

INDIA'S JUVENILE JUSTICE SYSTEM: ISSUES AND CHALLENGES, WITH PARTICULAR REFERENCE TO THE JUVENILE JUSTICE AMENDMENT ACT OF 2021

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Abstract

A long history underlies the Issue of juvenile crime in India. Throughout history, cultures have responded to delinquent behaviour by children and teenagers in a variety of ways. According to the Indian Constitution, the State is also tasked with protecting children's welfare. The Juvenile Justice Acts of 1986, 2000, and 2015 underwent substantial modifications as India's juvenile justice laws developed over time. These actions are intended to give children social integration, development, care, protection, and rectify. It lays out procedures for children who are in need of care and protection as well as those who have been accused of breaking the law and proven to have done so. In 2021, the most recent revision lowered the age of criminal liability for significant offences; this decision was made without empirical support and based on dubious data. Socially and economically disadvantaged children may be disproportionately impacted by this shift, and there are worries about the vagueness of the definition of heinous crimes. Concerns about procedural justice and the assumption of innocent are brought up by the Act's provisions. Despite these obstacles, the Constitution and court decisions both support the idea that rehabilitation, not punishment, should continue to be the core goal of the juvenile justice system.

Key Words: – Children, Social Integration, Development, Care, Protection, Rectify, Socially and economically disadvantaged.

INTRODUCTION

Juvenile justice, a crucial component of legal systems worldwide, focuses on the treatment and rehabilitation of young offenders. In India, the evolution of this specialized branch of justice has been marked by significant milestones, aiming to balance punitive measures with rehabilitative care. The importance of juvenile justice lies not only in its potential to reform wayward youth but also in its capacity to shape a more compassionate society that addresses the root causes of juvenile delinquency. As society evolves, so does the understanding and implementation of juvenile justice, reflecting the dynamic interplay between public safety, individual rights, and

social welfare. Sections will critically examine the challenges and criticisms facing the current juvenile justice system, including issues related to the juvenile justice board, juvenile courts, and the treatment of juvenile offenders. Additionally, significant judicial interpretations and landmark cases that have shaped the juvenile justice landscape in India will be discussed. Finally, the article will propose future directions and recommendations for reform, drawing attention to the ongoing need for a system that effectively balances societal interests with the rights and well-being of juveniles.¹⁴⁵⁴

¹⁴⁵⁴ 'Understanding Juvenile Justice in India: Key Insights and Challenges', available at: <https://www.legalserviceindia.com/legal/article-16628->

Union Minister for Women and Child Development, proposed the Juvenile Justice (Care and Protection of Children) Amendment Bill, 2021 for the first time Parliament's Budget session in 2021. Its main aim to underscore the need for handing over the ultimate accountability for the welfare and safeguarding of unsafe and disadvantaged children to the District Magistrates.¹⁴⁵⁵ Therefore, this Bill entrusts a wide scope of powers to District Magistrates and Additional District Magistrates in matters concerning childcare and adoption. The word "court" has been disposed of, and they now have the discretion to issue adoption-related issues under Section 61 of the Juvenile Justice Act, 2015. This has been done to establish a fair and speedy disposal of adoption cases because as of July 2018, there were 629 adoption cases awaiting resolution in several different courts.

The Juvenile Justice Amendment Bill, 2021 additionally empowers a CWC appointed by the State government an authority to make recommendations on matters concerning children who have to have care and safety. The committee also has the right to call for an investigation in order to guarantee their safety and well-being and to issue a directive for their rehabilitation, which may entail family-based care such as reconciliation with the family or the guardian, adoption, foster care, or placement in a facility for children. A person connected to an organization receiving foreign contributions is ineligible to serve as chairperson or a committee member, according to Rule 15 (4B) of the Juvenile Justice (Care and Protection Amendment) Model Amendment Rules 2022. Rule 15 (4C) states that any individual involved in the implementation of the aforementioned act in any NGO or organization in a way that leads to a conflict of interest will likewise be forthwith disqualified

from membership in the CWC¹⁴⁵⁶. No social worker may be appointed to the Board, pursuant to Section 4(3) of the Act, "unless such person has been continuously involved in health, education, or welfare activities having a bearing on children for at least seven years or such person serves as a practising professional with a degree in child psychology, psychiatry, sociology, or law." These rules have been laid down to ensure that the Juvenile Justice Board members are sensitive, empathetic, and more importantly capable of conducting inquiries concerning children's welfare and well-being.

