A STUDY OF THE RIGHTS OF THE CHILDREN WITH SPECIAL FOCUS ON THE ISSUE OF INSTITUTIONALIZATION

Shubham Sharma[1] & Rohit Kadiyan[2]

ABSTRACT

This study examines the persistent gap between India's stated commitment to deinstitutionalisation and the continued reliance on institutional care for children who are, in the overwhelming majority, not orphans but children separated from their families by poverty, family breakdown, or social distress. Beginning with the evolution of the international legal framework, principally the Convention on the Rights of the Child, 1989, and the 2009 UN Guidelines for the Alternative Care of Children, the study traces how the principle that institutional care must be a measure of last resort has been incorporated into India's constitutional and statutory scheme through Article 15(3) of the Constitution, the Commissions for Protection of Child Rights Act, 2005, the Integrated Child Protection Scheme, and the Juvenile Justice (Care and Protection of Children) Act, 2015, as amended in 2021.

The study places India's experience against a comparative backdrop, examining the European Union's phased withdrawal from large residential institutions in Central and Eastern Europe and the United States' timeline-driven foster care model, in order to identify structural lessons for policy design, chiefly, that a legislative preference for family-based care is meaningful only when matched by sustained investment in foster care, adoption processing, and independent monitoring.

Drawing on Indian case law, including Jose Maveli v. State of Kerala, Sheela Barse v. Union of India, Gaurav Jain v. Union of India, and Bachpan Bachao Andolan v. Union of India, the study documents how the judiciary has repeatedly reaffirmed the last-resort principle while also exposing continuing deficiencies in institutional oversight, staffing, and family-tracing practice, deficiencies that were sharpened by the child-welfare pressures of the COVID-19 pandemic.

The study concludes that India's legal architecture for deinstitutionalisation is well developed on paper but weakly implemented in practice, and that

[1] Shubham Sharma, B.A. LL.B. (Hons.), National Law Institute University, Bhopal.
[2] Rohit Kadiyan, B.A. LL.B. (Hons.), National Law Institute University, Bhopal.

closing this gap requires time-bound family reunification efforts, expanded and better-funded foster care, faster adoption processing through CARA, independent social audits of Child Care Institutions, and the integration of child protection with poverty-alleviation policy. Treating institutionalisation as a symptom of unaddressed socio-economic distress, rather than as an isolated child-rights failure, is essential to any lasting reform.

Introduction

Children represent one of the most vulnerable sections of society and are entitled to special care, protection, and rights to ensure their holistic development. A significant proportion of children placed in institutional care are not orphans but have been abandoned or separated from their families due to socio-economic distress, family breakdowns, or societal discrimination. Poverty, lack of education, and unemployment are among the primary factors leading to child abandonment.

The concept of deinstitutionalization, which advocates for reducing reliance on institutional care in favor of family- and community-based alternatives, has gained increasing recognition as a vital component of child welfare policies. Institutional care, while sometimes necessary, is often associated with negative consequences such as emotional deprivation, developmental delays, and difficulties in social reintegration. Globally, efforts have been made to shift toward more family-centric care models, emphasizing the need to preserve children's right to grow up in a nurturing and stable environment.

The government has implemented several legal and policy measures, including the JJ Act, 2015,[3] and the Integrated Child Protection Scheme, to safeguard children's rights and promote their reintegration into family-based care settings. However, despite these efforts, institutions continue to house a large number of children, raising concerns about the effectiveness of current deinstitutionalization strategies. According to data compiled by the National Commission for Protection of Child Rights (NCPCR) and the Central Adoption Resource Authority (CARA), tens of thousands of children currently reside in registered Child Care Institutions (CCIs) across India, the overwhelming majority of whom have a living parent or extended family member. This gap between institutional capacity and the actual need for out-of-home protective care underscores the urgency of examining why family-based alternatives

[3] Juvenile Justice (Care and Protection of Children) Act, 2015 (2 of 2016).

remain under-utilised.

This study explores the existing legal framework governing child rights in India and at the international level, and the socio-economic factors that contribute to child institutionalization. It adopts a doctrinal approach, examining primary legal sources at the international and domestic level, supplemented by case law and policy documents, in order to assess the extent to which India's deinstitutionalisation framework matches its stated commitments.

