
India's third and fourth combined report on the implementation of the Convention on the Rights of the Child. CRC/C/IND/3-4. 22 July 2013.

Care-related sections (Extract)

India has submitted its third and fourth combined report on the implementation of the Convention on the Rights of the Child (dated 26 August 2011), which is due to be examined by the Committee on the Rights of the Child at its 66th Session, taking place in May-June 2014 in Geneva.

For the full report, please visit: <http://www2.ohchr.org/english/bodies/crc/crcs66.htm>

Special Protection Measures

Articles 22, 30, 32-36, 37 (b)-(d), 38, 39 and 40

21. The Ministry of Women and Child Development (MWCD) launched the centrally sponsored scheme–ICPS with a view to create a safe and secure environment in the country for comprehensive development of children in need of care and protection, children in conflict and contact with law, and any other vulnerable child such as children of migrant families, children of prisoners, children of women in prostitution, working children, children living on the streets, trafficked or sexually exploited children, etc. The signing of memorandum of understanding (MoU) between the Government of India and the respective State Governments/UTs is a prerequisite for the implementation of the Scheme. Majority of the States/UTs (30) have signed the MoU and the remaining States are in the process of doing so.

General Measures of Implementation

Articles 4, 42 and 44 (para 6)

1. The National Charter for Children (NCC), 2003: The NCC, 2003, adopted in 2004, emphasizes the Government's commitment to children's rights to survival, development and protection. Whilst listing the responsibilities of the State and the community towards ensuring the rights of children, it also enumerates children's duties towards their families, society and the nation.¹ The Charter seeks and:

- (i) Emphasizes survival, life and liberty.

¹ National Charter for Children, 2003, Department of Women and Child Development, Ministry of Human Resource Development, GoI, February 2004, Sub folder 'Policy', India: Third and Fourth Combined Periodic Report on the CRC Attachments.

- (ii) Promotes highest standards of health and nutrition.
- (iii) Assures basic minimum needs and security.
- (iv) Provides for free and compulsory education.
- (v) Provides for protection of children from economic exploitation and all forms of abuse.
- (vi) Provides for protection of the girl child from discriminatory practices, including child marriage.
- (vii) **Emphasizes strengthening of families.**
- (viii) Provides for protection of Children with Disabilities (CWDs).
- (ix) Ensures child-friendly procedures, namely judicial, administrative, educational and social.

2. The **Policy Framework for Children and AIDS in India, 2007**: The 'Policy Framework for Children and AIDS in India' was released by the Ministry of Health and Family Welfare (MoH&FW) and the Ministry of Women and Child Development in 2007. This Policy Framework seeks to address the needs of children infected/ affected by HIV/Acquired Immuno Deficiency Syndrome (AIDS), by integrating services for them within the existing development and poverty-reduction programmes. It focuses on vulnerable children and adolescents, HIV positive children, pregnant HIV positive women, **and children, whose parents are either HIV positive or have AIDS or have died of AIDS-related condition.**² The four key strategies are: prevention of Parent-to-Child Transmission (PPTCT), primary prevention among adolescents, pediatric AIDS treatment, and protection and care of children and families affected by AIDS.

3. The **National Rehabilitation and Resettlement Policy, 2007**: This Policy replaced the National Policy on Resettlement and Rehabilitation for Project Affected Families, 2003. Under the new Policy, **no project involving displacement of families beyond defined thresholds can be undertaken without a detailed social impact assessment, which would include impact on the lives of children.** The key features of the Policy include: principle of rehabilitation before displacement, housing benefits to all affected families, including the landless, and monthly pension to the vulnerable people, such as disabled, destitute, orphans, unmarried girls, etc. Guided by the new Policy, a National Rehabilitation and Resettlement Bill, 2007, has been drafted.

4. The NCPCR has made recommendations vis-à-vis the Bill in the context of child rights. These include the need for an assessment of the impact of displacement on children (gender-and age-specific) and their access to entitlements. It has also emphasized **the need for a mandatory survey of affected families, enumerating their state of health, nutrition and education.**

² Policy Framework for Children and AIDS in India, National AIDS Control Organisation, GoI, July 31, 2007, page 10, Sub folder 'Policy', India: Third and Fourth Combined Periodic Report on the CRC Attachments.

1.5.1 Programmes Implemented by MWCD

60. Scheme of Assistance to Home for Children (Shishu Greh) to Promote In-country Adoption: The **Scheme provides support for institutional care within the country for care and protection of infants and children up to six years of age, who have either been abandoned, or orphaned or have been rendered destitute.** Nearly 6,000 children have been placed in adoption through Shishu Grehs in 18 States (Andhra Pradesh, Arunachal Pradesh, Assam, Bihar, Delhi, Gujarat, Haryana, Himachal Pradesh, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Manipur, Mizoram, Orissa, Rajasthan, Tripura and West Bengal.). This Scheme has now been merged with the recently-launched Integrated Child Protection Scheme (ICPS).

61. Dhanalakshmi – A Conditional Cash Transfer Scheme: A new pilot Scheme ‘Dhanalakshmi – Conditional Cash Transfer (CCT) for Girl Child with Insurance Cover’ was launched on March 3, 2008, by the MWCD in 11 blocks across seven States of Andhra Pradesh, Bihar, Chhattisgarh, Jharkhand, Orissa, Uttar Pradesh and Punjab. The Scheme proposes to provide cash transfers to the family of the girl child (preferably the mother) on fulfilling certain specific conditions for the girl child: at the time of birth and registration of birth; during immunisation; on enrolment and retention in school; and at the age of 18 years, for unmarried girls. In addition, insurance cover of Rs 0.1 million would be done for the girl child born on, or after, the cut-off date suggested in the Scheme.

The direct and tangible objective of the Scheme is to provide a set of staggered financial incentives for families to encourage them to retain the girl child and educate her. The more subtle and intangible objective is to change the attitudinal mindset of the family towards the girl, by linking cash transfers to her well-being. This will force the families to look upon the girl as an asset rather than a liability, since her very existence has led to cash inflow to the family.

63. Programme for Juvenile Justice: The Programme provides for the establishment and maintenance of institutions for the rehabilitation of juveniles in conflict with law and children in need of care and protection. **At present, there are 794 homes established under the JJ Act, 2000, catering to 46,957 children.** This Programme has been merged with the recently-launched ICPS.

64. Integrated Programme for Street Children: The objective of this Programme is to prevent destitution of children and facilitate their withdrawal from life on the streets. Financial assistance (90%) is provided to the eligible NGOs working for the welfare of street children and providing services such as shelter, formal and non-formal education, vocational training, nutrition, healthcare, sanitation and hygiene, safe drinking water, recreational facilities, and protection against abuse and exploitation. Since its inception, 321,854 street children have been extended help through 83 organisations in 21 States/UTs. This Programme has now been merged with the recently-launched ICPS.

65. Scheme for Welfare of Working Children in Need of Care and Protection: Launched in 2005-2006, the Scheme lends support to projects in urban areas not being covered by the existing schemes of the Ministry of Labour and Employment (MoL&E). The Scheme provides support for the wholesome development of child workers and potential child workers, especially those with none or ineffective family support, such as children of pavement dwellers/drug addicts, children living in slums/on railway platforms/along railway lines, children working in shops, *dhabas*, etc.

68. Integrated Child Protection Scheme: The Ministry formulated ICPS, a Centrally Sponsored Scheme (CSS), with a view to provide a safe and secure environment for the overall development of children, who are in need of care and protection, as well as children in conflict with law, including children in difficult circumstances.

69. The objectives of the Scheme are to contribute to the improvement in the well-being of children in difficult circumstances, as well as to **the reduction in vulnerabilities to situations and actions that lead to abuse, neglect, exploitation, abandonment and separation of children**. These will be achieved by:

- (i) Improved access to and quality of child protection services.
- (ii) Raised public awareness about the reality of child rights, situation and protection in India.
- (iii) Clearly-articulated responsibilities and enforced accountability for child protection.
- (iv) Established and functioning structures at all Government levels for delivery of statutory and support services to children in difficult circumstances.
- (v) Introduction of operational, evidence-based monitoring and evaluation.

