

Ensuring Safety And Justice For Vulnerable Children: Addressing Downtrend Of Offences By Caretakers/In-Charge Of Juvenile Homes

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Abstract - While efforts to prevent child abuse and maintain justice are continuing, the safety and well-being of vulnerable children in care facilities and juvenile homes continue to be of utmost importance. These problems are one of the focal points of legislative initiatives like the Juvenile Justice (Care and Protection of Children) Act. Still, there are issues like underreporting of incidents and slow investigations. This article explores the effects of the 2021 Juvenile Justice (Care and Protection of Children Amendment, namely the reclassification of serious offences as non-cognizable. Comparing incidence patterns before and after the amendment, it is evident that caregivers/in charge of juvenile homes have fewer reported infractions each year as compared to the previous years. However, power dynamics and procedural difficulties impede effective reporting and inquiry, even in the face of legal improvements. Suggestions for improvement include stringent registration requirements for care institutions, regular audits, and enhanced support services for children. Addressing these issues is crucial for creating a safer environment and ensuring justice for vulnerable children.

Keywords - Vulnerable Children, Juvenile Justice (Care and Protection of Children) Act, Offences by Caretakers

Introduction

The unbridled nature of child abuse in society has been much discussed, with the government coming up with legislation such as POCSO and Juvenile Justice Acts to provide viable solutions to this.

A 2015 article talks of the ill-treatment of children living in care institutions, and juvenile homes, by the authorities (Raza, 2015) due to the lack of accountability and a lack of centralised record of the number of children present in such homes. They have also noted that most cases of such nature go unreported (Raza, 2015)¹.

It thus becomes important to discuss why these crimes may not be reported and how the reporting and investigation of such cases may be affected by the categorization of the offence as either cognizable or non-cognizable.

In the latest Amendment (2021) of the Juvenile Justice (Care and Protection of Children) Act that focuses on the criteria – adoption procedure, Child Welfare Committees, classification of offences, and trial of 16 to 18-year-olds as adults in case of heinous crimes and illegal substances, for the improvement of the structure and functioning of juvenile and child welfare in the country, (Juvenile Justice (Care and Protection of Children) Amendment Act, 2021), serious offences, i.e., offences with a maximum imprisonment sentence between 3yrs to 7yrs, have been re-categorized as non-cognizable (Juvenile Justice (Care and Protection of Children) Amendment Act, 2021).

Offences under the JJ Act are roughly distributed between the two criteria in NCRB Crime in India booklet as “Offences by caretakers/in-charge of Juvenile homes” and “Other offences” (National Crime Records Bureau, Crime in India 2022), namely, “cruelty to child by any person employed by or managing an organisation, Employment of child for begging, Giving intoxicating liquor or narcotic drug or psychotropic substance to a child, Using a child for vending, peddling, carrying, supplying or smuggling any intoxicating liquor, narcotic drug or psychotropic substance, exploitation of child employee, sale and procurement of children for any purpose (except trafficking/prostitution) and Use of child by militant groups or other adults” (Agarwal, 2022). Thus, this amendment must be discussed regarding the effects of the mentioned re-categorization on the reporting and investigation of crime against children in care institutions and juvenile homes.

Due to the change of cruelty to a child by any person employed by or managing an organisation to a non-cognizable offence, it has been theorised in web-based articles that the reporting of these cases would become cumbersome due to an unfair power dynamic between

the victim who is a child and the offender who is an adult in charge, and the filing of an FIR would become time taking as the police cannot directly file an FIR upon receiving a complaint - they must first submit a report to the magistrate and once the magistrate approves, only then can they proceed with the filing of the FIR and the subsequent investigation. (Agarwal, 2022)⁴ (Issue With The Juvenile Justice Amendment Act, 2021)

The NCRB Crime in India report shows data regarding the number of cases being investigated under the Juvenile Justice (Care and Protection of Children) Act and the number of cases reported – Incidence all over India and in each of the States/UT and incidence under two categories i.e. “Offences by caretaker/in-charge of Juvenile homes” and “Other Offences”.³

Upon reviewing the trend of the incidence of cases under the Act over the years both pre- and post-Amendment, one may be able to make an effort to understand the reasons for the increase or decrease of cases under the Act and better view the similarity or dissimilarity in trend lines between the number of cases investigated under the Act and the number of cases reported under the Act through the years, and aim to provide congruent reasoning to the changes in trend.