It further examines the challenges faced by children in institutional settings, including the risks of abuse, neglect, and poor reintegration into mainstream society. Additionally, it evaluates possible alternatives to institutional care, while assessing the effectiveness of existing policies in ensuring child welfare. By critically analyzing these aspects, this study aims to contribute to the ongoing discourse on child rights and advocate for policies that prioritize a child's right to a family environment, ensuring their long-term well-being and development.

Evolution of the International Framework for the Rights of the Child

There are several conventions that focus on child rights, but the Convention on the Rights of the Child (CRC)[4] is widely recognized as the most significant international treaty in this area. It has been formally ratified by the majority of the countries, making it one of the most accepted global agreements. The primary reason for its broad acceptance is the vital role children play in shaping the future. The convention acknowledges that children with special needs have unique rights that are designed to accommodate their age and developmental requirements. The successful implementation of the CRC's objectives does not depend on charitable donations or organizational support. Instead, the provisions outlined in the convention are both independent in their function and interconnected in their purpose.

Historical Background

The origins of children's rights can be traced back to the Renaissance, a period that saw increased discussions on human rights and individual freedoms. However, formal recognition of child-specific rights only began to take shape in 1924 when governments first engaged in discussions about a document focusing on children's rights.[5] Unfortunately, the outbreak of

[4] Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3.
[5] Geneva Declaration of the Rights of the Child (adopted 26 September 1924) League of Nations OJ Spec Supp

major global conflicts hindered the adoption of an official charter at that time. After the 2nd World War, renewed efforts were made to establish international norms for the protection of children's rights. These efforts were primarily driven by Poland, which in 1978 presented a proposal drawing inspiration from the previous declarations on the subject. This proposal was submitted to the Commission on Human Rights, which then forwarded it to all member states and multilateral organizations through the UNSG.

Despite this progress, various concerns were raised, including its disproportionate focus on socio-economic and political rights while largely neglecting civil rights. Furthermore, it failed to address key issues such as the protection of children affected from armed conflicts, the rights of indigenous and minority children, and matters relating to juvenile justice. At the same time, other major international human rights instruments, including the ICCPR and the ICESCR, were being established.[6] Ultimately, these efforts culminated in the adoption of the Convention on the Rights of the Child in 1989.

The new convention was structured similarly to existing human rights treaties, with clearly defined rights and obligations. It ensured that all children, regardless of age, gender, nationality, disability, or ethnicity, would be granted equal rights and protections. To oversee compliance, the "Committee on the Rights of the Child" was created, comprising representatives from state parties and intergovernmental organizations such as the International Labour Organization (ILO), UNICEF, and the World Health Organization (WHO). This committee functioned based on consensus. Additionally, optional protocols were introduced to address critical concerns such as child trafficking, military conflict, and child pornography. These issues were further regulated through the establishment of a permanent "Child Complaint Forum."

Despite its comprehensive nature, the convention did not fully explore fundamental questions regarding childhood development, which were later addressed in separate discussions. Additionally, due to the lack of complete consensus among member states, several important aspects were left out of the convention. Some of the most debated issues included the appropriate legal age for marriage, the treatment of juvenile offenders within the legal system,

21, 43.

[6] International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171; International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3.

the provisions for temporary care of children, and the procedures for adoption on which the response of NGOs were disregarded. In response to their concerns being overlooked, NGOs took the initiative to establish the "NGO Ad Hoc Group on Convention on the Rights of the Child" in 1983 to advocate for these matters.

Core Principles of the Convention

The CRC establishes a binding obligation on states to protect children's positive rights while ensuring that their negative rights are not violated. This requires governments to enact and enforce legislative, administrative, and other measures to effectively implement the principles of the convention. The CRC also grants children several entitlements that promote their dignity and ensure their participation in decision-making processes that affect them. The expert committee overseeing the CRC has identified four overarching principles that form the foundation of the treaty: the principle of non-discrimination, the best interests of the child, the right to life and development, and the right to be heard.[7]

Articles 2 through 44 of the convention define substantive rights, which are categorized into three main groups. The first category consists of universal human rights, which include both first-generation rights (civil and political rights) and second-generation rights (social, economic, and cultural rights). The second category encompasses rights that are specific to children, particularly those ensuring deinstitutionalization and appropriate care in cases of adoption. The third category focuses on the rights of children requiring special protection, such as refugee children, those with disabilities, those affected by armed conflict, and children from minority communities.

