

Leila Seth

JUSTICE LEILA SETH
FELLOWSHIP

iProbono

A NATIONAL RTI STUDY



**INCARCERATION
OF CHILDREN
IN PRISONS
IN INDIA**

www.i-probono.in

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“

The children are always ours, every single one of them, all over the globe; and I am beginning to suspect that whoever is incapable of recognizing this may be incapable of morality.”

James Baldwin,
American writer and
civil rights activist

ACKNOWLEDGMENTS

This report would not have been possible without initial discussions with our former advisor to the juvenile justice work at iProbono, Advocate Anant Kumar Asthana, and his mentorship to Justice Leila Seth Fellow Krishna Sharma, as well as the support and friendship of Deeksha Gujral, India Program Director at iProbono.

We thank everyone who has contributed to building our understanding on this issue over the years, including but not limited to the children wrongly incarcerated in prisons who we have worked with, who have been wronged by the system and by our collective failure.

We are also grateful to Avnish Kumar, Fellow, Project Second Chance; Anuradha Shukla, Secretary, Delhi High Court Legal Services Committee; Anurag Kundu, former Chairperson, Delhi Commission for Protection of Child Rights; and (again) Anant Kumar Asthana, child rights lawyer, for their participation in a panel discussion in March 2023 on this subject, which additionally motivated us in taking the data collection to its logical conclusion.



“

Safety and security don't just happen, they are the result of collective consensus and public investment. We owe our children, the most vulnerable citizens in our society, a life free of violence and fear.”

Nelson Mandela,
Former President of South Africa, anti-apartheid activist



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PREFACE

We hope that this study can serve as a marker of the extent to which we have managed to achieve equal justice for children in India.

The results are grim, and in themselves they emerge as a call to urgent action in addressing the issue of children being incarcerated despite constitutional and procedural safeguards in place to prevent this unlawful outcome. The study is premised on data obtained through the Right to Information Act, 2005 (RTI Act). It is the result of a practical research assignment as part of iProbono's first Justice Leila Seth Fellowship.

The iterative way in which the study took shape, at first being limited to seeking data in Delhi, then to the different jurisdictions where iProbono's panel lawyers worked at the time, and finally, when we started getting results that seemed very disconcerting, to a pan-India study, perhaps is just the result of Justice Seth's spirit and actions -- she wanted everyone to slowly chip away at unjust structures, and undertake actions (however small or big) to strive for greater social justice through different roles.

Krishna Sharma, Justice Leila Seth Fellow from 2021-22, was pivotal to the study in carefully filing 124 RTI applications across the 28 states and two union territories (UTs), and in documenting the challenges of the RTI process while dealing with state prison departments. All the applications were filed at prison headquarters of the respective states and UTs, except Uttar Pradesh and Chhattisgarh, where they were filed in each district and central jail as instructed by their prison headquarters. This exercise was ably supported by Shalanki Prasad, who came into the Justice Leila Seth Fellowship the following year. The analysis of the responses and further trajectory of the study till its

completion would not have been possible without the consistent commitment of Yamina Rizvi, Program Officer at iProbono. She now undertakes litigation support for children in conflict with law (CCLs) who are found to be in prison. I am grateful to have had this opportunity to work closely with them and the wider iProbono India team from the stage of conception of the project to this juncture.

In the cases pertaining to CCLs undertaken by Yamina and the team at iProbono so far, several lapses in procedure are revealed, which either resulted in or prolonged the incarceration of children. Recently, in a case of attempted theft, there was deliberate action by the investigating officer to seize the Aadhar card of the child so that the family could not produce it as a proof of his age, and the child was threatened with an additional charge of rape if he brought to the notice of the magistrate during his first production that he was a minor. What seems further incriminating to the system in these cases is that often, the incarcerated child looks quite visibly like a minor. In another case, the victim in a harassment case named somebody else as the perpetrator, but because the alleged perpetrator was absconding, the case was pinned on a 17-year-old, who spent two months in prison before his family could secure a lawyer.

Another case demonstrates acts of omission by the police that can result in a child's incarceration. The Delhi High Court in W.P. (C) 8889/2011^[1] held that once the JJB has decided on the age of the child, the same could be used as an age document for the future. In this instance, the police failed to do this - they had information about the child's previous case but did not rely on his age determination order from that case and arrested him as an adult.

[1] Court On Its Own Motion v. Department of Women and Child Development, Delhi High Court, W.P (C) No. 8889 of 2011, 2012 SCC OnLine Del 1718

Often, we hear that prison authorities, too, do nothing despite minors telling them repeatedly that they were below 18 years at the time of commission of the alleged offence. In another one of iProbono's cases, the child told the sessions judge when her trial was commencing that she was a minor, and her matriculation mark sheet supporting this claim was produced, but there was no further investigation by the judge. In some cases, families say that they have not appointed a lawyer once the child goes to prison, thinking that it is better for the child to be there than to fall into bad company where they live.

We hope that practitioners will be able to use the data in this report to enable shifts in accountability at different levels of the police, courts, and prison systems. We very much welcome suggestions from readers on further strengthening this work.

Gitanjali Prasad
Advisor, iProbono
and former mentor for the
Justice Leila Seth Fellowship



“

Many prejudices against juveniles continue... Unfortunately, class bias has been the core of our juvenile justice system.”

