

RIGHTS OF CHILDREN IN THE TIME OF COVID-19

Stakeholder Specific Recommendations

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Stakeholder Specific Recommendations

I. Recommendations for the Judiciary

1.1. Hon'ble Supreme Court of India

(i) The scope of *In re: Contagion of COVID-19 Virus in Children Protection Homes*, Suo Motu Writ Petition (Civil) No.4 of 2020, should be enlarged to cover all issues affecting fundamental rights of children in the time of pandemic.

(ii) An amicus curiae or a Court appointed Child Rights Commissioner on the lines of commissioners in the *Right to Food case* should be appointed to assist the Hon'ble Supreme Court in these proceedings. Such *amicus curiae* or Child Rights Commissioner should be directed to receive and consider representations and reports from various subject experts and organisations and individuals working in the area of child rights, including those who work in after care, and submit periodic reports with recommendation before Hon'ble Supreme Court for consideration.

(iii) *In Re: Alarming Rise in the number of reported child rape incidents*, Suo Motu Writ Petition No.1 of 2019 should be taken up for determining compliance with order dated 25.07.2019 regarding the creation of courts dedicated to hearing only POCSO cases. Status reports may be called for from States and necessary orders may be passed to ensure that the said order is given effect to at the earliest.

(iv) Considering the extra-ordinary and unprecedented situation created on account of the pandemic, the Hon'ble Supreme Court should put in place an online mechanism, through itself or through the National Legal Services Authority, (NALSA), to enable citizens to approach the Hon'ble Supreme Court without aid and assistance of an advocate or an advocate on record in matters pertaining to public interest. Existing rules governing public interest litigation should be modified accordingly or be put at abeyance. This will ensure easy access to justice for citizens of India in matters involving public interest, including those of children.

1.2. The High Courts

(i) In suo motu cases initiated by High Courts in compliance of directions of the Supreme Court in *Sampurna Behura v. Union of India*, (2018) 2 SCALE 209, reports should be called for in the context of Covid-19 from the *amicus curiae* appointed in those cases and orders should be passed to address emerging issues and to protect various legal and fundamental rights of children.

(ii) Bottlenecks and procedural aspects pertaining to functioning of JJBs, CWCs, Children Courts, Courts of Session and the High Court need to be resolved by the High Court either by issuing judicial directions or by issuing appropriate orders on the administrative side.

(iii) The High Courts can monitor compliance with the order of the Supreme Court dated 25/7/2019 in *Suo Moto Writ Petition No.1 of 2019*, both on the judicial side (by expanding the scope of those proceedings initiated as a result of the *Sampurna Behura* directions) or on the administrative side, through the Juvenile Justice Committees.

(iv) The High Court should issue **Standard Operating Procedures for Juvenile Justice Boards and Children's Courts**, on the lines similar to Standard Operating Procedures for the District Judiciary issued by Karnataka High Court¹, for conducting proceedings to ensure the prevention of spread of COVID-19 and also additional guidelines to ensure adherence to child-friendly procedures.

(v) **Instruction to the district judiciary** should be issued, particularly the Special Courts under the POCSO Act, 2012, **to prioritize the cases of serious and heinous crimes against children.**² According to Crime in India, 2018, 90.1% of the trials of crime against children were pending. Further delays will severely impact child victims, and discourage victims and their families from coming forward to report, resulting in impunity for those responsible for violence against children.

(vi) **Practice directions** should be issued **for Magistrates on recording statements of child victims, including those with disability** while ensuring safety and accessibility to persons with disabilities as per Section 12, Rights of Persons with Disabilities Act, 2016; child-friendly atmosphere and adherence to child-friendly procedures. Depending on the case load, the Magistrates may be directed to designate a specific day/days on a weekly basis for the audio-visual recording of statements of child victims under the POCSO Act, 2012. A select number of Magistrates could be assigned, especially in larger metros, to record Section 164 statements of witnesses under the POCSO Act, 2012. Privacy and confidentiality should be maintained at all times, and protocols should specify the process for recording, storing, sharing, and custody of statements of children recorded via video-conference or audio-visual means.

(vii) **Practice directions in the light of COVID-19** should be issued **for Special Courts under the POCSO Act, 2012** for the conduct of trials bearing in mind lockdown restrictions, social distancing requirements, and children's protection needs, including the timely award of interim and final compensation. The directions should also be followed by JJBs while conducting inquiries in cases under the POCSO Act, 2012. The following suggestions may be considered:

1) **Safety measures:** Children and their family members should be provided with user-friendly IEC material about COVID-19 in a language they understand, masks and sanitizers for appearance before the court, by the police, in coordination with the DCPU. Assistance should also be

¹ Standard Operating Procedures for District Judiciary, Karnataka High Court (28.5.2020), Available at: <<http://karnatakajudiciary.kar.nic.in/noticeBoard/Modified-SOP-District-Courts-28052020-v2.pdf>>

² UN Office on Drugs and Crime & UN Development Program, "Ensuring Access to Justice in the context of COVID-19: A Joint Guidance Note by UNODC and UNDP", p.14, available at: <https://www.unodc.org/documents/Advocacy-Section/Ensuring_Access_to_Justice_in_the_Context_of_COVID-191.pdf>

provided for safe transport of children and their families by the police and the DCPU/ District Magistrate (DM).

- 2) **Schedule for POCSO cases:** The Special Court may be instructed to prepare a schedule for hearing POCSO cases and indicate time slots for the examination of child victims and witnesses. The examination-in-chief and cross-examination of a child should be completed on the same day, as far as possible and the child should not be called repeatedly to testify in court.³ Breaks should be allowed, if necessary. Care should be taken to ensure that the child is not kept waiting for lengthy periods of time on the day of the testimony.

3) Adherence to Child Friendly Procedures

- a) Special Courts should ensure that frequent breaks⁴ are given during the examination or cross-examination.
- b) Questions should be routed only through the Special Court⁵ and direct questions by the Prosecutor or defence lawyer should be avoided.⁶
- c) No aggressive questioning or character assassination should be permitted by the Special Court and the dignity of the child should be maintained at all times.⁷ For this purpose, the Special Courts may be instructed to refer to '*Development & Mental Health Implications for Eliciting Evidence under the Protection of Children from Sexual Offences Act, 2012*' -Training Manual for Judicial Personnel' (2019) by Community Child & Adolescent Mental Health Service Project, Department of Child and Adolescent Psychiatry, NIMHANS.
- d) The child should not be exposed to the accused inside or outside the court or via video-conference.⁸
- e) The child should be examined in the presence of a family member, guardian, friend, or relative, in whom the child has trust or confidence.⁹
- f) Assistance of qualified and experienced translators or interpreters should be taken while recording evidence of the child.¹⁰ The Special Courts can seek the directory of experts maintained by the DCPU for this purpose.
- g) Where the child victim is also a child in need of care and protection, the Special Court should ensure that the Child Welfare Committee (CWC) under the Juvenile Justice (Care and Protection of Children) Act, 2015, (JJ Act, 2015) has been informed by the police or SJPU, and a Support Person has been appointed.¹¹
- h) A specific waiting area for children and their families arranged in a manner that adheres to social distancing norms, should be designated within the court complex and this area should be sanitized at regular intervals.
- i) Privacy and confidentiality should be maintained at all times, and protocols need to be developed for the recording, storing, sharing, and custody of audio-visual statements of child victims and witnesses.

³ POCSO Act, 2012, Section 33(5).

⁴ POCSO Act, 2012, Section 33(3).

⁵ POCSO Act, 2012, Section 33(2).

⁶ POCSO Act, 2012, Section 33(2).

⁷ POCSO Act, 2012, Section 33(6).

⁸ POCSO Act, 2012, Section 36(1).

⁹ POCSO Act, 2012, Section 33(4).

¹⁰ POCSO Act, 2012, Section 38(1).

¹¹ POCSO Rules, 2020, Rules 4(4) and 4(8).

- 3) **Disability-sensitive procedures:** The Special Courts should admit the statement of a child with disability recorded under Section 164(5A)(a) Cr.P.C as examination-in-chief.¹² Assistance of a special educator or a person familiar with the manner of communication of children in every case of a child with an intellectual disability, mental retardation, or any other disability.¹³
- 4) **Vulnerable Witness Deposition Complex/Room (VWDC/R):** Wherever VWDC/R exist, administrative staff of VWDC/R may be directed to prepare a schedule that ensures that not more than one child or family is in the deposition room or waiting area at any given point of time. Disinfectants should be used to sanitize the room after each hearing.
- 5) **Representation of informant and presence of PP during bail application:** In accordance with Section 439(1-A), Cr.P.C, all courts should ensure the presence of the informant or a person authorized by them at the time of hearing a bail application under Sections 376(3), 376AB, 376DA, or 376DB of the IPC.¹⁴ Notice of the bail application in such cases should be given to the Public Prosecutor within 15 days of receipt of the notice of such application.¹⁵
- 6) **Compensation:** Upon receiving information about the registration of a FIR under the POCSO Act, 2012, the Special Court should consider passing a direction for interim compensation to meet the needs of the child for relief or rehabilitation and direct its payment from the State Victim Compensation Fund or by the State Government.¹⁶ **Payment of interim compensation should be considered in all pending cases as COVID-19 has placed many child victims and their families/guardians in severe financial and emotional distress.** The Special Court should proactively consider award of final compensation in every case under the POCSO Act, 2012 and state reasons for grant or refusal. A compliance report should be sought from the DLSA and the proceedings should be kept open till such a report is received.¹⁷
- 7) **Ensuring physical distancing and other measures in courts:** Only a limited number of persons should be allowed to enter courtrooms. No one should be permitted to enter without sanitization of hands and wearing masks while also ensuring that the masks are being used throughout. Hand washing units/ sanitizers should be set up outside the courts and everyone should wash their hands before entering the court rooms. The seats/chairs for advocates/ visitors may be removed for the courtrooms or kept at a bare minimum, to ensure lack of crowding and minimize spread of COVID 19 through contamination of surfaces. Measures may also be taken to ensure that there is no crowding in the registry - by promoting e-filing and permitting physical filing only through prior appointment and at a designated time slot. The guidelines issued by the Karnataka High Court can be used as a reference point for the specific measures to be taken for this purpose.¹⁸

¹² Code of Criminal Procedure, 1973, Section 164(5-A)(b).

¹³ POCSO Act, 2012, Section 38.

¹⁴ *Miss G (minor) through her mother v. State of NCT of Delhi*, CrI.M.C. 1474/2020 decided by the Delhi High Court on 14.05.20. *Reena Jha & Anr. v. Union of India & Ors*, W.P.(C) No.5011/2017, decided by the Delhi High Court on 25.11.19.

¹⁵ Section 439(1)(a) second proviso, Cr.P.C.

¹⁶ POCSO Act, 2012, Section 33(8) read with POCSO Rules, 2020, Rules 9(1) and 9(4).

¹⁷ *Gaya Prasad Pal v. State*, CrI. A. 538/2016 Delhi High Court judgment dated 09.12.16.

¹⁸ Standard Operating Procedures for District Judiciary, Karnataka High Court (28.5.2020), Available at: <http://karnatakajudiciary.kar.nic.in/noticeBoard/Modified-SOP-District-Courts-28052020-v2.pdf>

(viii) **Practice directions for JJBs when conducting proceedings through digital/ remote medium** so as to ensure respect for due process, rights of privacy, & data security. (See Section 1.6 on Technology and the Justice System).

1.3. Supreme Court Committee on Juvenile Justice and High Court Committees on Juvenile Justice

(i) The Juvenile Justice Committees of the Supreme Court and the High Courts should **urgently hold regional level review- cum- consultations** with all stakeholders and based on feedback regarding the situation on the ground, concrete stakeholder wise COVID-19 focussed action plans with monitoring indicators and time lines should be arrived. Presence and participation of credible NGOs, professionals and subject experts working on children's issues in the State as well as on COVID-19 should be ensured in the meeting. Children and youth in aftercare (Care Leavers) should also be given an opportunity to share their views at such consultations and encouraged to be part of ongoing monitoring processes at the State level. Such consultations may be done through remote process to minimise the need for travel, reduce costs and advance physical distancing

(ii) The Juvenile Justice Committee of Supreme Court should then hold a **National Review cum-consultation with Juvenile Justice Committees of all High Courts, at which** the presence and participation of credible NGOs, professionals and subject experts working on children issues from all zones of the country should also be ensured.

(iii) All such Review-cum-Consultations should ensure openness and transparency and be conducted in an inclusive, enabling and broad-based manner so as to include voices from the ground.

(iv) Pursuant to the Supreme Court's request to the JJC of all High Courts to ensure due compliance and regular monitoring of implementation (at least once a week) of its order dated 03.04.20 in *Suo Moto Writ Petition (Civil) No. 4 of 2020*, the High Court JJCs may consider **creating a COVID-19 Juvenile Justice Sub-committee**. The Sub-Committee may assist the JJC with the monitoring of compliance of JJBs, CWCs, and the nodal Department responsible for implementation of JJ Act, 2015, with the Supreme Court's directions and the various guidelines issued by the Ministry of Health and Family Welfare, State Department of Health, and the nodal Department. The Sub-Committee may consist of:

- i. a senior Judicial Officer who has experience or is familiar with the working of the Juvenile Justice System.
- ii. one representative of the State Commission for Protection of Child Rights,
- iii. two representatives of two different credible NGOs working on children's issues and familiar with COVID-19,
- iv. one medical expert familiar with COVID-19 management.

An **exclusive email ID** may be created for the Sub-Committee and information may be invited from the general public including children and young people in aftercare, about the state of implementation of the JJ Act, 2015 and the adherence to the COVID-19 guidelines applicable in the State.

(vi) All JJBs, CWCs, Children's Courts, DCPUs and CCI (government run and those run by private organizations) may be instructed to send weekly/fortnightly reports to this Sub-

committee on COVID-19, including the state of compliance, challenges faced, and solutions identified, perhaps according to a common reporting format that may be evolved at State level. The CCIs and DCPUs may submit such reports through the Nodal Department responsible for implementing the JJ Act, 2015 in the State.

(viii) Data about pending cases, stage of inquiry/trial, number of children in CCIs, as well as steps being taken to ensure prevention and control of the spread of COVID-19, family contact, access to rehabilitative services, and restoration measures shall be maintained, and suitable templates and systems for data entry, analysis and reporting may be created for this purpose.

