

**Implementation of Juvenile Justice System in Union Territory of Jammu and Kashmir****Mohd Yasin Wani<sup>1</sup>, Ashfaq Hamid Dar<sup>2</sup> and Ajaz Afzal Lone<sup>3</sup>**

1. Corresponding Author: Assistant Professor, School of Law, University of Kashmir, Hazratbal, Jammu and Kashmir
2. Research Scholar, School of Law, University of Kashmir, Hazratbal, Jammu and Kashmir
3. Research Scholar, Faculty of Law, Aligarh Muslim University, Aligarh-202001(U.P./India) email: aalone101@myamu.ac.in

**ABSTRACT**

*The constitution of India dreams of a healthy society, and in furtherance of it has granted many rights to children. Chapters on fundamental rights and Directive principles laid down detailed provisions, such as basic survival rights of life, development rights as regard to education, religion, cultural and freedom of thought, conscience and also protection rights from several kinds of abuses and exploitation. The Juvenile Justice System is the most active and illuminating framework espoused by people around the world with regard to children's whole development. Its primary goal is to reform the degenerates and to protect the vulnerable infants. A youngster should be rehabilitated and reintegrated into the family as soon as possible. In India, a comprehensive legal framework for dealing with children in conflict with the law and children in need of care and protection has been established. The aim of this paper, thus, is to critically analyze this legal framework with special focus on Jammu and Kashmir. The larger question that will be investigated is how successful Juvenile Justice Boards and Child Welfare Committees have been in ensuring justice to the children.*

**KEYWORDS:** Juvenile, Rights, Children in Conflict with law, Child in need of Care and Protection

**Introduction**

Children are our most valuable national resource. They symbolize the nation and the country's future. Child is defined as any person who has not attained the age of 18 years.<sup>1</sup> The term Juvenile comes from the Latin word 'juvenis' which means young. Juvenile Justice is a system whereby it is attempted to protect all children, including "children in need of protection" and those "in conflict with the law". It is a legal system designed to safeguard and promote the human rights of all children and adolescents. It is a branch of law that deals with

<sup>1</sup> Article 1, Convention on the Rights of Children, 1989, available at <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>, (last Visited on 25-03-2022).

minors or children who have been accused of crimes or who have been mistreated or abandoned by their parents or guardians. International standards highlight the necessity of both prevention and rehabilitation in the case of adolescents accused of crimes, often known as juveniles in confrontation with the law. Every child alleged, accused, or recognised as having infringed the penal law has the right to be treated in a way consistent with the enhancement of the child's feeling of dignity and value, according to international norms.<sup>2</sup>

### **Juvenile Justice: International Perspective**

Children's rights are extremely important to the international community and are governed by a variety of international instruments and treaties. Because they are vulnerable or fall into a specific group, juveniles must be protected in all aspects of their lives (family, education, freedom of expression, health, conscience and religion, protection from exploitation, protection of children with special needs, in armed conflicts, and so on). Children who have run afoul of the law and are involved in criminal conduct necessitate specific international legislation. Children's rights began to evolve in the mid-twentieth century, following the engagement of human rights in general and the acceptance of human rights generations. Children's rights are enshrined in a slew of international treaties that include both their general rights and the rights of juveniles deprived of their liberty. Some of these documents are binding on member states, such as the United Nations Convention on the Rights of the Child, while others are soft law in the form of recommendations on how to respond to a juvenile crime, such as the United Nations Standard Minimum Rules for the Administration of Juvenile Justice and others. Furthermore, domestic laws are used at the national level to organize this field more specifically in order to ensure that the aims are met. Universal Declaration of Human Rights declares essential human rights that should be safeguarded worldwide. In addition, Article 2<sup>3</sup> emphasizes the importance of the concept of non-discrimination, regardless of race, color, sex, language, religion, political or other beliefs, national or social origin, birth or other status. Article 5<sup>4</sup> declares that no one can be subjected to torture, cruelty, inhuman or humiliating treatment or punishment, and it also refers to a person deprived of their liberty. Next, no one can be arbitrarily arrested, detained, or exiled, according to Article 9.<sup>5</sup>

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<sup>2</sup> Convention on the Rights of the Child, Art. 40

<sup>3</sup> Universal Declaration of Human Rights, Article 2, available at: <https://www.un.org/en/about-us/universal-declaration-of-human-rights>, (last visited on 07-04-2022).

