

# Legislative Brief

## The Juvenile Justice (Care and Protection of Children) Amendment Bill, 2021

The Juvenile Justice (Care and Protection of Children) Amendment Bill, 2021 was introduced in Lok Sabha on March 15, 2021.

It was passed in Lok Sabha on March 24, 2021 and is currently pending in Rajya Sabha.

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### Highlights of the Bill

- ◆ The Juvenile Justice (Care and Protection of Children) Act, 2015 states that adoption of a child is final on the issuance of an adoption order by the civil court. The Bill provides that instead of the court, the district magistrate (including additional district magistrate) will issue such adoption orders.
- ◆ Under the 2015 Act offences committed by juveniles are categorised as heinous offences, serious offences, and petty offences. Serious offences include offences with three to seven years of imprisonment. The Bill 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.

### Key Issues and Analysis

- ◆ Adoption of a child is a legal process which creates a permanent legal relationship between the child and adoptive parents. Therefore, it may be questioned whether it is appropriate to vest the power to issue adoption orders with the district magistrate instead of a civil court.
- ◆ As of July 2018, there were 629 adoption cases pending in various courts. In order to expedite adoption proceedings, the Bill transfers the power to issue adoption orders to the district magistrate. An issue to consider is whether the level of pendency justifies shifting the load to the district magistrate.
- ◆ The Standing Committee on Human Resource Development (2015) had noted that various statutory bodies under the Act were not present in many states. As of 2019 only 17 of 35 states/Union Territories had all basic structures and bodies required under the Act in all districts.
- ◆ In 2017, the Madhya Pradesh High Court noted that children declared legally free for adoption were not being given timely referrals by Central Adoption Resource Authority (CARA). It recommended that the Steering Committee of CARA may monitor and investigate the conduct of CARA.

## PART A: HIGHLIGHTS OF THE BILL

### Context

A juvenile is a person less than 18 years of age. The Juvenile Justice (Care and Protection of Children) Act, 2015 addresses children in conflict with law and children in need of care and protection.<sup>1</sup> The Act fulfils India's commitment as a signatory to the United Nations Convention on the rights of the child, the Hague Convention on Protection of Children and Co-operation in respect of Inter-country Adoption (1993), and other related international instruments.<sup>2</sup> As a signatory, India is required to undertake all appropriate measures to ensure the rights of children with regard to juvenile justice, care and protection, and adoption.

The Juvenile Justice (Care and Protection of Children) Amendment Bill, 2021 was introduced in Lok Sabha on March 15, 2021 and is currently pending in Rajya Sabha.<sup>3</sup> The Bill amends the Juvenile Justice (Care and Protection of Children) Act, 2015.<sup>3</sup> The Statement of Objects and Reasons of the 2021 Bill states that adoption cases have witnessed significant delay in courts. Further, it states that adoption cases are non-adversarial in nature and can be dealt through a well laid out process.<sup>3</sup> A similar Bill empowering district magistrates to issue adoption orders was introduced in Lok Sabha in August 2018.<sup>4</sup> However, the Bill lapsed with the dissolution of the 16<sup>th</sup> Lok Sabha.

Under the 2015 Act offences committed by juveniles are categorised as: heinous offences (those with minimum punishment of seven years of imprisonment under IPC or any other law), (ii) serious offences (three to seven years of imprisonment), and (iii) petty offences (below three years of imprisonment).<sup>1</sup> In 2020, the Supreme Court observed that the Act does not deal with offences where the maximum sentence is more than seven years of imprisonment, but there is no minimum sentence, or minimum sentence is of less than seven years.<sup>5</sup> The Court ordered that these offences should be categorised as serious offences.<sup>5</sup> The Bill also seeks to give effect to this order.

### Key Features

- **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 Bill provides that instead of the court, the district magistrate (including additional district magistrate) will perform these duties and issue all such orders.
- **Appeals:** The Bill 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 within four weeks from the date of filing of the appeal.
- The 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 Bill removes this provision.
- **Serious offences:** The Act provides that the Juvenile Justice Board 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 Bill 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 Bill amends this to provide 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 Bill 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: (i) involved in health, education, or welfare of children for at least seven years, or (ii) a practising professional with a degree in child psychology, psychiatry, law, or social work. The Bill 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.

## PART B: KEY ISSUES AND ANALYSIS

### Empowering the district magistrate to issue adoption orders

Act:  
Section  
56 (5),  
58 (3,4),  
59 (7,8),  
60 (1),  
61, 63,  
64, and  
65 (4).  
Bill:  
Clause  
17 to 24.