Sheela Barse,
Indian journalist and
champion of child rights
and justice

LIST OF ABBREVIATIONS

- CCL - Child in Conflict with Law
- CWC - Child Welfare Committee
- CWPO - Child Welfare Police Officer
- DCPO - District Child Protection Officer
- DSLSA - Delhi State Legal Services Authority
- FIR - First Information Report
- HC - High Court
- IG Prison - Inspector General of Prison
- JJ Act, 2015 - Juvenile Justice (Care and Protection of Children) Act, 2015
- JJB - Juvenile Justice Board
- JJ MR, 2016 - Juvenile Justice (Care and Protection of Children) Model Rules, 2016
- KCPCR - Karnataka State Commission for Protection of Child Rights
- NCPCR - National Commission for Protection of Child Rights
- NHRC - National Human Rights Commission
- OBH/OH - Observation Homes
- PHQ - Prison Head Quarter
- PIO - Public Information Officer
- POCSO Act - Protection of Children from Sexual Offences Act, 2012
- RTI Act - Right to Information Act, 2005
- SC - Supreme Court
- SLSA - State Legal Services Authority
- SPJU - Special Juvenile Police Unit
- UNCRC - United Nations Convention on the Rights of the Child, 1989
- UP RTI - Uttar Pradesh Right to Information Rules
- UT - Union Territory
- WCD - Women and Child Development
- WP - Writ Petition

I. INTRODUCTION

There are multiple points at which the buck should ideally stop, and children should never end up in adult prisons. While the definition of a child with respect to their age has evolved over time, in both colonised and independent India, the law has been unequivocal that children shall not be placed in prisons or in police lockups.

The Juvenile Justice (Care and Protection of Children) Act, 2015 (JJ Act, 2015) legally mandates that a child, i.e. an individual who has not yet completed 18 years of their life, who is alleged to have committed an offence, or is found guilty of an offence, be placed in an observation home [2] or a place of safety [3], or a special home [4] or place of safety, respectively. It derives from this that it is unlawful and goes against the due process of law to place a child in an adult prison. The intent behind this is to both prevent harm to the child in the form of mental or physical trauma that they may be subjected to in prison, and to allow for rehabilitation and reform. While there are questions around the degree to which the childcare system can be rehabilitative, it allows for more restorative measures than the adult prison system. In the Sheela Barse case [5], the Supreme Court observed: *“It is an elementary requirement of any civilised society and it had been so provided in various statutes concerning children that children should not be confined to jail because incarceration in jail has a dehumanising effect, and it is harmful to the growth and development of children”*.

The systemic flaws of the criminal justice system that allow for children to be incarcerated in adult prisons have also been addressed by the courts over the decades. Most of these pertain to procedural safeguards by clarifying the

roles of the different institutional stakeholders in ensuring that children do not end up in adult prisons. To end up in prison means that the child has crossed three major checkpoints without authorities taking the requisite action – they would have been wrongly arrested as an adult by the police, they would have passed a hearing for first remand by a magistrate, and they would have been successfully admitted into prison without the prison staff raising the concern to authorities including the DLSA Secretary or relevant prison visitors that the individual is underage. Justice Sikri observed in the 8889 judgment [6] that children in adult prisons can end up there due to “sheer negligence, omission, or even deliberately.”

OBJECTIVES

It is in this backdrop, with an intent to try to demand greater accountability, that this study attempts to compile a comprehensive state-wise dataset on the number of children in conflict with the law (CCLs) who were detained in central and district jails in India across a six-year period from 1 January 2016 to 31 December 2021, and transferred to childcare institutions. The study utilises primary data based on responses received through the RTI Act.

A secondary question is to assess whether the Juvenile Justice Boards (JJBs) play an active role in preventing the incarceration of children in adult prisons by visiting prisons in their respective districts and identifying inmates who could be children. Under the JJ Act, 2015, the JJB has the statutory duty of conducting regular visits to adult prisons to check if a

[2] Section 2 (40) of the JJ Act, 2015

[3] Section 2 (46) of the JJ Act, 2015

[4] Section 2 (56) of the JJ Act, 2015

[5] Sheela Barse & Ors v. Union Of India & Ors, Supreme Court, 1988 (4) SCC 226

[6] Supra note 1

child is being lodged there and to take immediate measures for the transfer of such child to the appropriate child care institution.^[7]

As a follow up line of inquiry, RTIs were filed with the Department of Women and Child Development of five states – Haryana, Rajasthan, Assam, Karnataka, and Mizoram – to inquire about the minutes of meetings of JJBs visiting prisons for identification of children.

METHODOLOGY

The report relies on data obtained under Section 6 of the RTI Act, which pertains to the ‘Request for Obtaining Information’. Between April 2022 and March 2023, 124 RTI applications were filed across 28 states and two union territories, primarily directed to Prison Headquarters, except for Uttar Pradesh and Chhattisgarh, where applications were filed in each district and central jail at the directions of the Prison Headquarters. The data excludes the union territory jurisdictions of the Andaman and Nicobar Islands, Dadra and Nagar Haveli, Daman and Diu, and Lakshadweep due to the absence of district and central jails there.^[8] All RTIs were drafted in English. A draft sample of the RTI applications has been attached as Annexure-A. RTI applications for Delhi were filed with three different authorities, i.e. Delhi State Legal Services Authority (DSLISA), National Commission for Protection of Child Rights (NCPCR), and Prison Headquarters, Delhi. This was based on guidelines issued by the Delhi High Court in the 8889 judgment.^[9]

We received 474 replies in total from 25 states and one UT – some provided information fully, some partially for some prisons alone, some sought additional fees, and some refused to provide the information on different grounds – e.g. information not held by the concerned

prison, or under Sections 8 of the RTI Act, pertaining to exemption from disclosure. The process revealed deficiencies in voluntary information disclosure mandated by Section 4 of the RTI Act, with several central jails in Delhi also claiming non-maintenance of records. Fulfilling obligations for voluntary information disclosure is critical, and like many others, this study reveals the need for improved record-keeping and greater transparency within public institutions. Our findings pertaining to this are also discussed in detail in Chapter III titled ‘Where do we go from here?’.

