendations

- Support services for families with children with disabilities must be available and accessible. Additionally, the reach of the sponsorship scheme under Mission Vatsalya among children with disabilities must be strengthened to prevent surrendering and family separation.
- Support services for children must be made available where they are rather than children with disabilities being moved to institutions where these services may be available.
- Provision must be included in the JJA for deinstitutionalization plans to be put in place at the very time when a child is placed in a CCI, so it can truly be a temporary placement until alternate forms of care become available or the child can be reunited with their family.

Specific Recommendations

JJA

- The JJA must align its definition of disability with that enshrined in the RPWD Act. All forms used for collecting information about children when they come in contact with the JJ system should include specific disability questions. This includes the SIR under Section 36 or Form 22. The SIR form must collect information on disability not merely from a medical lens but also from the perspective of barriers faced by the child. Such an assessment done from an impairment as well as a barrier to participation lens would also benefit the larger discussion around disability assessment under the RPWD Act.
- The JJA must refer to the MHCA – and not the now defunct Mental Health Act 1987, for admission of CNCP in mental health establishments for treatment and include the role of the nominated representative as well as the role of MHRB in reviewing admissions.

RPWD Act

- Section 9(2) of the RPWD Act must include children with disabilities who may be considered CNCP under Section 2(14)(4) of the JJA, and the competent court entrusted with making the decision for separating the child with a disability and placing them in institutional care, must be specified as the CWC.

iii. Authorities in charge of inspection

a. Juvenile Justice (Care & Protection of Children) Act 2015

The JJA has a three-tier inspection process. Firstly, CWCs at the district level must conduct at least two inspection visits per month of residential facilities for CNCPs and recommend actions for improvement in quality of services to the DCPU and the State government.[147] Secondly, the State government must constitute inspection committees at both the district and State levels for inspecting registered institutions and fit facilities.[148] This committee is to have three members consisting of at least one medical officer and one woman.[149] It has to conduct at least one visit in three months to all facilities where children are housed[150] and send its reports within a week of inspection to the District Magistrate (DM) for appropriate action.[151] The DM, in turn, is required to take action within one month and then, accordingly, send a compliance report to the State government.[152] The DM, Central government or State government may also

147 Section 30(viii), JJA
148 Section 54 (1), JJA
149 Section 54(2), JJA
150 id
151 id
152 Section 54(3), JJA

independently evaluate the functioning of CCIs.[153] Rule 41 of the JJR also states that the District Inspection Committee would consist of one mental health expert who has experience of working with children. However, disability conditions are diverse, and no two disabilities are the same. Therefore, relying on a single mental health expert is insufficient, as no one professional will have the expertise required to assess the needs of all children with disabilities.

b. Rights of Persons with Disabilities Act 2016

The RPWD Act does not provide for inspections under the Act or the Rules. This was a critique that was also brought forth in the recommendation of the Amicus in the case of *Prashant Kumar (Supra)*. The case involved a volunteer at a disability organization found sitting in an objectionable position with three children with visual disabilities. The Amicus highlighted that there is no mandatory mechanism for periodic inspection and for monitoring of residential institutions under the Act or Rules. The Amicus recommended that the RPWD Act should include such mechanisms for institutions housing persons with disabilities. However, the State's response was that such institutions must be registered under the Delhi Rights of Persons with Disabilities Rules 2018, and such registration is only done after an inspection of the institution by the District Social Welfare Officer. The court did not direct the State of Delhi to implement the recommendation but did emphasize that implementing the recommendations would ensure better safety and security for those in the institution in question.

There is an urgent need to ensure that institutions providing residential care to CNCPs with disabilities that are registered under the RPWD Act must be linked to inspection and monitoring mechanism set up under the JJA as well. The inspection and monitoring mechanism under the JJA must align with the standards for service provision under the RPWD Act and the NTA. This includes accessibility, reasonable accommodation, access to rehabilitation, personal assistance, etc. This could be done by ensuring that members from the competent authority in charge of registration of institutions under the RPWD Act or the State Commissioners are a part of the of the State government inspection committees set up at the district and State level. Reference may also be added to such a section under inspections in the JJA. Some specificity may also be added under Form 46 of the JJR for infrastructure checks and service needs for children with disabilities that are mandated under the JJA and JJR.

c. Mental Healthcare Act 2017

The MHCA does not provide for periodic inspections, these are to be carried out either suo motu or on a complaint received by either the Central or State Mental Health Authority with respect to non-adherence of minimum standards or contravention of any provision of the MHCA.[154] In the case of any violation, the Mental Health Authority may direct an inquiry, on the basis of which, it can direct the MHE to make changes within a specified period of time. If the MHE fails to do so, then their registration can be cancelled. It is to be noted that unless the MHE is also a fit facility where children in need of care and protection are housed temporarily, then these provisions for inspections do not directly link to the JJA.

Given that many children in need of care and protection, including children with disabilities living in CCIs may need mental health treatment, Section 54 of the JJA may be amended to include a representative of the Central or State Mental Health Authority to be a part of the inspection committee for CCIs. This will ensure better coordination between the two laws and ensure that children needing mental health care find seamless support as needed with their rights protected.

153 Section 55(1), JJA
154 Section 68, MHCA

Recently, the Supreme Court in the case of *Reena Banerjee & Another v. Government of NCT of Delhi & Others*[155] directed eight National Law Universities to undertake a nationwide monitoring of all State-run care institutions housing persons with cognitive disabilities under Project Ability Empowerment. Considering that there is a lack of monitoring that encompasses all institutions housing persons with other disabilities as well, such an exercise may also be extended to them, widening the scope of the project and ensuring accountability and compliance.

Summary & Recommendations

JJA	The inspection mechanisms within the JJA must be linked to entities under the RPWD Act and the MHCA, such as the Chief/State Commissioners for Persons with Disabilities, the Central/State Mental Health Authority, among others. This cross-linkages will ensure that any institution housing children with disabilities who are also CNCPs come under the ambit of the JJA and do not fall through the currently fragmented inspection mechanisms across the three legislations.
JJA and the RPWD Act	The RPWD does not have inspection mechanisms set up for institutions registered under it including those that may be providing institutional care services to children with disabilities who may also be CNCP, neither does the law refer to inspection mechanisms set up for institutional care institutions under the JJA.
JJA and the MHCA	There is no clarity on whether the sheltered accommodation, community-based rehabilitation centres, halfway homes, etc. provided under Section 19(3) of the MHCA for individuals transitioning out of in-patient mental health treatment could also be considered fit facilities if they cater to children including those with disabilities. In such a case, these transitionary care centres would need to be under the inspection mechanism in the JJA. Additionally, the inspection committees for CCIs under Section 54 of the JJA does not include a representative of the Central or State Mental Health Authority.

General Recommendations

- All institutions that house and provide care to children in need of care and protection, including those that cater to children with disabilities who are also CNCPs must come under the monitoring mechanism enshrined in the JJA.
- The scope of Project Ability Empowerment by the Supreme Court should be expanded to include monitoring of all State-run care institutions housing all persons and children with disabilities.

Specific Recommendations

JJA

- Amend Section 54 to include disability experts from the Central or State Mental Health Authority and/or the State Commissioners as a part of the State and District Level Inspection Committees for CCIs.
- Amend Section 55 to include disability specialists as may be required for the comprehensive evaluation of institutions.
- Some specificity may also be added under Form 46 for checks on accessibility, infrastructure and service needs for children with disabilities as mandated under JJA and JJR, such as but not limited to rehabilitation, personal assistance, etc.