(ix) Based on the reports from the Sub-Committee, the JJC may consider issuing guidelines or the High Court may take judicial notice of lapses in implementation.

1.4. Special Courts under the POCSO Act, 2012

(i) Special Courts under the POCSO Act, 2012 should prioritize the trial of heinous offences under the POCSO Act, 2012.

(ii) Special Courts should adhere to the COVID-19 sensitive child-friendly and disability-sensitive measures suggested in Section 1.2, (vii) above.

1.5 Use of Technology and the Justice System

Even before COVID 19 pandemic, the use of technology at all levels of proceedings had been touted as one of the major reforms to be taken in our justice system. It was thought that this would promote efficiency, reduce costs and make it more accessible.¹⁹ Proceedings through video conferencing is not altogether a novel practice in India. The criminal courts in India have been resorting to this for quite some time now, to both hold trials and for managing remand productions. It appears that, at least in principle, it can be used for any kind of proceeding. The guidelines²⁰ published by the Delhi High Court say that “Video conferencing facilities can be used in all matters including remands, bail applications and in civil and criminal trials where a witness is located intra-state, inter-state, or overseas”. In a variety of circumstances, the Supreme Court has often directed lower courts and tribunals to hold its proceedings through video conferencing, including hearing of cases²¹ and examination of witnesses.²² The Supreme Court has also advocated the widespread use of video conferencing in trials to ensure witness protection and to promote efficiency.²³ Video recording of

¹⁹ Rishi Prakash, ICT in Indian Court Challenges & Solution, 1 (2) International Journal of Internet Computing (IJIC) 21, (2011).

²⁰ Video Conferencing Guidelines Issued by the High Court of Delhi, Available at: <http://www.nja.nic.in/CJ-CM_Resolution/Delhi_HC/Video%20Conferencing%20Guidelines%20issued%20by%20DHC.PDF>

²¹ *M/S. Goel Ganga Developers India v. Union of India & Ors*, Judgment of the Supreme Court dt. 10.8.2018, Available at: <<https://indiankanoon.org/doc/63473709/>>

²² *Asha Ranjan vs State Of Bihar*, Judgment of the Supreme Court dt. 15.2.2017, Available at: <<https://indiankanoon.org/doc/122252422/>>

²³ *Mahendra Chawla & Ors v. Union of India and Ors*, Judgment of the Supreme Court dt. 5.12.2018, Available at: <<https://indiankanoon.org/doc/80302994/>>

Section 164, CrPC statements is already envisaged under the Criminal Procedure Code, especially when it comes to crimes against women and children²⁴ and courts have in the past issued directions to the government to ensure that this is implemented and that the required infrastructure is set up for this purpose.²⁵ While efforts in these directions were slow in the past, COVID -19 induced lockdown has promoted the quick adoption of technology to conduct at least appellate court proceedings and possibly for trial too. The Supreme Court has issued guidelines for this purpose²⁶ and countries around the world are pursuing the option of proceedings through digital means to keep courts functional.²⁷

As much as the use of technology can be a welcome change, it is also important to remember here that there are concerns to be addressed before we rush into transforming judicial proceedings into a digital one. It is crucial to remember that a large number of persons, including lawyers are left outside the sphere of access to the internet.²⁸ Elsewhere, research has confirmed that proceedings conducted entirely through digital mediums raise due process concerns²⁹, especially for the rights of accused persons to have a trial in their presence and to communicate with their attorney during the course of the trial.³⁰ Even in jurisdictions where such proceedings have been in existence for years, scholars have observed that the effect that it has on the rights of the defendant are yet to be fully mapped out by way of empirical observations.³¹ It is thus imperative for us to not pursue video-conferencing or digital proceedings in a rushed manner, without taking into account the full set of impacts that it can have on the rights of the parties in a proceeding and devising solutions to mitigate them, especially since they are being thought of as a long term fixture³² and a judge of the Supreme Court is advocating for its widespread use.³³ With this in mind, the following observations and recommendations are made by looking into both existing sets of guidelines and practices in India, as well as those gathered from other jurisdictions.

²⁴ Doongar Singh vs The State Of Rajasthan, Judgment of the Supreme Court dt. 29.11.2017, Available at: <<https://indiankanoon.org/doc/99075271/>>

²⁵ For instance, the Madras High Court had directed the Government of TN to give effect to the directions of the Supreme Court in *Supra*. See Akshita Saxena, Madras HC Directs State To Implement Audio-Video Recording Of Witness Statements, Live law (2.12.2019), Available at: <<https://www.livelaw.in/news-updates/madras-hc-directs-state-to-implement-audio-video-recording-of-witness-statements-read-order-150349>>

²⁶ *In Re: Guidelines For Court Functioning Through Video Conferencing During Covid-19 Pandemic*, Order of the Supreme Court dated 6.4.2020, Available at: <https://main.sci.gov.in/supremecourt/2020/10853/10853_2020_0_1_21588_Judgement_06-Apr-2020.pdf>

²⁷ Mia Sawart, *How Courts are Navigating the Coronavirus Outbreak*, Al Jazeera (10.4.2020), Available at: <<https://www.aljazeera.com/indepth/features/courts-navigating-coronavirus-outbreak-200405112809135.htm>>

²⁸ Economic Times, *Let Lockdown not grow digital divide*, ET Edit (9.4.2010), Available at: <<https://economictimes.indiatimes.com/blogs/et-editorials/let-lockdown-not-grow-digital-divide/>>

²⁹ Jenni Ward, *Transforming 'Summary Justice' Through Police-led Prosecution and 'Virtual Courts': Is 'Procedural Due Process' Being Undermined?*. 55 (2) British Journal of Criminology 341 (2015)

³⁰ Gerald G. Ashdown and Michael A. Menzel, *The Convenience of the Guillotine?: Video Proceedings in Federal Prosecutions*, 80 Denv. U.L. Rev. 63 (2002)

³¹ C. Wiggins, *Videoconferencing in Criminal Proceedings: Legal and Empirical Issues and Directions for Research*, 28 (2), LAW & POL'Y 212 (2006).

³² Aishwarya Iyer, *Bombay HC considers setting up of video conferencing facilities on long-term basis, requests State Govt to release requisite finances*, Bar & Bench (3.4.2020), Available at: <<https://www.barandbench.com/news/litigation/bombay-hc-notifies-setting-up-of-video-conferencing-facilities-on-permanent-basis-has-requested-state-govt-to-release-requisite-finances>>

³³ Bar & Bench, *Use of technology must be institutionalised even after Lockdown: Justice Chandrachud in video conference with HC judges manning E-committees*, Report Dated 4.4.2020, Available at: <<https://www.barandbench.com/news/use-of-technology-must-be-institutionalised-even-after-lockdown-justice-chandrachud-in-video-conference-with-hc-judges-manning-e-committees>>

(i) Immediate efforts may be put into ensuring that all Section 164 CrPC statements are recorded through audio-visual means for all cases where the child is a victim or a witness. This may be also done through video-conferencing mode so that the need for the physical presence of the child in the courtroom or the chambers of the magistrate can be dispensed with. The recorded video-graph must be kept in the safe custody of the court and should not be ordinarily shared with any other person. Only a transcript of the statement needs to be provided to the investigating officer or the accused.

(ii) It is important to continue to remain mindful about the impact that proceedings through video conferencing can have on the rights of Children in Conflict with Law (CICL), Children in Need of Care and Protection (CNCP,) and child victims. Thus, ensure that the CICL and where applicable the victim is able to effectively communicate with their lawyer (including that they are able to communicate with the lawyer in a confidential manner), as well as the Support Person, especially in the course of trial where witnesses are examined and their statements are recorded.

(iii) The privacy of the victim, CNCP or a CICL must be respected throughout. The proceedings must be held *in camera* and no other persons except who have a defined role in the conduct of the proceedings must be allowed to be in the video conferencing platform through which cases are being conducted.

(iv) Proceedings through video-conferencing comes with the risk that it can be video-recorded by any of the participating parties - either by way of a screen recording or by using a mobile device. In proceedings that are *in camera* special attention needs to be paid to ensure that none of the participating parties are permitted to record the proceedings. This can be achieved by deploying appropriate technology that prevents screen recording and by paying special attention to ensure that no devices are being used to record the proceedings from the screens on which they are being displayed. Persons (especially victims and witnesses) who are making statements through a video-platform must be assured that their privacy is being protected and that the video will remain safe.

(v) Where the proceedings are being officially recorded, it must be kept safe with an access protocol which is limited and tracked. Ordinarily the video-recording (especially those of the witness statements) shall not be shared with the accused and only a transcript shall be made available. Where *due process* demands that the accused have access to the video-recording, a facility may be created for the inspection of the recording in the court premises, by drawing an analogy with the approach taken by the Supreme Court when it comes to sharing of video-evidence that was sensitive in nature.³⁴

(vi) All documents that are in the nature of evidence or official documents shared through a digital medium must be adequately password protected along with sufficient unique markers which will enable the identification of copies. This is crucial to prevent leakages and to enable tracking in case there are leakages.

(vii) Assign a pseudo-identity for each case (which is made known to the PP, the IO, the child's lawyer and/or legal aid counsel and the defence counsel). All references to the case must be made using this pseudo-identity, (including the causelists, etc.)

³⁴ P. Gopalkrishnan @ Dileep vs The State Of Kerala, Judgment of the Supreme Court dated 29.11.2019, Available at: <<https://indiankanoon.org/doc/188011203/>>

(viii) Always bear in mind that persons who are not acquainted with the use of these platforms may find it a novel experience and it will take them time to cope with it. Hence, persons making statements should be given adequate time to familiarise themselves with the use of these platforms.

(ix) While recording statements of witnesses, who are not in the physical presence of the court and are making them through a remote medium, it is important to ensure that they are not in the 'effective control' of the police or any other person and that they are in a position to make a statement free of duress or influence. For the same reasons, accepting a plea of guilt of a CICL or a recording of a statement in the nature of a confession should not be done through a remote process. Likewise, as far as practicable, ensure that the first production of the child is a physical one, so as to ensure that the interaction can be a more direct one enabling more effective communication.

(x) For proceedings before JJBs and CWCs, it is crucial that critical support services to the child such as counselling are also made available on the dates of hearing. When conducting a remote proceeding, it needs to be borne in mind that a counselling session through such platforms may not be as effective as on which is conducted physically. Thus, the inputs from the counsellor may be sought in each case as to whether considering the exigencies of the situation it is possible to have effective counselling through a remote process. Adequate weightage must be given to the opinion of the counsellor on this issue.

(xi) The One Stop Centres ("OSCs") may be equipped with facilities for video conferencing and audio-video recording and may be used as facilities for the vulnerable victims/witnesses to participate in the trial. Pending the creation of such infrastructure, the facilities available at the district centres of the National Informatics Centre can be temporarily augmented for this purpose.

(xii) Considering that resort to technology at this scale in the Judicial process is in its nascent stages in India, public access may be given to information regarding court functioning, number of functional courts and list of judicial officers presiding over these courts or duty roster, matters being heard / daily cause list, proceedings held, matters adjourned, bails granted and rejected, victim compensation status, etc. Such a system should also be complimented by setting up a system to grant permission to NHRI's, academic institutions and civil society organisations engaging with or working with children, women and other especially vulnerable groups and/or undertaking policy research and advocacy to access judicial data on implementation of laws concerning children and other vulnerable groups. This will ensure early identification of gaps and solutions to address them.

II. Recommendations for the Central Government

2.1. Ministry of Finance

(i) Increase in the revenue sharing pattern from Centre to State: Since the country has observed lockdown for more than two and a half months, it has severely impacted the economy. States have struggled a great deal and especially the States which do not have larger revenue generation capacities. With migrants returning to their native states, livelihood generation, poverty alleviation, public health facilities and social security for vulnerable groups needs to be the prime focus. States have a greater

responsibility in ensuring the access, affordability and availability of such services. Since it is the State Governments that are at the forefront of dealing with the crisis, it is crucial that the Union Government shares a much bigger quantum of resources with the States compared to what it did before the pandemic. Therefore, the vertical distribution of tax proceeds should go up to 50 per cent (as demanded by many State governments), from the present 41 per cent by the 15th Finance Commission (FC) for Financial Year (FY) 2020-21.³⁵

(ii) Increase Allocation for Child Protection Schemes: The share of children in the Union Budget has been of great concern over the last few years. In the year 2020-21 Union Budget, children received a mere 3.16 per cent of the total financial resources.³⁶ Within the Budget for Children, child protection has been one of the least financed sectors among all sectors like education, health, development, nutrition etc. The share of child protection in the Union Budget 2020-21 stands at 0.06 per cent, which is a reduced share compared to 0.07 per cent in 2019-20.³⁷ Despite India's commitment to SDG 16.2, allocation for the umbrella Integrated Child Protection Scheme (ICPS) remains unchanged at INR 1500 crore.³⁸ Post COVID-19, the added requirements of hygiene and health, infrastructural requirements of adding technology as a part of everyday functioning among many other new requirements need additional resources. **Thus, keeping the existing financial norms as well as new requirements necessary to ensure the effective functioning of the child protection system, the allocation for child protection schemes need to be increased exponentially.**

(iii) Child Protection Expenditure must be prioritised: COVID-19 has amplified the already unstable economic condition of the country pushing the government to prioritise its expenditure. Due to the resource crunch, the government has identified few priority services/Departments like food, health, petroleum, etc., which will continue to receive the expenditure budget as planned, whereas other sectors or departments may observe budget cuts in the present quarter. As per the priorities, the departments/ministries have been categorised between A, B & C. Those ministries falling under the category 'A' will continue to receive funds as planned, whereas the ministries under 'B' and 'C' will observe budget cuts. The Ministry of Women and Child Development is the nodal ministry for child protection programmes and schemes. The Ministry has been put under the Category 'C'.³⁹ Such categorisation will effectively regulate the government expenditure and fix the Quarterly Expenditure Plan (QEP) or Monthly Expenditure Plan (MEP) for such ministries/departments. **In the light of rising child protection concerns, it is quintessential for the government to prioritise and address child protection issues. Accordingly, the nodal ministry governing child protection i.e. the Ministry of Women and Child Development must be upgraded from Category 'C' to Category 'A' and the expenditures related to child protection must not be diverted to any other expenditure head.**