70. The services financed under the ICPS for strengthening/introduction are **emergency outreach services through Childline, transitional/open shelters for children in need in urban and semi-urban areas, cradle baby reception centres, family-based non-institutional care through sponsorship, foster care, adoption and after care. In addition, institutional services such as shelter homes, children's homes, observation homes, special homes, and specialised services for children with special needs are also provided under the Scheme**. Besides, general grants-in-aid for need-based/ innovative interventions are also being given; a child-tracking system, including a website for missing children, is being created; and interventions are being planned for advocacy, public education and communication and training of all child protection personnel.

71. The service delivery structures for the above services will be available at the Central, State and District levels. These are in the form of Central Project Support Unit, Childline India Foundation (CIF), CARA and NIPCCD at the Central level; State Project Support Unit, State Child Protection Society, and State Adoption Resource Agency at State level; and District Child Protection Society and Specialised Adoption Agencies at District level.

1.11 Partnerships

127. Many NGOs are implementing various child rights programmes through financial and technical support from the Government. The Government has involved NGOs in programmes for street and working children, and management of institutions for children. The JJ Act, 2000, specifically promotes partnerships with NGOs in management of homes for rehabilitation of children. Many Civil Society Organisations (CSOs) have been partnering with the Government to run crèches. With flexibility in their operations, and professional and volunteer support from various disciplines, **NGOs have been successful in responding to children's needs through education and vocational training, and helped with family tracing and re-unification.** The Central Government has encouraged such partnerships, which have shown considerable success, particularly in Tamil Nadu, Maharashtra, Karnataka, West Bengal and Delhi. The CIF initiates and monitors performance of Childline services in cities and Districts and conducts training, research and advocacy at the national level on child protection issues. The NGO contribution to early childhood education, non-formal education and implementation of SSA has been significant. The ICPS also emphasizes enhanced role and participation of NGOs as partners in protection and development of children.

3. General Principles

Articles 2, 3, 6 and 12

3B.3 Children with Disabilities

3B.3.1 Status and Trends

1. The Census is one primary source of data on disability, which is collated every decade. As per the 2001 Census, there were **21.91 million Persons with Disabilities (PWDs)**, viz. visual, hearing, speech, locomotor and mental, constituting 2.13% of the total population of India. According to the latest data on disability available from 58th (2002) Round of National Sample Survey Organisation, there are **an estimated 18.49 million PWDs in the country (1.8% of the population)**. The difference in aggregate estimates could be due to different definitions of disabilities used in NSS and Census for disabilities.³ According to the Rehabilitation Council of India, these estimates are extremely conservative, and 10% is cited as more accurate. **Based on the various estimates, there are between 6 and 30 million Children with Disabilities (CWDs) in India, who have**

³ The Census and the National Sample Survey have a different sampling design. The Census is an enumeration of the entire population of India, while the National Sample Survey has a nationally-representative stratified sample. In both the sources, disability was self-reported. Different definitions of overall disability and disability types have contributed to differences in estimates. For details, refer to People with Disabilities in India: From Commitments to Outcomes, The World Bank, 2007, Annexure 1.

special needs. The data from these sources influences all policy decisions pertaining to CWDs.

2. The 58th round of NSS reveals that in case of CWDs, attendance in school never rises above 70% for boys and around two-thirds for girls. Attendance rates in urban areas for CWDs are higher than in rural, but even at peak, attendance never exceeds 74% in urban, and two-thirds in rural areas. Even the best performing major States with excellent outcomes on their general child population, such as Kerala and Tamil Nadu, have stubbornly high out-of-school rates for CWDs. It is recognised that CWDs living in poverty are among the most deprived.

3B.4 Children Infected/Affected by HIV/AIDS

3B.4.1 Status and Trends

Six States have been identified as high-prevalence States (having more than 1% HIV prevalence in the general population), five States/UTs as moderate-prevalence States (concentrated epidemic with more than 5% HIV prevalence in high-risk population), and the rest as low-prevalence States.⁴ (See Figure 3B.1.) Fourteen States/UTs have been identified as highly vulnerable. However, as per the current surveillance, only Andhra Pradesh and Maharashtra have prevalence higher than 1% of the general population, while 156 Districts have high prevalence (Category A) of HIV across the country.

53. The single most adverse impact of HIV/AIDS is stigma and discrimination, which is weakening social support systems, intensifying vulnerability, and impacting the economic status of those affected. **While economic deprivation has resulted in children withdrawing from school to care for sick parents or earn additional income, social discrimination may result in the denial of basic services to affected children, especially health and education services.** Discrimination enhances the vulnerability of children to disease, and also subjects them to other forms of exploitation. Children orphaned by AIDS and other reasons, especially girls, tend to become vulnerable to sexual exploitation due to their disadvantaged socio-cultural status. In India, of the 0.18 million estimated HIV positive children, 18-20% may require Antiretroviral Treatment (ART). Presently, 0.015 million children are on ART.

55. The NHRC has taken *suo motu* cognizance, and initiated proceedings in two cases, both involving children in Kerala, who faced discrimination in schools due to their HIV positive status. It has taken note of cases of discrimination against children in education, clinics and orphanages because they or their family members were HIV positive. As there is no unified

⁴ Policy Framework for Children and AIDS in India, National AIDS Control Organisation, Ministry of Women and Child Development, GoI, July 31, 2007, page 6.

system of tracking episodes of stigma and discrimination among service providers (education, health, etc.), the possibility of knowing the exact scope of the problem is limited.

5. Family Environment and Alternative Care

5A. Parental Guidance (Article 5)

5A.1 Policy and Legislation

1. In India, parents, by virtue of being natural guardians of their children, have the right to determine the child's upbringing with regard to religion, education and overall care and development. **The National Plan of Action for Children (NPAC), 2005, recognises the need for capacity building of both the parents in providing care and meeting psychosocial needs of the child through effective parenting programmes.** It recommends developing capacities of child-care workers and other community groups through training and refresher courses for ensuring good child-care practices.⁵ **The 11th Five Year Plan recognises that children are best cared for in their own families, hence, strengthening family capabilities is necessary to provide care and protection to children.**⁶

2. **The Juvenile Justice (Care and Protection of Children) Amendment Act, 2006 (JJ (Amendment) Act, 2006), provides for care and protection to children, who do not have adequate parental care for various reasons.** It emphasises every child's right to family by simplifying the adoption processes. The Juvenile Justice (Care and Protection of Children) Rules, 2007, (JJ Rules, 2007), also emphasise the role of family for care and protection of a child.

5A.2 Programmes

5. The **Central Social Welfare Board (CSWB)**, an autonomous body under the Ministry of Women & Child Development (MWCD), is implementing the scheme of **Family Counselling Centres (FCC)** to provide counselling, referral and rehabilitative services to women and children who are victims of atrocity, family maladjustment and social ostracism. **Between 2001-02 and 2007-08, the number of FCCs has increased from 417 to 767 and the number of beneficiaries has risen from 27,749 to 95,877 respectively.** (See Annexure 5A.1 for details on FCCs.)

3. 'The Scheme of Assistance to Homes for Children (Sishu Greh) to Promote In-country Adoption' provides for counselling of prospective adoptive parents.

4. The Scheme for Welfare of Working Children in Need of Care and Protection has a provision for counselling of parents and heads of families to wean these

⁵ National Plan of Action for Children, 2005, Department of Women and Child Development, Ministry of Human Resource Development, GoI, 2005, page 15.

⁶ 11th Five Year Plan (2007-12), Vol. II, Social Sector, Planning Commission, GoI, 2008, page 209.

children from child labour and facilitate their entry/return into mainstream education system.