The core clauses of Juvenile Justice Amendment Act of 2021 have been described in detail as follows: -

- **Appeals:** Within 30 days of the District Magistrate's adoption order, any party that feels aggrieved by it may appeal against it to the Divisional Commissioner. Such appeals have to be adjudicated within four weeks of the appeal's filing date.
- **Adoption:** In keeping with the Act, an adoption agency is required to file the paperwork in a civil court of law to secure an adoption order as soon as prospective adoptive parents accept a child. The Bill specifies that the District Magistrate as well as the Additional District Magistrate are now in charge of carrying out the above duties instead of the court granting the adoption order.
- **Designated Court:** Prior to the implementation of this law, cases regarding crimes against children bearing sentences of upwards of seven years in jail needed to be heard by the Children's Court. A Judicial Magistrate would preside over trials for other offences which carried sentences of up to seven years in jail. This has been altered by the Act to provide that the Children's Court will have jurisdiction

[understanding-juvenile-justice-in-india-key-insights-and-challenges.html](#) (last visit on 11th March, 2025).

¹⁴⁵⁵ PIB Delhi, Parliament Passes Juvenile Justice (Care and Protection of Children) Amendment Bill 2021, pib.gov.in (28 July 2021, 6:54 PM), Press Information Bureau (pib.gov.in).

¹⁴⁵⁶ Jagriti Chandra, New rules for child welfare panel members, The Hindu (September 18, 2022 05:13 am, New Delhi), New rules for child welfare panel members – The Hindu.

over all cases regarding infractions of the Act.

- **Offences against children:** By virtue of the Juvenile Justice Act of 2015, offences against children that are enumerated in the chapter “Other Offences Against Children” and entail sentences of three to seven years in jail are cognizable and non-bailable. The amendment reclassifies those crimes of abuse and cruelty perpetrated by employees or those in charge of childcare institutions as non-cognizable and non-bailable offences. The young victims are finding it a greater challenge to report these atrocious offences as an outcome of this.
- **Serious offences:** The Juvenile Justice Board is mandated by the Act to conduct an investigation into any child who is suspected of committing a serious offence. Serious offences entail those offences that end up resulting in a sentence of three to seven years. It proceeds by noting that serious offences will also include situations wherein the minimum penalty is either not specified or is less than seven years in prison and the maximum sentence is greater than that.

Juvenile Justice (Care and Protection of Children) Amendment Bill, 2021 and its Impact on the adoption process: -

The revised Juvenile Justice (Care and Protection Amendment) Model Amendment Rules 2022 that came into effect on 1st September 2022 immediately drew concern from lawyers, activists, parents, as well as numerous adoption agencies since cases already pending before the courts from the past few months will now have to be transferred and the entire process will have to be started anew. Once a parent registers for adoption, a petition for adoption orders is filed. The prospective parent is then meticulously assessed through a home study report, referred a child, and in due course, allowed to take a child in pre-adoption

foster care. The fundamental issue here is that such a delay in such an order means that the child cannot get admission into a school because the parents do not have the necessary documents yet. Certain stakeholders also expressed their worry over the fact that neither judges nor the District Magistrates have been made aware of these prominent changes leading to a situation of utter chaos and disarray. It would be inconsiderate to expect district magistrates, who are already tasked with overseeing the functioning of an entire district, to take on these duties without first having undergone specialized training in juvenile matters. This has only been exacerbated by the recently introduced bill, which prevents the judicial review of adoptions even at the appellate stage.¹⁴⁵⁷ Furthermore, the vesting of judicial powers with these officers also results in blurring the lines between the executive and the judiciary with regard to the separation of powers.

The Central Adoption Resource Authority (CARA) has claimed that at present, there are nearly 1,000 adoption cases pending before the courts in the nation. A major problem with the adoption system at CARA is that it has quite a mere 2,188 children in its official registry whereas, a recent figure has shown that there are approximately 31,000 parents eagerly waiting to adopt a child. These loopholes have given rise to illegal adoption and trafficking.