³⁵ "Numbers On the Edge: Assessing India's Fiscal Response to COVID-19"; Centre for Budget and Governance Accountability (CBGA); <http://www.cbgaindia.org/wp-content/uploads/2020/05/Numbers-on-the-Edge-Indias-Fiscal-Response-to-COVID-19.pdf>

³⁶ "Union Budget 2020-21: Together with All, Development for All, the Trust for All (Except Children)"; HAQ: Centre for Child Rights; <https://www.haqcrc.org/wp-content/uploads/2020/02/haq-2020-21-budget-for-children-analysis.pdf>

³⁷ *Ibid*

³⁸ *Ibid*

³⁹ Office Memorandum, F. No. 12(13)-B(W&M)/2020; Department of Economic Affairs (Budget Division), Ministry of Finance; <https://www.dea.gov.in/sites/default/files/Modified%20Cash%20Management%20System%20-%20guidelines%20OM%20dated%208.4.2020.pdf>

2.2. Ministry of Women and Child Development

(i) **Urgent need for enhancing budgetary allocation:**

- a. by **increasing the ratio of Central-State fund support for the Juvenile Justice Fund.**
- b. by **increasing the Central Government's contribution to the Sponsorship, Foster Care and Aftercare Fund** established by State Child Protection Societies.
- c. for **Childline** keeping in view that they are frontline workers who are on ground for reaching out to children and they are incurring additional expenses on masks and sanitizers for ensuring safety.
- d. **for additional funding to support and** strengthen community based child protection mechanisms and community based child protection services.
- e. for ensuring provision of PPE; and for **extending health insurance coverage and hazard pay** to all those who are involved in core child protection services, including childline workers and staff of District Child Protection Units, staff of CCIs
- f. for **Child Care Institutions (CCIs)** for provision of additional items such as sanitization supplies, protective gear, medication, additional nutrition to boost immunity, additional clothing and bedding; capital costs to add infrastructure and equipment to ensure health and safety of children.
- g. for **infrastructural modifications, PPE, and other materials required** for courts, Juvenile Justice Boards (JJBs), Child Welfare Committees (CWC), District Child Protection Units (DCPUs), Special Juvenile Police Units, police stations, and Childline to meet the physical distancing requirement and safety protocols.

(ii) The Ministry of Women and Child Development should notify **Model Sponsorship Guidelines** under the JJ Act, 2015 with specific consideration for children, especially those affected by COVID-19. Similarly, the Ministry should notify **Model Aftercare Guidelines under the JJ Act, 2015**, with specific consideration for children affected by COVID-19.

(iii) **One Stop 'Centres' (OSC)** should be set up in every district for reporting/hearings/trials of specific crimes that are on the rise during COVID-19. States should urgently send proposals to the MWCD for setting up OSCs. Existing **one stop centres should be upgraded** and equipped to enable the lodging of FIRs, conduct of medical examination, and the audio-visual recording of statements by the police, while ensuring social distancing. They should also provide facilities for safe video link platforms for recording of statements under Section 164, Cr.P.C, and for attending hearings and trials..

(iv) **Data** should be collected and placed in the public domain on the status of children in all CCIs, children restored back to their families, children leaving care at the age of 18 years and measures taken by the CCIs for dealing with the challenges of COVID-19, number of children who have been tested for COVID-19, and so also the number who tested positive, recovered and deceased.

(v) A detailed **SOP for functioning of CCIs during the pandemic** with physical distancing norms must be issued for all CCIs. The SOP should include the directions passed by the Supreme Court of India in In Re: Contagion of COVID-19 in Child Protection Homes, Suo Moto WP(C) No. 4/2020 passed on 03.04.2020 and 11.04.2020.

(vi) **Core Child protection services, service providers and authorities** (Childline, JJBs, CWCs, DCPUs, SJPU and police, Child Care Institutions, lawyers, frontline workers in CSOs/NGOs,

counsellors) and Anganwadi workers **must be declared as 'essential'** during any lockdown or period of restrictions. They must be provided with all necessary protection, payment, training, supervision and other needs required to function as frontline workers, during the COVID pandemic and in the post pandemic recovery stage.

(viii) Ensure **timely Take Home Ration (THR)** to pregnant and lactating mothers and children under 3 years, who have returned to their villages, but not enrolled in the AWCs. Ensure cooked food/dry provisions to 3-6 year old children who have returned to villages, but not enrolled in the AWC.

(ix) **Notify guidelines and safety protocols to reopen crèches** (under National Crèche Scheme; and other laws and schemes, such as the MNREGA, Building and Other Construction Workers Act Mines Act, Plantations Labour Act Act) so that children are protected and cared for, as poor women workers rejoin the workforce..

(x) **Prioritize the creation of a cadre of para mental health workers**, trained in giving psychological first aid, and identify severity, which could be reported to specialists. Make mental health services available and accessible to all children.

(xi) Notify **safety guidelines and work with the Ministry of Labour, and relevant state authorities to provide Creches, Childcare and Parental Leave for working parents**, especially working mothers in the unorganised sector, so that due attention through crèche and daycare facilities is given, to ensure young children remain protected and cared for, as poor families rejoin economic activities for their incomes and sustenance.

xii) Notify **guidelines for supporting care leavers** whose vulnerability has been compounded by the COVID-19 crisis to prevent homelessness and unemployment.

2.3. Ministry of Human Resource Development

(i) Additional budgetary allocation is necessary to **prepare schools** for classroom teaching while ensuring physical distancing, filling of all vacancies, and provision of adequate facilities for handwashing, sanitation, and safe drinking water.

(ii) Issue orders to **re-start the MDMS** so as to ensure provision of one hot cooked meal daily or dry rations to every child, including children who have migrated, during school closure on account of the pandemic.

(iii) Issue orders to **provide sufficient quantities of dry rations or hot cooked meals to children who have migrated** to villages with their parents, even if they are not enrolled as students of that school. Ensure that sufficient quantities of dry rations (food grains, eggs, milk powder and medicines) and take home rations are made available to children under three years, as well as pregnant and lactating women, irrespective of registration with anganwadis.

(iv) The State Department of Education, State Food Commission, SMCs and village vigilance committees should be instructed to **proactively monitor the delivery of services** on the ground.

(v) Revise existing **data on out of school children** to factor in the current status of children who have dropped out of school to join the informal labour force and children who have returned to their home states and are out of school, through a rapid survey of **(reverse) migrant population movement**.

(vi) Schools must be instructed to **track all enrolled children, especially girls, transgender children, children with physical and intellectual disabilities, to ensure that no child drops out** and is in school once they open.

(vii) Educational materials should be provided along with relief and dry food packages.

(viii) Inclusive learning solutions are an imperative for the most vulnerable and marginalized children to **bridge the digital divides** in our society.

(ix) Staggered reopening of schools should be considered, in view of physical distancing and COVID-19 related protocols.

(x) The **academic year should be re-organized** as a number of States may have staggered opening of schools. For students up to 9th standard, there need not be an examination - students can be assessed according to their academic and extra curricular performance throughout the year.

(xi) Modifications should be made to ensure compliance with COVID-19 related protocols before schools reopen. Schools used for quarantine should be disinfected properly before they are reopened.

(xii) Education of children and young persons within the JJ System must be continued. Encourage care leavers to continue with their higher education by providing scholarships and freships in colleges and other training institutions

(xiii) Vocational skill and entrepreneurship training programmes should be extended to include children between 15-18 years and all available platforms should be used to maximise reach.

2.4. Ministry of Health and Family Welfare

(i) Universalise health and nutrition services for all children without attaching any conditionality or eligibility requirements to it. Ensure equity and inclusion of all children irrespective of gender, caste, class, ethnicity, rural-urban-tribal geographies, disability conditions, and other differences.

(ii) Issue guidelines to ensure routine immunisation and other essential child health services are not disrupted. Such guidelines should cover immunisation and other essential child health services in ICDS, schools, and quarantine facilities.

(iii) Urgently restart monitoring of growth and tracking of malnourished and SAM (Severe Acute Malnutrition) children, provide additional nutrition and energy DENSE food for severely

malnourished children, supplementary nutrition/mid-day meals for children, pregnant and lactating mothers and adolescent girls.

(iv) Issue guidelines, training and safety protocols in order to make mental health services available and accessible to all children and youth. Create a cadre of para mental health workers at district level, trained in giving emotional first aid, and identify severity, which could be reported to specialists. Make mental health services available and accessible to all children.⁴⁰

(v) **Ensure health and nutrition requirements of adolescent girls** through regular supply of iron supplements, RCH services, menstrual hygiene products, and supplementary nutrition through ICDS.

(vi) No child victim of sexual offences should be denied free first aid or medical treatment, including medical termination of pregnancy (MTP) in accordance with the MTP Act, 1971. No legal or magisterial requisition or other documentation should be demanded for rendering emergency medical care in cases under POCSO Act, 2012.⁴¹ If the pregnancy exceeds 20 weeks, legal aid should be provided to the child to petition the High Court for termination.

(vii) Ensure the **right to food** and adequate nutrition, health, care and protection **of children without parental care, living in child care institutions, young persons living in aftercare homes or independently and children in street situations** by linking them with existing mechanisms or creation of newer channels.

(viii) Issue **guidelines for establishment of Quarantine centres and Isolation centres within hospitals in every District specifically designed to serve children in the JJ System** (children in need of care and protection and children alleged or found to be in conflict with law).

(ix) Issue guidelines and IEC materials for Child Care Institutions and other residential facilities for children in the context of COVID-19.

2.5. Ministry of Home Affairs

(i) Core child protection services, service providers and authorities (Childline, JJBs, CWCs, DCPUs, SJPU and police, Child Care Institutions, lawyers, frontline workers in CSOs/NGOs, counsellors) and Anganwadi workers must be declared as 'essential' during any lockdown or period of restrictions.

(ii) An SOP focused on child protection concerns should be issued by the Ministry of Home Affairs for Capacity building of first responders in handling different situations of children facing violence & social stigma, including police officials and social workers/para legal volunteers working at police stations, focused on situations arising due to COVID-1

⁴⁰ For example, the Delhi Commission for Protection of Child Rights had put together a panel of counselors from NGOs who provided phone counselling through the lockdown in Delhi.

⁴¹ POCSO Rules, Rule 6(3) states "No medical practitioner, hospital or other medical facility center rendering emergency medical care to a child shall demand any legal or magisterial requisition or other documentation as a prerequisite to rendering such care."

(iii) The Ministry of Home Affairs should set up a Central Clearing Unit in partnership with the MWCD, where all instances of violation of online safety of children can be reported and duly forwarded to the concerned investigating agency and other supporting agencies in order to ensure the response is victim-centric and holistic. The existing cybercrime reporting portal (cybercrime.gov.in) must be revamped in line with best practices of global online reporting portals to function as a viable option for remote reporting of cybercrimes. It needs to make provision for:

- anonymous reporting
- a simple straightforward reporting format available in multiple languages
- increased transparency in how reports are processed; and
- options to report via telephone & sms services.

(iv) MHA must launch campaigns for greater awareness of the reporting system as well as online risks such as online child sexual abuse material, online sexual abuse, grooming, and unsafe sharing of private information & content.

(v) The guidelines issued under Section 12 of the Disaster Management Act, 2005 (which forms the legal basis for the lock down and COVID response management) should specifically cover measures to be taken to ensure child protection.

2.6 Ministry of Electronics and Information Technology (MEITY)

(i) As children will now be compelled to sign up and access more and more online platforms, a protocol needs to be created in line with global standards & best practices such as GDPR that ensures that:

- any collection of data from children under the age of 13 is strictly prohibited.
- While collecting data from a child above 13 years of age, explicit consent must be sought in simple understandable language.
- The processing of the personal data must be allowed only when a user is at least 18 years old.
- If a child is under 18 years of age, companies must obtain consent from the child's parent or legal guardian to process their data.
- It must be ensured that children have rights over their personal data. These include the rights to access their personal data; request rectification; object to processing and have their personal data erased.

(ii) A protocol for basic minimum cyber security measures for all platforms must be developed, specifically for children. The protocol must cover aspects such as ensuring usage of up-to-date software, encryption of any log-in pages, strong password policies (if required), provision for data backup and strong protection against any possible attacks.

(iii) Online safety of children requires specific attention and awareness initiatives and campaigns that are addressed to both children and parents may be launched. Awareness materials on safety and precautionary practices while using the internet (for both children and parents) must be prepared and made available in the regional languages.

2.7 Ministry of Consumer Affairs, Food and Public Distribution

- (i) Ensure the right to food for children without parental care living in child care institutions, young persons living in aftercare homes or independently and children in street situations and children headed households, by linking them with existing mechanisms or creation of newer channels
- (ii) Issue orders to update enrolment records of PDS to include names of children born after 2011, in the ration cards.
- (iii) Ensure nutrition security by distributing diverse food grains like millets, ragi, oil, spices and other cooking items which are essential beyond rice, through PDS during this crisis.

2.8. Ministry of Rural Development

- (i) Ensure adequate budget allocation under MGNREGA to run crèches for children of MNREGA women workers.
- (ii) Ensure maximum income security through coverage under MGNREGA so that families can ensure nutrition and health of their children.

2.9 Ministry of Tourism and Culture

- i) Issue orders to all homestays and other accommodation units in tourism locations to have facilities for child care in the same property where parents are employed.
- ii) Issue orders to all tourism service providers to be registered under the India Tourism and implement Code of Conduct for Safe & Honourable Tourism adopted by MoT in 2010.
- iii) Ministry of Tourism in collaboration with MWCD and NCPCR should develop a plan of action that caters to the needs of the migrant children, living independently in the tourism locations.
- IV) Issues an order to mandate messages on child protection as part of the tourist information brochures, tourist orientation programmes run by travel and tour agencies and in all accommodation units across the country in all tourism locations.

2.10. Ministry of Labour

- (i) Ensure that labour law standards, including those for child labour are not diluted in any manner.
- (ii) There is a need to reimagine what employability skills youth and families now need so that they can cope with the post-COVID-19 economy and consultation needs to be held with affected persons and service providers on possible vocational training and employment generation activities.

(iii) Mandate that creches be established at construction sites, for all children, irrespective of the registration status of construction workers. This will especially enable women construction workers to join economic activities, and ensure care, protection and development of their young children. This will also incentivise employers, such as small and medium builders / contractors to employ women as part of their workforce.