Literature survey

INCIDENCE TRENDS (2017 – 2022) UNDER THE JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT

As seen in Fig. 1, the total incidence under the Act has been on a steady decline from 2017 to 2020. The total incidence in the year 2020 is 1713, which is nearly 30% less than the total incidence in 2017. However, there has been a slight increase in the total incidence from 2020 to 2021 and has almost reached a plateau in 2022.

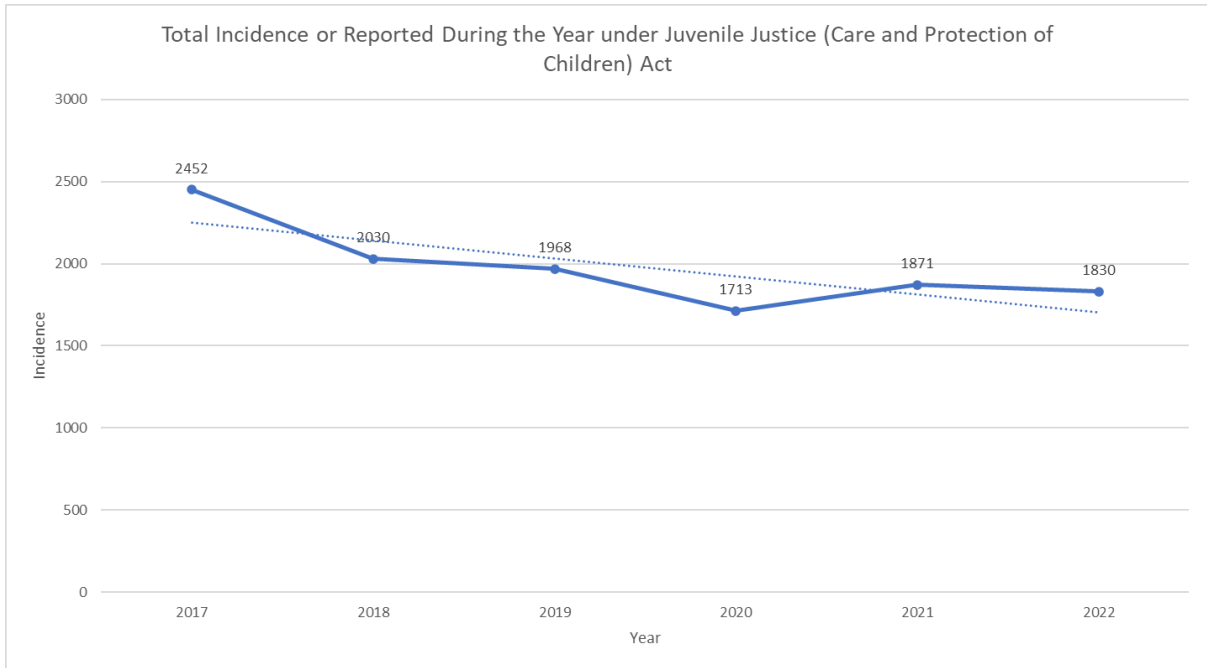


Fig.1 Total Incidence Under Juvenile Justice (Care and Protection of Children) Act