Assessment and Monitoring Mechanism

The monitoring and enforcement of children's rights under the CRC are carried out by the Child Rights Committee.[8] The convention authorizes the formation of this committee, which is responsible for overseeing administrative tasks, monitoring compliance, and addressing quasi-legislative matters related to children's rights. The committee operates under the Office

[7] UN Committee on the Rights of the Child, 'General Comment No 5 (2003): General Measures of Implementation of the Convention on the Rights of the Child' (27 November 2003) UN Doc CRC/GC/2003/5, para 12.
[8] Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3, art 43(1).

of the Commissioner for Human Rights and consists of ten specialized experts.[9] It is one of nine human rights treaty bodies responsible for ensuring compliance with international legal standards.

A key responsibility of the committee is to assess the implementation of the CRC by state parties. Newly ratifying states are required to submit an initial compliance report within two years.[10] Following this, all state parties must submit periodic reports every five years, detailing the measures they have taken to uphold children's rights. The committee collaborates closely with NGOs working in the field of child rights and holds preparatory meetings to draft questions for sessions with state representatives. In addition to these reports, the committee also gathers information from Children's Rights commissioners and UN organizations such as UNICEF to verify compliance with the CRC.

One of the key features of the convention is its recognition of children as active participants in the protection of their own rights. Under the CRC, children are granted the ability to file confidential complaints with the Child Rights Committee if their rights are violated.[11] These complaints are reviewed by the committee, and appropriate actions are taken based on the findings. After each session or meeting, the committee issues concluding observations, which summarize the discussions, highlight key concerns, and outline a policy framework for future improvements.

In addition to overseeing compliance, the committee also works to foster greater awareness and understanding of children's rights by engaging with state parties, NGOs, and international organizations. The convention, through its protocols and monitoring mechanisms, seeks to ensure that all children, regardless of their background, enjoy the rights and protections necessary for their well-being and development.

Measures for Protection of Child Rights in India

Article 15(3) of the Constitution of India[12] which is part of the provision of prohibition of

[9] Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3, art 43(2).
[10] Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3, art 44(1)(a).
[11] Optional Protocol to the Convention on the Rights of the Child on a communications procedure (OPIC) Article 5.
[12] The Constitution of India, 1950 art 15(3).

discrimination provides that "Nothing in this article shall prevent the State from making any special provision for women and children" emphasising the resolve to provide special protection to Children.

India was among the pioneering nations to officially endorse the Child Rights Convention (CRC) and has consistently aligned its policies with the standards set by the CRC Committee. The country has implemented several legal frameworks to uphold child rights, seeking support from various government ministries, state authorities, international organizations, non-governmental bodies, subject-matter experts, and academic institutions. Additionally, India has ratified optional protocols introduced by international panels, further reinforcing its commitment to child welfare. The government, along with different ministries, has taken proactive measures to ensure a secure and nurturing environment for children while promoting the deinstitutionalization process.

Following the CRC's recommendations, India established the National Commission for Protection of Child Rights (NCPCR) in 2007, pursuant to the Commissions for Protection of Child Rights Act, 2005[13]. This legislation also mandates the formation of Sub-National Commissions and Children's Courts at the state level. Numerous commissions have already been established across various states, with many actively working to safeguard and promote children's rights.

India's approach to CRC implementation is grounded in the core principles of interdependence, indivisibility, inviolability, mutual reinforcement, and universality. The government ensures that children actively participate in decision-making processes and that their voices and concerns are accurately represented. In collaboration with the CRC Committee, the government has also introduced a toll-free emergency helpline dedicated to addressing child-related distress situations.

As part of its efforts, the government launched the Integrated Child Protection Scheme (ICPS) alongside the National Commission for Protection of Child Rights.[14] The primary objective of the ICPS is to protect children's rights while prioritizing their best interests. This initiative is particularly focused on vulnerable children, including those from minority or indigenous

[13] Commissions for Protection of Child Rights Act, 2005 (4 of 2006).
[14] Ministry of Women and Child Development, Government of India, Integrated Child Protection Scheme: A Centrally Sponsored Scheme for Child Protection Services.

communities, children affected by armed conflict, those with disabilities, orphans, and other at-risk groups. By implementing these measures, India aims to strengthen its child protection mechanisms and promote an inclusive, secure, and development-focused environment for every child.