III. Recommendations for State Government

3.1. Nodal Department dealing with Children

(i) Undertake **urgent hiring/re-purposing of additional human resources** to meet the challenges arising out of COVID-19, to support Child Care Institutions, District Child Protection Units, as well as newly established COVID-19 Quarantine centres, Isolation Centres specifically catering to children in the juvenile justice system. State Governments should also engage representatives from recognized NGOs and social workers. As an immediate measure, vacancies may be filled on a contractual basis, till such time the process for a full appointment is completed.

(ii) **Make the following data available on the official website:**

- Number of children in government run CCIs and CCIs run by NGOs along with the capacity of the CCI, measures taken by the CCIs for dealing with the challenges of COVID-19, including health, nutrition, education and protection related challenges besides maintaining general hygiene, sanitation, social distancing, awareness and other safety measures
- Number of visits to CCIs by the CWCs, JJBs and DCPUs, as well as findings and suggested measures for overcoming gaps and challenges. This shall include record and minutes of visits made by CWCs/JJBs/DCPUs or online meetings conducted by CWCs/JJBs/DCPUs with children and staff of CCIs;
- Number of training programmes conducted for various stakeholders along with detailed programme schedule, list of resource persons/training instructors and pictures of online programmes where possible;
- Number of children and staff in Child Care Institutions who have been (i) tested and (ii) tested positive for COVID-19.
- Number of children released / restored from CCIs by type of case and conditions of release/restoration;
- Type of bail bonds and undertakings taken from parents/guardians of children who are released / restored to their families as an interim measure;
- Assistance provided to children for reaching their home post release / restoration orders or assistance provided to parents/guardians to fetch their child from a CCI post release / restoration orders;
- Date of release / restoration order and date on which the child is able to reach home along with reasons for delay;

- Post-release follow-up to ensure child's well being, including follow-up on sponsorship or monthly allowance given to the child's parents / guardians for meeting the child's needs;
- Status of education of released/restored children - Number of children going to school or undergoing open schooling at the time of release and their status of education post release/restoration;
- Number of children directly affected by COVID-19 by way of loss of one or both parents;
- Number of children placed in foster care, procedures followed and follow-up;
- Number of children placed in adoption, procedures followed and follow-up;
- Number of children placed in aftercare, procedures followed and follow-up;
- Number of missing and trafficked children and their tracking;
- Functioning of One Stop Centres - number of cases received and nature of services rendered;
- Functioning of childline services, cases reported to childline by type of cases, childline interventions, gaps, challenges and way forward
- Number of children under 6 years, between 6 - 14 years, and 14 to 18 years who have returned to their villages along with their migrating families, tracked and identified by the state.

(iii) Issue SOP for CCIs on preventive measures and procedures in the context of COVID-19 to be followed during admission, release of children from CCIs and protocols to be followed if any child or staff test positive.

(iv) Issue instructions to JJBs, CWCs, and DCPUs to identify facilities that can be recognised as fit facilities for the purpose of quarantining children who need to be institutionalized.

(v) **Guidelines for CWCs for conduct of proceedings through digital/ remote medium** while ensuring adherence to the principles of juvenile justice, procedures under the JJ Act, and Model/State Rules, data security, and physical distancing. Further, ensure that the CWCs have the required infrastructure to enable video conferencing for production of children or other hearings.

(v) Develop an Action Plan to address the support gap and to facilitate greater coordination between support persons, lawyers, prosecutors, as well as children and their families. The Action Plan should indicate measures that will be taken to ensure the availability of competent and sensitive Support Persons immediately after an FIR is lodged, till the completion of trial. The Action Plan should also address the counselling and support services that will be extended to girls who become pregnant because of the alleged assault and the protocol that should be followed to ensure that termination of pregnancies, if desired by the child, are carried out in a timely manner.

(vi) Coordinate with the Department of Home and Railways to ensure that restoration or repatriation of children is smooth.

(vii) **Instruct all DCPUs to list all Care Leavers in their district, who left in the last 1-2 years, and assess their needs and suitable interventions, so that they do not become homeless, unemployed, have to leave their education/ training, and provide emergency support.**

Pass necessary circulars for DCPUs to arrange for movement passes and transport for children and their families who need to visit a government or private mental health care facility or service provider for counselling or therapy. Order of the CWC for support services to a family or letter from the head of the NGO providing such support services along with a copy of the CWC order or prescription of

a mental health care facility/service provider should suffice for DCPUs to arrange access to movement passes and transport.

(viii) To ensure that children do not drop out of school as a result of abuse and/or are able to cope with online school education alongside the trauma and stress of abuse, or pursue a vocational training programme of their choice, it is imperative that the nodal department for child development, the DCPUs, the CWCs and the nodal department for Education and Vocational Training coordinate and evolve a suitable plan. Such a plan should cover open schooling also. It should be prepared in consultation with experts and should provide for education and vocational training for all children in difficult circumstances, whether living in child care institutions or with their families or foster carers. Given that social distancing may be required for some time even post lockdown, the curriculum and teaching methods call for suitable revision, including revision in the time table, syllabus and teaching tools, special permissions for students if any, special orientation for and instructions to teachers and those providing experiential learning and workshops that may require physical attendance. Extra classes or remedial classes along with a video recording of all online classes available on the website of the concerned schools/training centres should also be built into the action plan.

(ix) **Online orientation on protocols** that will be followed to deal with COVID-19 should be conducted for JJBs, CWCs, DCPU, Staff of CCIs, and other functionaries. Training components should include psycho-social support to be provided to children, as well as discharging of functions in accordance with the statutory framework.

(x) ensure effective functioning of Inspection Committees set up under Section 54 of the JJ Act, 2015. These committees can conduct regular online inspections and periodic physical inspections while observing physical distancing, to ensure that CCIs are able to cater adequately to the needs of children residing therein.

(xi) All CCIs must be provided funding support for laptops and good internet connections by the State Government.

(xii) Each CCI must be directed to set up comfortable spaces for children to access online classes and private spaces to access counseling services.

(xiii) Parents/guardians of all the children residing, including those of foreign nationals in the CCI must be informed about the changes in protocol due to COVID-19 and be allowed to meet the children in accordance with these protocols. The persons in charge of the CCIs must be advised to inform the parents about the same.

(xiv) Regular communication between the child residing in the CCIs and their family, including those of foreign nationals is a must. They must be allowed to do the same either physically (after duly observing social distancing norms) or through telephone or other digital means. The staff of the CCIs must be given adequate directions, supported by SOPs for this purpose.

(xv) CCIs must be directed to take necessary steps to practice, promote and demonstrate positive hygiene behaviors and monitor their uptake; Conduct regular screening of children lodged in institutions and follow Health Referral System as per the order dated 03.04.2020.

(xvi) A charter of responsibilities for each child protection committee should be disseminated, encouraging members and citizens to identify risks, raise issues that children face, keep watch on the situation of children in the community (children returning to the village, dropping out of school, child marriage getting fixed, trafficking etc) , track services and schemes for children in the community (immunization, supplementary nutrition, mid-day meal), follow-up of cases and link children to the system.

(xvii) Children left without support systems due to COVID-19, for example whose parents are in quarantine, need to be treated as CNCP.

(xviii) More resources will have to be channeled into sponsorship programs to support families of children who have lost their livelihood, making the children more vulnerable in the process.

(xiv) Families of victims in most ongoing cases are poor and belong to the unorganised sector. Civil society organisations and Childline need to be roped in to conduct a needs assessment of vulnerable children and their families and relevant public schemes need to be reached to them, accompanied with DBT.

(xv) Funds from the Juvenile Justice Fund set up by states should be used to build and strengthen support person programs for child victims appearing in POCSO cases, in partnership with civil society organisations.

(xvi) Train anganwadi workers, and equip ICDS systems to reopen anganwadi centres immediately to provide crucial growth monitoring, immunisation, cooked meal, and nutritional counselling services, and ensure monitoring of adequate safety protocols to prevent COVID infection for anganwadi workers, and women and children as per MWCD and MoHFW guidelines.

(xvii) Ensure timely delivery of services at home, especially for SAM and severely underweight children, if Anganwadis are closed.

(xviii) Issue orders for providing sufficient quantities of dry rations (food grains, eggs, milk powder and medicines) and take home rations to children under three years, as well as pregnant and lactating women, irrespective of registration with anganwadis.

(xix) Allocate funds for all necessary personal protection, timely payment, hazard pay, training, supervision and other needs required to function as frontline workers, during the COVID pandemic and in the post pandemic recovery stage. Cover anganwadi workers and helpers under health insurance and state specific social security benefits.

(xx) Ensure routine immunisation and other essential child health services are not disrupted, and are available at the PHC/CHC/mohalla clinics, at the quarantine centres, and in the Anganwadi centres.

(xxi) Issue orders to urgently restart monitoring of growth and tracking of malnourished and SAM (Severe Acute Malnutrition) children, provide additional nutrition and locally prepared energy-dense food for severely malnourished children, supplementary nutrition/mid-day meals for children, pregnant and lactating mothers and adolescent girls. Provide home based NRC services, to SAM children and anaemic pregnant and lactating mothers, in the absence of functional NRCs during COVID-19 pandemic.

(xxii) Allocate budget in order to create a cadre of para mental health workers at district level, trained in giving emotional first aid, and identify severity, which could be reported to specialists. Make mental health services available and accessible to all children.

(xxiii) Ensure health and nutrition requirements of adolescent girls through regular supply of iron supplements, RCH services, menstrual hygiene products, and supplementary nutrition through ICDS

(xxiv) Reopen crèche and daycare facilities under national crèche scheme, with proper monitoring of safety guidelines as per MWCD, so that children are protected and cared for, as poor families rejoin the workforce for their incomes and sustenance.

(xxv) Provide cash entitlements, food entitlements and access to health services irrespective of age of mother and number of children.

(xxvi) Food and nutrition counselling services must be delivered at home for as long as anganwadi centres remain closed. Where possible, provisions of cooked meals through or in the anganwadi centres and schools must be explored.

(xxvii) The main strategy currently for SAM children is for the frontline workers to identify them and refer them to Nutritional Rehabilitation Centres (NRCs). With the lockdown, many NRCs have shut down, transport systems are disrupted and residential treatment in NRCs might not be possible. It is known that about 85% of SAM children can be treated in the community and do not need in-patient care. Special services (like the VCDC experience in Maharashtra where SAM children were fed five times a day through the anganwadi centre) for SAM children at home must be provided. For this anganwadi workers need to be trained and additional resources have to be provided to the anganwadi centres so that they are able to locally procure and prepare the special diets. Deploy this as a state strategy, to urgently combat growing malnutrition amongst already SAM children.

(xxviii) Establish a village based mechanism to maintain data of migrant families and children in the age group of birth -18 years, returning from cities, who would need to be enrolled in anganwadis and schools post lockdown.

(xxix) Planning of the continuation and expansion of feeding centres/community kitchens must be undertaken so that those who might still be excluded from the PDS have access to food.

(xxx) Since the rural economy is struggling, there's a strong possibility of restored and repatriated victims to be re-trafficked from their villages. There is hence a need to focus more on source areas and partner with CSOs to strategize interventions and create a safety net for the children.

3.2. Department of Home

(i) Considering the obligation to ensure children's best interest, ensure that **core child protection services** i.e., Childline, functioning of JJBs, CWCs, DCPU, SJPU and police, Child Care Institutions,

lawyers including Legal Aid Lawyers, and mental health service providers, **are declared essential during any lockdown or declared emergency.**⁴²

(ii) Take steps to enforce the Witness Protection Scheme, 2018 approved by the Supreme Court in *Mahender Chawla v. Union of India*, W.P. (Criminal) No. 156 of 2016 decided on 05.12.18. Copy of the Scheme in English and in the local language should be sent to the Department of Prosecutions, all police stations, and District and Sessions Court.

(iii) Make available PPE kits in sufficient quantities should be made available to all SJPU members in all police stations in the State.

(iv) Issue a circular detailing the process that will be followed and the acceptable modes of communication during lockdown/while maintaining physical distancing by the police for lodging of FIRs in cases of offences against children, handling of cases of children in conflict with the law, production before CWC/JJB, recording of statements under Section 161, Cr.P.C, investigation, and facilitation of medical examination, medical treatment, and record of statement under Section 164, Cr.P.C, and information about legal aid and support services. The processes should be designed to ensure they are accessible to children with disabilities and children in difficult situations.

(v) Direct local police and SJPU to receive complaints of violence against women and children, either telephonically or otherwise, in a timely manner and proceed to register cases, while extending all possible support for transportation to hospital, court, etc. Where Support Persons are available, their assistance may be taken.

(vi) Publicize information about the reporting system and the number on which such complaints can be lodged and make it available on various mediums (radio, Doordarshan, Cable TV, newspapers, and social media platforms, etc) and on the website of the State police.

(vii) Encourage neighbours, Resident Welfare Associations, Citizens and Community Groups, and Gram Panchayats to report any matter that seems to be (potentially) violent or harmful, bearing in mind that the victim may not be in a position to reach out to anyone in authority.

(viii) Publish monthly data on the website about:

- Number of FIRs registered in cases of offences against children;
- Number of cases alleged against children in conflict with the law,;
- Number of chargesheets filed;
- Number of cases sent for forensic examination every month, number of forensic examination reports submitted in courts, delay in forensic examination and reasons for delay
- Number of cases where medical examination of child victims of sexual offences was conducted in a government facility;
- Number of cases where medical examination of child victims of sexual offences was conducted in a private facility;
- Number of cases where no examination was conducted despite a need;

⁴² Committee on the Rights of the Child, "The Committee on the Rights of the Child warns of the grave physical, emotional and psychological effect of the COVID-19 pandemic on children and calls on States to protect the rights of children" 8 April 2020, para 1, available at:

https://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/1_Global/INT_CRC_STA_9095_E.pdf

- Number of cases where the child/child's parent/guardian refused a medical examination and reasons therefor;

(ix) Police helplines for women and children, Childline, as an essential service, should be present across the country in each district, and it should be ensured that all distress calls are responded to immediately and effectively. Additional resources need to be allocated for hiring and training staff and setting up offices in districts where Childline is not present.

(x) A clear guideline for responding to children who report abuse, through phones or in person to the police, should be provided to Special Juvenile Police Units and be disseminated to each police station.