The Juvenile Justice (Care and Protection of Children) Act, 2015 states that adoption of a child is final once a civil court issues an adoption order.<sup>1</sup> The Bill amends this to provide for the district magistrate (including the additional district magistrate) to issue such adoption orders instead.<sup>3</sup> Any person aggrieved by such an adoption order may file an appeal with the Divisional Commissioner. This may raise certain issues discussed below.

#### Need for transferring power to issue adoption orders from courts to the district magistrate

The Statement of Objects and Reasons (SOR) of the Bill states that there is significant delay in finalising adoption cases in courts.<sup>3</sup> To expedite adoption proceedings, the Bill empowers the district magistrate to issue such orders.<sup>3</sup> Between April 2015 and March 2020, about 19,000 children have been adopted, an average of 320 adoptions per month.<sup>6</sup> As on July 2018, there were 629 adoption cases pending in various courts.<sup>4</sup> The question is whether this constitutes a significant delay, and consequently requires shifting the power to issue adoption orders from the court to the district magistrate. Empowering district magistrates to issue adoption orders may also lead to delays as they are already burdened with several responsibilities such as maintenance of law and order, land and revenue administration, disaster management, general administration, and implementing government schemes and programmes in their district. A district magistrate chairs about 75 committees, spread across 23 departments.<sup>7</sup>

#### Lack of judicial scrutiny in adoption orders

Under the Act, adoption of a child is final once a court issues an adoption order. With this, the child becomes the lawful child of his adoptive parents with all the rights, privileges, and responsibilities that are given to a biological child. The Bill shifts the power to issue adoption orders from the court to the district magistrate (including the additional district magistrate). The question is whether it is appropriate for an administrative authority to issue adoption orders instead of a judicial body.

The SOR of the Bill states that adoption cases are non-adversarial in nature and can be dealt as per the process laid out. Adoption of a child is a legal process which creates a permanent legal relationship between the child and adoptive parents. When deciding on adoption, courts review documents, ensure necessary procedures have been complied with, and conduct an inquiry of the child and adoptive parents. This helps ensure that due consideration is given to the wishes of the child, and the adoption is for the welfare of the child. It may be argued that determining whether the adoption is in the best interests of the child requires judicial training and competence.

Further, the Bill provides that any person aggrieved by an adoption order, may file an appeal before the divisional commissioner. Thus, it does not provide for judicial oversight at the appeal stage as well. District magistrates and divisional commissioners are trained to be administrators and perform functions of the government. They may not have the competence to issue adoption orders or hear appeals related to them. Vesting of such core judicial functions with them may also raise concerns of separation of powers between the executive and the judiciary.

Note that, since the Juvenile Justice (Care and Protection of Children) Act, 2000 (replaced by the 2015 Act) came into force, the power to issue adoption orders has rested with the courts. Similarly, in countries such as United Kingdom, Germany, France, and several states in the United States of America, adoption orders are issued only by the court.<sup>8</sup>

### Issues with implementation of the Act

Various Courts and Standing Committees have noted issues with the implementation of the 2015 Act and have provided several recommendations. Key issues with the implementation of the Act include:

#### Lack of availability and limited capacity of institutions set up under the Act

The 2015 Act provides for setting up one or more Juvenile Justice Boards (JJBs) and Child Welfare Committees (CWCs) in every district.<sup>1</sup> The Standing Committee on Human Resource Development (2015) had noted that statutory bodies under the Juvenile Justice Act, 2000 including JJBs and CWCs were not present in many states.<sup>9</sup> Several bodies existed only on paper, and were not functioning. Further, populous districts which were likely to produce larger caseloads had inadequate CWCs.

**Table 1: Institutions under the Act**

Institution	Number of states/ UTs with the institution
District Child Protection Society	34
Child Welfare Committee	27
Juvenile Justice Board	30
Special Juvenile Police Unit	34
Child Welfare Police Officer	32
Juvenile Justice Fund	25

Sources: Quick Review of Status of Juvenile Justice System, National Legal Services Authority, January 2019; PRS.

The National Legal Services Authority (2019) noted that only 17 of 35 states/Union Territories (UTs) had all basic structures and bodies required under the Act in place (Table 1).<sup>10</sup> For example, states such as Assam, Bihar, and Haryana, did not have CWCs in all districts.<sup>10</sup> The Standing Committee on Human Resource Development (2015) also noted that CWCs and JJBs lack authority to manage their financial and human resources and are dependent on the state or district administration. Due to lack of infrastructure or specific funds, action taken by them was limited and delayed.<sup>9</sup> It recommended greater financial allocation, training and cadre-building for various bodies.