155 *Reena Banerjee & Another v. Government of NCT of Delhi & Others, Supreme Court of India*, I.A. NO(S). 130117 OF 2018 IN CIVIL APPEAL NO(S). 11938 OF 2016

iv. Complaints Mechanism

a. Juvenile Justice (Care & Protection of Children) Act 2015

The management committee of each CCI is required to set up a complaint redressal mechanism in every institution. Additionally, they must set up a Children's Suggestion Box,[156] which is to be checked every week by the Chairperson of the management committee or representative from the District Child Protection Unit (DCPU) in the presence of the members of the children's committees.[157] Additionally, a Children's Suggestion Book has to be maintained in every institution where the complaints and action taken by the management committee against them are to be recorded. This also has to be checked by the CWC once a month.[158] Lastly, each CCI needs to have a complaint box specifically for complaints relating to corporal punishment.[159]

b. Rights of Persons with Disabilities Act 2016

No complaint mechanism per se is set up for institutions but one of the functions of the Chief Commissioner for Persons with Disabilities is to inquire, suo motu or otherwise, deprivation of rights of persons with disabilities and safeguards available to them. At the State level, the State Commissioners have analogous roles.

c. Mental Healthcare Act 2017

The MHCA sets up a three-tier system for complaints regarding MHEs. Such complaints can be raised by the minor with mental illness themselves or their nominated representative regarding deficiencies in care, treatment, and services. The system is as follows:

- To the medical officer/mental health professional in charge of the establishment, if unsatisfied then
- To the concerned Mental Health Review Board, if unsatisfied, then
- To the State Authority[160]

The complaint mechanism under each legislation operates in isolation and without intersection. The JJA has no mention of Chief or State Commissioners for Persons with Disabilities or the MHRB and vice versa the RPWD and MHCA have no mention of management committees. All three Acts also do not expand on the support needed by children with disabilities in accessing the complaint and redressal mechanisms.

Summary & Recommendations

JJA, RPWD Act and MHCA	Each law has its own complaint mechanism, and they do not interact with each other. Further, none of the legislation includes any provision of support required by children with disabilities to access the complaint and redressal mechanism.

156 Rule 39(5) and 39(6), JJR
157 Rule 39(6), JJR
158 Rule 39(11), JJR
159 Rule 60, JJR
160 Section 28, MHCA

General Recommendations

- In order to bring consonance between the laws, a member of the district level committee under the RPWD Act and Local Level Committee under the National Trust Act may be made a part of the management committee for CCIs where children with disabilities reside. Such a member, along with the children's committee members, can also lend support to children with disabilities in accessing the complaint and redressal procedures as well.

Specific Recommendations

JJA

- Rule 39(3) should be amended to include a member of the district level committee under the RPWD Act and Local Level Committee under the National Trust Act in the management committee.
- Rule 39 should be amended to include support from the district level committee or Local Level Committee member, along with the children's committee members to be extended to children with disabilities in accessing the complaint redressal procedures.
- Rule 39 should also be adapted to include the following escalation matrix:
  - Complaints can be looked at by the management committee, with a member of the district level committee or the Local Level Committee taking the lead, if unsatisfied then
  - Complaints to be investigated by the District Magistrate, if unsatisfied then
  - Complaints to be investigated by the Chief Commissioner under the RPWD Act or escalation matrix under Section 28 of the MHCA for a child in need of care and support undergoing treatment in any MHE.

v. Institutional Infrastructure for Children with Disabilities

While within the child protection discourse institutionalization is seen as the last and a temporary resort, the CRPD Committee's guidance on deinstitutionalization[161] calls for an immediate moratorium on new admissions. The guidelines also ask that the use of public funds to build or renovate institutions be stopped, and that they be redirected for building community support systems and inclusive mainstream systems instead. This is an area that requires further deliberation including within the Indian context, and the authors and publishers of this report are of the firm belief that investments should move away from institutions and into communities. For the purposes of this analysis, the report looks at the availability of infrastructure and services in institutions without which children with disabilities currently residing in them face neglect and harm. While prioritizing pathways out of these institutions for all children, including those with disabilities is paramount, it is equally important to take measures that reduce the immediate harm faced by them during the transition process.

a. Juvenile Justice (Care & Protection of Children) Act 2015

The Act provides for the following infrastructural requirements in CCIs for children with disabilities:

- Equipment such as wheelchairs, prosthetic devices, hearing aids, braille kits, or any other suitable aids and appliances as required[162]
- Appropriate education, including supplementary education and special education[163]

161 Committee on the Rights of Persons with Disabilities. (2022, September 9). *Guidelines on deinstitutionalization, including in emergencies* (CRPD/C/5). United Nations. https://www.ohchr.org/en/documents/legal-standards-and-guidelines/crpdc5-guidelines-deinstitutionalization-including

162 Section 53(1)(ii), JJA

163 Section 53(1)(iii), JJA

- Clean and accessible, gender and age-appropriate and disabled friendly toilets[164]
- Special infrastructural facilities and necessary equipment for children with disabilities under the guidance of specialists or experts[165]
- Specialized trainers and experts to cater to the educational needs of children with disabilities[166]

Documents to be maintained for children with disabilities

- Medical record of the children in CCIs has to include weight and height records, any sickness and treatment, and other physical or mental problems.[167]

Procedure at institutions

- In case of ill-health, injury, mental ailment, disease, or addiction requiring immediate attention, medical help will be provided.[168]
- Assignment of dormitory to be done keeping in mind the child's physical and mental status, and children requiring special care are to be kept in a different dormitory.[169]

Mission Vatsalya

Under Mission Vatsalya, which is the program to operationalize the JJA, the following are provided in the Special Unit for Children with Special Needs:

- Accessible infrastructure[170]
- Occupational therapy, speech therapy, verbal therapy, other remedial classes[171]
- Specialized staff such a special educators, therapists, nurses
- Capacity building of staff in sign language, braille etc.

Annexure IV also provides financial support for the above.

b. Rights of Persons with Disabilities Act 2016

While the RPWD Act does not have specific guidance on accessibility of institutions, Section 40 calls for establishment of standards for physical environment, transportation, information and communications, including appropriate technologies and systems, and other facilities and services provided to the public in urban and rural areas. The general provisions of the Act on accessibility, education, rehabilitation, healthcare, culture, recreation and sporting activities would also apply to institutions under the Act as well as CCIs, particularly those that house children with disabilities.

Additionally, it may be considered to review Chapter IX of the RPWD Act to include minimum quality of care standards for children with disabilities in institutions.

c. Mental Healthcare Act 2017

The MHCA includes minimum standards to be followed for registration of MHEs. These include:

- Safe and hygienic environment, adequate sanitation, facilities for leisure, recreation, education, privacy, wholesome food, personal hygiene items[172]

164 Rule 29(9), JJR
165 Rule 29(11), JJR
166 Rule 36(4), JJR
167 Rule 34 (3)(iv), JJR
168 Rule 69(F)(1)(iv), JJR
169 Rule 69(I)(2), JJR
170 Guideline 3.1, Mission Vatsalya
171 Guideline 3.1(1), Mission Vatsalya
172 Section 20(2)(a)-(h), MHCA

- Special provision for women's personal hygiene items required during menstruation[173]
- Separate accommodation for children in an environment considering age and developmental needs[174]
- Same quality of care as provided to other minors in hospitals for medical treatments[175]

In case institutions under Section 14(3) of the MHCA are considered as fit facilities then the standards set out under Rule 27 of the JJR shall also apply to them.