(xi) SOPs should be issued for the police to make the system for lodging FIR/general diary, recording statements, and facilitating medical examination, and statement under Section 164, Cr.P.C, remotely accessible to children, including children with disabilities while ensuring physical distancing and lockdown restrictions. Information about the reporting system should be publicized on various mediums (radio, Doordarshan, Cable TV, newspapers, and social media platforms, etc) and on the website of the State police.

(xii) The guidelines issued under Section 12 of the Disaster Management Act, 2005 (which forms the legal basis for the lock down and COVID response management) should specifically cover measures to be taken to ensure child protection.

(xiii) There is a need to reimagine what employability skills the victims now need so that they can cope with the post-COVID-19 economy. There needs to be a discussion with the victims as well as the service providers around the possible vocational training and employment generation activities.

3.3. Department of Health

(i) Universalise health and nutrition services for all children without attaching any conditionality or eligibility requirements to it. Ensure equity and inclusion of all children irrespective of gender, caste, class, ethnicity, rural-urban-tribal geographies, disability conditions, and other differences.

(ii) Recognise ICDS as essential service and reopen anganwadi centres immediately to provide crucial growth monitoring, immunisation, cooked meal, and nutritional counselling services, with adequate safety protocols to prevent COVID infection for anganwadi workers, and women and children. Ensure delivery of services home, especially for SAM children, if Anganwadis are closed.

(iii) Provide sufficient quantities of dry rations (food grains, eggs, milk powder and medicines) and **take home rations** to children under three years, as well as pregnant and lactating women, irrespective of registration with anganwadis.

(iv) Recognise Anganwadi workers and helpers as essential workers, with all necessary protection, payment, training, supervision and other needs required to function as frontline workers, during the COVID pandemic and in the post pandemic recovery stage.

(v) **Ensure routine immunisation** and other **essential child health services** are not disrupted.

(vi) **Urgently restart monitoring of growth and tracking of** malnourished and SAM (Severe Acute Malnutrition) children, provide additional nutrition and energy DENSE food for severely malnourished children, supplementary nutrition/mid-day meals for children, pregnant and lactating mothers and adolescent girls.

(vii) **Re-start MDMS** to provide one hot cooked meal or dry rations to every child, including children who have migrated, during school closure on account of COVID pandemic, to **ensure children receive at least one full meal daily**.

(viii) The State Department of Education, State Food Commission, SMCs and village vigilance committees should proactively monitor the delivery of services on the ground.

(ix) Create a cadre of para mental health workers at district level, trained in giving emotional first aid, and identify severity, which could be reported to specialists. Make mental health services available and accessible to all children.⁴³

(x) **Ensure health and nutrition requirements of adolescent girls** through regular supply of iron supplements, RCH services, menstrual hygiene products, and supplementary nutrition through ICDS

(xi) No child victim of sexual offences should be denied free first aid or medical treatment, including medical termination of pregnancy (MTP) in accordance with the MTP Act, 1971. No legal or magisterial requisition or other documentation should be demanded for rendering emergency medical care in cases under POCSO Act, 2012.⁴⁴ If the pregnancy exceeds 20 weeks, legal aid should be provided to the child to petition the High Court for termination.

(xii) Ensure the **right to food** and adequate nutrition, health, care and protection **of children without parental care, living in child care institutions, young persons living in aftercare homes or independently and children in street situations** by linking them with existing mechanisms or creation of newer channels.

(xiii) Ensure maximum income security through coverage under MNREGA so that families can ensure nutrition and health of their children.

(xiv) Provide crèche and daycare facilities so that children are protected and cared for, as poor families rejoin the workforce for their incomes and sustenance.

⁴³ For example, the Delhi Commission for Protection of Child Rights had put together a panel of counselors from NGOs who provided phone counselling through the lockdown in Delhi.

⁴⁴ POCSO Rules, Rule 6(3) states “No medical practitioner, hospital or other medical facility center rendering emergency medical care to a child shall demand any legal or magisterial requisition or other documentation as a prerequisite to rendering such care.”

(xv) Guidelines should be issued for prevention of COVID-19 in Child Care Institutions and residential institutions for children, and steps to be followed for quarantining children and staff, and if a child or staff tests positive.

(xvi) Circular should be issued instructing health facilities to inform the Child Welfare Committee (CWC), Childline, or District Child Protection Unit if a child's parent(s) tests positive, but the child tests negative and the child has no other family member who can assume her/his/their care.

(xvii) A circular should be issued by the Department of Health to all district hospitals and private hospitals stating:

- No child victim should be denied first aid or medical treatment or termination of pregnancy below 20 weeks and no legal or magisterial requisition or other documentation should be demanded.
- No medical practitioner should demand an order of a court or a Child Welfare Committee or authorization by any authority where the pregnancy of a child is below 20 weeks.
- Where the pregnancy exceeds 20 weeks, the district hospital should be asked to advise the child's parent or guardian to approach the High Court to seek permission for termination.

(xviii) The following data should be made available on the website:

- Number of children tested for COVID-19;
- Number of children who tested positive;
- Number of children who have recovered from COVID-19;
- Number of children who have died because of COVID-19

(ixx) Issue **Guidelines for establishment of Quarantine centres and Isolation centres within hospitals in every District specifically designed to serve children in the JJ System** (children in need of care and protection and children alleged or found to be in conflict with law). Such centres need to be managed jointly by the Departments of Health and the Nodal Departments responsible for implementation of the JJ Act, 2015.

3.4. Department of Labour

(i) Release funds under Building and other Construction Workers Cess Funds, managed by State labour welfare boards, to cover health, nutrition, education, care and protection of children of construction workers, and operation costs for creches at construction sites, for all children, irrespective of the registration status of construction workers. This will especially enable women construction workers to join economic activities, and ensure care, protection and development of their young children. This will also incentivise employers, such as small and medium builders / contractors to employ women as part of their workforce.

(ii) State labour welfare boards must release funds and ensure running of creches for children of women workers, as mandated under labour laws such as BOCWA, Mines Act, as per safety guidelines notified by MWCD.

(iii) There is a need to reimagine what employability skills youth and families now need so that they can cope with the post-COVID-19 economy and consultation needs to be held with affected persons and service providers on possible vocational training and employment generation activities.

3.5. Department of Rural Development

(i) Allocate budget to train, pay, and employ women under MGNREGA, to supplement cooking, feeding, distribution of THR, for children enrolled in anganwadi centres, schools, children returning with migrant families and staying in quarantine facilities, to provide at least one cooked meal a day.

(ii) Ensure maximum income security through coverage under MGNREGA so that families can ensure nutrition and health of their children.

(iii) Ensure adequate budget allocation under MGNREGA to run crèches for children of MNREGA women workers.

3.6. Department of Education/Human Resource Development

(i) To avoid disruption in education, State Governments must facilitate the enrolment of children of migrant families who have returned to their home states in the local schools, irrespective of the child having official school records.

(ii) Existing data on out of school children should be revised to factor in the current status of children who have dropped out of school to join the informal labour force and children who have returned to their home states and out of school.

(iii) District administration must do a rapid survey of (reverse) migrant population to assess the numbers of school going children in different age groups, caste, tribe, religion and gender. This data will help in re-enrollment of these children into formal schools.

(iv) Schools must track all enrolled children, especially girls, children with physical and intellectual disabilities, to ensure that no child drops out and is in school once they open.

(v) Educational materials should be provided along with relief and dry food packages.

(vi) Inclusive learning solutions are an imperative for the most vulnerable and marginalized children to bridge the digital divides in our society

(vii) Staggered reopening of schools should be considered, in view of physical distancing and COVID-19 related protocols.

(viii) The academic year should be re-organized as a number of States may have staggered opening of schools. For students up to 9th standard, there need not be an examination and the student can be assessed according to their academic and extra curricular performance throughout the year.

(ix) Modifications should be made to ensure compliance with COVID-19 related protocols before schools reopen. Schools used for quarantine should be disinfected properly before they are reopened.

(x) Education of children and young persons within the JJ System to education must be continued.

(xi) Vocational skill and entrepreneurship training programmes should be extended to include children between 15-18 years and all available platforms should be used to maximise reach.

(xii) Issue orders to provide sufficient quantity of dry rations or hot cooked meal to children who have migrated to villages with their parents even if they aren't students enrolled in that school

(xiii) Re-start MDMS to provide one hot cooked meal or dry rations to every child, including children who have migrated, during school closure on account of COVID pandemic, to ensure children receive at least one full meal daily.

(xiv) Track and enroll children who returned back to their villages with their families, in the nearest government school and provide sufficient quantity and timely delivery of dry rations or hot cooked meal to them, if they aren't students of that school.

3.7 Department of Tourism

i) Ensure that all accommodation units are registered and have child care facilities with adequate human resource as part of the staff welfare policies

ii) Ensure that all accommodation facilities and tourism services (Guides, Tour and travel agencies) have clauses that ensure child protection under their operational guidelines

iii) Ensure that all tourism service providers (Accommodation unit staff, guides, transporters, travel and tour agencies) are trained on child protection issues as per the "Guideline on the Code of Conduct for Safe and Honourable Tourism" adopted by MoT in March 2010.

IV. Recommendations for functionaries under the Juvenile Justice Act

4.1. Juvenile Justice Boards

(i) In furtherance of the Supreme Court's directions, JJBs and Children's Courts, as the case may be, should adopt a case-to-case approach and consider the following before directing the placement of a child into the Observation Home (OH), Special Home (SH) or Place of Safety (PsS). Considering that OH, PoS, or SH can be crowded, exposing the children to great danger of disease spread, children in conflict with the law should not be institutionalised, unless all available alternative options have been considered. At a minimum, the following need to be considered or applied:

1. **Whether placement in OH/SH/PoS is in the best interest of the child?** Best interest determination would entail a consideration of the child's views, child's identity, preservation of the family environment and maintaining relations, care, protection and safety of the child, situation of vulnerability, and the child's rights to health and education.⁴⁵ Each of these elements needs to be considered by the JJB or Children's Court before making a decision to place the child in the OH, PoS, or SH, as the case may be.
2. As part of such determination, the following aspects need to be specifically assessed while considering the Social Background Report:
 - a) **Safety of the child within their family home or current living space.** Vulnerability of each and every child and the family situation should be assessed to determine whether the family environment is safe for the child, not just with regard to their capacity to prevent a COVID-19 infection, but whether the child is likely to be at risk if the child continues to reside there. Given the challenges of conducting home visits for preparation of the SIR, the JJB can also **ascertain the family situation via video-calls and with the assistance of the CCI staff, Probation Officer, DCPU, Anganwadi workers, voluntary organisations or empanelled Case Workers.**⁴⁶
 - b) **Willingness and capacity of family to take custody of the child.** Families must not be forced to take custody of their children. Formal undertaking from willing parents/guardians/fit persons can be taken through electronic medium with the help of the Child Welfare Police Officers. Consent can be obtained via video conferencing mode and assistance of the concerned DCPU can be taken for this purpose. Counselling, legal aid and other support should be provided to the family in taking care of their child, coping with the situation, etc., in light of the pandemic.
 - c) **Conditions within the CCI.** JJBs and Children's Courts, as the case may be, must ensure that every OH, SH, and PoS is adhering to the directions of the Supreme Court and the Guidelines issued by relevant Ministries. **Monitoring checklist** to assess and confirm the quarantine measures that will be taken on admission of a new child in the CCI could be prepared and used to assess and monitor conditions in the CCI for this purpose.
 - d) **Whether the child has any special needs?** JJBs should consider whether the child has any **underlying medical condition** that puts the child at higher risk of being infected by COVID-19, or is **undergoing any treatment which may be interrupted** if the child is placed in a CCI and whether it can be continued. However, orders for treatment, counselling, referral, assessment, etc., should be made irrespective of whether the child is placed at the CCI or sent home.
4. **JJBs should *suo motu* take up and decide on bail of children in conflict with the law, and not wait for a bail application to be filed by any lawyer.** Bail should be **granted irrespective of whether they have allegedly committed petty, serious, or heinous offences**, "unless there are clear and valid reasons for the application of the proviso to Section 12, JJ Act, 2015."⁴⁷ Further, **seeking of surety may be avoided** given the current circumstances and children may be **released on a personal undertaking or personal bond without surety.** For children alleged to have committed a heinous offence, **no child should be institutionalized solely on the basis that the offence alleged is heinous.**

⁴⁵ 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), CRC/C/GC/14, 29 May 2013, paras 52-79.

⁴⁶ As provided for under JJ Model Rules, 2016, Rule 2(1)(iii).

⁴⁷ The Supreme Court's order dated 03.04.20.

5. **Requirement of filing bail applications, furnishing Bail Bonds or Undertakings, preparation of release warrant by office of JJB and sending it to the CCI should be waived. Merely an order of JJB by email to the Officer in Charge of the CCI releasing the child should be sufficient to release the child**
 6. The JJBs should apply Rule 10(1), JJ Model Rules, 2016 or similar provision in the State Rules, and **dispose off cases on the first hearing** if the allegation appears unfounded or the child is involved in petty offences; and submit the list of such disposed cases in a report to the CJM/CMM and the High Level Committee under Section 16, JJ Act, 2015.
 7. JJBs should be directed to **instruct the police to adhere to Rule 8(1)**, JJ Model Rules, 2016, to minimize the apprehension of children alleged to have committed petty or serious offences. Such children should not be placed in the OH, SH or PoS. JJBs may instruct the police to ensure that children being diverted or not being apprehended are connected to counsellors and NGOs attached to the SJPU. Further, **apprehension or institutionalization of children in statutory offences such as elopement, may be avoided.**
 8. Risks that a fresh entrant can pose to the children already living in the CCIs needs to be considered. Thus, where an order of institutionalization is unavoidable, as far as practicable, make it mandatory to conduct a medical assessment for COVID 19 before the child is actually sent to the institution, ensuring that adequate quarantine facilities are in place before the child reaches the institution.
- (ii) JJBs should **consider sponsorship for every child restored to the family or released**, during the pandemic. JJB should also ensure that youth who have attained 18 or 21 years and are leaving the CCI are provided **aftercare support**. Such funds may be routed through the Probation Officer of the DCPU. **A list of children who have been released and to whom sponsorship and aftercare has been given should be submitted to the High Court JJC on a fortnightly basis.**
- (iii) Children being released or discharged should be provided with **copies of relevant documents, contact numbers of helplines and other persons they could call to seek any assistance**, etc., and to keep the DCPU informed, so as to prevent any harassment or distress during their journey. The released children and their guardians must also be given adequate orientation about COVID-19 and how to keep oneself safe while also preventing risk of infection to others. In terms of Rule 79(4) of the JJ Model Rules, 2016, at the time of release, a child may be provided with a set of suitable clothing and essential toiletries, including hand sanitizers and masks and also adequate subsistence money and money to cover the travel costs.
- (iv) In terms of Section 14(4) of JJ Act, 2015, JJBs should **terminate all proceedings in cases of petty offences where the proceedings have been pending for more than six months**. A communication of such termination order should be sent to the child as well as the police, and the High Level Committee under Section 16(2) and the High Court- JJC.
- (v) JJBs and Children's Courts should **prevent continued detention of the child in the OH, SH or PoS because of COVID-19**. This would constitute a gross violation of their right to life and personal liberty and the principle of institutionalization as a measure of last resort.⁴⁸ Further, no child should be detained in the SH or PoS for a period beyond the term ordered by the JJB or the Children's Court, as the case may be. **All JJBs and Children's Court should prepare a list of children currently residing in the OH, PoS, or SH and prioritize the release of children who have completed their term or are nearing the completion of their term. A report to the High Level Committee**

⁴⁸ Section 3(xii), JJ Act, 2015.

under Section 16, JJ Act, 2015, and the High Court JJC should be submitted on a fortnightly basis.