Recognition of issue of Deinstitutionalisation under International Law

A comprehensive understanding of deinstitutionalization can be achieved by exploring the concept of childhood. Childhood represents a developmental stage during which an individual is regarded as a child and requires care, support, and protection. This stage is shaped by societal norms and evolves over time. The perception of childhood has significantly changed, particularly during the Industrial Revolution, through extensive scholarly research and case studies that analyze factors such as age, gender, socioeconomic conditions, and ethnic identity.

Institutional care was originally established to cater to children with disabilities and those who did not conform to societal norms. Over time, its scope expanded to include orphans and juvenile delinquents. Since the 1940s, researchers have argued that institutionalization has detrimental effects on a child's growth and overall development. Children placed in institutions frequently encounter developmental challenges across various domains. Institutional settings often cause physical, psychological, and emotional distress. When developmental factors and behavioural aspects are considered, alternative care is generally more cost-effective compared to institutional care.

Alternative Care

Children should ideally receive guidance and upbringing from their parents for their holistic development. Under the CRC, parents are recognized as right-holders and are entitled to support from the government in fulfilling their responsibilities.[15] They also have the right to provide essential advice and guidance to their children.

The core principles of alternative care include ensuring the child remains within their original community whenever possible, protecting children from abuse, neglect, and exploitation, recognizing the valuable role of extended family members and other caregivers and using

[15] Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3, art 5.

institutional care only as a last resort when no viable alternatives exist.[16][17]

In 2009, the United Nations adopted the Guidelines for the Alternative Care of Children. These guidelines integrate principles from the CRC, UDHR, and other region-specific child rights frameworks. Under the Guidelines, before institutionalizing a child, every effort should be made to provide alternative care. The guidelines for alternative care have been established to systematically reduce reliance on institutionalization while ensuring child welfare.

It emphasised family-based care while prioritizing the "best interests of the child." Institutions should only be used as a last resort when no appropriate family-based solution is available. Governments are responsible for implementing policies that enhance child welfare and social protection. Furthermore, they must take all necessary steps to help children remain within their families, as emphasized in the CRC's preamble.[18]

The guidelines recognize both formal and informal types of alternative care, including kinship care, foster care, supervised independent living, and residential care, which should only be considered when all other options are exhausted.

Best Interests of the Child

The principle of "best interests" serves as a universal standard in child rights discussions. Article 3 of the CRC[19] formally establishes this doctrine, although it took the committee nearly 20 years to develop a comprehensive interpretation of the concept. The principle dictates that any decision affecting a child—whether made by public institutions, private entities, or legal authorities—must prioritize the child's well-being and protection. It extends to ensuring the child's holistic development and upholding all rights enshrined in the convention. Governments are required to enact appropriate legal and administrative measures to safeguard children's interests.

[16] UN General Assembly, 'Guidelines for the Alternative Care of Children' UNGA Res 64/142 (24 February 2010) UN Doc A/RES/64/142, para 3.
[17] UN Human Rights Council, 'Guidelines for the Alternative Care of Children' (15 June 2009) UN Doc A/HRC/11/L.13, para VI.62.
[18] Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3, pmbl.
[19] Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3, art 23.

The 14th Committee on the Rights of the Child[20] provided additional guidelines on this principle, emphasizing that determining the "best interests" requires evaluating multiple factors holistically rather than hierarchically. The recommendations highlight the necessity of considering the overall development of the child, along with the conditions under which alternative care may be appropriate. They also reinforce the importance of safeguarding children, regardless of their background, ethnicity, or social status.

The report suggests that prioritizing family care while promoting access to healthcare, education, identity, and religious freedoms is the most effective way to implement the "best interests of the child" principle. A structured list of considerations is provided for assessing a child's best interests, including their overall well-being, sense of identity, presence of any disabilities, physical and mental health, education, safety, and vulnerability.[21] Additionally, the child's own views and cultural identity, national origin, and familial ties must be taken into account.