EXISTING DATA AND ONGOING EFFORTS

The Delhi High Court in *Court On Its Own Motion v. State* ^[10] in its order in January 2022 observed that based on the Delhi Government’s submission, approximately 800 CCLs were transferred from prisons to juvenile homes over the last five years. This indicates how endemic the problem has remained, despite the highest courts of the country repeatedly drawing attention to the issue in their judgments, and issuing guidelines for procedures to be followed by the relevant stakeholders, most of all the police, in ensuring that no child is incarcerated.

Also in 2022, the National Legal Services Authority (NALSA)’s ‘Standard Operating Procedures (SOPs) on Access to Legal Services to Prisoners and Functioning of Prison Legal Aid Clinics’ was published to state that the Secretary, DLSA is to make monthly visits to prisons, and the Chairperson, DLSA should visit once in three months. The SOP also mandates that Para Legal Volunteers (PLVs) appointed at Prison Legal Aid Clinics shall inform the Secretary, DLSA about any undertrial prisoner who appears to be a minor. This step is based on self-identification by the prisoner as being less

[7] Section 8 (3) (m) of the JJ Act, 2015

[8] Chandigarh is excluded due to our error of not filing an RTI to gather information from Model Prison Chandigarh, which is a central prison. We will update this data in subsequent copies of the report.

[9] Supra note 1

[10] *Court On Its Own Motion v. State*, Delhi High Court, CrI. Ref. 1/2020

than 18 years of age. It further stipulates that after the Jail Superintendent and the DLSA Secretary are informed, an application shall be filed immediately by the DLSA to the concerned court on behalf of the prisoner requesting: (i) to initiate the proceeding to determine the age of the prisoner, and (ii) to immediately transfer the person to an observation home under S. 9(4) of the JJ Act, 2015, while the age of the person is being determined by the court.

In furtherance of these aims, in January 2024, NALSA launched a national campaign titled “Restoring the Youth”, at the inauguration of which the Executive Chairperson of NALSA, Justice Sanjiv Khanna, stated unequivocally that the aim is to have “zero error cases”. An error case would be where a CCL is incarcerated without the authorities or NALSA being aware, and where the necessary steps are not taken to ensure that if they were a child on the date of the offence, they receive the full protection of the law. We look forward to receiving the results of this campaign, to understand both how widespread the problem currently is, and how quickly redressal of the issue can take place. The latter will be clear from the data because an essential part of the campaign includes DLSAs filing applications for claim of juvenility and subsequent transfer to childcare institutions. What would be of long-term interest to us is to understand how this process can become a regular part of the DLSA’s functioning as envisioned in NALSA’s SOP.

In the meantime and in conjunction with the data from NALSA, we hope that this study is useful for policymakers and socio-legal professionals, and that it can be instrumentalised both by government stakeholders and by advocates working to safeguard the rights and well-being of CCLs across the country.

A note: In the nomenclature of “prisons” v. “jails”, we have used prisons for the purposes of this report. There is currently mixed usage by state institutions.

“

Jab mai ander tha toh mahine me 3-4 jinki age 18 se kam hai woh dekhne koh aksar mil jate the. Toh jaise pooch liye unse ki aap itne chote ho aap yaha kaise ho?

Mujhe nahi pata, mai kaha hoon aur kaha jana chahiye mujhe.

When I was in prison, I would often see about 3-4 (boys) every month whose age was less than 18. So for instance, if asked, you’re so young, how are you here?

I don’t know where I am or where I should go, would come the reply.”

Avnish Kumar,
Fellow, Project Second
Chance, who was wrongfully
incarcerated in Tihar Jail



Response Rates from State-Wise District and Central Prisons

II. WHAT DO THE NUMBERS SAY?

The data we received indicates that at least 9681 children were wrongly incarcerated in adult prisons across the country between 1 January 2016 and 31 December 2021. “At least,” for two reasons. First, the data we have received is wholly incomplete. Two large states – Madhya Pradesh and West Bengal (with the 3rd and 6th highest prison populations, respectively, based on 2022 data), one relatively small state – Nagaland, and one UT – Ladakh, provided no response to the RTIs. From most other states, we received only partial responses. Second, the number of children eventually transferred is not an indication of how many children were eligible to be transferred during that period, only those who were actually transferred from adult prisons to juvenile homes due to the system working to enable that outcome.

To discuss the findings, the 28 states and two union territories of India are arranged in descending order of their prison populations.^[11]

The response rate corresponds to the percent of total district and central prisons in each state that responded to us with data on the question of the number of children transferred from prison in the six year period. Those that said that data was not available or recorded, or that additional fees were needed to produce the data, have not been included. The percentages are rounded to the nearest whole number.

at least
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1 January 2016 and 31
December 2021

STATES WITH LARGE PRISON POPULATIONS

UTTAR PRADESH

71% response, 2914 children transferred, 70 JJB visits

All 5 central prisons and 42 out of 61 district prisons responded to the RTI application.

District Prison Gorakhpur had the highest number of children (294) transferred in six years, despite there being no JJB visits there. Among the five central jails, only Central Prison Naini transferred children – 203 across the period, and 3 JJB visits were made there. In District Prison Badaun, 68 CCLs were identified by the JJB across six years, but no transfers were made. Of the 51 district prisons that responded, visits were made in only 9 prisons based on the data received. In the rest, no JJB visits were made and no children were transferred.

In Mainpuri District Prison, monthly visits were reportedly conducted by the JJB, a sign of good practice. However, no children were transferred from here.

BIHAR

34% response, 1518 children transferred, 95 JJB visits

Out of the 42 central and district prisons in Bihar, only 15 responded to the RTI application, including 1 central prison. Besides these, we received responses from five sub-jails.

In District Prison Araria and Central Prison Bhagalpur, the number of children identified by JJBs was greater than the number of children transferred from prisons to juvenile homes.