(vi) Directions and orders of the JJB or Children's Court for placement or release of children may be communicated to the concerned CCI through electronic means so as to save the time required for preparation of physical copies of documents and to reduce the risks associated with movement of persons.

(vii) JJBs and Children's Courts, as the case may be, **must monitor to ensure that every OH, SH, and PoS is adhering to the directions of the Supreme Court and the Guidelines issued by relevant Ministries** and confirm the quarantine measures that will be taken on admission of a new child in the CCI. Inspections, with physical distancing measures are to be conducted for this purpose with proper documentation of observations and recommendations. JJBs and Children's Courts, as the case may be, should **submit a report to the High Court JJC, on a monthly basis on the CCIs compliance with the Hon'ble Supreme Court's directions and guidelines.**

(viii) All CCIs may be asked to **identify a room/Reception Centre to be used as a quarantine room** for fresh admissions and to adhere to the guidelines concerning quarantine applicable in the State. The recommended quarantine period must be undergone by the child prior to moving that child with the other children. Care and caution must also be taken to ensure that the child under quarantine is not left without support and care, including psychological support. The period of quarantine can cause increased frustration, fear and loneliness for the child and hence special measures such as counselling and psychological support would be required in such cases. It is also important to ensure that these children are able to communicate with their guardians, especially during the period of quarantine. It is also critical to ensure that the children under quarantine are not left unsupervised.

(ix) JJBs and Children's Courts, as the case may be, must **ensure that children have access to their family and visits may be permitted** while maintaining **social distancing** and in keeping with the advisories and guidelines issued by the Ministry of Home Affairs and the Ministry of Health and Family Welfare. CCIs should be instructed to **ensure telephonic contact between children and their family members at least thrice a week, unless contact with the family is not in the best interest of children. The JJB should instruct the concerned staff responsible for facilitation of such contact to submit written updates on a regular basis through email to the JJB.**

(x) JJBs and Children's Courts, as the case may be, should instruct the Persons-in-charge and the DCPUs to facilitate alternatives to in-person visiting, including the use of telephones or video to facilitate interaction between the children and their family members, lawyer, NGOs authorized to work in the CCI and other visitors. **A written report from the Person-in-charge or the DCPU may be sought to assess steps taken in this regard.**

(xi) JJBs and Children's Courts, as the case may be, should **instruct the Persons-in-charge of CCIs to inform them about any suspected or confirmed case of COVID 19 infection within the CCI immediately.** However, **no delays in the medical care of the child should be caused only due to procedural formalities.** Such information should be shared with the health authorities as per guidelines issued by the Ministry of Health and Family Welfare or State Government.

(xii) Where sittings are conducted **through video-conferencing or other audio-visual means**, due process, principles of natural justice; safety; and privacy and confidentiality should be complied with.

Quorum should be ensured while passing orders. Social Worker Members should be a part of the inquiry process and their views need to be considered before the passing of interim or final orders. **Records of proceedings conducted through audio-visual means should be maintained and filed electronically** by the JJB and Children's Court, as the case may be. Confidentiality and cyber safety norms should be ensured.

(xiii) Where physical presence is unavoidable, JJB should **publish an inquiry schedule in consultation with the PP, police and the defence counsel**. A situation where a case for inquiry has to be adjourned on account of non-appearance of parties should be avoided. It should be considered that public transport availability may be limited, expensive and an appearance for a date can be a financial burden, especially for those who are from a poorer economic background, who are already in further financial distress on account of the lockdown. The JJBs may also consider a policy of permitting absence by informing the JJB telephonically of the same, especially in those cases which are long pending and proceedings are stalled for want of chargesheet, case records, etc. Where the parties attend physically, travel expenses should be reimbursed for the child and the escort as per Section 91(2), JJ Act, 2015.

(xiv) JJBs should **submit a report on the pendency of cases to the CJM or CMM** under Section 16(1) and the High Level Committee under Section 16(2), JJ Act, 2015, as well as a plan to address the pendency due to COVID-19.

(xv) **JJBs and Children's Courts should ensure that every child is legally represented** during the inquiry and preliminary assessment process and the process under Section 19(1), JJ Act, 2015, respectively. Lawyers should be instructed to inform the children whose cases they are handling, about the next date of hearing in their cases and undertake telephonic coordination with the concerned JJB or Children's Court in this regard.

(xvi) **JJBs and Children's Courts should consider and finalize Individual Care Plans for children, including follow up by the Probation Officer or the DCPU or a member of a non-governmental organisation**, as may be required, as per Sections 8(3)(h) and 19(2), JJ Act, 2015, respectively.

(xvii) JJBs should adhere to the child-friendly procedures specified in the POCSO Act, 2012 while dealing with child victims.

(xviii) JJBs should **create an official email ID**, if they do not already have one, and **share it along with their contact details with local police stations, SJPU, CWCs, Childline, CCIs, and district hospitals, as well NGOs/individuals working in the OH, PoS and SH**. Orders passed by the JJB should be brought to the notice of the lawyers and other concerned parties through electronic means as the usual physical methods of verification are difficult to pursue at this juncture. Further, transmission of information through electronic means would also contribute to achieving physical distancing.

(xix) **No email shall be responded to without the Principal Magistrate and at least one of the two Social Workers first discussing the issue telephonically or by any suitable audio or video mechanism, and effort should be made to form a consensus**. If there is no consensus possible, then the Principal Magistrate's view shall prevail.

(xx) A **weekly duty roster indicating the availability of the Principal Magistrate and Social Worker Members** shall be created and shared with all police stations, SJPU, CJM/CMM, District Judge, District Magistrate, DCPU, CWC, SLSA, and DLSA.

(xxi) **JJBs should work in coordination with the DCPU to proactively identify individuals who could be appointed as case workers,⁴⁹ fit persons, and facilities** that may be recognized by the JJB as a fit facility for specific purposes related to COVID-19 situations that may arise during the pandemic. Such individuals and facilities could form a **panel of authorized COVID-19 volunteers and fit facilities**, who may be called upon to assist the JJB and the DCPU where required.

(xxii) **JJBs should instruct the Probation Officer to ensure contact with the children restored to their families on a regular basis and provide updates** to the JJB. Assistance of authorised COVID-19 volunteers may be taken by the JJB, who may “assign any task” to such individuals.

4.2 Child Welfare Committees

(i) In furtherance of the Supreme Court's directions, CWC should adopt a case-to-case approach and consider the following for deciding whether a child or children should be kept in the CCI considering the best interest, health and safety concerns. At a minimum, the following need to be considered or applied:

1. **Whether continued placement in the CCI is in the best interest of the child?** Best interest determination would entail a consideration of the child's views, child's identity, preservation of the family environment and maintaining relations, care, protection and safety of the child, situation of vulnerability, and the child's rights to health and education.⁵⁰ Each of these elements needs to be considered by the CWC.
2. As part of such determination, the following aspects need to be specifically assessed:
 - a) **Safety of the child within their family home or current living space.** Vulnerability of each and every child and the family situation should be assessed to determine whether the family environment is safe for the child, not just with regard to their capacity to prevent a COVID-19 infection, but whether the child is likely to be at risk if the child continues to reside there. The CWC can also ascertain the family situation via video-calls and with the assistance of the CCI staff, Probation Officer, DCPU, or voluntary organisations. **No child victim in a POCSSO Case** should be released from the CCI **without considering the child's views and the views of the assigned Support Person.**
 - b) **Willingness and capacity of family to take custody of the child.** Families must not be forced to take custody of their children. Formal undertaking from willing parents/guardians can be taken through electronic medium with the help of the Child Welfare Police Officers. Consent can be obtained via video conferencing mode and

⁴⁹ Rule 2(1)(iii), JJ Model Rules, 2016 defines “case worker” as a representative from a registered voluntary or non-governmental organisation who shall accompany the child to the Board or the Committee and may perform such tasks as may be assigned to him by the Board or the Committee.

⁵⁰ 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), CRC/C/GC/14. 29 May 2013, paras 52-79.

assistance of the concerned District Child Protection Unit (DCPU) can be taken for this purpose. Counselling and other support should be provided to the family in taking care of their child, coping with the situation, legal aid, etc., in light of the pandemic.

- c) **Conditions within the CCI.** CWCs must ensure that every CCI is adhering to the directions of the Supreme Court and the Guidelines issued by relevant Ministries and confirm the quarantine measures that will be taken on admission of a new child in the CCI.
 - d) **Whether the child has any special needs?** Children's vulnerability, particularly that of children in the 0-6 years category, orphaned, abandoned and surrendered children, children with disabilities, children living with or affected by HIV/AIDS, transgender children, children in a street situations who do require shelter, and children subjected to abuse, neglect or exploitation by their family or guardian, must also be considered.
 - e) Whether effective rehabilitation and reintegration plan for children between 15 to 18 years have been prepared and its efficacy examined before they exit the CCI at 18 years.
 - f) To maintain a list of all care leavers receiving support for aftercare
3. Risks that a fresh entrant can pose to the children already living in the CCIs needs to be considered.. Thus, where an order of institutionalization is unavoidable, make it mandatory to conduct a pre-medical assessment for COVID before the child is actually sent to the institution. Further, ensure that adequate quarantine facilities are available at the institution, before a new child is sent there.

(ii) CWCs should consider sponsorship for every child restored to the family or released, during the pandemic. Such funds may be routed through the concerned disbursed by the Probation Officer of the District Child Protection Unit (DCPU). CWC should also ensure that youth who have attained 18 years and are leaving the CCI are provided **aftercare support. A list of children who have been released and to whom sponsorship or aftercare has been given should be submitted to the District Magistrate on a fortnightly basis.**

(iii) Children being released or discharged should be provided with **copies of relevant documents, contact numbers of persons they could call to seek any assistance,** etc., and to keep the DCPU informed, so as to prevent any harassment or distress during their journey. The released children and their guardians must also be given adequate orientation about COVID-19 and how to keep oneself safe while also preventing risk of infection to others. In terms of Rule 79(4) of the Model Rules, at the time of release, a child may be provided with a set of suitable clothing and essential toiletries, including hand sanitizers and masks and also adequate subsistence money and money to cover the travel costs.

(iv) CWCs should **prevent continued institutionalization of the child in the CH** because of COVID-19. This would constitute a gross violation of their right to life and personal liberty and the principle of institutionalization as a measure of last resort.⁵¹ **All CWCs should prepare a list of children currently residing in the CH and prioritize the release of children with respect to whom restoration orders have been passed. A report to the District Magistrate should be submitted on a fortnightly basis.**

(v) Directions and orders of the CWC for placement or release of children may be communicated to the CCI through electronic means so as to save the time required for preparation of physical copies

⁵¹ Section 3(xii), JJ Act, 2015.

of documents and reduce the risks associated with movement of persons.

(vi) CWC **must ensure that every CCI is adhering to the directions of the Supreme Court and the Guidelines issued by relevant Ministries** and confirm the quarantine measures that will be taken on admission of a new child in the CCI. Inspections, with physical distancing measures should be conducted for this purpose with proper documentation of observations and recommendations. CWCs should **submit a report to the District Magistrate, on a monthly basis on the CCIs compliance with the Hon'ble Supreme Court's directions and guidelines.**

(vii) All CCIs may be asked to identify a room/Reception Centre to be used as a quarantine room for fresh admissions. The recommended quarantine period must be undergone by the child prior to moving that child with the other children. Care and caution must also be taken to ensure that the child under quarantine is not left without support and care, including psychological support. The period of quarantine can cause increased frustration, fear and loneliness for the child and hence special measures such as counselling and psychological support would be required in such cases. It is also important to ensure that these children are able to communicate with their guardians, especially during the period of quarantine.

(viii) CWCs must **ensure that children have access to their family and visits may be permitted** while maintaining social distancing and in keeping with the advisories and guidelines issued by the Ministry of Home Affairs and the Ministry of Health and Family Welfare. CCIs should be instructed to **ensure telephonic contact between children and their family members at least thrice a week, unless contact with the family is not in the best interest of children. The CWC should instruct the concerned staff responsible for facilitation of such contact to submit written updates on a regular basis through email to the CWC.**

(ix) CWCs should instruct the Persons-in-charge and the DCPUs to facilitate alternatives to in-person visiting, including the use of telephones or video to facilitate interaction between the children and their family members, lawyer, NGOs authorized to work in the CCI and other visitors. **A written report from the Person-in-charge or the DCPU may be sought to assess steps taken in this regard.**

(x) CWCs should **instruct the Persons-in-charge of CCIs to inform them about any suspected or confirmed case within the CCI immediately.** However, **no delays in the medical care of the child should be caused only due to procedural formalities.** Such information should be shared with the health authorities as per guidelines issued by the Ministry of Health and Family Welfare or State Government.

(xi) Where sittings are conducted **through video-conferencing or other audio-visual means**, due process, principles of natural justice and privacy and confidentiality should be complied with. **Quorum should be ensured** while passing orders. **Records of proceedings conducted through audio-visual means should be maintained and filed electronically** by the CWC. Confidentiality should be ensured.

