

Amendments to Juvenile Justice Act

February 22, 2021

The Union Cabinet ushered in some major amendments to the Juvenile Justice (Care and Protection of Children) Act 2015 in a bid to bring in clarity and also entrust more responsibilities to bureaucrats when it comes to implementing provisions of the law. Careful scrutiny of the proposed changes is essential to understand their benefits.

In news: Union Cabinet approves amendments to the Juvenile Justice (Care and Protection of Children) Act, 2015

Placing it in syllabus: Law & Policy

Dimensions

- Details of New Amendments
- Importance of these Amendments
- Provisions Juvenile Justice Act 2015
- Children in conflict with law
- Children in need of protection

Content:

Details of the New Amendments:

Inclusion of Serious Crimes as a new category:

- For the first time the category of “serious crimes” differentiating it from heinous crimes
- Both heinous and serious crimes have also been clarified for the first time, removing any ambiguity
- Crime like the possession and sale of an illegal substance, such as drugs or alcohol, will now fall under the ambit of a “serious crime”.
- What this means is that for a juvenile to be tried for a heinous crime as an adult, the punishment of the crime

should not only have a maximum sentence of seven years or more, but also a minimum sentence of seven years.

Expanding the powers of district and additional district magistrates

- District magistrates (DMs) along with additional district magistrates (ADMs) will monitor the functioning of various agencies under the JJ Act in every district.
- The agencies include the Child Welfare Committees, the Juvenile Justice Boards, the District Child Protection Units and the Special juvenile Protection Units.
- DM's are also responsible now for ensuring that Child Care Institutions (CCI) falling in their district are following all norms and procedures.
- Before someone sets up a shelter home for children and sends their proposal for registration under the JJ Act to the State, a DM will have to assess their capacity and conduct a background check.
- The DM will also carry out background checks of Child Welfare Committee members, who are usually social welfare activists, including educational qualifications, as there is no such provision currently to check if a person has a case of girl child abuse against him.
- DM will also now be in charge of sanctioning adoptions, removing the lengthy court process.

Expanding the scope of the Juvenile Justice Act:

- Child victims of trafficking and drug abuse and those abandoned by their guardians will be included in the definition of "child in need of care" and protection

Importance of these Amendments:

Enhanced monitoring of CCIs (Children's homes)

- CCIs can be government-run, government-aided, privately run or run through government, private or foreign

funding.

- These institutions, while falling under the CWC and the state child protection units had very little oversight and monitoring.
- A report filed by the NCPCR in 2018-19 found that 1.5% of the children's homes do not conform to rules and regulations of the JJ Act. Also, Out of the 7000 children's homes (CCI), 29 per cent of them had major shortcomings in their management.
- The NCPCR report also found that not a single Child Care Institution in the country was found to be 100 per cent compliant to the provisions of the JJ Act.
- Even to receive a license, after an application was made, if the children's home were to not receive a reply from the government within 3 months time, it would be "deemed registered" for a period of six months, even without government permission.
- The new amendment ensures that this can no longer happen and that no new children's home can be opened without the sanction of the DM.

Swift adoption and rehabilitation of children

- Giving the DM powers of sanctioning adoptions will **remove the lengthy court process.**
- This hastens the process of adoption and ensure the swift rehabilitation of children into homes and foster homes

Oversight over CWC members

- There is no such provision currently to check if a person has a case of girl child abuse against him or her.
- With the DM checking the background of every CWC member the committees would be made safer for children.

Keeping Children out of adult justice system

- The clarification to the definition of heinous crimes means that for a juvenile to be tried for a heinous crime as an adult, the punishment of the crime should not only have a maximum sentence of seven years or more, but also a minimum sentence of seven years.
- Heinous crimes with a minimum imprisonment of seven years pertain mostly to sexual offences and violent sexual crimes.
- This provision has been made to ensure that children, as much as possible, are protected and kept out of the adult justice system.

Provisions Juvenile Justice Act 2015

- The Juvenile Justice (Care and Protection of Children) Act, 2015 has come into force from January 15, 2016 and repeals the Juvenile Justice (Care and Protection of Children) Act, 2000.
- The Act seeks to achieve the objectives of the United Nations Convention on the Rights of Children as ratified by India on December 11, 1992.
- It specifies procedural safeguards in cases of children in conflict with law.
- It seeks to address challenges in the existing Act such as delays in adoption processes, high pendency of cases, accountability of institutions, etc.
- The Act further seeks to address children in the 16-18 age group, in conflict with law, as an increased incidence of crimes committed by them have been reported over the past few years.