**Child-care institutions (CCIs):** CCIs refer to institutions including open shelters and specialised adoption agencies, which provide care and protection to children in need of such services.<sup>1</sup> As of March 2020, there were 2,162 CCIs across India.<sup>11</sup> The Committee on review exercise of CCIs (2018) noted that many CCIs fail to provide even the basic services to the children including individual bedding, and proper nutrition and diet.<sup>12</sup> In 2018, the Supreme Court recommended that state governments evaluate CCIs across India to ensure that minimum standards of care are being complied with.<sup>13</sup> The Committee also noted that despite registration being mandatory under the 2015 Act, only 32% of total CCIs across the country were registered.<sup>12</sup> The Supreme Court (2017) recommended that all children in CCIs be registered compulsorily and this data be verified and validated.<sup>14</sup>

**Role of High Courts:** In 2018, the Supreme Court requested that the Chief Justice of every High Court to register proceedings on its own motion to ensure effective implementation of the Act.<sup>13</sup> In 2017, the Court had suggested that Juvenile Justice Committees should be set up in every district and should comprise of High Court judges, who have a constitutional obligation to protect the fundamental rights of children.<sup>14</sup>

### Delays in Adoption

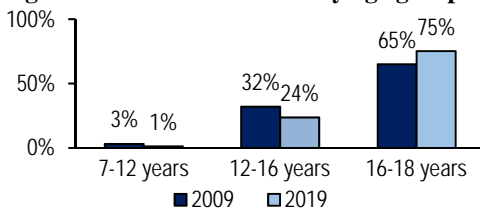
The 2015 Act empowers Central Adoption Resource Authority (CARA) to regulate and promote adoptions in India.<sup>1</sup> In 2017, the Madhya Pradesh High Court noted that children declared legally free for adoption were not being given timely referrals by CARA.<sup>15</sup> The Court recommended that the Steering Committee of CARA may monitor and investigate the conduct of CARA.<sup>1</sup> Further, action must be taken against individuals responsible for the delay.<sup>15</sup>

Note that, since 2013-14, the total adoptions across the country has ranged between 3,500 to 4,500 adoptions per year.<sup>16</sup> As of June 2019, 6,971 orphaned, abandoned, or surrendered children were living in Specialised Adoption Agencies across the country.<sup>17</sup> Further, 1,706 children are residing in CCIs linked with such agencies.<sup>17</sup>

### Juveniles in conflict with law

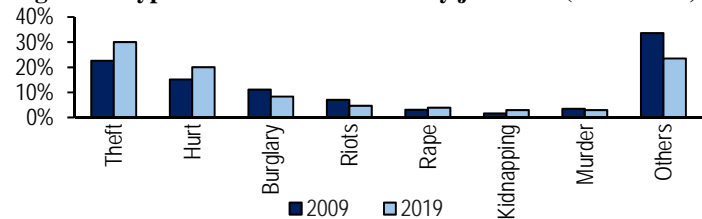
**Incidence of crime:** Under the Indian Penal Code, 1860 (IPC), the minimum age at which any person can be charged for a crime is seven years.<sup>18</sup> The total number of children arrested rose from 33,642 in 2009 to 38,685 in 2019, an increase of 15%. Children in the 16-18 years’ age group account for majority of children arrested.<sup>19</sup> More than half of the children were arrested for offences such as theft, causing hurt, burglary, and riots.

**Figure 1: Juveniles arrested by age group**



Sources: Crime in India, 2009-2019, National Crime Records Bureau; PRS.

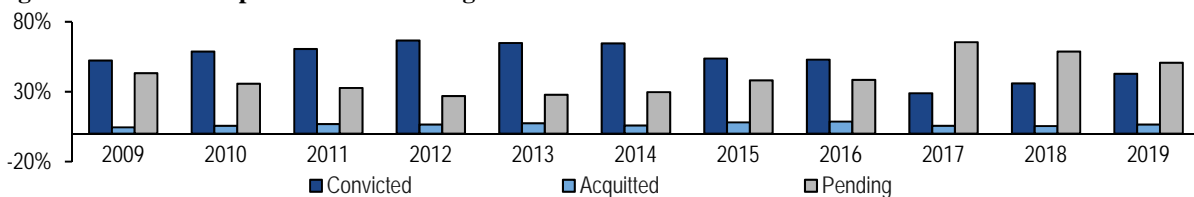
**Figure 2: Types of crimes committed by juveniles (under IPC)**



Note: Others include attempt to murder, fraud, blackmailing, dacoity, rash driving. Sources: Crime in India, 2009-2019, National Crime Records Bureau; PRS.

