

Evaluation of the Juvenile Justice (Care and Protection of Children) Amendment Bill, 2021

¹Rajat Rajan Singh, ²Dr. Sanjaya Choudhury
¹Research Scholar, Law Department, Bhagwant University, Ajmer
²Professor, Law Department, Bhagwant University, Ajmer

Abstract

The Juvenile Justice Act amendment is making it more complicated to report abuse in child care institutions by making abuse and cruelty by employees or persons in charge of child care institutions a non-cognizable offence. The Juvenile Justice (Care and Protection of Children) Amendment Bill, 2021 was passed to amend various provisions of the Juvenile Justice Act, 2015. According to the Juvenile Justice (Care and Protection of Children) Act, 2015, the adoption of a child is complete after civil court orders an adoption. The bill provides that instead of the court, the district magistrate (including the additional district magistrate) will issue the adoption orders. These amendments include authorizing district magistrates, including additional district magistrates, to issue adoption orders under Section 61 of the JJ Act, to ensure speedy disposal of cases and increase accountability. Under the Act, the District Magistrates have been given more powers to ensure its smooth implementation as well as to make coordinated efforts in favor of children in times of distress. As per the amended provisions of the Act, any child care institution shall be registered only after considering the recommendations of the District Magistrate. The District Magistrate will independently evaluate the functioning of District Child Protection Units, Child Welfare Committees, Juvenile Justice Boards, Special Juvenile Police Units, Child Care Institutions etc.

Keywords: Child Welfare Committees, Juvenile Justice Boards, Special Juvenile Police Units, Child Care.

Introduction:

The Juvenile Justice (Care and Protection of Children) Amendment Bill, 2021, was passed in Rajya Sabha to amend the Juvenile Justice Act, 2015. The Union Minister for Women and Child Development Smt. Smriti Zubin Irani stressed the need to hand over the responsibility of care and protection of vulnerable children to the District Magistrates in the light of the shortcomings in the system. He reiterated Parliament's commitment to give priority to the basic needs of children above all issues. The eligibility criteria for appointment of CWC members have been redefined. The criteria for disqualification of CWC members have also been introduced to ensure that only persons capable of rendering quality service with requisite qualifications and integrity are appointed to the CWC.

At present, three types of offenses (mild, serious, heinous) have been defined under the law. Which are referred to when considering any violation of law in the case of children. However, it has been observed that there are some offenses which do not fall under the above mentioned categories. It has been decided that offenses in which the maximum punishment is more than 7 years of imprisonment but no minimum punishment has been prescribed or minimum punishment of less than 7 years is provided, shall be treated as serious offenses under this Act.

The difficulties faced in the implementation of several provisions of the Act have been addressed in it. Under this, amendments have been made to remove the difficulties arising in the interpretation of various provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015. Along with this, the possibilities of using some of the provisions included in the Act have been clarified.

Provisions of the Juvenile Justice (Care and Protection of Children) Amendment Bill, 2021:

Non-cognizable offences:

Offenses against children which are mentioned in Chapter "Other offenses against children" of the Juvenile Justice Act, 2015, for which an offense punishable with imprisonment of three to seven years shall be "non-cognizable".

Adoption/Adoption:

The amendment provides protection to the provision of protection and adoption of children. Several adoption cases are pending before the court and the power to expedite the proceedings of the court has been transferred to the District Magistrate.

The amendment provides that the District Magistrate has the power to issue orders for such adoption.

Juvenile Justice (Care and Protection of Children) Act, 2015

Parliament passed the Juvenile Justice (Care and Protection of Children) Act, 2015 to replace the Juvenile Offenses Act and the Juvenile Justice (Care and Protection of Children) Act, 2000.

The Act allows juveniles between the ages of 16-18 years to be tried on the same lines as adults involved in heinous offences.

The Act covers the eligibility of parents for adoption and the method of adoption. The Act replaced the Hindu Adoption and Maintenance Act (1956) and the Ward's Guardians Act (1890) with more universally accessible adoption legislation.

The Act makes the Central Adoption Resource Authority (CARA) a statutory body for matters relating to adoption, to act as a nodal agency for the upbringing, care and adoption of Indian orphans.

Child Care Institute (CCI):

All child care institutions, whether run by the State Government or voluntary or non-governmental organizations, must be compulsorily registered under the Act within 6 months from the date of commencement of the Act.

Challenges related to Juvenile Justice Amendment Act, 2021: The challenge in particular amendment is one of section 86 of the Juvenile Justice Act, according to which offenses under the special law shall be made non-cognizable with imprisonment between three to seven years has been reclassified into.