Key Provisions

- **Updated Legislation:** The Juvenile Justice (Care and Protection of Children) Act, 2015 repeals the Juvenile Justice (Care and Protection of Children) Act, 2000.
- **Removes negative connotation in nomenclature:** The Act changes the nomenclature from Juvenile to child or

'child in conflict with law'. Also, it removes the negative connotation associated with the word "juvenile".

- **Special Provisions for Age 16-18 years:** One of the main provisions of the new Act was that juveniles charged with heinous crimes and who are between the ages of 16-18 years would be tried as adults and processed through the adult justice system. This provision received an impetus after the 2012 Delhi gangrape in which one of the accused was just short of 18 years, and was therefore tried as a juvenile.
- **Powers of Juvenile Justice Board:** The nature of the crime, and whether the juvenile should be tried as a minor or a child, was to be determined by a Juvenile Justice Board (set up in every district). Also Child Welfare Committees must be set up in every district. Both must have at least one woman member each.
- **Streamlined Adoption Related Clauses:** Another major provision was that the Act streamlined adoption procedures for orphans, abandoned and surrendered children and the existing Central Adoption Resource Authority (CARA) has been given the status of a statutory body to enable it to perform its function more effectively
- **Inclusion of New Offences:** The Act included several new offences committed against children (like, illegal adoptions, use of child by militant groups, offences against disabled children, etc) which are not adequately covered under any other law.

Provisions related to Children in conflict with law

- Offences have been categorized as petty/ serious/ heinous offences.
- Children in the age group of 16 – 18 years may be tried as adults in cases of heinous offences after preliminary assessment by the Juvenile Justice Board.

- A child in conflict with law will be sent to an Observation Home temporarily during pendency of inquiry.
- The child will be segregated according to age, gender, physical and mental status and nature of offence.
- A child who is found to have committed an offence by the Juvenile Justice Board will be placed in a Special Home.
- A Place of Safety will be set up for children above the age of 18 years or children of the age group of 16 – 18 years who are accused or convicted for committing a heinous offence.
- The Place of Safety will have separate arrangements and facilities for under-trial children and convicted children.
- The Juvenile Justice Board will conduct regular inspection of jails meant for adults to check if any child is lodged in such jails and take immediate measures for transfer of such a child to the Observation Home.
- The preliminary assessment by the Juvenile Justice Board is to be conducted within three months before transferring the case to the Children's Court.
- The Act mandates that in case the child is tried as an adult by the Children's Court, it shall ensure that the final order includes an individual care plan for the rehabilitation of the child, including follow up by the probation officer or the District Child Protection Unit or a social worker.
- Child offenders who come to be treated as adults by the juvenile justice administration, cannot be given capital punishment or life imprisonment without the possibility of release.
- The decision whether the child is to be released or sent to jail after attaining the age of 21 years will be taken by the Children's Court.
- The Child Care Institutions in respect of children in

conflict with law are the Observation Home, Special Home, Place of Safety and fit facility.

Provisions related to Children in need of Care and Protection

- The second major provision was with regards to adoption, bringing a more universally acceptable adoption law instead of the Hindu Adoptions and Maintenance Act (1956) and Guardians of the ward Act (1890) which was for Muslims.
- The Act streamlined adoption procedures for orphans, abandoned and surrendered children and the existing Central Adoption Resource Authority (CARA) has been given the status of a statutory body to enable it to perform its function more effectively.
- The Child Care Institutions in case of children in need of care and protection are Open Shelters, Children Home and Special Adoption Agencies.
- All Child Care Institutions have to be mandatorily registered within six months from the date of commencement of the Act and failure to do so is a punishable offence.
- A child in need of care and protection is to be produced before the Child Welfare Committee within 24 hours.
- The Act provides for mandatory reporting of a child found separated from his/her guardian. Non reporting has been treated as a punishable offence.
- The Child Welfare Committee is to send the child in need of care and protection to the appropriate Child Care Institution and direct a Social Worker, Case Worker or the Child Welfare Officer to conduct the social investigation within 15 days.
- The Child Welfare Committees shall meet at least 20 days in a month and the District Magistrate shall conduct a quarterly review of the functioning of the Child Welfare Committee.
- A child in need of care and protection will be placed in

a Children's Home for care, treatment, education, training, development and rehabilitation.

- The Act provides for Open Shelters for Children in need of community support on a short term basis for protecting them from abuse or keeping them away from a life on the streets.
- The Child Welfare Committee could recognize a facility to be a Fit Facility to temporarily take the responsibility of a child.
- The Specialized Adoption Agency is to take care of the rehabilitation of orphans, abandoned or surrendered children.

Mould your thought: Evaluated the effectiveness of the proposed amendments to Juvenile Justice Act 2015..

Approach to the answer:

- Introduction
- Purpose of JJ Act
- Discuss the proposed amendments
- Mention the Importance of these amendments
- Conclusion