However, UNICEF's assessments indicate that approximately 145 million children worldwide have lost at least one parent.[22] Additionally, around two million children are currently living in institutional care[23], with 80% of them being raised by a single parent.[24] The predominant causes of this situation include poverty, natural disasters, illness, armed conflict, discrimination, and disability.

Comparative International Practice in Deinstitutionalisation

The debate on institutional versus family-based care is not unique to India. Several jurisdictions have undertaken structural reform of their childcare systems, offering useful points of comparison and instructive lessons for policy design.

[20] UN Committee on the Rights of the Child, 'General Comment No 14 (2013): On the Right of the Child to Have His or Her Best Interests Taken as a Primary Consideration (art 3, para 1)' UN Doc CRC/C/GC/14 (29 May 2013).
[21] UN Committee on the Rights of the Child, 'General Comment No 14 (2013) on the Right of the Child to Have His or Her Best Interests Taken as a Primary Consideration' (29 May 2013) UN Doc CRC/C/GC/14, para 52.
[22] Nicole Petrowski, Claudia Cappa and Peter Gross, 'Estimating the Number of Children in Formal Alternative Care: Challenges and Results' (2017) 70 Child Abuse & Neglect 388.
[23] UNICEF, 'Children in alternative care' (UNICEF Data, 1 July 2026) <https://data.unicef.org/topic/child-protection/children-alternative-care/> accessed 9 September 2026.
[24] Save the Children, Keeping Children Out of Harmful Institutions: Why We Should be Investing in Family-Based Care (Save the Children 2009).

The European Experience

Beginning in the early 2000s, the European Union and allied bodies such as UNICEF and the Council of Europe launched a coordinated push to move children out of large residential institutions across Central and Eastern Europe, most notably in Romania and Bulgaria, where post-communist institutional systems had housed disproportionately high numbers of children.[25] Reforms combined moratoria on new admissions of children under three, investment in foster care and small group homes, and the phased closure of the largest institutions. Evaluations of these reforms found improved developmental outcomes for children moved into family-based settings, though implementation was uneven and often outpaced the availability of trained foster carers, resulting in some children being shifted between institutions rather than genuinely reintegrated.[26] This underscores a point equally relevant to India: legal reform without adequate investment in the alternative-care workforce risks becoming reform on paper only.

The United States Model

The United States followed a different model, built around a formalised foster care system regulated at the federal and state level, with statutory timelines for family reunification or, failing that, termination of parental rights and adoption. Federal legislation such as the Adoption and Safe Families Act imposed strict permanency timelines intended to prevent children from drifting indefinitely through the system.[27] While this model demonstrates the value of enforceable timeframes and independent judicial review of placement decisions, it has also been criticised for disproportionately removing children from low-income and minority families. Thus, even when the state intervention took place as a protective measure over-intrusion became a driver of family separation putting children under more risk than they would have faced in care of their families.[28]

Read together, these experiences suggest that successful deinstitutionalisation depends on more than a stated legal preference for family-based care. It requires phased moratoria on new institutional admissions, sustained investment in foster care recruitment and training, statutory

[25] Andy Guth, 'The Child Protection Reform Process in Romania and Bulgaria: A Comparative Approach' (Better Care Network, 2010).
[26] European Roma Rights Centre, Blighted Lives: Romani Children in State Care (ERRC 2021).
[27] Adoption and Safe Families Act of 1997, Pub L No 105-89, 111 Stat 2115 (1997).
[28] Dorothy E Roberts, 'Child Welfare and Civil Rights' (2003) 2003 University of Illinois Law Review 171.

timelines for reunification or alternative permanency, and independent oversight to prevent both indefinite institutionalisation and unwarranted family separation. India's own reforms, discussed in the following sections, can be evaluated against this comparative benchmark.

Challenges of institutionalization in India

One of the primary concerns surrounding deinstitutionalization in India is that most children in institutions are not orphans but rather those abandoned due to poverty, lack of food, clothing, and education. Ensuring their well-being, access to healthcare, and opportunities for development remains a significant challenge. Further, the threat of institutionalisation in India is faced by Juveniles in Conflict with the law.