Recent controversy

Section 86 of the JJ Act: the amendment under challenge is the one to 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)

¹⁴⁵⁷ Harsh Mahaseth and Nishtha Gupta, A critique of amendments to the Juvenile Justice Act in India, pure.jgu.edu.in (27 September 2021), A Critique of Amendments to the Juvenile Justice Act in India _ OHRH.pdf.

- 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)
- Giving children intoxicating/psychotropic substances or narcotics (Section 77).

Bharatiya Nagarik Suraksha Sanhita (BNSS): according to the BNSS, 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.¹⁴⁵⁸

Impact On Juvenile Delinquency And Crimes Against Children: -

A minor's behaviour that appears to be characterised by criminal activity, chronic antisocial behaviour, or disobedience that the child's parents are unable to control is generally referred to as juvenile delinquency. It is further defined as a violation of the criminal statute by a minor that is not punishable by death or life imprisonment. Delinquency in youth is brought about by an intricate web of social, environmental, economic, and psychological variables.

According to National Crimes Records Bureau's (NCRB) Crime in India 2021 report, an aggregate of 31,710 instances involving minors were filed in 2021, representing a jump of 4.7% from the previous year. A substantial percentage of them—76.2%—were between the ages of 16 and 18; the juvenile crime rate witnessed an upsurge from 6.7% to 7.0%. In its entirety, 37,444 minors were detained in 31,170 cases, of which 32,654 were detained under the IPC (Indian Penal Code) and 4,790 were detained under the SLL

(Special and Local Laws) in 2021.¹⁴⁵⁹ The number of such unlawful acts in these cities has been carefully dwindling from 6885 in 2019 to 5974 in 2020 to 5828 in 2021, based on its assessment of the 19 major urban cities of India with inhabitants of at least two million each. Having said that, Delhi still remains an area of grave concern where there are more cases than anywhere else. On the basis of reports, the number of criminal cases associated with minors filed in Delhi's juvenile courts shot up by 44% in 2021. The Delhi High Court acquitted 1108 kids in petty crime cases that had been put hold on for more than a year in October 2021. The court had ordered that all cases alleging trivial offences against minors, where an inquiry has been pending and has remained unresolved for a period of time exceeding one year, would stand terminated with immediate effect, regardless of whether these minors have been produced before the Juvenile Justice Boards in Delhi.¹⁴⁶⁰

With the new amendment making such crimes against children as non-cognisable (the police cannot arrest the accused without a warrant as well as not start an investigation), it is inevitable that these appalling crimes are only going to proliferate in the coming years. These kinds of offences should be reported right away to the police by either parents or child rights organisations and Child Welfare Committees (CWC), because the victims themselves are unable to take action so due to the disparity in power. However, considering that they work for daily wages, the parents of the children in question either lack understanding of how to report the crimes to the police or don't have the willingness to do so. They are reluctant to get caught up in the arduous legal process because undertaking so would necessitate them to be absent from work and cost them money. The Juvenile Justice Act of 2015 promulgated Child Welfare Committees

¹⁴⁵⁸ 'Issues with the Juvenile Justice Amendment Act, 2021' available at: <https://www.nextias.com/ca/current-affairs/28-06-2022/issues-with-the-juvenile-justice-amendment-act-2021> (last visit on 12th May, 2025).

¹⁴⁵⁹ Crime in India-2021 Snapshots (States/UTs), CII 2021 SNAPSHOTS STATES.pdf (ncrb.gov.in)

¹⁴⁶⁰ 'Issue with the Juvenile Justice Amendment Act, 2021' available at: <https://www.drishitias.com/daily-updates/daily-news-analysis/issue-with-the-juvenile-justice-amendment-act-2021> (last visit on 24th April, 2025).

with the overarching objective of providing security and care to such children, but these groups usually exhibit an apathetic stance in such circumstances and prefer that the concerned parties talk it out rather than bringing the matter up with the police.

The state of affairs is rendered more detrimental by the dearth of regular, basic mental health services, including targeted, need-based counselling sessions. The numerous institutions that make up this system operate without regularly scheduled visits from licenced mental health experts or only occasionally do so from volunteers with NGOs that offer supplemental services like health and recreation. The National Commission for Protection of Child Rights (NCPCR) recently completed a study that shed light on the drawbacks that kids in daycare facilities deal with, including bullying, sexual abuse, overcrowding, etc. It is of essence that childcare facilities be inspected on a regular basis so as to see if the Act's provisions are being thoroughly followed and if the children are being treated with utmost care.¹⁴⁶¹



¹⁴⁶¹ 'Juvenile Justice System in India and the Mental Health of Juveniles' available at: <https://www.scconline.com/blog/post/2021/06/05/juvenile-justice-system/> (last visit on 18th April, 2025).