While the imbalance in power causes the victims themselves to be unable to report them directly, most such crimes are reported to the police by parents or child rights bodies and child welfare committees (CWCs).

Parents of these children: They are mostly daily wage workers, either unaware of how to report crimes to the police or not.

They do not want to get involved in the legal process as it will force them to take time off from work, which will result in loss of wages.

Child Welfare Committees (CWC): In most cases the CWC's first instinct is to "talk and compromise" rather than escalate the matter to the police.

Making these offenses non-cognizable along with many other serious offenses under the special law will make it even more difficult to report the offense to the police.

Salient Features of the Bill

A person under the age of 18 is called a juvenile or juvenile. The Juvenile Justice (Care and Protection of Children) Act, 2015 contains provisions relating to children in conflict with law and children in need of care and protection.[1] India United Nations Convention on the Rights of the Child, The Hague Convention on the Protection of Children and Cooperation in Respect Off Inter-Country Approach (1993) and several other international agreements, and the Act fulfills this commitment.[2] Since India is a signatory to these agreements, it is necessary for it to provide juvenile justice. Ensure child rights related to care and protection and adoption.

The Juvenile Justice (Care and Protection of Children) Amendment Bill, 2021 was introduced in the Lok Sabha on March 15, 2021, and is currently pending in the Rajya Sabha.³ Bill amending the Juvenile Justice (Care and Protection of Children) Act, 2015 [3] The Statement of Objects and Reasons for the 2021 bill states that courts have seen considerable delays in adoption cases. Further, it states that adoption cases are non-adversarial in nature (i.e. when the two parties are not opposed to each other) and can be dealt with through a well laid down procedure.³ A bill was introduced in the Lok Sabha in August 2018, empowering the district magistrate to issue adoption orders.[4] But that bill lapsed with the dissolution of the 16th Lok Sabha.

Under the 2015 Act, juvenile offenses were divided into the following categories: (i) heinous offenses (for which a minimum punishment of seven years under the IPC or any other law), (ii) serious offenses (imprisonment of three to seven years)), and (iii) minor offenses (imprisonment of less than three years). punishment, or the minimum punishment is imprisonment of less than seven years.[5] The court ordered that these offenses should also be included in the category of serious offences.⁵ The Bill also seeks to give effect to this order.

Main characteristics

Adoption: Under the Act, after the child has been accepted by the prospective adoptive parents, the adoption agency makes an application to the civil court for obtaining an order of adoption. A court order establishes that the child belongs to the adoptive parent. The Bill provides that in place of the court, the district magistrate (including the additional district magistrate) shall issue the adoption orders.

Appeal: The Bill provides that a person aggrieved by the adoption order of the District Magistrate can appeal to the Divisional Commissioner within 30 days from the date of the order. It should be disposed of within four weeks from the date of appeal.

The Act provides that if the Child Welfare Committee finds that a child is not a child in need of care and protection, no appeal can lie against the order of the Committee. The Bill removes this provision.

Serious offences: The Act provides that the Juvenile Justice Board shall investigate a child who is accused of committing a serious offence. Serious offenses are those for which the sentence of imprisonment ranges from three to seven years. The bill added that serious offenses would also include offenses for which the maximum punishment is more than seven years, and the minimum punishment has not been specified or is less than seven years.

Specified Court: The Act provides that offenses against children under the law, which are punishable with imprisonment for more than seven years, shall be tried in a Bal Adalat (equivalent to a sessions court). For other offenses (punishment punishable with imprisonment of less than seven years) shall be tried in the Court of Judicial Magistrate. The bill proposes that all offenses under the Act will be tried in a children's court.

Offenses against children: The Act provides that an offense punishable with imprisonment of three to seven years shall be cognizable (allowing for arrest without warrant) and non-bailable. The Bill amends this and provides that such offenses shall be non-cognizable and non-bailable.

Child Welfare Committee (CWC): The Act provides that the State shall constitute one or more CWCs in each district for the benefit of children in need of care and protection. The Act also lays down certain criteria for appointment of members of the CWC, such as (i) a person who has been involved in the work of health, education or welfare of children for at least seven years, or (ii) a person who is engaged in child psychology, Be a practicing professional with a degree in Psychiatry, Law or Social Work. The Bill specifies additional criteria for the appointment of members of the CWC. These include (i) he should not have any record of violation of human rights or child rights, or (ii) he should not be part of the management of a child care institution in the district.