5A.3 Capacity Building

5. National Institute of Public Cooperation and Child Development (NIPCCD), Delhi, and its regional centres have laid special emphasis on organising capacity-building/training programmes for parents in the reporting period, besides programmes on management of crèche services for supervisory level personnel. **The objectives of these programmes are to explore attitudes and skills related to creating a nurturing environment, orient parents to the need and importance of early detection of behavioural problems of children, and enable them to take informed decisions on specific issues of concern.** The regional centre at Bangalore organised workshops for parents to provide knowledge and skills on quality care, importance of early detection of psychological problems in children and its management at home. To bridge the gap of trained professionals on guidance and counselling intervention, NIPCCD has also initiated an Advanced Diploma in Child Guidance and Counselling, a one-year programme, in August 2006. (See Annexure 1.3 for details of training programmes organised by NIPCCD during 2004-05 to 2007-08.)

6. **Building capacities of caregivers, strengthening family/parental capabilities to care for and protect the child through capacity-building, family counselling and support services, and linking it to development and community support services is a priority under the Integrated Child Protection Scheme (ICPS) in the 11th Five Year Plan.**⁷

5B. Parental Responsibilities (Article 18, paras 1 and 2)

5B.1 Status and Trends

7. Given the new socio-economic environment, **changing parental roles and responsibilities, and increased pressure on children from school, family and peers**, it has become essential to facilitate the understanding of parents about their common responsibilities in addressing the psychological problems and needs of children. **The prevailing laws in the country emphasise the role of parents/family in the up-bringing of children.** The State has taken several initiatives to provide assistance and build the capacity of parents and families in their child-rearing responsibilities.

⁷ 11th Five Year Plan (2007-12), Vol. II, Social Sector, Planning Commission, GoI, 2008, page 213.

5B.2 Policy and Legislation

8. The NPAC, 2005, emphasises the need for setting up pre-school centres, day-care centres and crèches at workplaces and in communities, especially in remote and socio-economically backward areas, **to reduce the burden of working/ailing mothers, and to prevent diversion of girl child into sibling care.**

9. As an extension of the principle established under the Juvenile Justice (Care and Protection of Children) Act, 2000, (JJ Act, 2000), the JJ (Amendment) Act, 2006, speaks of **the State taking responsibility of the child if there is “no family or ostensible support or if the child is in continued need of care and protection”.** The State has the obligation to provide shelter to the child till a suitable rehabilitation is found, or up to the age of 18 years, **through institutional or non-institutional care such as sponsorship, adoption and foster care.** The JJ Rules, 2007, also lay down the principle of best interest to ensure physical, emotional, intellectual, social and moral development of juvenile or child. These recognise the primary responsibility of biological parents to bring up a child with care, support and protection. **However, in the best interest of the child, this responsibility may be bestowed upon willing adoptive/foster parents.**⁸ It further specifies that in every matter and decision concerning children, their views should be respected and their best interests should be given priority.

10. **The Maternity Benefit Act, 2008**, is an important legislation that provides leave and security benefits to working mothers. Every women covered under this Act is entitled to receive a medical bonus of Rs 1,000 from her employer. It empowers the Central Government to increase the medical bonus to a maximum of Rs 20,000 by notification every three years. (See Section 1.4.2 for details.) Recognising that early childhood care and rights of working mothers, including breastfeeding, are interconnected, the 11th Five Year Plan seeks to ensure maternity entitlements to support exclusive breastfeeding.⁹

11. To enable both parents to share common responsibilities for bringing up their child, paid paternity benefits have also been introduced in India. Currently, it is only 15 days for Central Government employees. The benefits have also been introduced in some private sector companies.

12. **The Prohibition of Child Marriage Act, 2006**, ascribes responsibility to parents/ guardians, (amongst others) and provides for punishment for promoting or permitting solemnisation of child marriage.

13. During separation of parents, the Court grants custody of children to one of the parents and access to the other parent so that children grow under the care and affection of both parents.¹⁰

⁸ Juvenile Justice (Care and Protection of Children) Rules, 2007, The Gazette of India: Extraordinary, page 137.

⁹ 11th Five Year Plan (2007-12), Vol. II, Social Sector, Planning Commission, GoI, 2008, page 209.

¹⁰ Asha Bajpai, Child Rights in India, Oxford University Press, 2006, page 109.

5B.3 Programmes

14. The Government of India has taken **several measures to provide assistance to parents and legal guardians in their child rearing responsibilities.**

15. Till 2005, the MWCD was implementing two schemes, namely '**Assistance to Voluntary Organisations for Crèches for the Children of Working and Ailing Women**' with provisions of sleeping and day-care facilities, supplementary nutrition, medicines and contingencies, as well as monitoring of crèches and the 'National Crèche Fund' to provide assistance for opening of new crèches and converting existing AWCs into *Anganwadi-cum-Crèche* Centres. In 2006, these two Schemes were merged into Rajiv Gandhi National Crèche Scheme (RGNCS) for Children of Working Mothers, launched on January 1, 2006. The RGNCS provides for improved services and enhanced financial norms, besides increasing the number of crèches in the country. The main objective of the Scheme is to promote a healthy all-round development of children of working/ailing mothers, particularly those employed in the unorganised sector and belonging to the below poverty line category. The Scheme, which has an in-built component of monitoring of crèches and training of the crèche workers for better services, aims to build a child-friendly environment in all crèches. Under this Scheme, a total of 31,718 crèches have been sanctioned till date, reaching out to approximately 0.79 million children (See Annexure 5B.1 for details on RGNCS and 5B.2 for details of number of crèches sanctioned to the implementing agencies under the RGNCS.). To meet the needs of 220 million working women in the informal sector, 0.8 million crèches are required to be set up.¹¹ To ensure better monitoring and provide enhanced financial support, a revision of RGNCS has been taken up.

16. Under the **National Rural Employment Guarantee Scheme**, there is a provision to set up child-care facilities/crèche at the worksite under the care of a woman if there are more than five children below the age of six years.¹²

17. The **Integrated Child Development Services**, Kishori Shakti Yojana and Nutrition Programme for Adolescent Girls have provisions for improving nutrition, health and development of children, including adolescent girls. These programmes also aim to promote awareness on health, hygiene, nutrition and family care. (See Section 1.5.1 for details.)

18. **The ICPS thrust is on strengthening the family's capabilities to care for and protect the child through capacity building, family counselling and support services, and by linking these to community support services.**¹³ NIPCCD has been organising workshops and training programmes for the capacity-building of parents, enabling them to cater to the needs of their children. (See Annexure 1.3 for details of training programmes organised by NIPCCD during 2004-05 to 2007.)

¹¹ 11th Five Year Plan (2007-12), Vol. II, Social Sector, Planning Commission, GoI, 2008, page 203.

¹² The National Rural Employment Guarantee Act, 2005, Operational Guidelines, 2008
http://nrega.nic.in/Nrega_guidelinesEng.pdf

¹³ 11th Five Year Plan (2007-12), Vol. II, Social Sector, Planning Commission, GoI, 2008, page 213.

19. Under the scheme of hostels for working women with day-care centres (for single working women, working women away from their home towns, widows, divorcees and separated women), 876 hostels and 321 day-care centres were functioning by the end of December 2007, benefiting 8,442 children.

20. Labour legislations in India contain provisions for child-care facilities for women workers. (See India First Periodic Report, 2001, para 22, page 108 for details.)

21. Based on the recommendation of the Sixth Central Pay Commission to enhance maternity leave and introduce special leave for child care, the Government of India has modified the existing provisions of the Central Civil Services (Leave) Rules, 1972, for civilian employees of Central Government. According to the new provisions, the existing ceiling of 135 days maternity leave has been enhanced to 180 days (six months). This would promote breastfeeding, the first right of an infant. In addition, women employees having minor children are now entitled for child-care leave for a maximum period of two years (i.e. 730 days) during their entire service for taking care of up to two children, whether for rearing or to look after any of their needs such as examination, sickness, etc.¹⁴

22. States, such as West Bengal and Himachal Pradesh, are running child-care services like *Balwadi Centres* for children taking pre-school education. Cottage schemes are being run in West Bengal for children belonging to backward communities, while Himachal Pradesh has launched Mother Teresa Matri Sambal Yojana that provides financial assistance to destitute mothers, widows and deserted women below poverty line. Besides the crèche programme, Karnataka offers foster-care services and sponsorship programmes with the objective of de-institutionalisation of children. *Balwadis* and *Phoolwadis* are being run in Rajasthan and Chhattisgarh respectively, with the support of community women.¹⁵ (See Annexure 5B.3 for details on State initiatives for child-care institutions and services.)