Budget allocations for the Ministry of Women and Child Development (in Rs crore)¹⁴⁶²

Budget year	2021-22 Actuals	2022-23 RE	2023-24 BE	Budget 2024-25	Revised 2024-25	Budget 2025-26
Revenue	21,655	23,911	25,509.98	26,588.81	23,679.60	27,384.99
Capital	-	2	8.48	3.38	3.38	4.70
Total	21,655	23,913	25,518	26,592	23,682	27,389



¹⁴⁶² 'MINISTRY OF WOMEN AND CHILD DEVELOPMENT' DEMAND NO. 101 Ministry of Women and Child Development. available at: <https://www.indiabudget.gov.in/doc/eb/sbe101.pdf> (last visit on 26th May, 2025).

RECENT JUDICIAL DECISION ON JUVENILE JUSTICE

Delhi Commission for Protection of Child Rights v Union of India,¹⁴⁶³ in this case, the Delhi Commission for Protection of Child Rights has moved the Apex Court challenging the amendments made in the provisions of the Juvenile Justice Act, 2015 in the year 2021, categorizing serious offences as non-cognizable.

The plea has, therefore, sought Section 26 of the Juvenile Justice Amendment Act, 2021 which amends Section 86 of the Juvenile Justice Act, 2015 to the extent it makes offences under the Act which are punishable with imprisonment for a term of three years and above, but not more than seven years, as non-cognizable, to be declared unconstitutional

Om Prakash v State of Uttarakhand,¹⁴⁶⁴ in this case, the Supreme Court a bench of Justices M.M. Sundresh and Aravind Kumar set aside a life sentence on the ground that the appellant was a juvenile when he committed the crime. In 2012, a Presidential Order had commuted the earlier death sentence to life imprisonment.

The appellant's claim of juvenility had been earlier rejected in the subordinate courts and the Supreme Court. Despite presenting evidence such as school certificates and ossification tests which indicated his age to be 14 at the time of offence, he had not been tried under the juvenile laws. The trial court relied upon the appellant's statement regarding a bank account to consider him a major and sentenced him to death, overwhelmed by the nature of the crime. The reliance was upheld in subsequent court verdicts. The judgement against which the appeal arose noted that the proceedings had attained finality.

The judgement, authored by Justice Sundresh, affirmed that juvenile laws are

applicable retrospectively, prioritising rehabilitation over punishment. The Court endorsed an expansive interpretation of Section 9(2) of the Juvenile Justice Act, 2015 allowing juvenility claims to be raised at "any" stage of litigation. "We place emphasis on the words 'even after the final disposal of the case' in Section 9(2) of the 2015 Act. As stated, this provision being the heart and soul of the entire Act, must be given its fullest meaning and interpretation," the judgement noted.

Biswajit Kumar Pandey and Lalu Kumar v. The State of Bihar,¹⁴⁶⁵ in this case, the Patna High Court has delivered a landmark judgment emphasizing the reformatory nature of juvenile justice while granting bail to a juvenile accused in a murder case. The court highlighted that institutionalization should be the last resort for children in conflict with the law. Justice Jitendra Kumar made significant observations while hearing a criminal revision petition challenging orders of the Juvenile Justice Board and the Special Children Court, which had denied him bail in a case involving charges under Section 302 IPC (murder) and other provisions. The court noted that Section 12 of the Juvenile Justice Act makes bail mandatory for juveniles unless specific grounds for denial exist, stating, "Section 12 of the Act overrides the bail provisions contained in the Criminal Procedure Act, 1973 or any other law for the time being in force."

State of Rajasthan v Bhawani Shankar Moorh,¹⁴⁶⁶ in this case, the Rajasthan High Court, Jodhpur Bench has observed that an employer is prohibited by law from considering the juvenile record of the conviction of a successful candidate as a ground to deny a police job to him. The Court was hearing an appeal filed by the State questioning the legality and validity of the order passed by the Single Bench of the High Court whereby the plea of the respondent was accepted with regard to his candidature for

¹⁴⁶³ *Delhi Commission for Protection of Child Rights v Union of India*, (Writ Petition (Civil) No 572 of 2021).