[11] Table 1.2 ‘Capacity, Inmate Population and Occupancy Rate of Jails as on 31st December 2022’ in “Prison Statistics 2022” published by the National Crime Records Bureau.

Based on reported data, in district prisons like Araria, Hajipur, and Samastipur, no JJB visits are taking place, but children are being identified in prisons. In District Prison Munger, 67 children were transferred from prisons to juvenile homes between 2016-2021, but no children in prisons were identified by the JJB in their 17 visits during this period.

MADHYA PRADESH

Madhya Pradesh provided no data despite us going up to a second appeal under the RTI Act.

MAHARASHTRA

35% response, 34 children transferred, 32 JJB visits made

Out of 9 central prisons only 4 replied and out of 31 district prisons, 10 replied.

Out of the 14 prisons that replied, District Prison Akola (13 visits) and Central Prison Yerawada (7 visits) are the only prisons where JJB visits took place in 5 years. In Central Prison Yerawada, 14 children were transferred over six years, but within the same duration, the number of children identified by the JJB were 37.

PUNJAB

75% response, 173 children transferred, 135 JJB visits

12 out of 16 central and district prisons in Punjab responded to the RTI applications. In addition, some sub-jails, open prisons, and women's prisons also responded. Many prisons also provided additional information for the year 2022 about children transferred from prisons to juvenile homes and the number of JJB visits.

Central Prison Kapurthala transferred the highest number of children over the six-year period, with no JJB visits recorded. Prisons like Central Prison Hoshiarpur (30 visits) and District Prison Mansa

(34 visits) had a high number of JJB visits recorded, but no dates of the visits were shared.

Central Prison Ludhiana followed good practice for the two years that they provided data for i.e. 2019 and 2020 – they provided dates not only for JJB visits but also for when children were transferred from the prison to juvenile homes, along with the details of courts that passed the order for transfer. However, information for years 2016, 2017, and 2018 was not provided, and no reason was cited for this. Women's Prison Ludhiana reported that a girl was detained there and subsequently transferred to an observation home.

In both Central Prison Ludhiana and Women's Prison Ludhiana, the District Child Protection Officer visited the prisons in addition to JJB members.

WEST BENGAL

West Bengal provided no data despite us going up to a second appeal under the RTI Act.

HARYANA

90% response, 1621 children transferred, 83 JJB visits

18 of 20 central and district prisons in Haryana responded to the RTI application, except for Rohtak and Sirsa District Prisons.

The highest number of transfers of children from prisons to juvenile homes were reported from district prisons like Karnal (309), Gurugram (279), and Sonapat (144). Karnal District Prison not only detained a high number of children but also had the highest number of JJB visits (30) among the prisons that provided information. From the data provided, the number of children transferred to juvenile homes each year corresponds perfectly with the number of children identified during JJB visits.

This again is an indication of good practice where JJB visits can be an effective tool in the identification of children lodged in prisons.

Central Prison-II Hissar and Jhajjar District Prison stated that no records of children being detained in prisons were maintained by concerned authorities. Gurugram District Prison has not provided any data on the number of JJB visits and the number of children identified during such visits.

RAJASTHAN

51% responses, 108 children transferred, 182 JJB visits

Of 35 central and district prisons in Rajasthan, 18 responded to the RTI application. In addition, some women's prisons also responded to the application.

District Prison Jhunjhunu is the exception that provided a detailed response including time periods on the number of children detained there and subsequently transferred to juvenile homes. 16 children were detained for a minimum of five days to a maximum of eight months in this prison before being transferred to a juvenile home.

Rajasthan reported the highest number of JJB visits across all states. However, most prisons from the state have not provided dates of these visits as sought through the RTI application. Also, despite such high number of JJB visits, none of the prisons have provided any information on the number of children identified during these visits.

CHHATTISGARH

44% responses, 159 children transferred, 34 JJB visits

Out of 25 central and district prisons in

Chhattisgarh, 11 responded to the RTI application. Out of 5 central prisons, only 2 responded.

Central Prison Durg transferred 42 children during this period, which is the single highest number among prisons that provided information.

In District Prison Ramanujanj, the number of JJB visits (15) is highest among the prisons that provided information. However, the number of children identified during this period by the JJB (68) is much higher than the number of children transferred from the prison to juvenile homes (16).

In all other prisons that had JJB visits, the number of visits was very low and irregular. For instance, District Prison Kabirdham had only one JJB visit during this period, and the District Prison Janjgir had only three JJB visits during this period.

JHARKHAND

60% responses, 1115 children transferred, 42 JJB visits

Out of 23 central and district prisons in Jharkhand, only 14 responded to the RTI application.

The highest number of children were detained in Central Prison Birsa Munda in Ranchi (248), followed by District Prison Dhanbad (239) and Central Prison Hazaribagh (166).

For the central prisons, the only one that reported JJB visits was Central Prison Deoghar, where 36 visits were conducted. For the entire pandemic period, there seemed to be active visits; however, no children were identified by the JJB during these visits based on records. 27 children were transferred from prison to juvenile homes during this period.

ODISHA

6%, 0 children transferred, 0 JJB visits made

There are no central prisons in Odisha. There are 17 district prisons out of which five replied. Out of these, one stated that zero children were transferred and that zero JJB visits were made, while the rest have asked for additional payment to access data.

TAMIL NADU

38% responses, 0 children transferred, 56 JJB visits

Seven out of 18 central and district prisons in Tamil Nadu responded to the RTI application. In addition, some sub-jails and special women's prisons also responded.

Among the central prisons, Central Prison Vellore denied information stating an exemption under Section 8(1)(g), which says “*information, the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes.*”

Except for District Prison Pudukkottai, no other district prisons responded. JJB visits took place in Central Prison Coimbatore (1) and Central Prison Trichy (5). The only JJB visit to Central Prison Coimbatore took place in 2021, and five visits to Central Prison Trichy took place in 2019 and 2021. Out of the 56 JJB visits, 50 JJB visits were to women's prisons and special prisons.