(xii) Where physical presence is unavoidable, CWC should publish an inquiry schedule in consultation with the Case Worker, Probation Officer, and Person-in-charge. It should be considered that public transport availability may be limited, expensive and an appearance for an inquiry can be a financial burden, especially for those who are from a poorer economic background, who are already in further financial distress because of COVID-19. Where the parties attend physically, travel expenses should be reimbursed for the child and the escort as per Section 91(2).

(xiii) CWCs should **submit a report on the pendency of cases to the District Magistrate**, as well as a plan to address the pendency due to COVID-19.

(xiv) **CWCs should consider and finalize Individual Care Plans for children and specify follow up** in the final order in accordance with Section 30(vi), JJ Act, 2015 and Rules 19(17) and 19(18), JJ Model Rules.

(xv) CWCs should **create an official email ID**, if they do not already have one, and **share it along with their contact details with local police stations, SJPU, JJBs, Childline, CCIs, and district hospitals, as well NGOs/individuals working in the Observation Home, Place of Safety and Special Home**. Orders passed by the CWC should be emailed to the concerned parties and authorities.

(xvi) **No email shall be responded without the Chairperson and five Members first discussing the issue telephonically or by any suitable audio or video mechanism, and effort should be made to form a consensus**. If there is no consensus possible, then the Chairperson's view shall prevail.

(xvii) A **weekly duty roster indicating the availability of the Chairperson and Members** shall be created and shared with all police stations, SJPU, JJB, District Judge, District Magistrate, DCPU, CWC, SLSA, and DLSA.

(xviii) **CWCs should work in coordination with the DCPU to proactively identify individuals who could be appointed as case workers,⁵² fit persons, and facilities** that may be recognized as a fit facility for specific purposes related to COVID-19 situations that may arise during the pandemic. Such individuals and facilities could form a **panel of authorized COVID-19 volunteers and fit facilities**, who may be called upon to assist the CWC and the DCPU where required.

(xix) CWCs should **instruct the Case Worker, Social Worker, Child Welfare Officer of the CCI or any NGO, to ensure contact with the children restored to their families on a regular basis and provide updates** to the JJB. Assistance of authorised COVID-19 volunteers may be taken by the CWC who may "assign any task" to such individuals.

(xx) The CWC should ensure that the police/SJPU send reports electronically of POCSO cases filed and instruct them to produce before the CWC children living in the same or shared household with the accused, or child living in a child care institution and without parental support, or child found to be without any home and parental support.⁵³

(xxi) The CWC can on its own or with the assistance of a social worker determine whether the child victim of a sexual offence should be taken out of the custody of the child's family or shared household and placed in a Children's Home or Shelter Home.⁵⁴ Assistance of the DCPU may be taken for the purpose of the Social Investigation Report. COVID precautions and government orders regarding movement must be followed while visiting the child's house. The principles of juvenile justice and the factors stated in Rule 4(6), POCSO Rules, 2020 should be followed by the CWC in making this

⁵² Rule 2(1)(iii), JJ Model Rules, 2016 defines "case worker" as a representative from a registered voluntary or non-governmental organisation who shall accompany the child to the Board or the Committee and may perform such tasks as may be assigned to him by the Board or the Committee.

⁵³ POCSO Rules, Rule 4(4).

⁵⁴ POCSO Rules, Rule 4(5).

determination. Care should be taken to ensure that the inquiry does not expose the child to any unnecessary inconvenience or injury.⁵⁵

(xxii) With respect to child victims under the POCSO Act who wish to terminate their pregnancy, the CWC should **facilitate necessary support** in the form of access to legal aid, counselling, etc., to enable such termination. **No permission of the CWC or court order is required for such termination** if the child has a guardian and the pregnant is below 20 weeks. In pregnancies above 20 weeks, the CWC can facilitate legal representation before the High Court to seek permission for termination. Where the child does not have a guardian, under Section 30(vi) read with Section 2(31), JJ Act, 2015, the CWC may recognise the Person-in-Charge of the CCI where the child is placed as a guardian for the purpose of giving consent for medical termination of pregnancy.

(xxiii) Coordination meetings between CWC, SJPU, DCPU, Childline and NGOs working with children need to happen on a weekly basis to ensure adequate response to child protection needs.

IV. Recommendations for other functionaries

4.1. Special Public Prosecutors and Public Prosecutors

(i) The Public Prosecutor should maintain a roster of duty of Special Public Prosecutors/Additional Public Prosecutors of Special Courts under POCSO Act & in Magistrate's Courts for online hearing of urgent applications like bail, registration of FIR, request for recording of statement of any child witness, testimony of child witnesses and appeal under section 101 of JJ Act. The duty roster shall be shared with the concerned District and Sessions Judge to be circulated to all Judges on roster who are supposed to hold hearings in any of the above said cases.

(ii) At the time of receiving a copy of bail application from the side of defence counsel in cases under the POCSO Act, APP/SPP must ensure that the child victim also gets a copy of the same through the IO during the service of notice of bail application.

(iii) If nobody is present from the side of the victim during a bail hearing in a case under the POCSO Act, APP/SPP concerned should remind the judge about the absence of victim's representative as mandated under CrPC.

(iv) In case of hearing by Video conferencing (VC), APP/SPP should ensure that the victim is given a link for the VC hearing and IO should make arrangements for the facilities.

(v) APP/SPP should ensure that the victim gets the e-copy of charge sheet after the filing of the same through the IO.

(vi) APP/SPP should ensure that victims and their accompanying guardian get diet money in case of appearance. It should be provided in cash in the courtroom/VWDC itself and victims should not be forced to run around for encashment of diet money order. At the same time, if permissions are

⁵⁵ POCSO Rules, Rule 4(6) proviso.

required by the witness and an accompanying escort to reach the court for physical appearance, the APP/SPP should inform the IO in this regard.

4.2. Police & SJPU

(i) Lock-downs can heighten the threats faced by children who are subjected to abuse by a parent, blood relations or face abuse within the households (and remember that the vast majority of cases are of this nature). The police must be conscious of this danger and must be mindful of this issue. Hence, when undertaking policing functions, be on the lookout for such children. Ensure that response time for distress calls received directly or from CHILDLINE or other civil society organizations are shortened and that they are prioritized. It is also advisable to be in touch with the Asha workers who undertake door to door surveys and seek their inputs to undertake rapid vulnerability mapping. Where community policing structures exist, their services can also be used.

(ii) A larger number of accused persons has been released on bail to prevent overcrowding of prisons. It is thus imperative to assess whether victims and witnesses are more susceptible to influence. The Police must aid the witnesses to avail the protections under the witness protection scheme laid down by the Supreme Court in *Mahender Chawla v. Union of India*.⁵⁶

(iii) The Special Juvenile Police Unit nodal officer must ensure that all complaints related to violence, abuse and exploitation of children are being registered and acted upon.

(iv) Investigating Officers can do telephonic checks with victims in their respective POCSO cases and inform them of their right to appear or have their representative appear through Video Conferencing in any bail application filed by the accused during lockdown as well.

(v) Ensure physical distancing when producing children before various fora. Ensure that such children are given masks and facilities to wash their hands frequently. The CWPOs should also sensitize the children about the use of masks, washing their hands often and physical distancing.

(vi) Child friendly corners in police stations should be sanitized frequently.

(vii) As far as practicable, avoid taking the child to the police station.

(viii) Avoid apprehension of CCLs at this juncture, unless it is only for the purpose of ensuring the child's safety. Even where apprehensions are done, wherever possible, release the children on the personal guarantee of the guardian. Ensure that the parents and the children are given information about free legal aid and that they are put in touch with the DLSA.

(ix) Request the physicians who undertake any medical assessments to undertake a COVID-threat assessment.

(x) Since the police is undertaking a lot of community sensitization measures about COVID (through public announcements etc.), basic information about child protection may also be given (such as the childline number, prohibition of child marriage and POCSO).

⁵⁶ Judgment dated 05.12.18 in W.P. (Crim) No. 156 of 2016.

4.3. Support Persons under POCSO Rules, 2020

(i) During COVID-19, Support Persons in cases registered under POCSO Act should provide assistance to children and family while ensuring adherence to safety measures and physical distancing, to the extent possible.

(ii) Support Persons should make weekly calls to children to inquire about their general physical and emotional wellbeing of child and family, current activities they are involved in, Status of education/school etc, if the child is attending any sessions online, etc. Requirement for financial assistance or supplies, etc, should also be inquired.

(iii) CWC should be immediately informed if children require urgent financial support or support for shelter, food, rations, medical treatment, etc and a recommendation for sponsorship may be made.

(iv) Support Person should follow-up with the IO/PP to enquire if accused is out on bail. The child/family should be informed and their **concerns about safety and perceived or real threats** should be obtained. The concerned IO, Public Prosecutor, and CWC should be informed if the child receives threats from the accused or anyone on his behalf. The PP should also be asked to ensure that the child is represented during bail hearings. Failure to do so should be brought to the attention of the CWC and the Special Court.

(v) The Support Person should lend coordination assistance between stakeholders (CWC, Police, hospital authorities) during medical examination of victims.

(vi) In the event of pregnancy, the child's decision should be respected and necessary coordination support should be extended to ensure compliance with the MTP Act. In the event of termination beyond 20 weeks, the CWC may be informed and requested to facilitate legal representation before the High Court. Support Persons could also identify lawyers who would be willing to file petitions seeking orders of termination in the respective high court

(vii) While a case is being registered, if the Support Person is unable to be present in person due to COVID related restrictions, coordination can be done over telephone and other electronic means.

(viii) During investigation, the Support Person can coordinate with the SJPU to ensure that the police officers follow the child friendly provisions of the law and provide timely information on the status of the case. The Support Person should be familiar with guidelines (if any) issued for the police in the context of COVID-19. The Support Person can assist the child and family in identifying others from within the family and community who can support them during the processes.

(ix) The child and family should be provided with information about recording of statements before a Magistrate, crime scene investigation, identification of accused, recording of evidence, and compensation. For this purpose, **the Support Persons should be familiar with the guidelines (if any) issued by the High Court in the context of COVID-19 for the district judiciary for recording of 164 statements and recording of evidence.** The Support Person should also accompany the child while maintaining the safety protocols and physical distancing.

(x) The Support Person should be aware of existing state sponsored schemes and the process of applying for the same. Information on the **availability of compensation** should be provided to the child and family and they should be **assisted in the application for compensation**. Assistance should be provided in opening of bank account where necessary or provide information on existing bank accounts to DCPU or DLSA. **On behalf of the child, the Support Person may make an application to the Special Court to consider payment of interim compensation in pending and fresh cases.**

4.4. Lawyers representing Children

(i) Lawyers must equip themselves with knowledge and understanding of technological modes of filing petitions, participating in court hearings.

(ii) While equipping themselves with technical knowledge and understanding, lawyers must also learn to follow formal court etiquettes online which they generally follow in physical hearings, eg: appearance in mandatory dress code, protocols to be followed alike physical court hearings, keeping the mike on mute when not required to speak or address the court or parties present in the hearing, extreme precaution in sharing documents with the courts in prescribed format and file type etc.

iii) Lawyers must also familiarise themselves with the guidelines and practice directions issued by the CMM/CJM, District and Sessions Judge holding administrative charge of a district court, the High Court and Supreme Court with regards to functioning of JJBs and Children's Courts during and post lockdown.

(iv) With consent of both the parties, a written communication with regards to appointment of lawyer should be kept for future records in the form of text message or e-mail conversation till the time a physical copy of the *vakalatnama* is signed by the parties. Most of the states have already issued notifications/practice directions in place for exemption from filing of *Vakalatnama*, Affidavits, original documents and even court fees. Lawyers should follow such notifications/practice directions.

(v) Meeting with clients and families is an integral part of a lawyer's work. During lockdown or even thereafter for sometime, physical meetings however should be held only in unavoidable circumstances. Meetings should be conducted online or telephonically. It must be kept in mind that even if a person does not feel ill, a person can be a carrier of the disease. Therefore, in extreme cases, if a lawyer has to meet a child or his/her family members, following necessary precautions may be taken:

- a. Maintaining safe physical distance during the meeting.
- b. Wearing a mask and gloves.
- c. Minimal paperwork is expected. If necessary, proper sanitization of paper and stationary items or any other device to be used must be carried out.
- d. Children as well as family members must be advised to avoid any physical appearance before court or any other crowded places except in most important hearings like bail, child's statement under section 164 CrPC, child witness' testimonies, only if the court so insists on justified grounds. Even in these hearings, lawyers must ensure that the child is accompanied by a guardian or an adult trusted by the child, and rules of safe distancing and personal hygiene are followed.

(vi) Information about relevant directives and available services, including helplines must be provided to children and their family members represented by the lawyers.

(vii) Lawyers must keep a track of bail, charge sheet, overall status of their case, documents filed, and file a status report application, keeping in mind the statutory limitations provided in cases of child sexual abuse and/or children in conflict with the law.

(viii) There is no notification in place which stops progress of investigation in any case. Therefore rights of victims of crimes for speedy and effective investigation in their cases still subsists and clients may be advised accordingly.

(ix) As many government hospitals are dedicated COVID treatment hospitals, clients may be advised and pressure may be created on investigation agencies to first not to skip this mandatory step of medical examination and second that private hospitals are also competent and duty bound to conduct medical examination of victims.

(x) Wherever Vulnerable Witness Deposition Complexes/Rooms (VWDC/R) exist, lawyers must pray for its mandatory use for all hearings warranting a child's presence in court.

(xi) Where a trial is conducted through a remote process such as video-conferencing, do assert the right to consult your client in a confidential manner in the course of the proceedings. Where required, the court can be asked to stop the proceeding to facilitate this.

(x) In case of Lawyers representing a Child in Conflict with Law:

a. Permanent exemption may be sought from the concerned Juvenile Justice Board under Section 91 of the Juvenile Justice (Care and protection of Children) Act, 2015, and if the child's presence is required by the Board then the lawyer must ensure that:

i. Diet money is given to the child under section 91(2) of the Act.

ii. All necessary precautions including to provide protective gears to the child for appearance are ensured.

iii. Permissions required for the to and fro travel of the child and an escort are arranged.

b. Access of lawyers to the observation homes, special homes or places of safety have been fully or partially restricted during the lockdown. Therefore, lawyers must approach the concerned Juvenile Justice Board to avail permission for talking to the child through video conferencing, which should be arranged by the person in-charge of the concerned child care institution.

c. Information about relevant court directives and special helplines must be provided to the CCL or their family members.