¹⁴⁶⁴ *Om Prakash v State of Uttarakhand* (CRIMINAL APPEAL NO. 4229 OF 2024).

¹⁴⁶⁵ *Biswajit Kumar Pandey and Lalu Kumar v. The State of Bihar* (CRIMINAL REVISION No.617 of 2024).

¹⁴⁶⁶ *State of Rajasthan v Bhawani Shankar Moorh* (Division bench Special Appeal Writ 816 of 2022, decided on 13-02-2023).

the post of Constable. The Division Bench comprising Justice Sandeep Mehta and Justice Yogendra Kumar Purohit held, "... in such a situation, the employer is prohibited by law from referring to or taking in consideration the judgment of conviction so as to deprive a successful candidate, who was a child in conflict with law at some point of time from being employed in Government service

Sindhu Sivas v. State of Kerala and Another,¹⁴⁶⁷ in this case, the Kerala High Court has held that requiring students to wear school uniforms does not constitute an offence of cruelty under Section 75 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (JJ Act). The court quashed the criminal proceedings against a school principal, emphasising that the insistence on wearing a uniform is aimed at maintaining discipline and cannot be considered an act likely to cause unnecessary mental or physical suffering to the child.

CONCLUSION

India had started working in the field of providing protection and rehabilitation of children long before the United Nations Convention, but at that time the states used to make different laws for the children of their respective states like the United Nations. This system is seen in some states of India but it is not very suitable because the Supreme Court of India in the case of Sheela Barse gave special instructions regarding making a law related to the safety of children, every state has its own law. It would be more appropriate that the Parliament make a Law which can be applied to the entire nation so that the provisions related to children can be applied with uniformity. The Government of India, following the instructions of the United Nations in 1986, Juvenile Justice Act 1986 was made following the guidelines of the Supreme Court and all the provisions related to Juvenile Justice were included in this Act, but the biggest shortcoming of this Act is that it does not provide a separate approach

for delinquent children and neglected children. After this, Juvenile Justice Act 2000 removed this deficiency, but after some time Nirbhaya case happened, due to this, this Act was once again amended and Juvenile Justice Act 2015 was brought. This Act also had some shortcomings like children Instructions for adoption were given by the court; it would be better if some work is handed over to the magistrate. Keeping this in mind, the Juvenile Justice Act 2021 was brought so that the burden of the court is also reduced and the process of Juvenile Justice Act is streamlined. Can be implemented with propriety but still not much improvement is seen Still most of the districts have not taken the proceedings of Juvenile Justice Board and Juvenile Justice Act seriously. Juvenile Justice Board and Child Welfare Committee of most of the districts are not doing their work with full responsibility due to which child crimes are increasing day by day in the society. Today's children are being greatly influenced by the changing society. Today's parents do not have time for their children to tell them about moral and immoral things and contribute to making them a gentleman citizen. Children of today commit crime as if it is a fashion. Today's electronic resources have so much influence on children that they want to adopt the films and videos shown in electronic resources in their lives. Such Juvenile Justice Act has been passed. The negligence on the part of the nodal implementing departments will turn out to be a big problem for the children of the society due to which children will become more juvenile delinquent and oriented. If the situation like this continues then the future of the country will also be in trouble somewhere in the future. Therefore, there is a need to implement the Juvenile Justice Act in a more powerful manner. Even after looking at the provisions of other countries, I did not find any very good situation that the law of this country is sufficient for the juvenile. Some or the other problem related to juvenile is being found in the laws of all the states. Due too many national and international efforts. Despite this, the problem related to

¹⁴⁶⁷ *Sindhu Sivas v. State of Kerala and Another* (CRL.MC NO. 2948 OF 2022).

juveniles remains the same as it was. There is a need to implement the provisions of protection and rehabilitation of children with more vigor. Along with this, the parents of our society also need to give a moral education to their children. So that he can become an example for the society and children look at him and behave well. Children often have the habit of copying others. Children often adopt what they see around them; hence, children are provided with a safe and respectful environment. Should be provided so that children learn to respect their elders and stay away from immoral activities.