DELHI

38% responses, 767 children transferred, 0 JJB visits

Delhi is unique, not just as a jurisdiction with the most well-established justice and accountability institutions, but also because the Delhi High Court executed specific directions to all appropriate authorities for compliance to prevent the incarceration of CCLs and their subjection to the adult criminal justice system, in 2012, over a decade ago. Below are the directions specifically passed to the Tihar and Rohini Jails, NCPCR, DSLSA, and JJBs in the matter *Court On Its Own Motion v. Dept. of Women and Child Development* [12]:

[12] Supra note 1

1. To Tihar and Rohini Jails:

“Every prison shall display at a prominent place in all the wards, canteens and visitors’ areas in Hindi, English and Urdu languages notice boards informing inmates that persons who are below 18 years old at the time of the commission of offence are not supposed to be in jail and are entitled to be kept in children homes and be treated under the provisions of Juvenile Justice Act and be dealt with by the Juvenile Justice Board which makes efforts for reformation and rehabilitation. Such notification shall also inform the procedure to be adopted and the persons to be contacted within the prison in case they want to claim juvenility. Prison Authorities, as well as Legal Aid Authorities, shall be under a duty to provide effective and speedy legal aid to every inmate who wants to claim juvenility from the Court.”

2. To NCPCR:

“NCPCR shall constitute a panel of at least ten (10) persons to make visits to various prisons in Delhi to find out if there are any persons lodged in such prisons who should have been the beneficiaries of the JJ Act. Members of such panel may visit various prisons as per the schedule drawn in consultation with/ intimation to the prison authorities.”

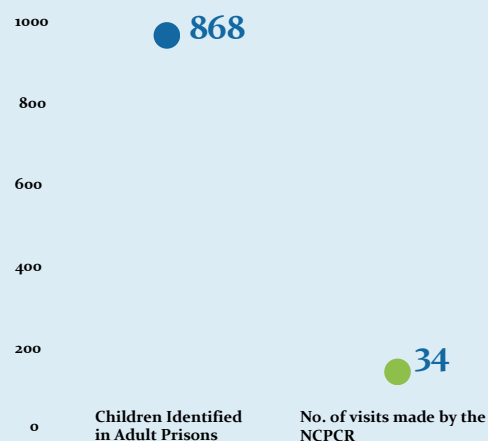
3. To Legal Aid Lawyers and Delhi State Legal Services Authority:

“Legal Aid Lawyers from Delhi State Legal Services Authority who are authorised to be the prison visiting lawyers shall visit prisons on their schedule as may be prescribed and shall intimate the details of inmates who may be juveniles to the Secretaries of the respective District Legal Services Authorities for further appropriate action.”

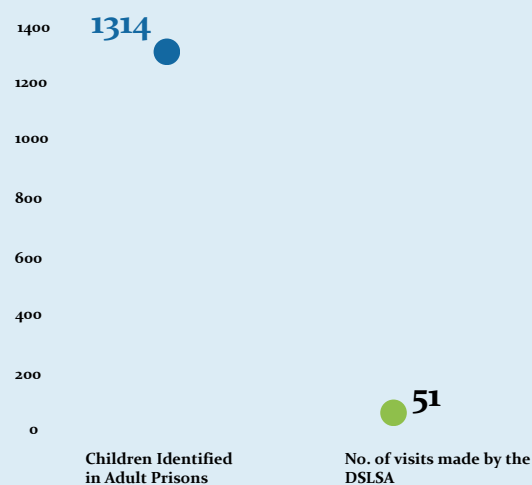
Based on this premise, in Delhi we requested data from all three institutions: Prison Department, Delhi, NCPCR and DSLSA. The following graphs represent the data received.



Source: Prison Department, Delhi



Source: National Commission for Protection of Child Rights



Source: Delhi State Legal Services Authority

Central Jail Delhi consists of 15 prisons across Tihar, Rohini, and Mandoli, out of which 6 prisons responded to the question of children transferred (767).

Meanwhile, NCPCR stated that 866 children were identified by them as being in Central Prison Delhi during this period, and DSLSA stated that 1314 detained children were identified through DSLSA visits in this period.

Regarding visits made by JJBs, DLSA lawyers and the NCPCR panel, all prisons replied that they do not maintain such records. Responses included statements such as “this office maintains no separate and specific record” and “such type of information/data is not maintained by this prison separately”.



OTHER STATES AND UNION TERRITORIES

GUJARAT

40% responses, 55 children transferred, 14 JJB visits

Six out of 15 central and district prisons in Gujarat responded to the RTI application. In addition, we received responses from sub-jails and open prisons.

Central Prison Lajpor in Surat reported the highest number of children (36) transferred during this period.

Like in many other states, JJB visits are very low and irregular in the prisons of Gujarat. The data suggests that the highest number of JJB visits took place in District Prison Junagadh (7), followed by Central Prison Vadodara (4) and Central Prison Lajpor (2).

In District Prison Nadiad, only one JJB visit took place in 2018, after which a child was transferred to a juvenile home. There is a possibility that the child was identified during the JJB visit.

KARNATAKA

72.5% responses, 193 children transferred, 58 JJB visits

Out of 29 central and district prisons in Karnataka, only 21 responded to the RTI application. Besides central and district prisons, we received responses from three sub-jails.

Central Prison Bengaluru reported the highest number of children transferred from prisons to juvenile homes (118). There was only one relevant visit during this period, on 30-01-2021, by the Karnataka State Commission for Protection of Child Rights, Bengaluru and Child Welfare Committee, Bengaluru.

District Prison Chikmagalur is the only prison that reported a regular number of JJB visits at 17 across the six year period.

