

DCPCR moves Supreme Court Challenging Juvenile Justice Act 2021 Amendment

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Manifest Pedagogy:

Reporting instances of abuse and cruelty by staffers or persons in-charge at child care institutions (CCI) is not easy. While the victims themselves are unable to directly report them due to the imbalance in power, most such crimes are reported to the police by either parents or child rights bodies and child welfare committees (CWC). The parents of these children, who are mostly daily wage labourers, are either unaware of how to, or not inclined to report the crimes. With the 2021 amendment to the Juvenile Justice (Care and Protection) Act making these crimes non-cognisable, would make reporting them to the police even more difficult.

In News: The Delhi Commission for Protection of Child Rights (DCPCR) has filed a writ petition in the Supreme Court challenging the amendments made to the Juvenile Justice (Care and Protection) Act 2015 in 2021 by which certain categories of offences against children have been made non-cognizable.

Placing it in Syllabus: Polity and Social Justice

Static Dimensions

- Key features of JJ amendment Act, 2021
- Statistics related to the matter

Current Dimensions

- More on news
- Amendments being questioned
- Issues associated with these amendments

Content

More on news

- The Commission has challenged the 2021 Amendment to the extent it has made the following categories of offences **non-cognizable-**
 - Use of children for drugs peddling
 - Use of children by terrorists
 - Exploitation of child employee
 - Cruelty against children
- When the offences are non-cognizable, the police cannot register FIR and the investigation can commence only on the basis of a complaint filed before the concerned Magistrate.
- In 2021, the Juvenile Justice (Care and Protection of Children) Amendment Act, 2021 was passed to amend various provisions of the Juvenile Justice Act, 2015 which received the assent of the President.
- However, the **Amendment Act is yet to be notified.**
- There are 29 Amendments carried out in the Juvenile Justice (Care and Protection of Children) Act, 2015 by the Amendment Act, 2021.

Statistics related to the matter-

- Data from the National Crime Records Bureau (NCRB) shows that since it started recording these crimes in 2017, they had risen by over **700% by 2019.**
- The NCRB in 2017 recorded **278 cases** of crimes involving 328 child victims and these cases rose to **1,968 by 2019**, involving as many as **2,699 child victims.**

Key Features of JJ amendment act 2021-

- **Adoption:** Under the Act, once prospective adoptive parents accept a child, an adoption agency files an

application in a civil court to obtain the adoption order. The adoption order issued by the court establishes that the child belongs to the adoptive parents.

- The amendment provides that instead of the court, the district magistrate (including additional district magistrate) will perform these duties and issue all such orders.
- **Appeals:** The amendment provides that any person aggrieved by an adoption order passed by the district magistrate may file an appeal before the Divisional Commissioner, within 30 days of such order.
 - Such appeals should be disposed of within four weeks from the date of filing of the appeal.
- The 2015 Act provides that there will be no appeal for any order made by a Child Welfare Committee concluding that a person is not a child in need of care and protection. The amendment removes this provision.
- **Serious offences:** The Act provides that the Juvenile Justice Board (JJB) will inquire about a child who is accused of a serious offence. Serious offences are those for which the punishment is imprisonment between three to seven years.
 - The amendment adds that serious offences will also include offences for which maximum punishment is imprisonment of more than seven years, and minimum punishment is not prescribed or is less than seven years.
- **Designated Court:** The Act provides that offences against children that are punishable with imprisonment of more than seven years, will be tried in the Children's Court (equivalent to a Sessions Court).
 - Other offences (punishable with imprisonment of less than seven years) will be tried by a Judicial Magistrate.
 - The amendment provides that all offences under the Act will be tried in the Children's Court.

- **Offences against children:** The Act provides that an offence under the Act, which is punishable with imprisonment between three to seven years, will be cognizable (where arrest is allowed without warrant) and non-bailable. **The amendment provides that such offences will be non-cognizable and non-bailable.**
- **Child Welfare Committees (CWCs):** The Act provides that states must constitute one or more CWCs for each district for dealing with children in need of care and protection. It provides certain criteria for the appointment of members to CWC. For instance, a member should be
 - Involved in health, education, or welfare of children for at least seven years,
 - A practising professional with a degree in child psychology, psychiatry, law, or social work.
- The **amendment adds certain criteria for a person to be ineligible to be a member of the CWC.** These include: (i) having any record of violation of human rights or child rights, or (ii) being a part of the management of a child care institution in a district.

Amendments being questioned-

- **Section 26** of the Amendment Act categorises serious offences i.e. offences with imprisonment for a term of three years and above, but not more than seven years as non-cognizable.
 - Such offences include sale and procurement of children, exploitation of child employees, employment of children for child begging, giving intoxicating liquor or narcotic drugs to a child.
- **Section 86** of the JJ Act, according to which crimes under the special law, with punishment between three to

- seven years, have been reclassified as non-cognisable.
- These crimes include cruelty to children by CCI staff (**Section 75**), employment of children for begging (**Section 76**), using children to smuggle or sell intoxicating substances and narcotics (**Section 78**), sale and procurement of children (**Section 81**), exploitation of child employees (**Section 79**), use of children by militant or other groups for illegal purposes (**Section 83**), and giving children intoxicating/psychotropic substances or narcotics (**Section 77**).

Issues associated with these amendments-

- Make reporting cases to the police even more difficult.
 - According to the Code of Criminal Procedure, once the crimes are rendered non-cognisable, the police will be able to register an FIR only on the directions of a magistrate and a complainant will first have to approach the concerned magistrate to start the process.
- The Commission argues that such categorization violates **Article 14 and 21** of the Constitution of India and also various other international obligations under the United Nations Convention on the Rights of the Child to which India is a signatory.
- Such categorization is contrary to the scheme of the Juvenile Justice Act which is progressive in nature and protects children against all forms of exploitation.
- It is argued that the categorization is also contrary to the general scheme of IPC wherein offences punishable with imprisonment for more than three years are categorised as Cognizable whereas offences are punishable with imprisonment for up to three years as non-cognizable.
- There is no reasonable justification or rationale sought to be achieved by reclassifying the cognizable offences as non-cognizable offences.

- The current system of reporting crimes committed by staff at CCIs already causes delays in registering FIRs (first information report) and sometimes FIRs not being registered at all.

Cognisable and non cognisable offences

- **Cognizable Offences:** A cognizable offence is an offence in which the police officer as per the first schedule or under any other law for the time being in force, can arrest the convict without a warrant and can start an investigation without the permission of the court. Eg- kidnapping, theft,
- **Non-cognizable offence,** the police cannot arrest the accused without a warrant as well as cannot start an investigation. Eg-forgery, cheating. A criminal complaint is lodged with the magistrate who is supposed to order the concerned police station to initiate an investigation.

Way Forward

- District Administration should work in close coordination with all five arms – CWC, JJ Board, CCI, District child protection units and special juvenile police units.
- District magistrates typically lack the knowledge and resources necessary to comply with these specific laws, so it is important to provide them with specialised training in child protection laws.
- The reporting ability of victims must be made easier through parents or independent civil society organisations, who will offer the victim the required support and make sure the child returns to a normal life, in order to remove procedural flaws and enable quicker justice delivery.
- A high conviction rate would go a long way toward guaranteeing a safe environment for kids.

Mould your thoughts

1. The 2021 amendment to the Juvenile Justice (Care and Protections) Act making certain crimes non-cognisable, would make reporting them to the police even more difficult. Discuss (250 Words)

Approach to the answer

- Introduce about the recent move by DCPCR
- Brief about amendments of JJ act 2021
- Amendments being questioned and Issues associated with them
- Wayforward and conclusion