While budgets should be utilized for deinstitutionalization in accordance with international mandates, in the interim, it is essential that all institutions housing children with disabilities meet minimum standards of care which is currently not the case.

Summary & Recommendations

JJA & RPWD Act	General provisions for accessibility and reasonable accommodation within the RPWD Act will apply to all institutions including CCIs where children with disabilities reside.
JJA & MHCA	In case institutions under Section 14(3) of the MHCA are considered as fit facilities then the standards set out under Rule 27 of the JJR shall also apply to them

General Recommendations

- Deinstitutionalizing children is a priority but recognizing the need for immediate amelioration of conditions within institutions that actively harm children with disabilities is an imperative inclusion measure. This includes ensuring accessibility and reasonable accommodation while deinstitutionalization plans are underway.

vi. Registration of Institutions

This section analyzes the provisions of registration for CCIs and institutions housing CNCPs, including children with disabilities. This is not meant to condone the establishment of new institutions, but to highlight the risk of obscurity facing children with disabilities who are also CNCPs due to disjointed registration mechanisms.

a. Juvenile Justice (Care and Protection) of Children Act 2015

Under the purview of the JJA, all CCIs must apply for registration to the State government using Form 27 of the JJR.[176] The State government shall, after considering the recommendations of the District Magistrate, determine and record the capacity and purpose of the institution and register it as a children's home or open shelter or Specialized Adoption Agency or observation home or special home or place of safety, as the case may be.[177] Such registration must be renewed every five years.[178] Further, fit facilities have to apply through Form 38 to the CWC and after inspection and inquiry, they will be registered as a fit facility for a particular purpose under Rule 27[179] and renewal of such registration has to be done every three years.[180]

173 Section 20(2)(h), MHCA
174 Section 87(4), MHCA
175 id
176 Section 41(1) JJA read with Rule 21(2) JJR
177 Section 41(2), JJA
178 Section 41(6), JJA
179 Rule 27, JJR
180 Rule 27(6), JJR

b. Rights of Persons with Disabilities Act 2016

All institutions for persons with disabilities other than those established or maintained by Central or State government must be registered.[181] Such an application for registration has to be made to the competent authority (to be appointed by the State government and usually the Department of Social Welfare).[182] The competent authority shall make such enquiries as it may deem fit and shall only issue such registration on being satisfied that the applicant has complied with the requirements under the Act and Rules.[183] Further, the competent authority must be satisfied that the institution is in a position to provide such facilities and meet such standards as may be prescribed by the State government.[184] The Act does not specify the period for which such registration would apply and only says that renewal may be made from time to time.[185] There is also no clarity on institutions registered under this Act housing children with disabilities in need of care and protection.

c. `Mental Healthcare Act 2017

Under the MHCA, any person or organization that proposes to establish or run a Mental Health Establishment (MHE) shall register the establishment with the Central or State Mental Health Authority.[186] On being satisfied that the MHE fulfils the standards specified by the Authority, they may be registered.[187] The Authority shall conduct an audit every three years to ensure that the MHE meets the specified minimum standards.[188] There is clarity needed on whether establishments housing CNCP who have moved out of restrictive treatment in MHEs under Section 19(3) come under the ambit of fit facilities, in which case, they will have to apply for registration under Rule 27 of the JJR.

Summary & Recommendations

JJA & RPWD Act	Registrations for CCIs or any institution currently housing children in need of care and protection (CNCP) including children with disabilities must be under the JJA.
JJA & MHCA	If an institution under 19(3) of the MHCA has to house CNCPs transitioning out of MHEs, it would need to apply for registration under Rule 27 of the JJR.

General Recommendations

JJA

- Section 41 of the JJA and Rule 27 of the JJR should include a proviso stating that if a CCI houses children with disabilities, the competent authority under the RPWD and Central or State Mental Health Authority must also be made a part of the decision-making process, related to these children as required.

181 Section 50 read with Section 54, RPWD Act
182 Section 51(1), RPWD Act
183 Section 51(2), RPWD Act
184 Section 51(3), RPWD Act
185 Section 51(4)(b), RPWD Act
186 Section 65(1), MHCA
187 Section 65(3), MHCA
188 Section 67(1), MHCA

8. ADOPTION

India's adoption system is governed by a combination of laws, policies, and guidelines intended to uphold the best interests of children and families. However, the JJA, the Adoption Regulations 2022, Mission Vatsalya Guidelines and associated policy and regulatory frameworks do not align with the RPWD Act.

i. Meeting the Standard of Physical Fitness

The JJA states that "prospective adoptive parents shall be physically fit, financially sound, mentally alert and highly motivated."[189] This requirement could and does act as an exclusion criterion for persons with disabilities and violates their right to family.[190] This provision contravenes the RPWD Act which specifically states that discrimination on the grounds of disability is prohibited.[191]

The Adoption Regulations 2022 reinforce this discrimination against persons with disabilities through Regulation 5(1), which states that prospective parents "*shall be physically, mentally, emotionally and financially capable*", and "*shall not have any life threatening medical condition.*"[192] These requirements fail to incorporate any process for accommodation or for assessing an individual's capacity to parent. Instead, they presume a blanket inability of persons with disabilities to parent, without considering the supports or assistance that prospective parents might need.

ii. Prioritization of Children with Disabilities for International Adoption

The Adoption Regulations expedite the process for children with disabilities to be legally free for adoption, including for international adoption. As per the Adoption Regulations, a '*special needs child*' or child with a disability, "*shall be made available for resident Indian or non-resident Indian or Overseas Citizen of India Card holder prospective adoptive parents for fifteen days and thereafter shall be made available for all categories of prospective adoptive parents.*"[193] In contrast, children without disabilities (referred to as a "*normal child*") have 60 days to be first placed with Indian families.[194] While this provision may have been included to prioritize adoptions for children with disabilities, this could be read as an implicit preference for inter-country adoptions for them which goes against the fundamental principles governing adoption that establish preference for "*placement of the child in their own socio-cultural environment, as far as possible*".[195]

189 Section 57(1), JJA
190 Article 23, CRPD, 2023
191 Section 3, RPWD Act
192 Regulation 5(1), Adoption Regulations, 2022
193 Regulation 8(2), Adoption Regulations, 2022
194 Regulation 8(1)(a), Adoption Regulations, 2022
195 Regulation 3(b), Adoption Regulations, 2022

Furthermore, the JJA also puts children with disabilities at the front of the international adoption list. The JJA states, "*children with physical and mental disability, siblings and children above 5 years of age may be given preference over other children for such inter-country adoption*".[196]

iii. Eligibility Criteria

The adoption framework does not make provisions for reasonable accommodation to be made for prospective adoptive parents with disabilities. The Home Study Report requirements in Schedule VII of the Adoption Regulations ask for detailed assessments of the physical and mental health of prospective adoptive parents, with no reasonable adjustments or alternative assessment procedures for prospective parents with disabilities.[197]