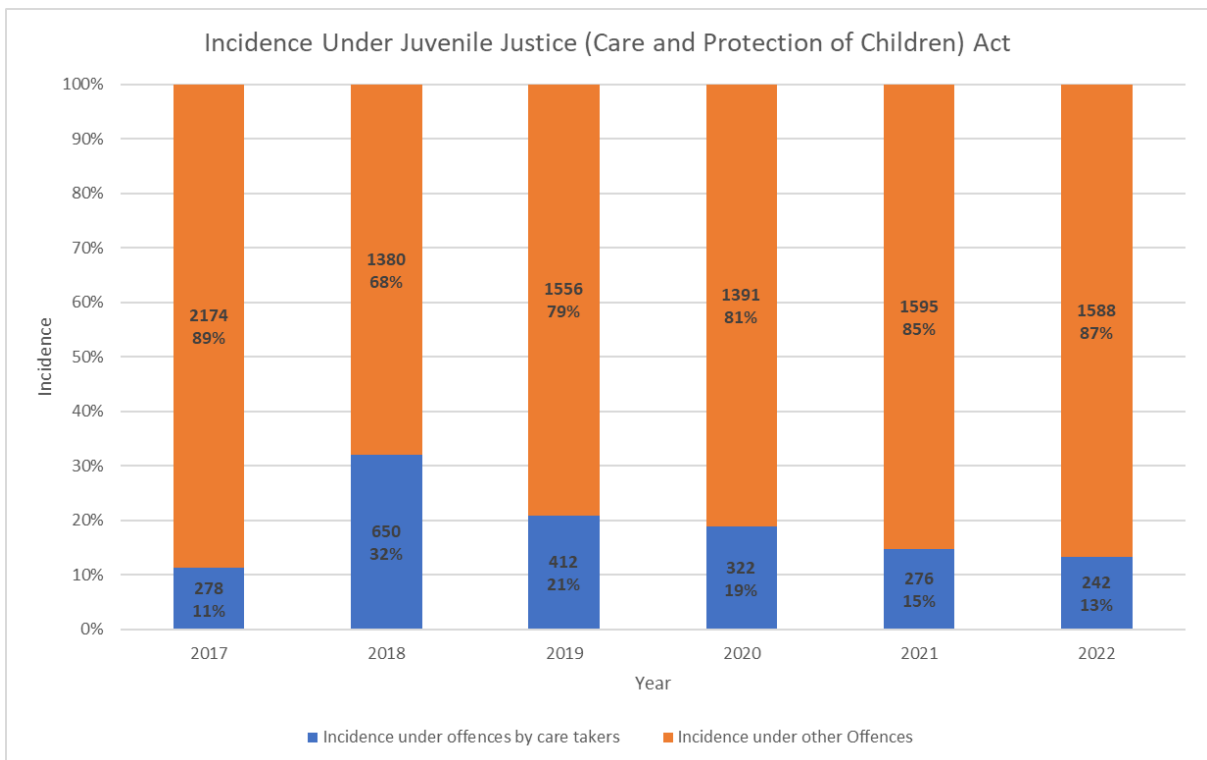


Fig. 2 Incidence Under Juvenile Justice (Care and Protection of Children) Act

Upon a closer look at the graphs in Fig. 1 and Fig. 2, it can be noticed that the incidence trend for offences by caretakers/in-charge of juvenile homes is in contrast with the total incidence trendline.

In the year 2018, there was an increase in offences by caretakers which has since declined rapidly. However, the incidence of “Other Offences” has not followed a similar downward trend. As seen with the total incidence, it demonstrates a plateau post-amendment.

Based on these incidence trends, it can be said that a clear downward trend has been demonstrated after the Juvenile Justice (Care and Protection of Children) Amendment Act, 2021 in the case of “Offences by caretakers/in-charge of juvenile homes” as mentioned in the NCRB Crime in India data. Upon a closer look at the trend, it can be said that the downward trend had started before the Amendment made in 2021 and the change has not affected it.

This becomes an appropriate pretext to discuss the duality of cognizable and non-cognizable offences, the promptness with which investigation is initiated, and the certainty of an FIR being filed. Krishna, V. (2020), in his paper, has elaborated upon the procedures and failings of filing an FIR in the current state of the criminal justice system. An FIR is an important step that can directly affect the case proceedings. Delay in filing the FIR or incorrect or inadequate filing may result in undue delays in the investigation process and subsequent arrests (Raperia, 2022). On numerous accounts, it is seen that the police indulge in FIRs and delay in filing them due to reasons such as malpractice and corruption (Krishna, 2020)⁷.