5C. Separation from Parents (Article 9)

5C.1 Status and Trends

23. Separation from parents in the best interest of the child usually takes place when **either parent is not in a position to take care of the child because of poverty, ailment, alcoholism or imprisonment, or when parents are not known, or when children are abandoned, or when children became victims of man-made natural disasters.**

¹⁴ Letter No.13018/212008-Estt. (L), Department of Personnel & Training, Ministry of Personnel, Public Grievances & Pensions, GoI.

¹⁵ 11th Five Year Plan (2007-12), Vol. II, Social Sector, Planning Commission, GoI, 2008, page 211.

24. It is estimated that a large number of children are destitute and orphans or without parental support in the country. **Many of them have been placed in institutional care.**¹⁶ These include children in conflict with law, children of prisoners, and children in need of care and protection. **Information on the number of children, who are not orphaned but placed in institutional care, is not available.** Keeping the best interest of children in mind and their ultimate rehabilitation, initiatives are being taken to place orphaned and destitute children in non-institutional care options, such as adoption, foster care and sponsorship.

25. In matters concerning guardianship and custody of children, the courts have given several judgements in preference/consideration of the best interest of the child.

5C.2 Policy and Legislation

26. The NPAC, 2005, the JJ (Amendment) Act, 2006, and the JJ Rules, 2007, recognise the need for care and protection of children, who are separated from parents, including children of prisoners.

27. The JJ (Amendment) Act, 2006, and JJ Rules, 2007, **focus on placing children without parental care and support in alternative care within families and use of institutionalisation only as a step of last resort.** The JJ Rules, 2007, also provide that parents and relatives of a juvenile placed in an institution should be allowed to visit him/her once a month or more frequently in special circumstances. It also provides the juvenile freedom to write and receive letters.¹⁷

28. Welfare of children of mothers living in prison as under-trial prisoners or convicts has been a matter of concern. **Children forced to live with their mothers in prison in case there is nobody to look after at home, face the problem of social isolation and the absence of healthy interaction,** while those separated from their imprisoned mothers and fathers have similar problems of healthy development.¹⁸ Responding to a Public Interest Litigation, the Supreme Court of India, in its judgement dated April 13, 2006, issued guidelines to the Central and State Governments to follow minimum standards that provide these children an opportunity to lead normal healthy lives. Taking note of the Model Prison Manual, prepared by a National Expert Committee, 1986, on Women Prisoners, which makes special provision for children of women prisoners, the Supreme Court also directed the amendment in existing jail manuals, rules, regulations and instructions within three months to implement the guidelines. The Supreme Court

¹⁶ India Country Report on Violence Against Children 2005, Department of Women and Child Development, Ministry of Human Resource Development, GoI, page 53 and Sub-Group Report on Child Protection for the 11th Five Year Plan, Ministry of Women and Child Development, GoI, page 54.

¹⁷ Juvenile Justice (Care and Protection of Children) Rules, 2007, The Gazette of India: Extraordinary, page 172.

¹⁸ 11th Five Year Plan (2007-12), Vol. II, Social Sector, Planning Commission, GoI, 2008, page 217.

has laid down a uniform guideline applicable to all prisons in the country. **It has further allowed female prisoners to keep children up to the age of six years with them. After the age of six, the child has to be handed over to a suitable surrogate, in accordance with the mother's wishes, or put in an institution run by the social welfare department in the same city.**¹⁹

29. **The Family Courts Act, 1984**, provides for establishment of Family Courts by the State Governments in consultation with High Courts to **deal with issues of guardianship, custody and access to a child**. In places, where there are no Family Courts, the matter is taken up by the District Courts in India. So far, 190 Family Courts have been set up in 24 States and Union Territories (UTs) across the country. Based on the recommendation of the Parliamentary Committee on Empowerment of Women, all the State Governments/UT Administrations have been requested to set up Family Courts in each District.²⁰ These Courts are required to take a decision in favour of the best interests of the child and may consult children to know their wishes.

30. Successive court judgements in recent years have given prime consideration to the best interest and welfare of the child while **appointing a guardian in matters of custody, education and maintenance of children**.²¹ In some of the judgements, the court has recognised the mother as much a natural guardian as the father.²² Prior to the judgement given by the Supreme Court of India (*in Githa Hariharan vs. Reserve Bank of India*, February 18, 1999), that mother was as much the child's natural guardian as the father) (See India First Periodic Report 2001, Box 5.1, page 107 for details.), the courts mostly gave importance to the father's right as a natural and legal guardian, but after this landmark judgment, courts all over India have interpreted in favour of welfare of the child in matters of custody, overriding the supremacy of parental rights. For instance, in *Amit Beri vs. Sheetal Beri*,²³ the Supreme Court gave the custody to the mother, with whom the child was for 10 years, saying that affluence of father cannot be a substitute for affection, whereas in *Mausami Moitra Ganguli vs. Jayant Ganguli*,²⁴ the court gave the custody rights of the child to the father with visitation rights to the mother. (See Annexure 5C.1 for details of recent court judgments on the best interest of children.)

¹⁹ *R.. D. Upadhyay vs. State of AP & Ors.*, Writ Petition (civil) 559 of 1994, April 13, 2006, Sub folder 'Judgements', India: Third and Fourth Combined Periodic Report on the CRC Attachments.

²⁰ Family Courts, Ministry of Home Affairs, <http://mha.nic.in/pdfs/Familycourts.pdf>.

²¹ Asha Bajpai, *Child Rights in India*, Oxford University Press, 2006, page 97.

²² Asha Bajpai, *Child Rights in India*, Oxford University Press, 2006, pp. 98, 127.

²³ *Amit Beri vs. Sheetal Beri*, All India Reporter (AIR) Allahabad, 2006, page 267, Sub folder 'Judgements', India: Third and Fourth Combined Periodic Report on the CRC Attachments.

²⁴ *Mausami Moitra Ganguli vs. Jayant Ganguli*, AIR 2008 SC 2262, Sub folder 'Judgements', India: Third and Fourth Combined Periodic Report on the CRC Attachments.

5C.3 Programmes

31. The MWCD is implementing several programmes and schemes to reach out to children having no support of parents and families, including those in situation of destitution. These programmes include the Scheme of Assistance to Homes for Children (Shishu Greh) to promote in-country adoption, Programme for Juvenile Justice, Integrated Programme for Street Children and the ICPS. (See Section 1.5 for details.)

32. **Several States have also taken initiatives for providing care and support to children without parental care.** In Rajasthan, the Government has launched 'Palanhar Yojana', **a unique Scheme to provide alternative care to children without parental care and support.** Under this Scheme, a child, whose parents have both died due to accident or illness, or have been awarded life imprisonment/ death sentence, is placed in the care of a willing family, for which financial assistance is provided by the State Government. The Department of Social Justice and Empowerment, Rajasthan, is running **Shishu Grehs for newborn children abandoned by their mothers/ families and Balika Grehas for destitute and neglected girls in 6-18 age group.**²⁵ The Maharashtra State Government is implementing a foster-care programme called 'Bal Sangopan Yojana', for children without family support.²⁶ In Delhi, the State Government has framed **Foster-Care Placement Services to regulate the placement of illegitimate and abandoned children in the 0-6 age group, including those from fondling homes, juvenile homes and children referred by hospitals, nursing homes, social workers and welfare institutions with foster parents.**²⁷ (See Annexure 5C.2 for details on State initiative for alternative care and support to children.)