Summary & Recommendations

JJA & the RPWD Act 2016	The requirement under Section 57(1) that adoptive parents be "*physically fit, mentally alert*" stands to exclude persons with disabilities from consideration as prospective parents, which would then violate the provisions of the RPWD Act, particularly Section 3 (non-discrimination) without assessing actual parenting capacity.
JJA & Adoption Regulations	Under Section 59(1), fast tracking preference to children with disabilities for inter-country adoption may inadvertently promote inter-country adoptions for them. This goes against current understanding that children should be placed in their own socio-cultural environment.
Adoption Regulations 2022 & the RPWD Act	Regulation 5(1) that requires prospective parents to be *"physically, mentally, emotionally and financially capable"* with no *"life threatening medical condition"* without accommodation provisions stands to deny persons with disabilities their right to family.
Adoption Regulations 2022	Under 8(1)(a) and 8(2), the Adoption Regulations expedite the process for children with disabilities to be legally free for adoption, including for international adoption. The timeline for children with disabilities to be placed with Indian families is 15 days as opposed to 60 days for children without disabilities.
Adoption Regulations 2022 & the RPWD Act	Home Study Report under Schedule VII demand detailed physical and mental health assessments with no provisions for reasonable adjustments or alternative assessment procedures for prospective adoptive parents with disabilities leading to discrimination.
Adoption Regulations 2022 & Mission Vatsalya	Specialized Adoption Agencies (Regulation 30) and State Adoption Resource Agencies (Mission Vatsalya Section 2.5) lack clear protocols for interaction with disability-specific services that could result in fragmented assessments, bureaucratic obstacles, and delayed placements.

General Recommendations

- In-country adoptions for all children, including children with disabilities, must be prioritized.
- Ongoing support for families adopting children with disabilities must be provided under Mission Vatsalya.
- There should be mandatory disability rights training for all CWC members, SAA staff, and adoption personnel via State Adoption Resource Agencies.

196 Section 59(1), JJA
197 Schedule VII, Adoption Regulations, 2022

Specific Recommendations

JJA

- Section 57(1) of the JJA should be adapted to include individualized assessments of prospective parents with reasonable accommodation provided as needed, in line with the RPWD Act. This will require amending the JJA and Adoption Regulations to remove blanket requirements like "*physically fit*" and "*mentally alert*". No person should be denied adoption on the basis of a disability.

Adoption Regulations

- Regulation 11(4) may be amended to add: "*Specialized Adoption Agencies shall conduct comprehensive assessments focusing on parenting capacity including reasonable accommodation needs, community support systems, and long-term care planning, rather than medical fitness criteria alone.*"

9. FOSTER CARE

The Model Foster Care Guidelines 2024 provide the framework for foster care in India. It limits foster care eligibility to children "*above the age group of six years*,"[198] which could create a significant gap for younger children in institutional care. This works in conjunction with another restriction that limits foster care to "*all children who do not get a family either in in-country adoption or inter-country adoption and are placed under the category of hard to place or children having special needs as provided in the Adoption Regulations.*"[199] This age limitation is a policy preference, as children below six years will be directed toward adoption pathways based on the assumption that they have a higher likelihood of finding an adoptive family, and that permanency through adoption better serves a young child's developmental needs. Mission Vatsalya Guidelines support this approach by stating that children aged "*6-18 years*", who have been in CCIs for more than two years and are not legally free for adoption as of now, may be placed in foster care consistent with the Individual Care Plans.[200]

India has low rates for adoption when it comes to children with disabilities. If the age restriction were to be removed, it could benefit children with disabilities to be in foster care as they wait for adoption placements. Promoting and investing in foster care that is inclusive of children with disabilities could also, by extension, lead to greater acceptance of disability within the society and create more demand for inclusive services.

Another area that needs attention is the provision in the Model Foster Care Guidelines that states that "*prospective foster parents already having biological/foster/adopted special needs child may not be considered for another special needs child to be given in foster care.*"[201] It may be assumed that the reason behind such a provision would be to prevent 'burdening' one foster family with multiple children with "*special needs*" to ensure quality of care. However, such a policy reflects assumptions about disabilities that are not consistent with current understanding of inclusive family structures and could be discriminatory.

i. Multiplicity of Authorities

Pursuant to the JJA, CWCs have paramount authority over decisions regarding placement of children in foster care, stating that "*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.*"[202] Meanwhile, in the Model Foster Care Guidelines, the District Child Protection Unit (DCPU) is introduced as "*the nodal authority for implementation of foster care program*" while stipulating that "*all decisions related to placement of the child in foster care are to be taken by the Child Welfare Committee.*"[203]

198 Guideline 4(1), Model Foster Care Guidelines
199 Guideline 4(2), Model Foster Care Guidelines
200 Section 4.2.2, Mission Vatsalya Guidelines
201 Guideline 12(c), Model Foster Care Guidelines
202 Section 44, JJA
203 Guideline 7, Model Foster Care Guidelines

The Sponsorship and Foster Care Approval Committee (SFCAC) is also meant to provide inter-institutional coordination by bringing together the District Magistrate (as chairperson), the CWC Chairperson, representatives from Specialized Adoption Agencies (SAA) or CCI, representatives of NGOs, the District Child Protection Officer and Program Officer (non-institutional care).[204] While this multi-stakeholder committee has the potential to allow for coordination of key actors in the child protection system, the Guidelines do not provide enough clarity around an operational protocol for how each authority will interface with one another.

The SFCAC is also meant to "*review each recommendation and approve all deserving cases of sponsorship and foster care support and the deserving cases will then be referred to Child Welfare Committee for the final order*",[205] which suggests a decision-making process that is sequential. However, the Foster Care Guidelines do not clarify:

- What criteria the SFCAC would use to identify "*deserving cases*" in distinction from the CWCs consideration of best interests
- What would the SFCAC do if their assessment is different from that of CWC
- Whether the SFCAC's approval is a prerequisite condition for CWC consideration or just a mere recommendation, and
- How will the SFCAC review and the three-month statutory requirement to comply with the decision of CWC[206]

Additionally, there is ambiguity concerning the appeal process. The JJA states that "*any person aggrieved by an order made by the Committee or the Board under this Act may, within thirty days from the date of such order, prefer an appeal to the Children's Court, except for decisions by the Committee related to Foster Care and Sponsorship Aftercare for which the appeal shall lie with the District Magistrate*".[207] This creates a possible conflict of interest, as the District Magistrate, who chairs the SFCAC that reviews foster care funding, also acts as the appellate body for the committee's foster care decisions.

ii. Financial Support Mechanism

The Model Foster Care Guidelines do not make provision for additional financial allowances to cover the specific and often significant costs associated with caring for children with disabilities. This is a critical omission, as foster parents of children with disabilities may face expenses for rehabilitation services (which can include regular physiotherapy, occupational therapy, speech therapy, or behavioural interventions), assistive devices and aids (which can include wheelchairs, hearing aids, specialized furniture, or communication devices), medical care (which can include co-payments for frequent doctor visits, medications, and emergency care), accessibility modifications (which can include adapting the home or vehicle to be accessible), and any specialized nutrition or personal care.

Additionally, Section 24(30)(i) of the RPWD Act calls for appropriate government to introduce schemes that provide caregiver allowance to persons with disabilities with high support needs. The Model Foster Care Guidelines do not link to this provision.

Without supplementary allowance for children with disabilities, particularly those with high support needs, there is a risk that prospective foster families will be dissuaded to welcome children with disabilities.