**Pendency:** Pendency of cases of juveniles in conflict with law has increased over the years from 43% in 2009 to 51% in 2019 (Figure 3).<sup>19</sup> The total number of convictions decreased from 52% in 2009 to 43% in 2019, whereas acquittals remained below 10%.<sup>19</sup>

**Figure 3: Status of disposal of cases filed against children in conflict with law**



Sources: Crime in India, 2009-2019, National Crime Records Bureau; PRS.

Table 2 compares juvenile justice laws of different countries on the basis of regulation of children in conflict with law and children in need of care and protection.

**Table 2: Comparison of juvenile justice laws in various countries**

Country	United Kingdom	South Africa	France	Canada	Germany	Australia	India
Minimum age at which juvenile can be charged for an offence	10 years	10 years	Case by case basis*	12 years	14 years	10 years	Seven years (Under Indian Penal Code, 1860)
Age at which juvenile can be tried as adult	If appearing before the Court after 18 years of age	16 years	16 years	14 years	Juvenile cannot be tried as an adult	If appearing before the Court after 18.5 years of age	Children between 16 to 18 years can be tried as adults
Penalty for juveniles treated as adults	-	Same as adults. No life imprisonment; no death penalty	Same as adults, on a case by case basis; life imprisonment allowed	Same as adults convicted of the same offence	-	If they are between 18 and 18.5 years, they will be sentenced as an adult if the offence is proven	Any sentence that can be imposed on an adult who has been convicted of the same offence
Gradation of offences	No gradation	Least serious: including trespassing and public indecency; More serious: including arson and culpable homicide; Most serious: including treason and murder	Petty offences: fine up to 3,000 francs; Misdemeanours: imprisonment of up to 10 years; Felonies: maximum imprisonment of more than 10 years	Serious offences: maximum imprisonment of five years; Violent offences: one which includes the element of causing bodily harm; Serious violent offences: such as murder or its attempt	Less serious offences: minimum imprisonment lesser than one year; Serious offences: minimum imprisonment of more than one year	Serious offences: minimum imprisonment of one year	Petty offences: imprisonment of up to three years; Serious offences: imprisonment between three and seven years ( <i>The Bill adds that serious offences will also include offences where maximum punishment is imprisonment of more than seven years, and minimum punishment is not prescribed or is less than seven years</i> ); Heinous offences: imprisonment of more than seven years
Authority giving adoption orders	Family Court or High Court	Children's Court	District Court	It differs across states, including Family Court, Supreme Court and Provincial Court.	Family court	Family Court	District Court ( <i>The Bill changes this to district magistrate, including additional district magistrate</i> )
Designated authority to try offences	Youth Court (Passed on to the Crown Court for more serious offences)	Children's Court	Juvenile Court	Youth Court	Juvenile Courts	Children's Court	Petty offences: Magistrate; Serious offences: Magistrate of First Class; Heinous offences: Children's Court ( <i>The Bill changes this to Children's Court for all offences</i> )

\*Minors over the age of 13 years are criminally responsible for their offences if they are able to understand their actions: French Penal Code, [www.legifrance.gouv.fr/content/download/1957/13715/.../Code\\_33.pdf](http://www.legifrance.gouv.fr/content/download/1957/13715/.../Code_33.pdf). Sources: **United Kingdom:** Children and Young Persons Act, 1933; Adoption and Children Act, 2002; **South Africa:** Child Justice Act, 2008; Criminal Law Amendment Act, 1997; **France:** Children's Rights- August 2007, The Library of Congress; **Canada:** Youth Criminal Justice Act, 2002; Adoption Act, 2013 (Newfoundland and Labrador); Child, Youth and Family Enhancement Act, 2000 (Alberta); Adoption Act, 1996 (British Columbia); Adoption Information Act, 1996 (Nova Scotia); **Germany:** Youth Courts Law; German Criminal Code; **Australia:** Children and Young People Act, 1999; Adoption Act, 1994; **India:** Juvenile Justice (Care and Protection of Children) Act, 2015; Indian Penal Code, 1860; PRS.