5D. Family Reunification (Article 10)

5D.1 Status and Trends

33. The Government of India recognises the need for effective measures to protect and safeguard the interests and rights of families, especially the children of migrants for reunification with the family. There are an estimated 25 million²⁸ overseas Indians spread globally and about five million Overseas Indian Workers (OIWs) employed all over the world (over 90% being in Gulf countries and South-East Asia). The process for family reunification has been simplified with the

²⁵ India: Third and Fourth Combined Periodic Report on the CRC draft, Inputs of Rajasthan State, 2004-07, pp. 48, 49, 51.

²⁶ India: Third and Fourth Combined Periodic Report on the CRC draft, Inputs of Maharashtra State, page 39.

²⁷ India: Third and Fourth Combined Periodic Report on the CRC draft, Response of Delhi State, September 2009.

²⁸ Annual Report (2007-08), Ministry of Overseas Indian Affairs, GoI, pp. 2 and 37.

creation of the Ministry of Overseas Indian Affairs (MOIA), in 2004, as the nodal Ministry to manage the migration issues of Indian workers for overseas employment, and ensure protection of emigrants and their families.

34. India has policy and legislative provisions to deal with emigration issues of Indian citizens overseas and their return.

5D.2 Policy and Legislation

35. The NPAC, 2005, the JJ Act, 2000, the JJ (Amendment) Act, 2006, and the JJ Rules, 2007, recognise the need for care and protection of children, who are separated from parents.

36. The JJ Rules, 2007, under the principle of repatriation and restoration, recognise the right of every juvenile or child or juvenile in conflict with law to be re-united with his/her family, and restored back to the same socio-economic and cultural status as before coming within the purview of the Act, or becoming vulnerable to any form of neglect, abuse or exploitation.²⁹ A juvenile or child, who has lost contact with his family, shall be repatriated and restored, at the earliest, to his family, unless such an action is against the best interest of the juvenile or child.³⁰ A juvenile or child, who is a foreign national, shall be repatriated at the earliest to the country of his origin in co-ordination with the respective Embassy or High Commission.³¹

37. The Emigration Act, 1983, deals with all emigration from India to overseas countries and the return of emigrants. To transform the emigration system into a simple, transparent, humane and orderly process, the MOIA is in the process of finalising the amendments proposed in the Emigration Act, 1983.³²

38. To make the migration process of OIWs emigrant-friendly, and enable the reunification of families, the MOIA has decentralised the process of emigration clearance. Furthermore, the Emigration Check Required Suspension has been abolished with effect from October 1, 2007. With this, children and spouses of migrant workers are now entitled to get Emigration Check Not Required endorsement on their passports after showing proof of their eligibility. The number of emigration clearances increased from Rs 0.466 million in 2003 to Rs 0.809 million in 2007.³³

²⁹ Juvenile Justice (Care and Protection of Children) Rules, 2007, The Gazette of India: Extraordinary, page 139.

³⁰ Juvenile Justice (Care and Protection of Children) Rules, 2007, The Gazette of India: Extraordinary, page 139.

³¹ Juvenile Justice (Care and Protection of Children) Rules, 2007, The Gazette of India: Extraordinary, page 183.

³² Annual Report (2007-08), Ministry of Overseas Indian Affairs, GoI, pp. 27-29.

³³ Annual Report (2007-08), Ministry of Overseas Indian Affairs, GoI, page 38.

39. Issues related to children in India seeking to join their parents abroad, and the process and purpose of visit by foreign nationals wishing to visit India, are described in the last periodic report. (See India First Periodic Report 2001, paras 32-35, page 112 for details.)

5E. Recovery of Maintenance for the Child (Article 27, para 4)

5E.1 Legislation

40. The issue of guardianship and custody of minors in India is governed by the Guardianship and Wards Act (GWA), 1890, the Hindu Minority and Guardianship Act, 1956, and the unmodified Muslim Law of Custody and Guardianship. Sections 41 to 44 of the Indian Divorce Act, 1869, deal with matters related to custody, education and maintenance of children below 18 years of age.³⁴ The personal laws of Hindus, Parsis, and Christians lay down the principles relating to custody and guardianship of children (See India First Periodic Report 2001, paras 39-43, page 114 for details).

41. In cases of custody dispute during separation, the Family Courts pass orders in matters related to custody, education and maintenance of children, based on provisions of the prevailing legislations on custody and guardianship, giving paramount consideration to the best interest of the child, besides considering age, sex and wishes of the child if old enough to form an opinion, and fitness of the parent to whom custody is to be handed over.³⁵ A guardian is expected to take custody of the minor and is obliged to provide financial support, healthcare and education.³⁶ (See Section 5C.2 for details.)

42. India participated in the negotiations for the 'Convention on the International Recovery of Child Support and Other Forms of Family Maintenance', adopted in November 2007 by the Hague Conference on Private International Law, and the Convention is being examined with a view to ratify and for enacting the implementing legislation.³⁷

³⁴ The Indian Divorce Act, 1869.

³⁵ Asha Bajpai, *Child Rights in India*, Oxford University Press, 2006, page 101.

³⁶ Asha Bajpai, *Child Rights in India*, Oxford University Press, 2006, page 96.

³⁷ India: Third and Fourth Combined Periodic Report on the CRC draft, Response of Ministry of External Affairs, GoI, October 2009.

5F. Children Deprived of a Family Environment (Article 20)

5F.1 Status and Trends

43. According to estimates, a large proportion of children in India are destitute, orphan and without parental support. Many of these children get separated, temporarily or permanently, from their family, under vulnerable and exploitative situations or desertion by the family. To safeguard their best interest and their ultimate rehabilitation, legislative provisions have been made and programmes initiated **to place these children in community-based alternative care or institutional care.**

5F.2 Legislation, Programme and Monitoring

44. The JJ Act, 2000, and JJ (Amendment) Act, 2006, **outline provisions for non-institutional (adoption, foster placement and sponsorship), as well as institutional care.** (See Sections 5G and 8B.4 for details.) The ICPS provides for sponsorship of education, health, nutrition and other developmental needs of children at risk, to support the family in taking care of the child. **Section 43 of the JJ (Amendment) Act, 2006, lays down a provision for developing sponsorship programme for providing supplementary support to families, children's homes and special homes to meet medical, nutritional, educational and other needs of children for improving their quality of life.** The State Government may make rules for the purpose of carrying out various schemes of sponsorship of children, such as individual-to-individual sponsorship, group sponsorship or community sponsorship.³⁸ The State has the obligation to prepare the sponsorship programme in consultation with Non-Governmental Organisations (NGOs), Child Welfare Committees (CWCs), relevant Government agencies and the corporate sector.³⁹ The Central Adoption Resource Authority (CARA) promotes domestic adoption for the rehabilitation of orphaned, abandoned and destitute children.

45. A few attempts have been made by NGOs such as **Udayan Care (a Delhi-based NGO) to promote group foster-care model, providing long-term residential care for orphaned and abandoned children above six years of age,** and SOS Children's Villages of India that provide a family-like environment to enable children's healthy development through 40 SOS Children's Villages.⁴⁰ Maharashtra has introduced Bal Sangopan Yojana, a foster-care scheme (tending to function as a

³⁸ Section 43, Juvenile Justice (Care and Protection of Children) Amendment Act, 2006.

³⁹ Juvenile Justice (Care and Protection of Children) Rules, 2007, The Gazette of India: Extraordinary, page 159.

⁴⁰ SOS Children's Villages, <http://www.soscvindia.org/charity/index.php>.

sponsorship programme).⁴¹ (See Annexure 5C.2 for details of State initiative for alternative care and support to children.)