204 Guideline 9, Model Foster Care Guidelines
205 Guideline 11(2), Model Foster Care Guidelines
206 Guideline 7, Model Foster Care Guidelines
207 Section 101(1), JJA

iii. Monitoring and Safeguarding

While the Model Foster Care Guidelines advocate that "*Child Welfare Committee, in conjunction with district and state functionaries shall ensure that the foster child's best interest is upheld and his/her views are taken into consideration as far as possible in his/her placement as well as the individual care plan developed*";[208] the Guidelines do not provide any parameters on how to obtain, document or include a child's views, especially children with disabilities or those who might be from linguistic minorities.

There are extensive criteria for termination of foster care provided in the Guidelines, including when "*the child has stopped going to school or the attendance of the child in school is below 75 percent (special circumstances such as disability or illness of the child shall be considered as an exception).*"[209] This could unintentionally, perpetuate the assumption that children with disabilities cannot go to school or learn, which goes against the idea of inclusive education. Children with disabilities have the right to attend their neighbourhood school and learn together with their peers. The termination clause, which asks whether "*foster family or the care givers of the group foster care and the child are unable to adjust in the placement inspite of counselling*"[210] brings in the subjective term "*adjustment*" without clear guidance, and potentially adversely impacts children who might have different behavioural or emotional needs that may stem from them being not understood or not being treated as children but as a diagnosis.

The complaint process set out in Schedule 2 of the Model Foster Care Guidelines provides a basic structure requiring the child to give detailed information about the foster parents and about the specifics of their complaint. However, it does not introduce any procedural protocols and safeguards to help protect vulnerable children as they go ahead with this complaint mechanism or if they face potential retaliation from their caregivers.

Summary & Recommendations

Model Foster Care Guidelines & JJA	Guidelines limit foster care eligibility to children above six years of age based on the assumption that younger children have a higher chance of being adopted. This should be reviewed as children with disabilities are seen to have lower rates of adoption and this age restriction could mean that they continue to be in institutional care in the critical formative years of their lives. This may harm children with disabilities who could benefit from specialized foster arrangements while awaiting adoption.
Model Foster Care Guidelines	Provision restricting foster families with a child with a disability from fostering another child with a disability further reduces the foster parent pool available to children with disabilities. It also stands to perpetuate a notion of disability as a burden.
JJA, Model Foster Care Guidelines & Mission Vatsalya	Multiple authorities (CWC, DCPU, SFCAC) have overlapping decision-making powers without clear operational protocols. The Guidelines also do not clarify the SFCAC's role, criteria for "*deserving cases*," conflict resolution mechanisms, or how the review process aligns with CWC's three-month statutory timeline.
Model Foster Care Guidelines & Mission Vatsalya	Guidelines do not have any reference to include disability related additional costs.
Model Foster Care Guidelines	Guidelines do not provide parameters for obtaining, documenting, or including views of children. This could be particularly problematic for children with disabilities or those from linguistic minorities who may face communication barriers.

208 Guideline 27(1), Model Foster Care Guidelines
209 Guideline 17(4)(d)(i), Model Foster Care Guidelines
210 Guideline 17(4)(d)(v), Model Foster Care Guidelines

Model Foster Care Guidelines	Foster care is terminated if the school attendance percentage of the child is less than 75 percent. However, there is an exception for a child with a disability. This opens the door for potential violation of the right to inclusive education for children with disabilities and could lead to poor quality education for them.
Model Foster Care Guidelines	While the complaint mechanism requires detailed information from children, it lacks procedural safeguards to protect them from possible harm and retaliation.

General Recommendations

- Steps must be taken to actively promote foster care for children with disabilities. This must include social protection provisions including disability allowances, caregiver allowance for those with high support needs, among others. Towards this, it is critical for the JJA, the Model Foster Care Guidelines to be in consonance with the provisions of the RPWD Act and the NTA particularly on schemes and programs linked to access to rehabilitation, assistive technology, and overall enhanced quality of life.

Specific Recommendations

JJA, Model Foster Care Guidelines & Mission Vatsalya

Establish clear operational protocols defining:

a. SFCAC criteria for "*deserving cases*" in relation to CWC's best interest assessment

b. Conflict resolution procedures when SFCAC and CWC assessments differ

c. Whether SFCAC approval is a prerequisite or a recommendation

d. Timeline coordination with CWC's three-month statutory requirement

Model Foster Care Guidelines

- Paragraph 4(1) to be reviewed to permit foster care for children below six years who are not legally free for adoption or remain unadopted for six months after being declared so.
- In Paragraph 12(c) restrictions against families with children with disabilities from fostering additional children with disabilities should be reviewed.
- In Guideline 27, comprehensive protocols for obtaining, documenting, and incorporating children's views in placement and care planning must be developed. Accommodation for children with disabilities and linguistic minorities must be included, together with mandatory training for authorities on child participation methods.
- In Paragraph 17(4)(d)(i), "special circumstances" for disability-related school attendance must be defined to prevent potential exclusion of children with disabilities from accessing their neighbourhood schools and from learning with their peers. Additionally, standardized evaluation procedures must be put in place to prevent discriminatory application of termination criteria, with guidelines addressing behavioural and emotional support needs.
- Under Schedule 2, complaint mechanism with procedural safeguards must be strengthened including: confidential reporting channels, protection from retaliation, child-friendly and accessible complaint formats, support persons during complaint processes, and mandatory investigation timelines with independent oversight.

Mission Vatsalya

- Tiered financial support for children with disabilities must be created based on specific needs and accommodations required.

10. SPONSORSHIP

i. Scope of Sponsorship

The JJA defines sponsorship as a "*provision of supplementary support, financial or otherwise, to the families to meet the medical, educational and developmental needs of the child.*"[211] To this broad definition, Mission Vatsalya Guidelines add an extra explanation stating that it is a "*conditional assistance, to ensure that children get the opportunity to stay and grow within their social and cultural milieu in the community, without displacement.*"[212]

Sponsorship is of two types "*preventive and rehabilitative*". The former is a support system for families in vulnerable conditions, providing financial or material aid to help keep children from being separated from their families and entering exploitative situations or institutional care. Rehabilitative sponsorship is targeted towards children who are restored to their families from institutional care and whose families may require support to remain united.

While providing for sponsorship by government-aided programs, Mission Vatsalya also encourages "*individual, group, community, institution sponsorship*" by private-aided programs.[213]

It must be noted that the RPWD Act under Section 24(1) calls for appropriate government to formulate necessary schemes and programs that safeguard and promote the right of persons with disabilities to adequate standard of living. The quantum of assistance under such schemes should be 25 percent higher than similar schemes in application to others. Due consideration also must be given to diversity of disability, gender, age, and socio-economic status. This mandate must be connected to the sponsorship provision under the JJA.

ii. Economic Threshold

The economic threshold outlined for sponsorship under Mission Vatsalya Guidelines states: "*Rural areas: Family income not exceeding Rs. 72,000 per annum. Others: Not exceeding Rs. 96,000 per annum*". It is unclear how these specific amounts were determined, as they do not correspond with established poverty line criteria. These thresholds also do not take into account geographic variations in costs, unique family size, and a child's individualized needs that are essential to uphold the best interest principle and the overall well-being of the child.