In the case of Child Care Institutions, care homes or juvenile homes, the children would not be able to report the offence due to the authority of the caretaker or in-charge (Issue With The Juvenile Justice Amendment Act, 2021)⁵ (Agarwal, 2022)⁴. They must rely on Child Welfare Organizations to file a complaint with the police. Raza (2015)¹ in a news article describes the case of a boy in a care shelter who was being subjected to sexual assault for months, which only came to light after he non-verbally indicated to a counsellor. Only then upon enquiry, the atrocities faced by the children in said shelter surfaced. It becomes clear that violence against children in these homes does not come to light without external interference and audit. In another case, it was found that the minors in a Child Care Institution were forced to consume intoxicating substances by the authorities/caretakers (Raza, 2015)¹. Thus, the clear difference in power between the victim and the perpetrators in these cases becomes obvious.

Raperia (2020)⁸ has noted that “...the filing of an FIR is more likely to happen in the case of non-cognizable crimes” due to the involvement of the magistrate’s order as the police cannot refuse to file an FIR. In cognizable offences, too, the police must not refuse to file an FIR, but it becomes important to note that there is no punishment for not filing an FIR in the CrPC.

That being said, the police are required to present an explanation in the court in case of delay in filing an FIR (Yadav, 2009).

However, upon viewing the trend line of “offences by caretakers/ in-charge of juvenile homes” the downward trend of the number of cases being reported remains. It can be said that the cognizability or non-cognizability of the offence has not contributed to the process of identifying the case or reporting the case.

CASES UNDER INVESTIGATION UNDER THE JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT AND RELATED TRENDS (2017 – 2022)

The Investigation trends are similar to the total incidence trends, i.e., a downward trend from 2017 to 2020, followed by a plateau through the years 2021 – 2022. The total cases investigated are a sum of (National Crime Records Bureau, Crime in India) –

- a) the number of cases reported in that year
- b) The number of cases pending investigation from the previous year, and
- c) The number of reopened cases