Child rights in India stem primarily from the Constitution, which guarantees fundamental rights such as life, liberty, education, and health.[29] Various legislations provide additional protection, ensuring the dignity and freedom of children while enabling legal recourse against exploitation, abuse, and neglect. Specific laws focus on the rights of vulnerable children, especially girls, with child protection commissions and NGOs playing crucial roles in safeguarding child welfare. The media also serves as an important watchdog in this regard.

However, despite these safeguards, many children in institutions face heightened risks due to social stigmas, violence, sexual abuse and economic hardship. Further, they face the issue of a lack of holistic development and often fail to properly integrate into societies. Some children are placed in care facilities following migration, family illness, or separation, while others move to urban centres for educational opportunities.

The Juvenile Justice Act[30] introduced institutional care to support destitute children and orphans, addressing basic needs and social integration.[31] It primarily assists children in conflict with the law or those abandoned and mandates periodic evaluations of juvenile homes to improve policy implementation. While the act promotes deinstitutionalization through foster care programs, family reunification, and rehabilitation, challenges remain, including poorly maintained facilities, inadequate staffing, and insufficient monitoring mechanisms.[32] The lack

[29] The Constitution of India, 1950 arts 21, 21A.
[30] Juvenile Justice (Care and Protection of Children) Act, 2015 (2 of 2016).
[31] Juvenile Justice (Care and Protection of Children) Act, 2015 (2 of 2016) s 2(14).
[32] Ministry of Women and Child Development, Government of India, Report of the Committee for Analysing Data of Mapping and Review Exercise of Child Care Institutions under the Juvenile Justice (Care and Protection of Children) Act, 2015 and Other Homes, vol 1 (2018).

of proper oversight leaves institutionalized children vulnerable to external influences, loss of personal identity, and potential criminal involvement.

Judicial Recognition of Child Rights

The Indian judiciary has played a pivotal role in advancing child rights and human rights, aligning with international conventions and treaties. The principle of last resort was recognized in *Jose Maveli v. State of Kerala*[33], where the court placed children under institutional care only until their father was located. This judgment reinforced the best interest doctrine enshrined in Article 3 of the UN Convention on the Rights of the Child. Furthermore, the ruling reaffirmed that confinement of children within institutions should be prevented under the Juvenile Justice Act, ensuring that institutional care remains a last resort.

Indian courts have addressed institutional child welfare in several other significant proceedings. In *Sheela Barse v. Union of India*[34], the Supreme Court directed the framing of guidelines for the identification, production, and care of children in observation homes, emphasising that detention conditions must not violate a child's dignity. In *Gaurav Jain v. Union of India*[35], the Court examined the rights of children of sex workers and directed the creation of separate, welfare-oriented institutional arrangements rather than housing such children in conditions resembling remand homes, reiterating that institutional placement must be need-based rather than punitive. More recently, in *Bachpan Bachao Andolan v. Union of India*[36], the Supreme Court directed states to conduct mapping and social audits of Child Care Institutions to identify unregistered or non-compliant homes, reflecting continuing judicial concern over inadequate monitoring.

Empirical assessments reinforce these judicial concerns. Social audits and inspection reports of Child Care Institutions conducted by state child protection authorities have repeatedly flagged deficiencies including insufficient case-work staff, absence of individual care plans, and poor documentation of family-tracing efforts, all of which delay reunification even where it is feasible.[37] The COVID-19 pandemic added further strain: government data recorded a significant rise in the number of children reported as losing one or both parents or a caregiver

[33] *Jose Maveli v State of Kerala* 2007 SCC OnLine Ker 295.
[34] *Sheela Barse v Union of India* (1986) 3 SCC 632.
[35] *Gaurav Jain v Union of India* (1997) 8 SCC 114.
[36] *Bachpan Bachao Andolan v Union of India* (2011) 5 SCC.
[37] *In re: Exploitation of Children in Orphanages in the State of Tamil Nadu v Union of India* (2017) 7 SCC 578.

during 2020-21, prompting welfare schemes such as PM CARES for Children to provide financial and educational support with the explicit objective of keeping such children within family or kinship care rather than institutional settings.[38] However, this also failed with the data in 2026 revealing that the spending dropped to Rs. 87.85 Lakhs in 2024-25 a significant drop from Rs. 15.37 Crores disbursed in 2023-24 with the failure of the government to disburse the existing funds. The pandemic period thus served as an unplanned test of India's deinstitutionalisation commitments, with mixed results across states.