The Guidelines, to a certain extent, do acknowledge the arbitrariness of these thresholds when they provide reference to "*proxy parameters of residential locality, social deprivation and occupation*", but there is no guidance on how to operationalize these 'proxy parameters'.[214]

211 Section 2(58), JJA
212 Section 4.1, Mission Vatsalya Guidelines 2022
213 Section 4.1.1, Mission Vatsalya Guidelines 2022
214 Section 4.1.3, Mission Vatsalya Guidelines

The JJA prescribes no economic restrictions on sponsorship but instead focuses on circumstantial or evidence-based need, for example, "*mother is a widow or divorced or abandoned by family"* or *"where parents are victims of life threatening disease."*[215]

The thresholds do not take into account the added cost of disability and its impact on standard of living.

iii. School Attendance and Disability Accommodations

Mission Vatsalya Guidelines require the monitoring of school attendance reflecting a recognition that attending school is a critical aspect of a child's development and long-term outcomes. It provides that "*sponsorship assistance will be reviewed and suspended, if the school-going child is found to be irregular for more than 30 days in school attendance*"[216] which creates a clear accountability mechanism, connecting the sponsorship finances to ongoing attendance at a school.

This attendance expectation ensures that sponsorship is supporting children's overall development. Additionally, attendance will create regular touchpoints for monitoring a child's development and well-being through observations in the school environment and help emphasize the importance of education to families. Additional reinforcement to the linkage between education and sponsorship is provided in the procedure for sanction and release of funds under the sponsorship program by including quarterly home and school visits by DCPU.[217] This framework also provides for disability specific accommodations. An attendance waiver is provided to children "*with special needs*",[218] and SFCAC also considers "*disability/illness*" as a valid exception when reviewing and recommending the termination of family-based sponsorship if the child stops attending "*school/Anganwadi*".[219] While this provision acknowledges that children with disabilities face systemic barriers to regular school attendance and should therefore not be penalized, it offers no accompanying solutions. As a result, it risks reinforcing the perception that children with disabilities should not, or cannot, attend mainstream schools alongside their peers. The Guidelines do not define "*special needs*" or "*disability/illness*", nor do they provide any clarity on how families would document disability related barriers or how monitoring would be done when the primary oversight mechanism (i.e. school visits) does not apply.

The sponsorship framework's lack of reference to coordination between health and disability-specific services presents another significant gap. While Mission Vatsalya Guidelines provide for "*annual check-ups from government hospital/District Medical Officer*",[220] this represents a minimal level of health monitoring rather than asking for a systemic coordination with health specialists, rehabilitation services, or disability support systems that children with disabilities might require. There are no instructions or protocols in Mission Vatsalya linking families to assistive technology services, early intervention support systems and programs, respite care or support services for caregivers, or ensuring children who have been sponsored are able to access and make use of disability-specific benefits.

The inclusion of "*child with disabilities*" as an eligible category for sponsorship acknowledges their vulnerability, yet it does not clarify whether the sponsorship amount or the forms of support provided account for disability-related expenses. A child with a disability may need physiotherapy, assistive devices and specialized transportation, among many other such supports, and will face substantially higher costs than a standard monthly base of Rs. 4,000.

215 Section 45(2), JJA
216 Section 4.1.4, Mission Vatsalya Guidelines
217 Section 4.1.4, Mission Vatsalya Guidelines
218 Section 4.1.4, Mission Vatsalya Guidelines
219 Section 4.2.3, Mission Vatsalya Guidelines
220 Section 4.1.4, Mission Vatsalya Guidelines

Lastly, Mission Vatsalya enumerates several reasons for termination of family based sponsorship service including if a child reaches 18 years, family's economic position improves, child stops attending school/ *anganwadi* (unless due to a disability/illness), child is re-institutionalized, parent/caregiver is incapacitated, child had some adjustment issue for three months and more after their rehabilitation out of a CCI, etc. [221] Of these, the provision for termination on the grounds of "*family's economic position improves*" remains vague, as it does not provide any assessment protocols on how families are supposed to report any income changes which could lead to the possibility for arbitrary termination of support.

Summary & Recommendations

JJA & Mission Vatsalya Guidelines	JJA defines sponsorship as "*supplementary support*" for medical, educational, and developmental needs, while Mission Vatsalya adds "*conditional assistance*" with categorical distinctions (preventive/rehabilitative, individual/group/community/ institution). The definitions need to be reconciled.
JJA & Mission Vatsalya Guidelines	Mission Vatsalya imposes economic thresholds (Rs. 72,000 for rural areas and Rs. 96,000 for urban) while the JJA prescribes no economic restrictions, instead focusing on circumstantial need. These thresholds do not consider geographic cost variations, family size, and individualized needs of a child.
Mission Vatsalya Guidelines	Guidelines suspend sponsorship if school attendance is irregular for more than 30 days, with exceptions for "special needs" and "disability/illness". They do not define these terms or provide protocols for documenting barriers faced by children with disabilities in accessing schools, approving exceptions, identifying alternative to school education, or monitoring when school visits become inapplicable. While the Guidelines mandate annual health check-ups, they lack systematic coordination with health specialists, rehabilitation services, or disability support systems. Additionally, there are no protocols to link families to assistive technology, early intervention programs, respite care, any other or disability-specific benefits under the RPWD Act or the NTA. The Guidelines recognize "*child with disabilities*" as eligible for sponsorship but provide a uniform Rs. 4,000 monthly supports without adjustment for disability-related costs. It also does not link to social protection schemes under the RPWD Act.

General Recommendations

- Sponsorship provisions under JJA and Mission Vatsalya must link to social protection safeguards enshrined in the RPWD Act, particularly Section 24. In particular, it must consider disability related additional costs, other barriers such as family income, geographic location, migration status, etc.
- Sponsorship is a critical component of social protection and can play an enabling role in ensuring that children with disabilities are part of mainstream life and the community, rather than being confined to segregated spaces and specialized schemes and programs.

221 Section 4.2.3, Mission Vatsalya Guidelines

Specific Recommendations

JJA

- In Section 2(58), the definition of sponsorship in JJA and Mission Vatsalya must be harmonized.
- In Section 45, economic thresholds must be reviewed to bring in individualized need-based assessment protocols considering geographic variations, family size, and child-specific needs.

Mission Vatsalya Guidelines

- In Section 4.1, the operational boundaries between preventative, rehabilitative, group, community, and institution sponsorship categories should be reviewed and clarified. Eligibility criteria and implementation protocols for each should be established.
- In Section 4.1.2, a tiered or supplementary sponsorship amounts for children with disabilities must be included to reflect disability related additional costs.
- In Section 4.1.3, clear operational guidance for "*proxy parameters*" (residential locality, social deprivation, occupation) must be developed to ensure transparent, non-discriminatory application.
- In Section 4.1.4, terms like "special needs" must be harmonized with reference to the RPWD Act. Clear protocols must be developed to document disability related barriers to attending school and establishing alternative monitoring mechanisms when school visits are inapplicable.
- Additionally, systematic coordination mechanisms are required to develop individualized accommodation plans, linkages to support services such as but not limited to, rehabilitation services, assistive technology services, early intervention programs, and respite care, and access to Unique Disability ID and disability pension schemes to ensure comprehensive support.

11. AFTERCARE

Aftercare is an integral part of the child protection system as it helps children in need of care and protection (CNCP) transition from life in alternative care to independent living within the community. Mission Vatsalya also emphasizes the importance of aftercare and how the transition from institutions raises various challenges for young people going through situational and emotional changes.[222] During the transition period, young people may encounter opportunities that they cannot fully access without adequate support. These include education, vocational training, and basic necessities such as shelter, food, and clothing. Mission Vatsalya also emphasizes that the primary focus of aftercare should be to help people leaving care develop skills that enhance their employability and equip them to adapt to life in the community.[223]

The JJA provides for the aftercare for young people leaving institutions until they reach the age of 21[224] and the JJR further state that such aftercare may also be provided until the age of 23 in exceptional circumstances.[225] Mission Vatsalya expands the criteria of aftercare to all young persons who have been cared for and protected in any formal or informal form of alternative care as a child.[226] It broadens aftercare support to include young people leaving non-institutional forms of alternate care, such as foster care.