5G. Adoption (Article 21)

5G.1 Status and Trends

46. CARA, through its agencies, **gives approximately 3,000 children in adoption every year.** There has been a decline in the number of in-country adoptions by CARA from 2,533 in 2001 to 2,294 in 2004 and further to 2,169 in 2008. The number of cases of inter-country adoption of Indian children has also steadily declined in the reporting period, from 1,298 in 2001 to 1,021 in 2004, and 821 in 2008.⁴² (See Annexure 5G.1 for details of number of children placed in adoption through Recognised Indian Placement Agencies and Shishu Grehs.) **In addition, a large number of adoptions take place between families and relatives, and through direct adoption.**

5G.2 Policy and Legislation

47. At present, adoption takes place both formally and informally in the country. Formal adoptions take place under the Hindu Adoption and Maintenance Act, 1956, (applicable to Hindus, Sikhs, Jains and Buddhists, wherein the child gets all the rights of a biological child) and recently under JJ Act, 2000, amended in 2006. A child can also be taken as a ward under the GWA, 1890, (applicable to all other communities, but wherein the child does not have the rights of a biological child).

48. The JJ (Amendment) Act, 2006, has widened the scope of adoption of children by adoptive parents. For the first time, this Act defines 'adoption' in absolute terms as a process through which the adopted child is permanently separated from his biological parents, and becomes the legitimate child of the adoptive parents and enjoys the rights, privileges and responsibilities of a biological child. The Act also talks about setting up of specialised adoption agencies in every District and giving all children living in institutional care an opportunity for adoption.

49. The JJ Act, 2000, makes it mandatory to register all child-care institutions, including orphanages and homes actively taking up adoption, and to ensure that adoptions take place only after proper documentation and scrutiny of prospective parents.

50. The Provisions of the JJ Act, 2000, and the JJ (Amendment) Act, 2006, are applicable in the entire nation, except in the State of Jammu & Kashmir (J&K). The

⁴¹ India: Third and Fourth Combined Periodic Report on the CRC draft, Inputs of Maharashtra State, 2007, page 24.

⁴² Annual Report (2008-09), Ministry of Women and Child Development, GoI, page 201.

State has J&K JJ Act, 1986, under which it has recently formulated the J&K Juvenile Rules, 2007. Both the J&K JJ Act, 1986, and the J&K Juvenile Rules, 2007, are being amended to bring them in line with the JJ (Amendment) Act, 2006.

51. In-Country Adoption: To regulate and monitor all adoption programmes and the working of recognised social/child welfare agencies engaged in in-country adoptions through State Governments and UT Administrations, CARA has notified the In-Country Adoption Guidelines, 2004, formulated after a consultative process with stakeholders.

52. Inter-Country Adoption: Inter-country adoption is now governed by Guidelines for Adoption from India, 2006, issued on February 14, 2006, following India's ratification of the Hague Convention in 2003.⁴³ These guidelines replaced the earlier guidelines, in order to make adoption procedures simple and more transparent. These guidelines provide a framework to protect the interests of both biological and adoptive parents along with that of children through the mechanisms of licensing, follow-up reports, documents, etc.⁴⁴

53. At present, the In-Country Guidelines, 2004, and Inter-Country Guidelines, 2006, are under revision, keeping in view the JJ Amendment Act, 2006. Some of the salient features of the proposed guidelines include more transparency across the adoption system, production of surrendered children in front of CWCs, procedure for adoption of children with special needs, central system for inter-country adoption, etc.⁴⁵ (See Annexure 5G.2 for salient features of the proposed adoption guidelines.)

5G.3 Institutions and Programmes

54. CARA, as nodal authority, promotes domestic adoption and regulates inter-country adoptions in India, as provided under guidelines of the Government of India.

5G.3.1 In-Country Adoption

55. CARA is implementing the 'Scheme of Assistance to Homes for Children (Shishu Grehs) to Promote in-country Adoption'. (See Section 1.5 for details and Annexure 5G.1 for details of number of children placed in adoption through Shishu Grehs.) At present, 74 organisations are being provided Grant-in-Aid to promote domestic adoption.⁴⁶ The States implementing Shishu Greh Projects include Andhra Pradesh, Arunachal Pradesh, Assam, Bihar, Delhi, Gujarat,

⁴³ Report of Working Group on Development of Children for the 11th Five Year Plan, Ministry of Women and Child Development, GoI, page 42.

⁴⁴ Annual Report (2007-08), Ministry of Women and Child Development, GoI, page 72.

⁴⁵ India: Third and Fourth Combined Periodic Report on the CRC draft, Response of Central Adoption Resource Authority, September 2009.

⁴⁶ Annual Report (2008-09), Ministry of Women and Child Development, GoI, page 132.

Haryana, Himachal Pradesh, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Manipur, Mizoram, Orissa, Rajasthan, Tripura and West Bengal.⁴⁷

56. CARA recognises 18 Adoption Coordinating Agencies (ACAs) to promote in-country adoptions. These agencies maintain a State-level list of children available for adoption, and prospective parents willing to adopt. Besides, they also undertake publicity and awareness on adoption, and issue clearance for inter-country adoptions.

57. Regular monitoring and evaluation through follow-up on adoptive children/families has been prescribed by CARA in case of in-country adoption. During pre-adoption foster-care placement of a child, a professionally-trained social worker visits the family regularly. After the legal adoption, the agency maintains a follow-up with the family for a period of at least one year or as directed by the court. Post-adoptive counselling is provided by the agency to the adoptive parent(s) and the adoptee till the child has adjusted to the new environment. To deal with fears and apprehensions of prospective adoptive parents, pre-adoptive counselling sessions are also taken by social workers.⁴⁸

58. During the 11th Plan period, the ICPS will promote in-country adoption by setting up a State Adoption Resource Agency (SARA) in every State/UT. SARA will coordinate, monitor and develop the work of adoption, and provide assistance to the State Adoption Advisory Committee.

59. The ICPS focuses on identifying bottlenecks to complete the adoption process in the shortest possible time, and reaching out to children, whose parents are unable to care for them.⁴⁹

60. Recently, CARA has taken various initiatives, such as establishing an online database, revision of existing adoption guidelines, training and development programmes and multimedia campaigns to revamp the adoption programme in the country and developing of Central Adoption Resource Information and Guidance System (CARINGS), a web-based MIS portal for child protection to reorganise adoption system in the country and establishing transparency in adoption process.⁵⁰

61. The central aim of CARA is to facilitate the adoption of as many Indian children as possible who would benefit from adoption and to ensure that number of eligible children are available for adoption without prospective adoptive parents having to endure unnecessary onerous requirements, unreasonable delays and illegal demands. CARA is also required to act as a clearing house for information

⁴⁷ Annual Report (2008-09), Ministry of Women and Child Development, GoI, page 204.

⁴⁸ Guidelines for In-Country Adoption 2004, Central Adopton Resource Authority, http://www.adoptionindia.nic.in/ad_procedure_in_country.htm.

⁴⁹ 11th Five Year Plan (2007-12), Vol. II, Social Sector, Planning Commission, GoI, 2008, page 213.

⁵⁰ India: Third and Fourth Combined Periodic Report on the CRC draft, Response of Central Adoption Resource Authority, September 2009.

about children eligible for adoption; develop public awareness campaigns; undertake research and evaluation; monitor and regulate the work of recognised and associated agencies; liaison with the other central authorities and foreign missions and ensure post-adoption follow-up and care for the adopted children.

62. CARA has been taking several initiatives such as training and development activities through State orientation programmes, zonal meets, national-level meets for various stakeholders in the adoption process for promoting adoption and non-institutional care for children in need of care protection in general and for orphan, abandoned and surrendered children in particular. The participants include adoption agencies and children homes housing orphan, abandoned and surrendered children, CWC members, District Welfare Officers / Superintendents of Government run homes and homes run by NGOs, advocates dealing with adoption matters, representatives of the State chapters of Indian Medical Association (IMA), paediatric association, gynaecologic association and District medical association, members of civil society/Childline, etc. for their capacity building. The participants are imparted training on adoption guidelines, laws dealing with adoption to minimise delay in the adoption process so also to get feedback from the participants about regional needs and requirements. CARA has also initiated workshops to promote domestic adoption, feedback and interactive meets with prospective adoptive parents and adoptive parents.