Key issues and analysis

Child adoption is a legal process in which a permanent legal relationship is established between the child and the adoptive parents. The question, therefore, may be asked whether it is appropriate to vest the power to issue adoption orders in the District Magistrate instead of a civil court.

As of July 2018, 629 cases of adoption were pending in various courts. In order to expedite the process of adoption, the Bill transfers the power to pass orders in this regard to the District Magistrate. In this regard, the matter is deserving of consideration whether in view of the large number of pending cases, the handing over of this charge to the District Magistrate can be justified.

The Standing Committee on Human Resource Development (2015) had observed that statutory bodies under the Act do not exist in many states. In 2019, only 17 out of 35 state/UT districts had the required infrastructure and bodies under the Act.

In 2017, the Madhya Pradesh High Court had held that the Central Adoption Resource Authority (CARA) did not timely recommend children who were legally free for adoption. The court had suggested that the steering committee of the authority could oversee and investigate the functioning of CARA.

Empowering District Magistrate to issue adoption orders:

The Juvenile Justice (Care and Protection of Children) Act, 2015 stipulates that adoption is complete after a civil court orders adoption. 3. The person aggrieved by the order can file an appeal before the Divisional Commissioner. This raises a number of issues which are mentioned below.

Transfer of power to order adoption from court to district magistrate:

The Statement of Objects and Reasons (SOR) of the Bill states that considerable delays have been observed in adoption cases in courts. 19,000 children were adopted between April 3, 2015 and March 2020, i.e. an average of 320 children were adopted every month. [6] As of July 2018, 629 adoption cases are pending in various courts.4 The question is whether this is enough. delay and consequently transfer the power to issue adoption orders from the court to the District Magistrate. Delegating this power to district magistrates can also be delayed as they are already burdened with many responsibilities, such as restoration of law and order, land and revenue management, disaster management, general administration and government schemes and programs in their district. to implement The District Magistrate is the chairman of about 75 committees of 23 departments.[7]

Lack of judicial inquiry into adoption orders:

The adoption of a child under the Act is complete when the court orders the adoption. With this the child becomes the legal child of the adoptive parents and enjoys the same rights, privileges and responsibilities as a biological child. The Bill transfers this power of the court to district magistrates (including additional district magistrates). The question is whether it is appropriate for an administrative authority to issue an order of adoption instead of a judicial body.

The SOR of the Bill states that adoption cases are non-adversarial in nature and can be dealt with through a well laid down procedure. Adoption is a legal process in which a permanent legal relationship is established between the child and the adoptive parents. While making a decision, the court reviews the documents, makes sure that necessary procedures are followed and examines the child and the adoptive parents. This ensures that the wishes of the child are also considered and the adoption is for his/her welfare. It can be debated whether adoption is in the best interest of the child, whether judicial training and competence is necessary for this.

Conclusion and Suggestion

The Juvenile Justice (Care and Protection of Children) Amendment Bill, 2021, was passed in the Rajya Sabha on July 28, 2021. The purpose of this bill was to amend the Juvenile Justice Act, 2015. The government introduced this bill in Parliament in the budget session this year. It was passed in Lok Sabha on 24.03.2021. The Union Minister for Women and Child Development Smt. Smriti Zubin Irani stressed the need to entrust the responsibility of care and protection of vulnerable children to the district magistrates keeping in mind the lacunae in the system. He reiterated the commitment of Parliament to give priority to the children of the country over all other issues. The amendments include authorizing district magistrates, including additional district magistrates, to issue adoption orders under Section 61 of the Juvenile Justice Act, to ensure speedy disposal of cases and increase accountability. Under the Act, the District Magistrates have been given more powers to ensure its smooth implementation as well as to make coordinated efforts in favor of children in times of distress. As per the amended provisions of the Act, any child care institution shall be registered after considering the recommendations of the District Magistrate. The District Magistrate will independently evaluate the functioning of District Child Protection Units, Child Welfare Committees, Juvenile Justice Boards, Specialized Juvenile Police Units, Child Care Institutions etc.

Recommendation

Along with addressing procedural loopholes and ensuring speedy delivery of justice, there is a need to facilitate reporting of victims through parents or independent civil society organizations that will provide necessary support to the victim and ensure that the child return to normal life.

Higher conviction rates will go a long way in ensuring a safe world for children.

Child protection regulations specific training should be given, as district magistrates are generally not trained or equipped to deal with these specific laws.

To ensure the safety of the children, the district administration should work closely with all the five organs – CWC, JJ Board, CCI, District Child Protection Units and Special Juvenile Police Units.

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