While States are also directed to prepare their own aftercare programs,[227] the JJR and Mission Vatsalya detail what aftercare support should include:

- Education[228]
- Employable skills and placement[229]
- Providing a place for stay[230]
- Sponsorship[231]
- Basic needs such as food, clothing, health care and shelter, age appropriate and need based education and vocational training, stipend, and any other requirements[232]
- Financial support of Rs. 4,000/- per month per individual to be provided to CCIs, organizations or individuals interested in providing aftercare to fully implement the Individual Aftercare Plan (IAP).[233] Additional amounts and support may also be allocated by State governments as per State

222 Guideline 4.3, Mission Vatsalya
223 Guideline 4.3.3, Mission Vatsalya
224 Section 2(5), JJA
225 Rule 25(2), JJR
226 Guideline 4.3.1, Mission Vatsalya
227 Rule 25(1), JJR
228 Rule 25(1), JJR
229 id
230 id
231 Section 46, JJA
232 Guideline 4.3.3, Mission Vatsalya
233 id

specific schemes under various ministries such as housing, higher education, skills development, sports, youth affairs, social justice etc.

- Direct financial support for essential expenses to be provided by the State government.[234]

The services provided in the aftercare program may include community group housing, stipend and scholarships, skill training, provision for a counsellor, creative outlets, loan or subsidies for entrepreneurial activities, and encouragement to stay without State/institutional support.[235]

Under JJR, a post-release plan recommending aftercare for the individual as per their needs is to be prepared by the Child Welfare Officer or case worker, or social worker, which has to be submitted before the CWC two months before the person is due to leave the CCI.[236] Mission Vatsalya on the other hand, recommends that a plan be created when the child is 16 years and implemented when they are 18 years.[237] The CWC may accordingly order aftercare support for the individual through Form 37.[238] The CWC can order for both placement for the child in an aftercare home and financial support for them to be paid by the State or District Child Protection Unit (DCPU), and also carry out necessary follow up and open a bank account for the transfer of said amount.[239] The DCPU is required to maintain a list of organizations, institutions, and individuals interested in providing aftercare and share the same with the CWC to assist with such placement.

The CWC must also monitor such post-release plan and examine the effectiveness of the aftercare program and the progress being made by the young person.[240]

There are no specific provisions within the aftercare framework for young persons with disabilities. It is apparent that if at all a young person with a disability leaves a CCI, they will need aftercare support, including financial support. For instance, a young person with a physical disability may need additional financial support for accessible housing. Community housing suggested under Rule 25 of the JJR does not put in measures for accessibility and other infrastructural support that a young person with disability transitioning out of care may require. There must be an explicit mention under Rule 25 stating that aftercare must also include reasonable accommodation, disability specific needs and sponsorship support, keeping in view the person's disability. All these must be included in the post-release plan.

Further, whereas Rule 25 mentions that aftercare support may be extended to 23 years in exceptional circumstances, there is no indication of what these exceptional circumstances may be. There must be specificity added to the rule stating that young persons with disabilities leaving care specifically would be eligible for such extended support should they need it.

These issues have also been highlighted via a PIL currently pending before the Supreme Court, *KSR Menon v. Union of India*[241] for the explicit inclusion of aftercare for children with disabilities.

There should be proactive measures taken by CCIs housing children with disabilities and CWCs to train children on life skills that they will need once they leave the institution, as many children struggle with adjusting to life outside of an institution.[242] There must also be an endeavour by both aftercare homes and CCIs in which the child is residing, to assist them in connecting to possible government welfare schemes that they can take advantage of as they transition out of institutions.

234 Rule 25(6), JJR
235 Rule 25(7), JJR
236 Rule 25(4), JJR
237 Guideline 4.3, Mission Vatsalya
238 id
239 Form 37, JJR
240 Rule 25(5), JJR
241 Supreme Court of India, W.P.(C) No. 001403 of 2023
242 This was shared by a young person with lived experience of care as well as disability during the consultation on October 28, 2025 on the draft report of this study

Summary and Recommendations

JJA & Mission Vatsalya	While young persons with disabilities transitioning out of care may require additional support, there are no specific provisions within the aftercare framework. Rule 25 (2) of JJR and Mission Vatsalya mention that aftercare support may be extended to 23 years in exceptional circumstances, however these are not defined. This must include young persons with disabilities. No linkages are made to social protection support available through the RPWD Act or the NTA.
JJA	Community housing suggested under Rule 25 of the JJR does not include provisions for accessibility or costs incurred for infrastructural adaptations.

General Recommendations

- Young persons with disabilities leaving all forms of alternative care should be eligible to take advantage of all schemes available to persons with disabilities. This includes aftercare, sponsorship and disability pension.
- Guidelines on aftercare must include accessibility, reasonable accommodation and other disability specific support.
- Training children, including children with disabilities in life skills as they age out of care must be strengthened to ease transition and assist them in connecting to social protection schemes.

Specific Recommendations

JJA & JJR

- Section 2(5) should be reviewed to incorporate children leaving all forms of alternative care.
- Rule 25 of JJR should be adapted to include accessibility, reasonable accommodations, disability specific support and these must be included in the post release plan.
- Rule 25(2) must explicitly state that young persons with disabilities leaving care would be eligible for extended support should they need it.

12. OFFENCES

Offences in legislation define specific acts or omissions that are prohibited, accompanied by penalties such as fines, imprisonment, or corrective measures to deter harmful behaviour and enforce accountability. They establish clear boundaries of acceptable conduct, provide mechanisms for redress and safeguard the rights and well-being of individuals.

The legal frameworks protecting children's rights and those safeguarding the rights of children with disabilities prescribe different types and degrees of punishment. It is essential that these punitive structures operate consistently, so they complement one another and effectively protect the rights of children with disabilities who are CNCPs.

i. Juvenile Justice (Care & Protection of Children) Act 2015

One of the major gaps in the JJA is its continued reference to the erstwhile PWD Act of 1995, which was replaced by the RPWD Act in 2016. Section 85 of the JJA provides for double the penalty if the offence is committed against a child with a disability.[243] The Act enlists punishment for cruelty, which results in physical incapacitation or mental illness or renders the child mentally unfit.[244] JJA also prescribes punishment for persons who employ children for begging.[245]

The JJA Model Rules outline the procedures for handling offences against children and emphasize the need for sensitization of court functionaries.

ii. Rights of Persons with Disabilities Act 2016

The RPWD Act provides for the punishment of atrocities, specifically in cases involving women and children with disabilities.[246] Importantly, the Act establishes a higher threshold for offences that are punishable under multiple legislations where, if an offence is also punishable under another law, the offender shall be liable only under the legislation that prescribes the greater degree of punishment.[247]

RPWD Act provides for the establishment of Special Courts and mandates the State government to appoint a Special Public Prosecutor for each such court. The Special Public Prosecutor may be a Public Prosecutor or an advocate who has been in practice for not less than seven years.[248]

243 Refers to offences under Sections 74-84 of the JJA
244 Section 85, JJA
245 Section 76, JJA
246 Section 92(d), RPWD Act
247 Section 95, RPWD Act
248 Section 84 and 85, RPWD Act

iii. Mental Healthcare Act 2017

The MHCA prescribes punishment for general contravention of its provisions[249] and for unregistered mental health establishments (MHEs).[250] It further includes punishment for prohibited procedures on persons with mental illness. It has measures against acts that violate rights mentioned under Section 20, like safe environment, privacy, protection from abuse, etc. and the use of restraints beyond authorization under Section 97.[251]

Summary & Recommendations

JJA	Section 85 of the JJA provides twice the penalty in case the offence is committed against a child with a disability.
RPWD Act	Section 92(d) of the RPWD Act punishes sexual offences against a child, but the Act does not include provisions on children with disabilities who are CNCPs. Section 95 prescribes that for offences that are punishable under multiple legislations, the offender shall be liable only under the legislation that prescribes the greater degree of punishment.
MHCA	There are no child centric provisions for offences in the MHCA, including for suspected abuse of children in mental health establishments.