5G3.1.1 State Initiative to Promote In-Country Adoption

63. Most States are making efforts to promote adoption by spreading awareness through radio, television, newspapers, hoardings, leaflets, etc. The Government of Bihar set up an Adoption Cell and constituted State-level Advisory Board on Adoption in June 2005, and held an orientation workshop on adoption for placement agencies and Government functionaries in December 2006. Karnataka State has also constituted a State Adoption Cell to supervise and monitor all adoption programmes and agencies at the State level with the support of CARA.⁵¹ Adoptive parents in the city of Bangalore have formed an association called Sudatta to look into the issues of adoptive parents. Chhattisgarh has constituted a State-level Committee to monitor inter-state adoption and other related issues.⁵² In Orissa, CARA collaborated with Sanjog, a State-based adoption coordinating agency, to hold a consultative meet on legal adoption in 2007. The State has also constituted a State Adoption Cell for promotion and monitoring of adoption activities. Maharashtra too has formed an Adoptive Parents Association. The Kerala State Council for Child Welfare, a recognised agency for local adoption, facilitated in-country adoption of 787 children in 2004-05. **The agency however, faces difficulties in nurturing the differently-abled children, who face difficulty in**

⁵¹ India: Third and Fourth Combined Periodic Report on the CRC draft, Inputs of Karnataka State, July 2009.

⁵² India: Third and Fourth Combined Periodic Report on the CRC draft, Response of Chhattisgarh State, August 2009.

getting adopted. (See Annexure 5G.3 for details on State initiative to promote in-country adoption.)

5G.3.2 Inter-Country Adoption

67. CARA is the Central authority to implement the Hague Convention on Protection of Children and Cooperation in respect of Inter-Country Adoption, 1993, ratified by India on June 6, 2003. It has developed mechanisms to implement the salient features of the Convention and to ensure that all orphan, abandoned and surrendered children are expeditiously placed in adoption. Regular inspection is done by CARA to ensure quality child-care and compliance of existing guidelines.⁵³ In consonance with the Hague Convention, CARA ensures that all efforts are made to place a child in his/her own socio-cultural milieu in his best interest, before giving him/her in inter-country adoption.

68. CARA grants recognition to Indian placement agencies and enlists foreign agencies engaged in sponsoring applications, which are recognised under the appropriate laws of their own country or are recommended by Indian Missions abroad.

69. At present, there are 73 Indian adoption agencies recognised by CARA for placing children in inter-country adoption. However, these agencies are required to give priority to in-country adoption. **There are 91 foreign adoption agencies enlisted with CARA for processing the application of the prospective foreign adoptive parents for adoption of Indian children. In addition, 46 Government departments from 24 countries are also involved in the process.**

70. CARA organised its second International Conference on Adoption, from October 8-10, 2007, to discuss issues such as compliance of Hague Convention on Inter-Country Adoption and the concerns and challenges faced in inter-country adoption.⁵⁴

71. The ICPS aims to regulate inter-country adoption through the State Adoption Advisory Committee with the support of SARA, which will coordinate, monitor and develop the work of adoption.

5J. Periodic Review of Placement (Article 25)

5J.1 Legislation and Monitoring

94. The JJ (Amendment) Act, 2006, and the JJ Rules, 2007, lay down the process of restoration, rehabilitation and social re-integration, as well as

⁵³ India: Third and Fourth Combined Periodic Report on the CRC draft, Response of the Central Adoption Resource Authority, September 2009.

⁵⁴ India: Third and Fourth Combined Periodic Report on the CRC draft, Response of the Central Adoption Resource Authority, September 2009.

follow-up mechanisms to assess the situation of child/juvenile, post-restoration and rehabilitation. Section 36 of the JJ Act, 2000 has provisions for social audit, which enables the Central and State Governments to monitor and evaluate the functioning of the children's homes and also periodically review the situation of children placed in these institutions. The JJ Rules, 2007, focus on promoting the well-being of the juvenile or child through preparation of individual care plans and also provide comprehensive guidelines for monitoring and periodic review of standards of care in homes and of children placed in adoption, foster care and institutions.

95. The CWC has powers to direct officer-in-charge in a children's home to submit a quarterly progress report of any child, and produce the child before the Committee for annual review of the progress.⁵⁵ The Committee is required to visit each institution, where children are sent for care and protection or adoption, at least once in three months to review the condition of children in institutions with the support of State Government and suggest necessary action.⁵⁶ The Committee is empowered to order re-integration of the child with the family, if it's in the best interest of the child, based on the assessment of the family situation.⁵⁷

96. CARA provides for monitoring and follow-up of children placed in adoption. (See Section 5G.3.1 for details.)

97. The Commission for the Protection of Child Rights Act, 2005 empowers the NCP-CR to monitor the conditions and functioning of all categories of juvenile homes in the country. The NCPCR has recently initiated a process of reviewing the pending cases of children placed in institutional care system in the country. (See Section 8 B-2.3.1 for details.)

98. Sections 14 and 33 of the JJ (Amendment) Act, 2006, have provision for review of cases pending with CWC and JJB every six months. To deal with pending enquiries, the State Government can direct the CWC and JJB to increase the frequency of its sittings or cause the constitution of additional CWCs or JBJs.

5K. Challenges

99. The ICPS, with its budget of Rs 107.3 million for the 11th Plan, will contribute significantly to develop systems and infrastructure to efficiently and effectively protect children in need of care and protection. (See Section 1.5.1 for details.) The JJ (Amendment) Act, 2006, also provides for strengthening provisions for setting

⁵⁵ Juvenile Justice (Care and Protection of Children) Rules, 2007, The Gazette of India: Extraordinary, page 154.

⁵⁶ Juvenile Justice (Care and Protection of Children) Rules, 2007, The Gazette of India: Extraordinary, page 151.

⁵⁷ Juvenile Justice (Care and Protection of Children) Rules, 2007, The Gazette of India: Extraordinary, page 154.

up administrative mechanisms, and capacity-building of personnel concerned with child protection and non-institutional/ alternative care system. It has also simplified the process for adoption of children.

100. The proposed Prevention of Offences against the Child Bill, 2009, aims to address all the issues concerning children, including abuse and neglect of children, and be a comprehensive legislation for protecting children.

101. In order to strengthen a supportive, enabling and protective environment for children, the MWCD has identified the following issues for priority attention in the coming years:

- **Creation of support services to families at risk and strengthening of implementation of policies, legislation and programmes to protect children from vulnerable and exploitative situations.**
- **Adequate child-care services and institutions for children in need of care and protection, including child victims of abuse and exploitation, children of vulnerable groups, such as prisoners, and children of working parents.**
- Strengthening lateral linkages with essential services for children, such as education, health, police, judiciary, services for the disabled, etc.
- **Capacity-building of parents, caregivers and professionals engaged in child care at various levels.**
- Training and sensitisation of judges, lawyers and counsellors for adopting a 'child-centred approach'.
- Adequate trained manpower and infrastructure, such as CWCs and Shishu Grehs to deal with issues of abandonment, abuse and neglect of children.
- Comprehensive reporting of incidences of child sexual abuse and prosecution of perpetrators.
- **Expanding family-based non-institutional care services such as sponsorship, kinship care, foster care and adoption for rehabilitation of children without family care and support and strengthening follow-up and monitoring of these.**
- **Simplification of adoption process, supported by provision of trained staff, and adequate counselling support to parents.**
- Establishment of specialised adoption agencies in every District, supported by a centralised and comprehensive database to identify children for adoption.
- **Strengthening State adoption programmes to rehabilitate large number of children in institutional care without homes/ family.**
- Mapping of children in need of care and protection and the services available for them at the city/District/State levels.
- Enhancement in allocation of resources for strengthening protection of vulnerable children.

- Strengthening monitoring and systems for analysing implementation of these provisions and their outcomes for children.