<sup>4</sup> *Id.*, Article 5

<sup>5</sup> *Id.*, Article 9

European Convention on Human rights 1950, under Article 5 and 6 contains provisions dealing with juvenile delinquency. Article 5(1)(d) states that detention "of a minor by lawful order for the purpose of educational supervision or his authorized detention for the purpose of presenting him before the appropriate legal authority" is permissible.<sup>6</sup> The right to a fair and public judicial hearing is guaranteed by law. Despite the fact that the trial must be open to the public, it is possible to exclude the public if it is "in the interests of morals, public order, or national security in a democratic society, when the interests of juveniles or the preservation of the parties' private lives need it". A crucial principle is that everyone is deemed innocent until proven guilty.<sup>7</sup> The Convention on the Rights of the Child is the most important international agreement in the subject of children's rights. It was adopted by the United Nations General Assembly on November 20, 1989.<sup>8</sup> It encompasses all aspects of a child's human rights (civil, political, economic, social, and cultural rights) while adhering to the principle of non-discrimination based on race, colour, sex, language, religion, political or other beliefs, national, ethnic, or social origin, property, disability, birth, or other status. Other documents govern one of these regions independently. The convention has four articles that represent General Principles, which are important to all children. For all children, non-discrimination<sup>9</sup>, the best interests of the child<sup>10</sup>, the right to life, survival and development<sup>11</sup>, and the right to participate<sup>12</sup> are essential rights. Any decision-making process must put the child's best interests first, and adults must evaluate what is best for a child before making a choice. Because everyone has an inherent right to life, it is critical to provide conditions that allow children to grow up healthy and survive. Adults must provide youngsters the opportunity to voice their opinions and consider them in the decision-making process. The convention under Article 37 regulates criminal liability of the Child. A fundamental imperative for child protection against torture and other cruel, inhuman, or degrading treatment is emphasized. A person under the age of eighteen years old cannot be sentenced to

<sup>6</sup> European Convention on Human rights 1950, Article 5, available at:

<https://www.echr.coe.int/Pages/home.aspx?p=basictexts&c#:~:text=of%20the%20Court-European%20Convention%20on%20Human%20Rights,force%20on%203%,> (last visited on 07-04-2022).

<sup>7</sup> *Id.*, Article 6.

<sup>8</sup> A/RES/44/25: Convention on the Rights of the Child, available at:

[https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A\\_RES\\_44\\_25.pdf](https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_44_25.pdf), (last visited on 07-04-2022)

<sup>9</sup> Convention on the Rights of Children, Article 2, available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>, (last visited on 07-04-2022).

<sup>10</sup> *Id.*, Article 3

<sup>11</sup> *Id.*, Article 6

<sup>12</sup> *Id.*, Article 12

death or life imprisonment.<sup>13</sup> It also governs the circumstances of a deprivation of liberty. Illegal or arbitrary deprivation of liberty is prohibited, and imprisonment should only be used as a last option, lasting as little time as possible. When a kid is deprived of his or her liberty, the child should be treated with humanity, taking into account his or her needs and age. Separation of children from adults is important when the child is in jail, unless it is in the best interests of the child. Contacts with family members must also be made available. Furthermore, the kid has the right to legal assistance, to challenge the legitimacy of detention before a court or other authority, and to have such a request resolved in an expedited manner.<sup>14</sup> Article 40 of the convention specifies the characteristics of the procedure for determining whether a minor is potentially responsible for an offence. It is critical to respect the child's human rights, fundamental freedoms, and age throughout the procedure. The procedure's eventual goal is reintegration and a productive role in society. As an obligatory instrument, the Convention on the Rights of the Child is critical in ensuring children's rights in general, as well as the rights of child delinquents.

### **Juvenile Justice System in India**

In 1850, the Apprentice Act was passed. It was the first piece of juvenile law, requiring that children aged 10 to 18 years who had been convicted by a court be given vocational training that would aid in their rehabilitation and reformation. The Reformatory Schools Act of 1897 came after it. The Indian Jail Committee (1919-1920) emphasized the importance of fair trials and care for juvenile offenders. The Children Act was enacted in Madras in 1920 as a result of its suggestions. Bengal and Bombay Acts were passed in 1922 and 1924, respectively. Between 1948 and 1959, the three pioneer acts (the Madras, Bengal, and Bombay Acts) were heavily revised. Following that, the Children Act of 1960 was established at the federal level to address the requirements of the Union Territories. The Children (Amendment) Act was introduced in 1978 to address several fundamental flaws in the above-mentioned Act. However, the necessity for a uniform juvenile justice law for the entire country has been stated in several places, including Parliament, but it could not be adopted since the subject matter of such legislation lay under the Indian Constitution's State List. To bring the country's juvenile justice system in line with the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules, 1985), Parliament appears to have used its power under Article 253 of the Constitution, read with Entry 14 of the Union List, to make