ASSAM

71% responses, 477 children transferred, 6 JJB visits

Out of the 28 central and district prisons in Assam, 20 responded to the RTI application. We also received responses from Nagaon Special Prison and Jorhat Open Air Prison.

In some district prisons, like Udalguri and Karbi Anglong, the Undertrial Trial Review Committee (UTRC) and Chief Judicial Magistrate (CJM) made visits to prisons, however, no details on these visits were provided. The Nagaon Special Prison, which is the only special prison in Assam, also transferred 29 children to juvenile homes during this period.

KERALA

76% responses, 26 children transferred, 5 JJB visits

13 of Kerala's 17 central and district prisons responded to the RTI application. We also received responses from sub-jails, special-sub jails, an open prison, women's prisons, and a borstal school.

Kerala has one borstal school in Ernakulam, from which 11 children were transferred to juvenile homes. JJB visits were extremely low in the state.

ANDHRA PRADESH

67% responses, 22 children transferred, 94 JJB visits

Out of the 12 central and district prisons in Andhra Pradesh, eight responded to the RTI application, and with partial information.

On the question of the number of children transferred from prison,

three central prisons – Visakhapatnam, Nellore and Kadapa – shared information in the affirmative. The data from these three prisons indicates that 22 children were transferred during the six year period. Five additional prisons provided information on the number of “probable juveniles” identified.

On the number of JJB visits, only two central prisons and five district prisons responded to this query with partial information. None of the prisons has provided information for the period of 2016-2018, and no reason has been cited for this.

UTTARAKHAND

87% responses, 419 children transferred, 64 JJB visits

Seven of eight central and district prisons in Uttarakhand responded to the RTI application. Two sub-jails also responded.

Sub-jail Haldwani transferred 165 children, followed by District Prison Haridwar (121) and Sub-jail Roorkee (74).

District Prison Chamoli reported 30 JJB visits in the six year period, but there were none during the COVID-19 pandemic from March 2020-2021. Five children were identified through JJB visits in District Prison Almora, and 20 children were transferred from there during the six year period.

TELANGANA

100% responses, 6 children transferred, 1 JJB visit

Out of the 10 central and district prisons in Telangana, all responded to the RTI application. The Special Prison for Women also shared a response.

JJB visits in Telangana have been amongst the lowest across all states. The only JJB visit in these six years took place in District Prison Khammam, on 17-12-2021.

JAMMU AND KASHMIR

40% responses, 1 child transferred, 0 JJB visits

Four of the 10 central and district prisons in Jammu and Kashmir responded to the RTI application.

The only child transferred was from District Prison Udhampur.

HIMACHAL PRADESH

92% responses, 7 children transferred, 99 JJB visits

11 out of 12 central and district prisons in Himachal Pradesh responded to the RTI application.

JJB visits took place in all districts and central prisons that responded. These visits enabled the identification of children in both District Prison Solan and Model Central Prison Shimla. In District and Open Air Prison Chamba, 34 JJB visits were conducted during this period. All prisons in Himachal Pradesh provided specific dates for JJB visits.

MIZORAM

100% responses, 17 children transferred, 137 JJB visits

Out of nine central and district prisons in Mizoram, all responded to the RTI application.

Among smaller states, Mizoram has by far the highest numbers of JJB visits. In district prisons like Aizawl, Lunglei, and Champhai, there have been quarterly visits by JJBs. However, there is no mention of the specific dates of the JJB visits.

TRIPURA

66% responses, 14 children transferred, 0 JJB visits

Two of the three central and district prisons in Tripura responded to the RTI application. In addition, 2 sub-jails also responded.

MEGHALAYA

100% responses, 29 children transferred, 4 JJB visits

Out of the five district prisons in Meghalaya, all responded to the RTI application. (There are no central prisons in Meghalaya.) District Prison Tura had the highest number of children detained. The four JJB visits were limited to district prisons in Jowai and Williamnagar.

MANIPUR

100% responses, 0 children transferred, no data on JJB visits

Both the central prisons in Manipur responded to the RTI application.

A consolidated response from the Department of Prisons and Correctional Services, Manipur, stated that “no juvenile had been lodged in District and Central Jails, Manipur or transferred to juvenile homes in the state of Manipur since 2016”. There was no data provided on the number of JJB visits during this period.

GOA

0% responses

Only one of two central prisons in Goa – Central Prison Colvale – responded to the RTI application. They stated that the prison office does not maintain a record of the sought information. There are no district prisons or sub-jails in Goa.

NAGALAND

Nagaland provided no data despite us going up to a first appeal under the RTI Act.

SIKKIM

33.3% responses, 2 children transferred, 0 JJB visits

Out of the three central and district prisons in Sikkim, only one responded to the RTI application – Central Prison Rongyek.

ARUNACHAL PRADESH

100% responses, 1 child transferred, 0 JJB visits made

Both the district prisons in Arunachal Pradesh responded to the RTI application.

District Prison Jolly provided us with additional information for the year 2022, which stated that the one child who was detained there was subsequently transferred to the observation home in Pasighat.

PUDUCHERRY

100% responses, 1 child transferred, 0 JJB visits

The single central prison in Puducherry responded to the RTI application, and there are no district prisons.

LADAKH

Ladakh provided no data despite us going up to a first appeal under the RTI Act.