Despite legislative and judicial interventions, state-run institutions remain susceptible to inefficiencies and external threats, highlighting the need for improved oversight, better rehabilitation programs, and stronger community-based alternatives to institutionalization.

DEINSTITUTIONALISATION IS THE RULE, INSTITUTIONALISATION IS THE EXCEPTION

Children have an inherent right to seek shelter with their parents and to be raised in a family that prioritizes their overall well-being. Parents, in turn, hold the responsibility of fostering their child's holistic development in accordance with recognized legal and social standards. The institutionalization of children has profound negative effects on their growth, spanning multiple aspects of development. The consequences of institutional care include deteriorating physical health, stunted brain growth, and inadequate physical development. Additionally, such children often struggle with emotional instability, which can lead to decreased social, cognitive, and behavioral functioning. Extended stays in institutional settings frequently create a sense of alienation, making reintegration into society a significant challenge. As a result, these children may be more prone to engaging in delinquent behavior, criminal activities, experiencing severe depression, and, in extreme cases, contemplating or committing suicide.

Although remaining in an institutional setting might sometimes be deemed the best available option for a child, the decision should be assessed based on the prevailing circumstances, time, and specific facts of the case. Exceptions to this general rule must be adaptable, context-specific, and responsive to contemporary realities. The principle of institutional care as a last resort stems from the UN Guidelines on Alternative Care for Children, which mandate that all possible family-based and community-based care options should be exhausted before a child

[38] Ministry of Women and Child Development, Government of India, PM CARES for Children Scheme (29 May 2021).

is placed in institutional care.[39] Children face varying degrees of risks and vulnerabilities based on their individual circumstances, which necessitate case-specific assessments.

Institutionalization may be considered in cases where a child provides informed consent, provided that the decision aligns with their best interests, long-term welfare, and personal accountability. A comprehensive medical evaluation is required before placement, and continuous care should be ensured during the rehabilitation process. Furthermore, reintegration into society and family life must be facilitated through structured programs. Government agencies and child welfare organizations bear the responsibility of ensuring that children receive the necessary resources and support to navigate these transitions effectively.

This is especially important for those persons in institutions who are already vulnerable due to other reasons such as children with disabilities, whether physical or mental, require special considerations. Similarly, substance abuse is a significant concern. When children are struggling with addiction and their parents lack the financial means for rehabilitation, institutional settings may provide a more structured and supportive environment. If a child's parents themselves suffer from drug dependency, institutional care may become a necessity for the child's protection and well-being. Another category of at-risk children includes recidivists, who repeatedly engage in delinquent behaviour due to a lack of parental supervision and guidance. For such individuals, intensive counselling and therapy, along with placement in specialized facilities, are often the most effective solutions.

Children raised by single parents may also face difficulties in receiving adequate care, as stipulated by international child welfare conventions. Those working long hours may find it increasingly challenging to provide the necessary attention and support their child requires. This issue becomes even more critical when the parent is a mother or when both parents suffer from chronic illnesses. Additionally, domestic violence has severe implications for a child's emotional and cognitive development. Exposure to domestic abuse can significantly hinder a child's ability to form healthy relationships and may increase the likelihood of delinquent behavior. In situations where one or both parents are incarcerated, especially in cases involving serious crimes such as child abuse or sexual offenses against minors, institutionalization may be the only viable alternative to ensure the child's safety and welfare.

[39] UN General Assembly, 'Guidelines for the Alternative Care of Children' UNGA Res 64/142 (24 February 2010) UN Doc A/RES/64/142, para 21.

Thus, institutionalization should only be pursued when it becomes evident that the family structure is incapable of providing a safe and nurturing environment or when the family itself poses a direct threat to the child's well-being. This approach is particularly relevant in cases where the prevailing circumstances expose children to severe harm or vulnerability. Alternative care institutions are authorized to temporarily classify a family as unsuitable if doing so ensures the child's safety and protection. Specialized agencies must conduct thorough assessments of a child's needs by considering inputs from multiple stakeholders, including the child, their parents, extended family, and the larger community.