1. The Juvenile Justice (Care and Protection of Children) Act, 2015.
2. Convention on the Rights of the Child, <https://www.unicef.org/child-rights-convention/convention-text>; United Nations Standard Minimum Rules for the Administration of Juvenile Justice, <https://www.ohchr.org/documents/professionalinterest/beijingrules.pdf>; Convention on Protection of Children and Co-Operation in Respect of Intercountry Adoption, <https://assets.hcch.net/docs/77e12f23-d3dc-4851-8f0b-050f71a16947.pdf>.
3. The Juvenile Justice (Care and Protection of Children) Amendment Bill, 2021.
4. The Juvenile Justice (Care and Protection of Children) Amendment Bill, 2018.
5. Shilpa Mittal v. State of NCT of Delhi and ANR, (2020) Special Leave Petition (Crl) no. 7678, [https://main.sci.gov.in/supremecourt/2019/28877/28877\\_2019\\_15\\_1502\\_19348\\_Judgement\\_09-Jan-2020.pdf](https://main.sci.gov.in/supremecourt/2019/28877/28877_2019_15_1502_19348_Judgement_09-Jan-2020.pdf).
6. Adoption Statistics, Central Adoption Resource Authority, Ministry of Women and Child Development, last accessed on March 18, 2021, [http://cara.nic.in/resource/adoption\\_Statistics.html](http://cara.nic.in/resource/adoption_Statistics.html).
7. 'District collector: superman or stopgap solution?', Rashmi Sharma (Former IAS officer), Mint, October 2, 2018, <https://www.livemint.com/Opinion/wUF3NfRYLUCdwXeW4S4qRM/Opinion--District-collector-superman-or-stopgap-solution.html>.
8. United States of America (governed by state specific laws): The Family Code, California, Division 13; The Revised Code of Washington Title 26, Chapter 33; United Kingdom: The Adoption and Children Act, 2002; Germany: The German Civil Code, 1900; France: The Napoleonic Code, 1804.
9. 264th Report on the Juvenile Justice (Care and Protection of Children) Bill, 2014, Standing Committee on Human Resource Development, February 25, 2015, [https://prsindia.org/files/bills\\_acts/bills\\_parliament/SC\\_report- Juvenile\\_justice\\_1.pdf](https://prsindia.org/files/bills_acts/bills_parliament/SC_report- Juvenile_justice_1.pdf).
10. A Quick Review of Status of Juvenile Justice System, Structures, Mechanisms, and Processes, National Legal Services Authority, January 2019, <https://drive.google.com/file/d/1CktonWaSh5aGOrO4Oi14HuvpdqIECEaH/view>.
11. Unstarred Question No. 2253, Ministry of Women and Child Development, September 23, 2020, <http://164.100.24.220/loksabhaquestions/annex/174/AU2253.pdf>.
12. Report of the Committee for Analysing Data of Mapping and Review Exercise of Child Care Institutions under the Juvenile Justice (Care and Protection of Children) Act, 2015 and Other Homes, constituted by the Ministry of Women and Child Development, September 6, 2018, [https://wcd.nic.in/sites/default/files/CIF%20Report%201\\_0\\_0.pdf](https://wcd.nic.in/sites/default/files/CIF%20Report%201_0_0.pdf).
13. Sampurna Behura v. Union of India and others, (2018), W.P. (C) No.473 of 2005, <http://patnahighcourt.gov.in/jjs/PDF/UPLOADED/128.PDF>.
14. Exploitation of Children in Orphanages, in re v. Union of India, (2017) W.P. (Crl.) No.102 of 2007, <http://mediationcentrephc.gov.in/jjmc/Judgements/Judgement%20dt%205.5.2017,%20CWP%20102%20of%202007%20regd%20separate%20sect.pdf>.
15. Smt. Vineeta Kushwaha (2018), Civil Revision No.258/2017; Civil Revision No.260/2017, [https://districts.ecourts.gov.in/sites/default/files/CR\\_258\\_2017\\_FinalOrder\\_12-Feb-2018.pdf](https://districts.ecourts.gov.in/sites/default/files/CR_258_2017_FinalOrder_12-Feb-2018.pdf).
16. Adoption Statistics, website of Central Adoption Resource Authority, last accessed on June 7, 2021, [http://cara.nic.in/resource/adoption\\_Statistics.html](http://cara.nic.in/resource/adoption_Statistics.html).
17. Unstarred Question No. 1225, Ministry of Women and Child Development, June 28, 2019, <http://164.100.24.220/loksabhaquestions/annex/171/AU1225.pdf>.
18. Section 82, Indian Penal Code, 1860.
19. Juveniles in Conflict with Law, Crime in India 2019, National Crime Records Bureau, Ministry of Home Affairs.

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