III. WHERE DO WE GO FROM HERE?

SUMMARY OF KEY FINDINGS

- The data we received indicates that **at least 9681 children had been wrongly incarcerated in adult prisons across the country between 1 January 2016 and 31 December 2021.** This means an **average of over 1600 children were transferred out of prisons across the country, every year.**
- This number is despite an overall **response rate of exactly 50 per cent**, i.e. responses from 285 district and central prisons out of a total of 570. This also does not include the 749 other prisons [13] from which we did not request data, including sub-jails, women's prisons, open prisons, special prisons, borstal schools, and other prisons. It also, as previously mentioned, only includes those who were successfully identified and transferred, not all those who were juveniles at the time of their alleged offence, including those identified by prison visitors, families, or through self-identification.
- There is a glaring absence of data from two big states – Madhya Pradesh and West Bengal. Both states failed to respond to the RTI applications despite us going up to a second appeal under the RTI Act with the respective State Information Commissions. Nagaland and Ladakh failed similarly despite us going up to a first appeal under the RTI Act. **In total, these two states and two union territories account for data missing from 85 district and central prisons.** Coupled with the **overall response rate of 50 per cent, this underscores the fact that there are major lapses by state prison departments in fulfilling their voluntary disclosure obligations under the RTI Act.** We went up to a first appeal under the RTI Act for Gujarat, Haryana and Tamil Nadu and second appeal in Uttar Pradesh and Rajasthan.
- **Data received from Jail no. 5 in Central Prison Tihar in Delhi, and from District Prison, Jhunjhunu, also provide illustrative indication of how long children could spend in prison before being transferred.** For Jail no. 5 in Delhi across six years, out of the total of 730 children transferred, only 22 children were there for one week or less. 93 per cent were there for less than three months, 26 children from 3-6 months, 14 from 6-12 months, three children for over one year, and one child who only got transferred in his third year in prison. In District Prison Jhunjhunu, out of the 16 children transferred, only three were there for one week or less. 10 were there for less than three months, four between 3-6 months, and two between 6 and 12 months.

[13] Based on 'Prison Statistics in India - 2021', published by the National Crime Records Bureau, Ministry of Home Affairs, there were 1319 prisons in the country in total at the end of 2021.

CHALLENGES IN OBTAINING INFORMATION UNDER THE RTI ACT

A few observations on contentious responses -

- With respect to Rajasthan, the initial RTI application was rejected on incorrect grounds under Section 7(9) of the RTI Act: *“Any information shall ordinarily be provided in the form in which it is sought unless it would disproportionately divert the resources of the public authority or would be detrimental to the safety or preservation of the record in question.”* Some PIOs also cited Section 8(1)(h) *“information would impede the investigation, apprehension, or prosecution of offenders”* to absolve themselves of a response, even though no personal details about the children transferred were sought.
- In Odisha’s case, the initial RTI application was rejected on the grounds that the RTI application submitted was not in accordance with the format as per Section 6(1) Form ‘A’ of the RTI Act, and that the applicant had attached their identity proof incorrectly. Accordingly, a fresh RTI application was filed taking care of these grounds, but this time, the mode of payment for accessing information became a challenge in the responses received. Some prisons stated that they will take payments only through cash or money orders.

- In the case of Tamil Nadu, Central Prison Vellore incorrectly rejected the RTI application on grounds provided under Section 8(1)(g): *“Information, the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes.”*

Authorities thus found creative ways to deny disclosing information, which is against the very spirit of the RTI Act.



CONTEXTUALISING EXISTING COURT DIRECTIONS

In *Court On Its Own Motion v. Dept. of Women and Child Development* [14], the Delhi High Court in 2012 provided extremely comprehensive and critical guidelines for all the relevant stakeholders that are responsible for, firstly and most effectively, ensuring that children are not arrested as adults and wrongly sent to prisons, and thereafter, those that can support in their speedy transfer to CCIs in case they are wrongly incarcerated. For instance, for the latter, the Court directed that all government hospitals shall constitute medical boards to carry out medical age examinations and shall give a report not later than 15 days after the request for the bone ossification test for age determination is made.

Recognising the need for safeguards at the time of arrest, Justice Sikri stated that investigating officers, while making arrests, must ascertain the age of the accused, and shall reflect the age of the arrested person in the arrest memo (which will later be seen by the magistrate during first production in court). However, a report published in May 2024 by Project 39A at the National Law University - Delhi titled *'Magistrates and Constitutional Protections - An Ethnographic Study of First Production and Remand in Delhi Courts'* reveals that the arrest memo used in Delhi glaringly does not include any reference to the age of the accused.

The Court also stated that in each case where a police officer arrests a person as an adult and later on such person turns out to be a CCL, the DCP concerned shall undertake an inquiry to satisfy him/her that a deliberate lapse was not committed.

On the same issue, the Court stated as a direction to the JJB, that “on every occasion when the case of a juvenile is transferred from the adult court to the JJB and the juvenile is transferred from prison to the concerned observation home, the JJB shall interact with the juvenile and record his/her version on how he came to be treated as an adult. If, from the statement of the juvenile and after an appropriate inquiry from IO, it appears that the juvenile was wrongly shown as an adult by the IO, then the JJB shall inform the concerned DCP.”

In 2021, the Delhi High Court in *Court On Its Own Motion v. State* on 29 September, 2021 [15] reprimanded the Delhi Police for not maintaining records of a staggering 409 CCLs charged with petty offences who were produced before the JJB but not subsequently handed over to their parents, in contravention of the JJ Act, 2015.

Time after time, there have been observations by courts, juvenile justice lawyers who are part of civil society, and by wrongly incarcerated CCLs themselves, that cite wrongful police action as a critical reason for protections of children under the JJ Act, 2015 not being realised.