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<sup>13</sup> *Id.*, Article 37

<sup>14</sup> *Ibid.*

laws that apply to the entire country in order to meet international obligations. The Juvenile Justice Bill, 1986 was tabled in the Lok Sabha on August 22, 1986. The provisions of the Juvenile Justice Act of 1986 superseded previous laws on the issue, such as the Children Act of 1960 and other state legislation. Though the Juvenile Justice Act of 1986 was passed, there were still loopholes and flaws, and the Act of 1986, as predicted, could not stand the test of time and had to be replaced by The Juvenile Justice (Care and Protection of Children) Act of 2000. The age of both males and females was made uniform by this Act. This Act established a framework for the protection, treatment, and rehabilitation of children in the juvenile justice system, as well as a unique approach to the prevention and treatment of juvenile delinquency. This law was enacted to comply with the United Nations Convention on the Rights of the Child (UNCRC) of 1989, and it repealed the previous Juvenile Justice Act of 1989. In 2006, the Juvenile Justice (Care and Protection of Children) Amendment Act came into effect. It increased the age of juveniles from 16 to 18. The Indian Parliament enacted the Juvenile Justice (Care and Protection of Children) Act, 2015. It superseded the Juvenile Justice (Care and Protection of Children) Act, 2000, which permitted adolescents in confrontation with the law between the ages of 16 and 18 who were involved in heinous crimes to be prosecuted as adults. The Act was again amended in 2021 and several changes were incorporated.

### Key Features of Act

A new category of age group of 16 to 18 years was introduced who could be convicted as adults in case of heinous offences. The 2015 Act adds three members to the Boards (a metropolitan or judicial magistrate plus two social workers)<sup>15</sup>; establishes a Child Welfare Committee<sup>16</sup>; and resurrects the Children's Court in each district.<sup>17</sup> The Act also establishes a State Adoption Resource Agency and a Central Adoption Resource Agency, both of which are responsible for monitoring, regulating, and making laws related to child adoption.<sup>18</sup> It also lays down detailed criteria for Prospective Adoptive Parents which was not present in the previous legislations. This provision would expedite the adoption process. Child Welfare Committees will now visit foster families on a monthly basis. Similarly, the registration of the child care institutions has also been made mandatory.<sup>19</sup> In the event that foster parents are not available in the nation, the Act also allows for inter country adoption.<sup>20</sup> To combat child

<sup>15</sup> The Juvenile Justice (Care and Protection of Children) Act, 2015, Sec. 4.

<sup>16</sup> *Id.*, Section 27

<sup>17</sup> *Id.*, Section 28

<sup>18</sup> *Id.*, Section 67-68

<sup>19</sup> *Id.*, Section 41

<sup>20</sup> *Id.*, Section 36

trafficking the Act provides for harsher penalty to persons involved in supplying drugs to minors.<sup>21</sup> It is argued that a youngster cannot be sentenced to life in jail without the chance of being released or facing the death penalty. A child in trouble with the law can be sentenced to a maximum of three years in a special home or appropriate institution under the new law. However, if the offence falls under the category of heinous offence, a juvenile between the ages of 16 and 18 may be prosecuted as an adult, regardless of the date of apprehension. A juvenile between the ages of 16 and 18 who commits a major crime and is caught after the age of 21 may also be prosecuted as an adult. By including the word "irrespective of apprehension," this Act attempts to close the loopholes in the previous Act, which allowed juvenile criminals to get away with their crimes because of their age. In addition, the Juvenile Justice Boards (JJB) will perform a preliminary evaluation of the child's mental and physical competence to commit such a crime.<sup>22</sup> He can still avoid criminal culpability if the Board grants him a clean chit.<sup>23</sup> If it is determined that the case should be handled as an adult, the Board will refer the matter to the Children's Court.<sup>24</sup> Even at this stage, the Children's Court has the authority to deny its adult trial if it believes it is necessary.<sup>25</sup> If the trial is held and the individual is found guilty, he will be placed in a secure location until he reaches the age of 21, at which point he will be transferred to a prison.<sup>26</sup> However, if the Children's Court finds that the youngster has made some positive improvements, the child may be released at the age of 21.<sup>27</sup> Reformatory services, such as counseling, must be offered to the kid while he or she is in the safe place. The Court will ensure that the District Child Protection Unit submits periodic follow-up reports.<sup>28</sup>

### Changes brought by Amendment Act 2021

One of the changes introduced by the amendment was the classification of offences into Heinous and Serious. Heinous offences are those that warrant a minimum sentence of seven years or more. Murder, assault, sexual molestation, and other heinous crimes, for example,

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<sup>21</sup> *Id.*, Section 76-78