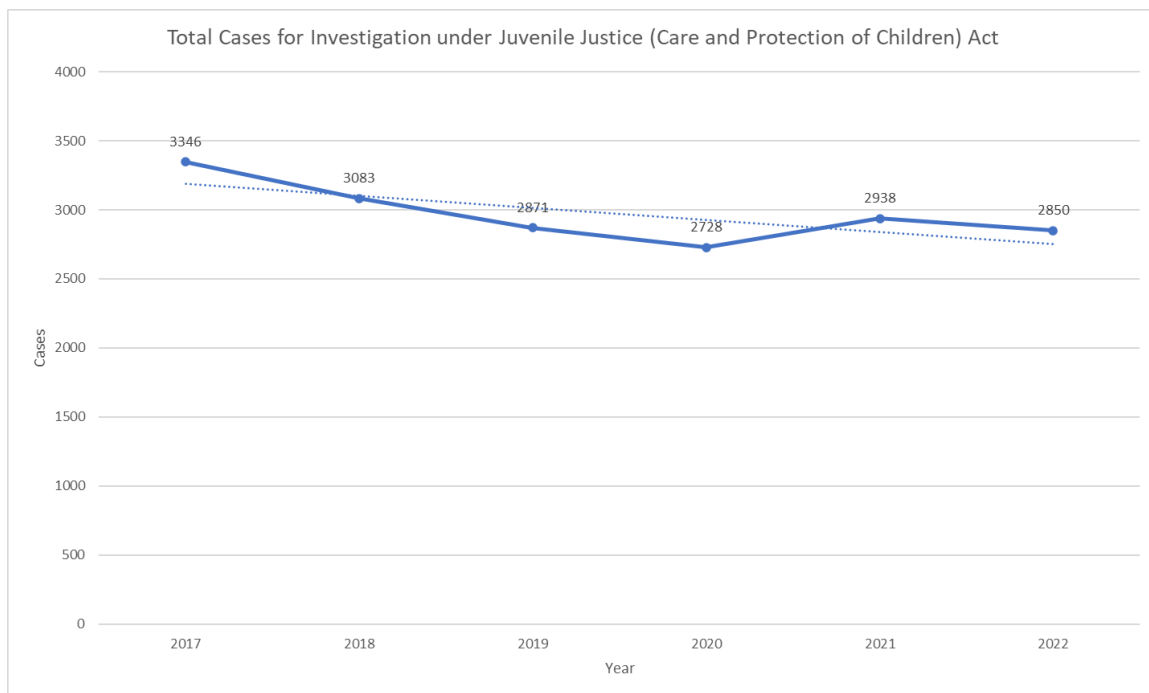


Fig. 3 Total Cases for Investigation Under Juvenile Justice (Care and Protection of Children) Act

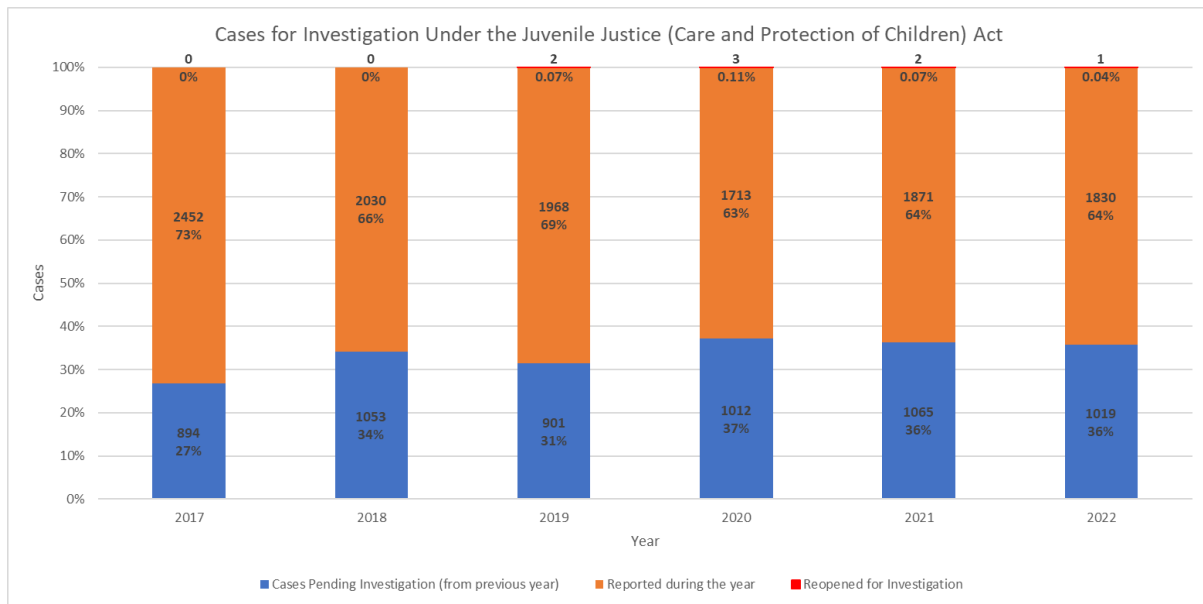


Fig. 4 Cases for Investigation under the Juvenile Justice(Care and Protection of Children) Act

The number of reopened cases is very low, ranging from 0 – 2. The reason for the low number could not be understood, yet, the long procedure of appealing to the court to reopen a case (Aranlaw, 2023) may deter the victim from doing so, considering that in these cases, the victims are children without proper support of a guardian. It is also necessary for the appellant to be able to afford a lawyer for this process (Aranlaw, 2023)¹¹ and it is imperative that in these cases the children are not able to afford a lawyer (Agarwal, 2022)⁴.

As mentioned previously, the number of reported cases in a year is the total incidence for that year.

The trend that needs to be analysed, remains to be the Cases pending investigation from the previous year. Upon looking at the chart in Fig. 5, it becomes clear that the number of these cases has an upward trendline from 2017 to 2022. The highest pending cases are noted in the year 2021.