General Recommendations

- Section 95 of the RPWD must be cross-referenced with Section 85 of the JJA in cases of children with disabilities who are CNCPs.
- A separate provision may be inserted within MHCA to include offences on abuse, neglect and mistreatment of children in mental health establishments in consonance with Section 92(d) of the RPWD Act.

249 Section 108, MHCA
250 Section 107(1) and 107(2), MHCA
251 Section 108, MHCA

ANNEXURE: TERMINOLOGIES ACROSS LEGISLATIONS

S. No.	Provision	Terminology	Definition (if any)
Juvenile Justice (Care & Protection of Children) Act 2015 & Rules			
1.	JJA: 2(14)(iv)	Mentally or physically challenged	Not defined
2.	JJA: S. 50(2), 53(1)(ii)(iii) JJR: Rule 23(10), Rule 36(4), Rule 44 (iv), Rule 85(1)(xix), Form 46	Children with special needs	Not defined
3.	JJR: S.2(ix)(a), Rule 54(20)	Special needs of children	Special needs are not defined but from a reading of this section, one can assume it alludes to children with disabilities.
4.	JJA: S. 85 JJR: Rule 2 (vi)	Disabled children	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.
5.	JJA: Third Proviso to S.75	Physically incapacitated	Not defined
6.	JJA: Third Proviso to S. 75, 2(14)(iv) JJR: Rule 80 and Form 22	Mental illness/ Mentally ill	Not defined
7.	JJA: Third Proviso to S. 75	Rendered mentally unfit	Not defined
8.	JJR: Rule 29(9)	Disabled friendly toilets	Not defined
9.	JJR: Rule 80(2)	Physical or mental Health problems	Not defined
10.	JJR: Rule 29(11), Form 22	Differently abled	Not defined but the form expands on it as hearing impairment, speech impairment physically disabled, mentally disabled, or others
11.	JJR: Form 43 15(ix) and (x)	Physical and mental handicap	Not defined
12.	JJR: Rule 69(F)(1)(iv)	Mental ailment	Not defined

S. No.	Provision	Terminology	Definition (if any)
Rights of Persons with Disabilities Act 2016 & Rules			
1.	RPWD: S. 2(l)	High support	An intensive support, physical, psychological and otherwise, which may be required by a person with benchmark disability for daily activities, to take independent and informed decision to access facilities and participating in all areas of life including education, employment, family and community life and treatment and therapy.
2.	RPWD: S. 2(r)	Persons with benchmark disability	Means a person with not less than forty per cent of a specified disability where specified disability has not been defined in measurable terms and includes a person with disability where specified disability has been defined in measurable terms, as certified by the certifying authority.
3.	RPWD: S. 2(s)	Persons with disabilities	Means a person with long term physical, mental, intellectual or sensory impairment which, in interaction with barriers, hinders his full and effective participation in society equally with others.
4.	RPWD: S. 2(t) read with Section 58(2)(a)	Person with disability having high support needs	Means a person with benchmark disability certified under clause (a) of sub-section (2) of Section 58 who needs high support.
5.	RPWD: S. 2(zc) read with Rules 17 and 18, and the Schedule to the Act	Specified disability	Means the disabilities as specified in the Schedule.
Mental Healthcare Act 2017			
1.	Section 2(t)	Minor	A person who has not completed the age of eighteen years.
2.	Section 2(s)	Mental illness	Means a substantial disorder of thinking, mood, perception, orientation or memory that grossly impairs judgment, behaviour, capacity to recognize reality or ability to meet the ordinary demands of life, mental conditions associated with the abuse of alcohol and drugs, but does not include mental retardation which is a condition of arrested or incomplete development of mind of a person, specially characterized by sub-normality of intelligence.
3.	Section 2(s)	Mental retardation	A condition of arrested or incomplete development of mind of a person, specially characterized by sub-normality of intelligence.

S. No.	Provision	Terminology	Definition (if any)
4.	Section 18(2), 21(1)(a)	Mentions 'disability'	Disability has not been defined; but has been used as a protected ground against discrimination.
5.	Section 18(4)(e)	Child mental health services	Not been defined in the Act; but mentioned as required service provision.
		Mission Vatsalya Guidelines 2022	
1.	Section 3.1.1 (Page 21), Annexure IV; Section 4.1, 4.2 (Exception provisions)	Children with special needs	Not defined
2.	Section 3.1.1 (Page 21)	Special need children	Not defined
3.	Section 3.1.1 (Page 21), Annexure IV Part B	Special units for children with special needs	Not defined
4.	Section 4.1.2, 4.2.2 (Pages 30, 32)	Children with disabilities	Not defined
5.	Annexure IV Part B	Physical/mental disabilities	Not defined
6.	Section 3.1	Special educator	Not defined
		Adoption Regulations 2022	
1.	2(25), 8(2), 30(3)(g), 41 (16), 44(8), 51	Special needs child	A child who is suffering from any disability as provided in the Rights of Persons with Disabilities Act 2016 (49 of 2016) as given in Schedule XVIII and Schedule III (Part E) of these Regulations.
2.	35(2)(g)	Mentally or physically challenged children	Not defined
3.	6(18)	Declaring a child of parents with mental illness or intellectual disability	Not in definitions but mentioned in Schedule XVIII (3) as "Mental illness" means a substantial disorder of thinking, mood, perception, orientation or memory that grossly impairs judgment, behaviour, capacity to recognize reality or ability to meet the ordinary demands of life, but does not include retardation which is a condition of arrested or incomplete development of mind of a person, specially characterized by sub-normality of intelligence.
		Other variations of special needs child	
4.	9(2), 30, 37, 51(2) and (6)(d), Schedule III Part E, Schedule VII (H)	Child/children having special needs	Not defined

S. No.	Provision	Terminology	Definition (if any)
5.	35(2)(p)	Children in the category of special needs	Not defined
6.	36(8)	Children having suspected special needs conditions	Not defined
		Model Foster Care Guidelines 2024	
1.	4(2)	Children having special needs	Not defined
2.	4(4)(d)(i)	Disability	Not defined
3.	12(1)(c)	Special needs child	Not defined
4.	16(4)	Category of special needs	Not defined
5.	17(4)(b)	Mental illness	Not defined
6.	2(3)	Mentally unsound	Not defined

NOTES

KEYSTONE
HUMAN SERVICES
INDIA ASSOCIATION