8. Special Protection Measures Articles 22, 30, 32-36, 37 (b)-(d), 38, 39 and 40

8B.2 Children Deprived of their Liberty, including any Form of Detention, Imprisonment or Placement in Custodial Settings (Article 37 (b), (c) and (d))

8B.4.3 Programmes

1. The Programme for Juvenile Justice, a Centrally Sponsored Scheme, provides for establishment and maintenance of various levels of institutions for the rehabilitation of juveniles in conflict with law and children in need of care and protection, and services for preventing children from coming into conflict with law.
2. Under the ICPS, all the existing programmes for children in need of care and protection and children in conflict with law, including the Programme for Juvenile Justice, have been merged. The ICPS has provisions that focus on rehabilitation of children in conflict with law based on institutionalisation as the last resort. Enhanced budget provision has been made for building of institutions and services, including construction cost, to strengthen the rehabilitative services. (See Section 1.5.1 for details.)

8B.4.3.1 Institutional Rehabilitation

3. At present, 794 homes established under the JJ Act, 2000, for juveniles in conflict with law, as well as children in need of care and protection, which cater to 46,957 children (as of December 3, 2008), are being assisted under the Programme for Juvenile Justice.⁵⁸ Table 8.1 provides an overview of institutional care services since 2002-03.

Table

Institutional care services

8.1

<i>Year</i>	<i>Facilities</i>	<i>Beneficiaries</i>
2007-08	794 homes	46,957 children
2006-07	711 homes	39,962 children
2005-06	675 homes	38,359 children
2004-05	593 homes	40,739 children
2003-04	623 homes	38,749 children

⁵⁸ Schemes being implemented for Children, Ministry of Women and Child Development, GoI, March 2008.

<i>Year</i>	<i>Facilities</i>	<i>Beneficiaries</i>
2002-03	625 homes	38,821 children

64. The JJ Act, 2000, recommends initiation of rehabilitation and social re-integration of children in conflict with law during their stay in special homes through non-institutional alternative care services.⁵⁹ The NCPCR, in its report 'Key Recommendations and Guidelines for Reform in the Juvenile Justice System', submitted to the Government in April 2009, has made specific recommendations for remedial measures towards creating child-friendly protective services and promoting non-institutional services on a larger scale so that children can live with families, if required, with sponsorship aid or be referred for adoption or foster care.⁶⁰ To ensure stable and durable placement for children without parental care and appropriate reunification processes of children returning to parental care, it has recommended strengthening of non-institutional and alternate care, and procedural reform in the placement processes.⁶¹ Following the recommendation of the NCPCR, the Government of National Capital Territory of Delhi, Department of Women and Child Development (DWCD) is implementing a Pilot Project on 'Action Research on Progressive Approaches to Non-Institutional Care' within the legal framework of the JJ Act, 2000.⁶²

65. The sponsorships programme under the JJ Act, 2000, has provisions for supplementary support to special homes to meet medical, nutritional, educational and other needs of children for improving their quality of life.⁶³ NGOs offer financial and other support services to families in distress to prevent abandonment and institutionalisation of children, and ensure their development in a family environment. However, no data is available on the number of children/juveniles in conflict with law receiving assistance and NGOs providing such assistance.⁶⁴ The recently-launched ICPS

⁵⁹ Section 40, Juvenile Justice (Care and Protection of Children) (Amendment) Act, 2006.

⁶⁰ Review of Operations of Observation and Children's Homes, National Commission for Protection of Child Rights Sub-Committee Report, November 2007 to March 2008, pp. 80-81.

⁶¹ Key Recommendations & Guidelines for Reform in the Juvenile Justice System, National Commission for Protection of Child Rights, GoI, April 2009, page 15.

⁶² India: Third and Fourth Combined Periodic Report on the CRC draft, Response of National Commission for Protection of Child Rights, GoI, October 2009.

⁶³ Section 43, Juvenile Justice (Care and Protection of Children) (Amendment) Act, 2006.

⁶⁴ Sub-Group Report on Child Protection for the 11th Five Year Plan (2007-12), Ministry of Women and Child Development, GoI, page 57.

will provide systemic support structures to promote adoption, foster care and sponsorship.

66. The JJ Act, 2000, has provisions for after-care programmes to assist in successful social re-integration of juveniles leaving special homes, by preparing them to sustain during the transition from institutional to independent life. The guiding principles and the community-based after-care services for achieving this objective however is not laid down in the Act. Therefore the after-care homes often function with an institutional approach.⁶⁵ The provision of additional three-year period in after-care needs to be reviewed and alternatives found.

8E. Children Living or Working on the Street

8E.1 Status and Trends

235. India First Periodic Report, 2001, quoted the estimated number of street children in India as 11 million. (See India First Periodic Report 2001, para 75-79, page 354 for details.) The Census 2001, for the first time, estimated 13 million 'houseless households', with each household accounting for 5-6 members; the total population of houseless (or shelterless) amounted to at least 65 million in the country.⁶⁶ Based on such information, it can be inferred that the estimated number of street/homeless children requiring shelter is much more than that estimated by various sources. There is no Census data available on the number of street children (comprising shelterless/homeless poor, migrant labourers, pavement dwellers and child beggars), since they constitute a floating population.

236. The Growth in urban sector has outpaced the development of the rural economy. As a result, a large number of people migrate from rural to urban areas in search of better economic opportunities, and many start living in slums, *jhuggi jhopris* or even on the streets and other public places. Many children are driven to live on the streets in highly deplorable and risky conditions, making them highly vulnerable. Street children and children without homes are very often exposed to abuse and exploitation due to lack of identification in the absence of birth certificates and school-leaving certificates. **Micro studies reveal that the number of street children has been growing in the country due to factors such as dearth of educational opportunities, violent or abusive home conditions, trafficking and natural calamities. Many belong to families of seasonal migrants and/or families forcibly evicted from homes and lands as a result of development projects without adequate rehabilitation.**⁶⁷ Migration to cities by families forces children to drop out of school, and many end up

⁶⁵ Juvenile Justice in South Asia, Improving Protection for Children in Conflict with the Law, UNICEF, 2006, page 69.

⁶⁶ Economically Weaker Sections and Slum Dwellers in Metros: A Case for the Shelterless in Delhi, http://www.naredco.org/d_articles.asp.

⁶⁷ Sub-Group Report on Child Protection for the 11th Five Year Plan (2007-12), Ministry of Women and Child Development, GoI, 2008, page 45.

becoming child labourers, beggars or/and victims of drug abuse, smoking, gambling, drinking, prostitution or sexual abuse. Given the limited number of shelters in cities, street children are often exploited and harassed by the police. They are vulnerable to hunger, malnutrition, lack of healthcare and education, physical and sexual abuse, substance abuse and STD/HIV/AIDS.⁶⁸

8E.3 Programmes

242. The Integrated Programme for Street Children (IPSC) aims to prevent destitution of children and facilitate their withdrawal from the streets. During the 10th Five Year Plan (2002-07), over 0.2 million children benefited from this programme.⁶⁹ To evaluate and assess the efficacy and impact of IPSC at the grassroots level, the MWCD undertook an evaluation study through NIPCCD in 117 sample centres in 17 States of the country. The major finding of the study revealed that the programme had brought about a perceptible change in beneficiaries' behaviour, attitude, livelihood patterns, values, habits and future aspirations.⁷⁰

243. The IPSC is now merged with ICPS, which provides preventive, statutory, and care and rehabilitation services for all categories of disadvantaged and vulnerable children, including street children. Services that will be provided for street children under ICPS include open shelters for children in need in urban and semi-urban areas, offering creative activities, counselling, guidance and life-skills education for channelling energies into productive endeavours, and protection from abuse and neglect.

⁶⁸ 11th Five Year Plan (2007-12), Vol. II, Social Sector, Planning Commission, GoI, 2008, page 217.

⁶⁹ 11th Five Year Plan (2007-12), Vol. II, Social Sector, Planning Commission, GoI, 2008, page 203.

⁷⁰ Integrated Programme for Street Children, an Evaluation, 2008, NIPCCD, Preface and Chapter 4.