(xi) During this unprecedented slowdown of economy and mass loss of earning capacity, apart from Legal Services Authorities and some civil society organisations engaged in legal aid work, lawyers and law offices must encourage extending legal support to the marginalized, particularly children, by way

of more and more *probono* litigation.

4.5. Child Protection Committees & Local Self Government Institutions

(i) Existing Child Protection committees or community level structures/groups (SMCs, SHGs, RWAs, Village development committee etc) should apply a child and family protection and well-being lens and support Panchayats/Municipal authorities to:

- Conduct Situational/needs assessment and vulnerability mapping to understand the status of children and their families so as to identify emerging issues, which in turn can help in planning and strategizing work to ensure protection of children.
- Facilitate and ensure access to all available social protection benefits. (PDS, MGNREGA, ICDS, sponsorship, cash transfer schemes such as pensions (disability, widow, senior citizen) scholarships, girl child schemes etc. and be responsive to issues in these domains.
- Keep watch on families and children for fall outs of economic shocks to families including school drop-out, exploitation of children-trafficking of children for labour, sexual exploitation, domestic violence, emotional violence and structural systemic violence.
- Respond/intervene and reach out to the formal system to address issues/cases related to children- DCPU, CHILDLINE, CWC, SJPU, Police. Follow up on cases of children if requested by the formal system, especially children who have returned to the village in Covid pandemic who may be with their families or in family-based care.
- Create awareness and have dialogue in the village/community with families to actively discourage children on issues such as dropping out of school, child marriage, child labour, substance abuse.
- Source, prepare and create awareness about CHILDLINE 1098, DCPU, CWC, JJB, Police 100, 102, women's helpline, and escalate cases to the formal system and follow up/monitor the progress in the cases.
- Assist and facilitate, build a conducive environment for families returning to the village, assist with liaison for access to schemes, enrolment of children, and with emotional support. Encourage sharing of resources to help families settle and cope.
- Capture data and track trends in real time on cases and issues, escalate issues to relevant officials at the block and district level as required.
- Participate in discussions with block and district level departments and civil society on measures to ensure- access to supplementary nutrition, immunization (services provided under ICDS), continuity in education, exercises to engage children constructively (in the interim).
- Facilitate to ensure the smooth return of all children to AWCs and school when it resumes
- Existing local authorities and community groups like Gram Panchayats/Sabhas, SMCs, SHGs, RWAs, VLCPCs, WCPCs etc may be asked to volunteer as 'Child Protection Committees' for designated areas and set up monitoring and reporting mechanisms for child protection concerns.

(ii) Since the rural economy is struggling, there's a strong possibility of restored and repatriated victims to be re-trafficked from their villages. There is hence a need to focus more on source areas and partner with CSOs to strategize interventions and create a safety net for the children.

4.6 State Food Commissions

- (i) Ensure the right to food and adequate nutrition, health, care and protection of children without parental care, living in child care institutions, young persons living in aftercare homes or independently and children in street situations by linking them with existing mechanisms or creation of newer channels.
- (ii) Issue orders to update enrolment records of PDS to include names of children born after 2011, in the ration cards.
- (iii) Ensure nutrition security by distributing diverse food grains like millets, ragi, oil, spices and other cooking items which are essential beyond rice, through PDS during this crisis.
- (iv) Issue orders to continue and expand Feeding centres/community kitchens so that those who might still be excluded from the PDS have access to food.
- (v) Make provisions for street children to avail food from the State Feeding Centres.
- (vi) State Commission for Protection of Child Rights, State Food Commission, SDMCs and village vigilance committees should proactively monitor the delivery of services on the ground.

V. Recommendations for NALSA, SLSA, and DLSA

- (i) **Victim Compensation:** A dedicated help line and portal should be developed for receiving, processing, tracking and addressing victim compensation applications. Those who require victim compensation should be able to call the helpline and receive necessary assistance on how to file an application as well as the process and the email addresses and phone numbers of those responsible for processing victim compensation requests. Through the web portal, victims/applicants should be able to track their application. Banks should also be connected to the portal in order to track the victim compensation disbursement right up to the bank. This will enhance transparency and smooth functioning of the victim compensation schemes. Such a portal should also have an Android based Mobile App for easy use by victims and concerned stakeholders. CWCs, DCPUs, organisations and individuals acting as support persons designated by the Child Welfare Committees or the Courts/DLSAs should also be able to track victim compensation applications or at least access a status report on the victim compensation application.
- (ii) **Empanelment of lawyers and NGOs providing legal and psycho-social support:**
 1. NALSA, SLSAs and DLSAs should revise their policies and practices to empanel NGOs providing legal aid and psycho-social support and enhance their pool for such services and increase outreach.
 2. A dedicated set of lawyers may be empanelled across all districts only to deal with juvenile justice cases.
 3. SLSAs should create a panel of lawyers who can provide timely legal support to the child, particularly if a child wants to terminate her pregnancy, the pregnancy being beyond 20 weeks.

4. The details of the panel lawyers should be made available to all police stations, CWCs, and JJBs via email/WhatsApp and should be uploaded on their website as well. The child or the child's parent or guardian will, however, retain the right to engage a lawyer of her choice.

(iii) **Data on legal aid services and compensation provided to children:** The SLSAs should make available on their website monthly reports on the following:

- Jail visits by DLSA Secretaries and panel of lawyers to check if there are any minors in jails, findings and suggested measures for overcoming the gaps and challenges;
- Number of cases where legal aid lawyers are provided to children, by type of case;
- Number of cases in which interim and final compensation was paid to children under the POCSO Act, quantum of compensation disbursed, and the time taken for disbursement from the date of the court's order.

(iv) Organisation of Trainings

1. State Bar Councils and State Legal Service Authorities should organise training for Public Prosecutors and Lawyers, including Legal Aid Counsels on e-filing and online hearing platforms being used by courts. For example, Cisco Webex is being used by District Courts, Juvenile Justice Boards and High Courts in Delhi. [<https://delhicourts.nic.in/WebexTrainingVideo.html>]
2. Online training of para legal volunteers should be conducted periodically to equip them with necessary information and skills regarding expansion of outreach during and post lockdown in order to ensure that people in distress receive requisite assistance and can be connected to the Taluka Level Legal Aid Committees / DLSA / Legal Aid Counsels for case specific support.
3. All training programmes must include training on MIS for all users associated with the legal services at the taluka, district, state and national level, including special courses for Legal Aid Counsels and Para-legal Volunteers on how to maintain and submit outreach records and action taken reports to the concerned DLSA online.
4. Mobile Apps that are used for Human Resource Development purposes and General administration are available. These can be customised for SLSAs and DLSAs to plan and execute recruitment, training and orientation of Legal Aid Counsels and Para-legal Volunteers, recording their attendance as well as daily activity.

(v) **Awareness Campaigns and Drives:** Legal awareness campaigns should be initiated by NALSA and SLSAs providing information about rights of litigants during lockdown, functioning of courts during and post lockdown, whom to approach for legal queries. Such information should be shared through periodic SMS besides being made available online and through the Legal Aid Services Helplines. Steps should be taken to make such information accessible to children and persons with disabilities. Posters may be put up at the police stations and JJBs in the vernacular language about the right to free legal aid for children. The para-legal volunteers attached to police stations may be sensitised further about this.

(vi) **Development of Online Information Management System:** Automated systems are the key to effective functioning in the future and emergencies such as COVID-19 provide enough rationale for investing in automation. NALSA, SLSA and DLSA should develop an Online Information Management System with necessary Protocols on its use and access, widely disseminated among all Secretaries and Member Secretaries. Reporting systems and training on reporting systems should be

carried out for all Legal Aid Counsels and Para-legal volunteers.

(vii) Considering that lawyers are also going through a lean period with significant reduction in incomes, the pending bills of the empanelled lawyers may be cleared up at the earliest.

(viii) Community mechanisms focused on protection of children from violence, abuse and exploitation need to be supported. Para legal volunteers across the country can be activated by respective State Legal Services Authorities to perform regular checks and meetings in their communities regarding child protection and reporting any cases which need intervention. These mechanisms need to be particularly vigilant about instances of child labour, child abuse at home and child trafficking, as outcomes of the lockdown.

(ix) Since vulnerable groups of persons such as women and children face higher risks of violence, measures may be taken to ensure they are provided assistance to register FIRs etc.

VI. Recommendations for Human Rights Institutions

Compliance with various guidelines and directives issued by the Supreme Court, the concerned High Court, concerned Ministries and Departments and such other authorities needs to be monitored by independent human rights institutions such as the National and State Human Rights Commissions, the National and State Commissions for Protection of Child Rights, the National and State Commissions for Women, National and State Minority Commissions, the SC/ST Commissions, and office of the Right to Food Commissioners, Disability Commissioners, etc. Such compliance reports must be made available in public domain, on the website of the concerned NHRIs as well as Offices of the Right to Food Commissioner and the Disability Commissioner.

Further, human rights institutions have an obligation to ensure that human rights of children are not ignored in emergency situations such as the one created by the COVID-19 pandemic. These bodies can initiate certain measures as their response to the pandemic, especially on child rights and access to justice for children. Some suggestive measures that may be taken and can also be drawn from the response of NHRIs in different European countries⁵⁷ include:

(i) Setting up a dedicated web page on COVID-19 Response with a distinct platform on children's rights and access to justice.

(ii) Issuing statements and press release on full applicability of children's rights during the COVID-19 pandemic.

(iii) Setting up a compliance dashboard, monitoring compliance on various administrative and judicial decisions and directions issued during COVID-19 lockdown and post lockdown affecting children's rights, particularly their right to food, education, protection and safety, right to be heard in administrative and judicial proceedings and access to justice.

⁵⁷ <http://ennhri.org/covid-19/>

(iv) Undertaking advocacy with the government for amending the National Disaster Management Act and Policy to specifically include and provide for securing children's rights, their protection and access to justice in situations of natural and man-made disasters and emergencies. Any amendments to be proposed should evolve through a consultative process with child rights organisations and children and affected families.

(v) Commissioning fact-finding missions on alleged violations of rights of children brought to their notice such as death of a child in a child care institution due to negligence of authorities, cases of sexual violence against children in different settings; reports of domestic violence against children; abuse and exploitation of street children, child labour, child trafficking, children orphaned due to the COVID-19 pandemic, failure of CWCs, JJBs and Special Courts in ensuring child-friendly processes and the principle of best interest of children in matters before them.

(v) Reviewing governmental measures taken so far and examining how COVID-19 and the government's response is affecting the enjoyment of economic, social, cultural, and civil and political rights of different groups of children and issue recommendations.

(vi) Organising webinars for cross learning exchange and documentation of good practices.

VII. Recommendations for Universities, NGOs, and Donors

7.1. Law Universities

(i) Law Universities running Legal Clinics and legal aid should develop SoPs for the functioning of the legal clinic.

(ii) Such clinics shall also develop an online information management system to maintain record of outreach and delivery of services.

(iii) Law students and faculty engaged in the functioning of legal clinic must hold weekly online meetings to review the cases pending and action taken.

(iv) Tie-ups with agencies that allow bulk SMS may help in effective functioning of the Legal Clinics. Awareness drives informing different groups of people about their rights and court related processes can be carried out through bulk SMS.

(v) The legal aid clinics can support the work of the SLSAs and DLSAs by providing manpower support and back end research support to legal aid lawyers. Clinics can support the work of the Legal Services Authorities by setting up clinics in JJBs, Special Courts under POCSO Act, Children's Courts, and providing support to CCIs. Where it is not possible to function by maintaining physical distancing, support can be provided remotely.

(vi) Volunteer coalitions can be formed involving NSS, NYK, Paralegal Volunteers and any individual who has aptitude and attitude to serve as volunteer to provide counseling and guidance services. Legal Aid Clinics can also support the work of local civil society organizations who are involved in provision of legal aid.

7.2. Donor Agencies

The last three months of lockdown has completely jolted the existing socio-economic and socio-political system in the country. Although food (in)security and livelihood have always been one of the biggest challenges, lockdown has presented these like never before. This pandemic outbreak has also brought the civil society organisations working on cross-cutting thematic areas and the government together to engage into various kinds of relief work. Such collaborations need to continue at least for the coming future.

While it is the need of the hour to have a focussed plan of action towards working for or supporting the initiatives towards livelihood, food security and public health as immediate and urgent needs, it is also important to devise new elements of accountability into the system. Needless to say, during times like these, the responsibility and accountability of the State amplifies multiple folds, which further calls for close monitoring for State Actions. Secondly, COVID-19 has also forced us to introduce new system changes, alter the existing system as per the emerging needs. This again makes the role of civil society with rights based perspective more proactive in monitoring the State performance as well as hand- holding the system to suggest better alternatives.

Thus, in the current atmosphere of COVID-19 outbreak, while it will need combined efforts to build back our systems as per the 'New Normal', the role of donor agencies to strike a balance between rights based and service delivery approach is going to be a key to success. Thus,

- Donor Agencies must loosen or eliminate the restrictions on current grants. This can include: converting project-based grants to unrestricted support; accelerating payment schedules; and not holding grantees responsible if conferences, events, and other project deliverables must be postponed or cancelled.
- They must make new grants as unrestricted as possible, so non-profit partners have maximum flexibility to respond to this crisis. Donors must support organizations created and led by the communities most affected that they may not fund currently.
- Contribute to community-based emergency response funds and other efforts to address the health and economic impact on those most affected by this pandemic
- Support, as appropriate, grantee partners advocating for important public policy changes to fight the pandemic and deliver an equitable and just emergency response for all. This may include its economic impact on workers, such as expanded paid sick leave; increasing civic participation; access to affordable health care; and expanded income and rental assistance. It should also include lending voices to calls to action led by grantee partners, at their direction and request.
- They must consider postponing reporting requirements, site visits, and other demands on their time during this challenging period.

- They must continue to invest and support in strengthening historically weak systems for children's nutrition, health, education, protection, care, and participation, as an equal priority while they deploy necessary funds in prevention, treatment, health infrastructure, research and technological solutions to combat corona virus infection.