As mentioned previously, non-cognizable offences require a warrant to make an arrest of the accused and thus might prolong the investigation. However, in the case *State of Jammu and Kashmir v. Dr. Saleem ur Rehman, 2021* (Shah, 2021) the court has held that police have the right to initiate an investigation without a sanction from the magistrate, though they need a warrant and permission to make an arrest. This ensures less delay than obtaining permission from the magistrate to file an FIR and initiate an investigation.

The Problem

The few issues mentioned in this article revolve around providing a safer environment to children residing in Care Organizations, Centres and Homes, and reducing the possibility of delays to investigation within the system.

Child Welfare Committees and other organisations report offences by caretakers or those in charge of Care Institutions, homes, juvenile homes etc.. The children do not have the power or opportunity to report these offences by themselves, and most lack the support of a parental figure.

In *Smritikana Das vs. State of West Bengal and ANR, 2023*, the victim was not able to report cruelty and abuse in the child care centre while still in that environment. It was only after they had been adopted that the abuse came to light and the parents took subsequent action.

The person in charge was to face trial under sections 6 and 17 of the POCSO Act and Section 75 of the Juvenile Justice (Care and Protection of Children) Act (Chaudhuri, 2023)¹³.

Raza (2015)¹ notes that abuse in juvenile homes or Child Care Institutions only comes to light in the case of a whistleblower or an escaped victim. Sexual assault in these institutions comes to light under the POCSO Act, yet, cruelty towards the children rarely comes to light as a standalone case. In the same article, Raza (2015)¹ mentions a case of sexual abuse where the victim later mentions ill-treatment of the inmates in the institution.

In another case, it was mentioned that inmates “irrespective of age” were forced to consume an intoxicating substance (Raza, 2015)¹.

Through the analysis of trends, it is apparent that cases may go unreported due to different reasons based on whether the offence is cognizable or non-cognizable, nevertheless, they do go unreported. It can be understood that regardless of the categorization of the offence, the cases against in-charge or authorities in any Child Care Institution where the child is the victim may go unreported as the opportunity to report the crime may be unattainable to victims residing within the institution.

Suggestions - Path To A Safer Environment For Children

Keeping in mind the current change, the change of these offences to non-cognizable may hold some merit, in ensuring the filing of an FIR due to the involvement of the magistrate (Raperia, 2020)⁸, there should be regular audits of homes and Child Care Institutions, Juvenile homes etc., to ensure the safety of the children.

As mentioned in the Juvenile Justice (Care and Protection of Children) Act, 2015, every Child Care Institution must be registered under the State or District Government. This would ensure that any crime that may go unreported is brought to light and necessary action is taken quickly and effectively.

To reduce possible delays in the investigation of the newly designated non-cognizable offences, separate special courts or the existing Children's Courts or Juvenile Courts may be allowed to receive reports related to these offences on priority and permit investigation.

The Juvenile Justice (care and Protection of Children) Act provides procedure and rules for registration of Child Care Institutions under the Act. The registered Institutions are inspected regularly by the members of Child Welfare Committees. According to the 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, Volume-I by the Ministry of Women and Child Development, 33% of Child Care Institutions and Homes taken into consideration for review did not have legal status, only 32% were registered under the Juvenile Justice (Care and Protection of Children) Act, while the rest were registered under other Acts.

It would thus be beneficial to enforce strict rules for the registration of these institutions under the Act, to enforce an ideal environment and safety for the children effectively.

Similarly, keeping in mind the large ratio of the power dynamic between the children and the in-charge or caretakers of juvenile homes, it is of utmost importance to ensure regular inspections in Juvenile Homes to realise the objectives of rehabilitation and reintegration as mentioned in the Juvenile Justice (Care and Protection of Children) Act. It is essential to ensure regular counselling sessions for the children or interactions with psychologists or psychiatric social workers, so that they may have the opportunity to report any ill-treatment or cruelty that they may be facing. These sessions may be helpful to their psychological well-being and in the case of children in juvenile homes, may further assist in their road to rehabilitation.

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