India's statutory framework has also evolved in this direction. The Juvenile Justice (Care and Protection of Children) Amendment Act, 2021 strengthened institutional oversight and adoption processes envisaged under the principal Act, transferring authority to issue adoption orders from courts to District Magistrates in order to reduce delays, while also tightening eligibility and background-verification requirements for personnel managing Child Care Institutions.[40] The Central Adoption Resource Authority (CARA), the statutory body regulating both in-country and inter-country adoption, works with State Adoption Resource Agencies to maintain a centralised database of adoptable children and prospective adoptive parents, with the explicit goal of reducing the time a child spends in institutional care pending placement.[41] Despite this architecture, the pace of adoption continues to lag behind the number of children legally free for adoption, pointing to persistent gaps between statutory design and on-ground implementation.[42]

To prevent unnecessary institutionalization and improper admissions, additional safeguards should be implemented. These include mandatory counselling for parents and regular evaluations of alternative care arrangements. Through these measures, child welfare authorities can create a system that minimizes reliance on institutional care while prioritizing family-based solutions whenever possible.

Conclusion and Suggestions

The rights of children are fundamental to their growth, development, and overall well-being. Deinstitutionalization, as a global movement, seeks to ensure that children are provided with a

[40] Juvenile Justice (Care and Protection of Children) Amendment Act, 2021 (23 of 2021) s 10.
[41] Central Adoption Resource Authority, Adoption Regulations, 2022, Ministry of Women and Child Development, Government of India.
[42] *Sampurna Behura v Union of India* (2018) 4 SCC 433.

nurturing family environment rather than being placed in institutional care. In India, where a significant number of children in institutional settings are not orphans but rather victims of poverty, abandonment, or familial distress, the transition from institutional care to community-based alternatives presents significant challenges.

Despite constitutional guarantees and extensive legislative frameworks such as the Juvenile Justice Act, the practical implementation of deinstitutionalization faces obstacles, including inadequate rehabilitation programs, poor oversight, and societal stigmas. Judicial interventions have played a pivotal role in reinforcing the principle of institutional care as a last resort, ensuring that children are placed in institutions only when no viable family-based alternative exists. However, systemic inefficiencies continue to persist, underscoring the need for a more comprehensive, child-centric approach to care and protection.

A balanced strategy that prioritizes family reunification, foster care, and community-based solutions must be developed to minimize reliance on institutional settings. This approach should include structured reintegration programs, enhanced support mechanisms for at-risk children, and specialized interventions for vulnerable groups, such as children with disabilities, victims of domestic violence, and those suffering from substance abuse. Moreover, proactive state intervention, in collaboration with NGOs, child rights commissions, and other stakeholders, is essential to ensure that children's rights are safeguarded effectively.

Ultimately, the success of deinstitutionalization in India depends on a multidimensional approach that integrates legal, social, and economic interventions. Strengthening community support networks, improving access to education and healthcare, and fostering greater awareness about the harmful effects of prolonged institutionalization are crucial steps toward achieving this goal. By prioritizing child welfare in policy and practice, India can move toward a future where every child is raised in a secure, nurturing, and empowering environment.

Specific Recommendations

Building on the analysis above, the following specific measures are recommended:

1. Mandate time-bound family tracing and reunification efforts, with documented case files, for every child within a fixed period of admission to a Child Care Institution.

2. Expand foster care and sponsorship schemes with adequate financial support and training

for foster families, rather than treating institutional placement as the default response to family distress.

3. Strengthen the monitoring role of State Commissions for Protection of Child Rights through regular, independent social audits of registered and unregistered institutions alike.[43]

4. Fast-track adoption processing through CARA and State Adoption Resource Agencies to reduce the average duration a legally-free child spends awaiting placement.[44]

5. Integrate poverty-alleviation and family support schemes (housing, healthcare, education subsidies) with child protection services, addressing the socio-economic drivers of abandonment identified throughout this study rather than treating institutionalisation as an isolated child-rights issue.

6. Institute mandatory periodic training for CCI staff and caseworkers on trauma-informed care and the best-interests standard, supported by adequate staffing ratios.

[43] Commissions for Protection of Child Rights Act, 2005 (4 of 2006) s. 17.
[44] Juvenile Justice (Care and Protection of Children) Act, 2015 (2 of 2016) s. 68.