[14] Supra note 1
[15] Supra note 10

RECOMMENDATIONS

Building state accountability – compensation for incarceration:

An effective way to hold the state accountable for its failures is to make it pay – by way of compensation. There are various schemes and judgements that provide for monetary relief from the state in cases where fundamental rights are violated. Demanding compensation for violations of this kind, along with other advocacy efforts, will generate pressure on the State to be cognizant of its shortcomings and reform them. In 2004, Justices Dalveer Bhandari and DY Chandrachud of the Bombay High Court paved the way for this by providing Rs. 1 lakh in compensation to a boy who was wrongfully incarcerated for almost three years. The respondents – Borivali Police Station and Mumbai Central Prison – were required to together pay this amount for their omissions and commissions resulting in the boy being incarcerated for so long.^[16]

In 2011, Justices Ravindra Bhat and Gita Mittal of the Delhi High Court ordered compensation of Rs. 5 lakhs to a CCL who had been incarcerated at the age of 14 or 15 and had spent 8 years in prison for a murder, despite the prevailing JJ law not allowing for a punishment of more than three years in a special home for a juvenile. The bench also put a stay on all proceedings against him, and directed the department to quash all criminal cases lodged against him.^[17] In 2018, a lawyer and activist moved the NHRC to seek Rs. 28 lacs as compensation for an individual who had been wrongly jailed as a juvenile for 14 years in Odisha.^[18]

In cases where deliberate misrepresentation is revealed on part of officials, disciplinary action should be sought against them.

Monitoring and legal education by state child protection bodies:

The primary subjects and beneficiaries of JJ Act, 2015 children and adolescents, remain uninformed about their rights. Adding legal rights and protections available to children to school curriculums will not only empower them with information and make them cautious of violations, it will also cultivate a culture of sensitivity by rooting these principles in our basic education standards.

Posters in key locations on rights of children wrongfully arrested and/or imprisoned:

A simple tool is to disseminate information about the law prohibiting the incarceration of children in prisons in areas CCLs are most prone to come across – such as prisons, police stations, courtrooms, etc. In this manner, CCLs who are unaware that their incarceration in prisons is prohibited can be made cautious prior to their admission.

Medical examination in prisons:

A major checkpoint for juvenility can be the Chief Medical Officer (CMO). The Model Jail Manual states that when an accused is presented before them prior to their admission in prison, the CMO can make note of suspected juvenility, and the matter will then be referred back to the court concerned.

Establishing observation homes and places of safety across the country:

Nationally, at the end of 31.03.2023, there were only 311 observation homes, 39 special homes, and 36 places of safety, which indicates the appalling lack of infrastructure needed to realise rehabilitation of CCLs, available in much less than half of the country's districts. This contributes to the incarceration of children in prisons.

[16] Master Salim Ikramuddin Ansari v. Officer-In-Charge, Borivali Police Station, Bombay High Court, SCC OnLine Bom 722

[17] Subhash v. State, Delhi High Court, 2011 SCC OnLine Del 1612

[18] Statesman News Service, (18 October 2018), 'Odisha rights activist moves NHRC seeking damages for 'wrongly implicated' juvenile', The Statesman; <https://www.thestatesman.com/india/odisha-rights-activist-moves-nhrc-seeking-damages-wrongly-implicated-juvenile-1502698156.html>

As of March 2022, there were states such as Odisha, Himachal Pradesh, and Arunachal Pradesh that did not have a single observation home. No UTs without a legislature other than Chandigarh had an observation home. In approximately 2/3rds of all districts in Uttar Pradesh, there are no observation homes. As on 31.03.2022, there were only 26 observation homes in a state that has 75 districts. And as on 31.03.2023, there were only two special homes and one place of safety in the entire state.

Some families of CCLs have anecdotally reported that it is easier for them if their children are incarcerated in a prison in their own district than a juvenile home far away, and that visiting juvenile homes far away is both a financial and logistical burden. State governments must prioritise setting up CCIs of standard in all districts. Juvenile homes that exist in remote areas often have extremely poor infrastructure, arguably worse than that in prisons. The Standing Committee on Human Resource Development (2020) observed that living conditions in juvenile homes are inadequate. They stated that unsatisfactory living conditions are caused by: (i) inadequate space (ii) poor quality of bathrooms (iii) lack of recreational activities, and (iv) lack of trained staff. This covers many important aspects but should also include a lack of employment, vocational and education opportunities, and mental health support.

Clarity on responsibilities:

Anecdotal evidence suggests that one of the reasons there have been no JJB visits to prisons in Delhi is that the members feel it unnecessary since NCPCR is already conducting this exercise. It needs to be made clear to the relevant functionaries that their responsibility to conduct inspections does not end because another entity is undertaking the same exercise, and more importantly, that their statutory obligations to do so remain.

In general, CCLs need to be fully seen as children with equal rights who deserve equal justice.

To end, we cite a desirable outcome for ensuring greater accountability in the system, in addition to the Delhi High Court's excellent directions. Supreme Court Justice Sanjiv Khanna and Executive Chairperson of NALSA said on 25 January 2024 during the inauguration of NALSA's campaign to identify and transfer children from all prisons across the country: *"Our aim...is to have zero error cases. That means there cannot be even one case where the juvenile is incarcerated without the authorities or NALSA being aware and carrying out necessary exercise, and ensuring if he is a juvenile on the date of the offence, he is given full protection of law. This is the only way we can ensure there is equality of opportunity and rule of law prevails."* This is where the buck should stop, with NALSA and with our courts.



ANNEXURE-A

To,
The Public Information Officer
Office of the Director General of Prisons and Correctional Services

SUBJECT: Request to furnish information under section 6(1) of the Right to Information Act, 2005

Sir/Madam,

1. Please provide year-wise and jail-wise data on the number of juveniles transferred from all district and central jails in (State) to juvenile homes in (State) since 2016, in the following format for each jail in each district:

Year	District	Jail	Number of juveniles transferred
2016			
2017			
2018			
2019			
2020			
2021			

2. Please provide details of number of visits made by juvenile justice boards in all district and central jails in (State) since 2016 as per the following format.

Sr. no	Month & year	Dates	Jail	No. of probable juveniles identified
	2016			
	2017			
	2018			
	2019			
	2020			
	2021			

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