<sup>22</sup> *Id.*, Section 14(3)

<sup>23</sup> *Id.*, Section 17

<sup>24</sup> *Id.*, Section 18(3)

<sup>25</sup> *Id.*, Section 19(i)

<sup>26</sup> *Id.*, Section 19(3)

<sup>27</sup> *Id.*, Section 20(2)

are all examples of heinous crimes.<sup>29</sup> Serious offences are those for which a minimum sentence of three years and a maximum sentence of seven years is imposed.<sup>30</sup> Similarly, the amendment provides for allowing District Magistrates, including Additional District Magistrates, to make adoption orders, in order to ensure that cases are dealt with quickly and effectively.<sup>31</sup> Under the Act, the District Magistrates have been given additional powers to facilitate the Act's seamless execution and to coordinate actions in favor of children in distress. Any Child Care Institutions must be registered after considering the recommendations of the District Magistrate, according to the modified requirements of the Act. District Child Protection Units, Child Welfare Committees, Juvenile Justice Boards, Specialized Juvenile Police Units, Child Care Institutions, and other entities will be evaluated separately by the DM. The Act also made changes to composition of the Child welfare committees. It lays down that no individual will be designated as an individual from CWC unless they have been effectively engaged with any record of human rights or child rights, have been indicted for an offence including moral turpitude, have been eliminated or excused from administrations of the central government, any state government, or any administration undertaking, or if they are a part of the administration of a child care institution in a locale. The requirements for CWC members to be appointed have been changed. Criteria for disqualification of CWC members have also been established to ensure that only those who are capable of providing quality service while also possessing the necessary competence and integrity are nominated to the CWC. Several difficulties encountered in implementing various provisions of the Act have been addressed, and appropriate amendments have been introduced to remove these difficulties arising in the interpretation of various provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015, and to clarify the scope of certain provisions of the Act.

## Role of Judiciary

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<sup>28</sup> *Id.*, Section 40

<sup>29</sup> Indian Penal Code, 1860, Section 2(33).

<sup>30</sup> *Id.*, Section 2(54).

<sup>31</sup> The Juvenile Justice( Care and Protection ) Act, 2015 Section 61(as amended by Amendment Act 2021).

The Juvenile Justice Act was the result of decision of Supreme Court in *Sheela Barse v. Union of India*<sup>32</sup>; in which the court held that instead of each State having its own Children's Act different in procedure and content from the Children's Act in other States, it would be desirable if the Central Government initiates Parliamentary Legislation on the subject, so that there is complete uniformity in regard to the various provisions relating to children in the entire territory of the country. The Children's Act which may be enacted by Parliament should contain not only provisions for investigation and trial of offences against children below the age of 16 years but should also contain mandatory provisions for ensuring social, economic and psychological rehabilitation of the children who are either accused of offences or are abandoned or destitute or lost. Moreover, it is not enough merely to have legislation on the subject, but it is equally, if not more, important to ensure that such legislation is implemented. In *Partap Singh v. State of Jharkhand*<sup>33</sup> it was held that the reckoning date for the determination of the age of the juvenile is the date of an offence and not the date when he is produced before the authority or in the Court. In *Bachpan Bachao Andolan v. Union of India*,<sup>34</sup> and *Sampurna Behrua v. Union of India*,<sup>35</sup> the Hon'ble Supreme Court gave several directions to be followed by the High Courts and other authorities. One of the directions was for the High Courts to register proceedings on their own for the effective implementation of the Juvenile Justice (Care and Protection of Children) Act, 2015, so that any roadblocks encountered by statutory authorities and the High Court's Juvenile Justice Committee are meaningfully addressed after hearing the concerned governmental authorities.

### Juvenile Justice Jammu and Kashmir

Jammu and Kashmir is not far behind in pursuing the goals set forth in the Juvenile Justice Care and Protection of Children Act of 2015. The primary stakeholders' and the Hon'ble High Court's efforts are noteworthy. People realised and comprehended the Act's efficacy, and with the efforts of Hon'ble High Court of Jammu and Kashmir, the Directorate Office of Child Protection Services and the establishment of Observation Homes in Jammu and Kashmir came to be. The first was a children's home in Budgam, and attempts are now being made to expand to other places. In light of covid 19, the current administration bears a greater obligation to ensure that the good laws affecting children is adhered to in a major manner. Jammu and Kashmir had its own Juvenile Justice Act namely, Juvenile Justice Act 1997. It

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<sup>32</sup>(1986) 3 SCC 632

<sup>33</sup>2005(3) SCC 551

<sup>34</sup>(2011) INSC 403

<sup>35</sup>(2018) 4 SCC 433.

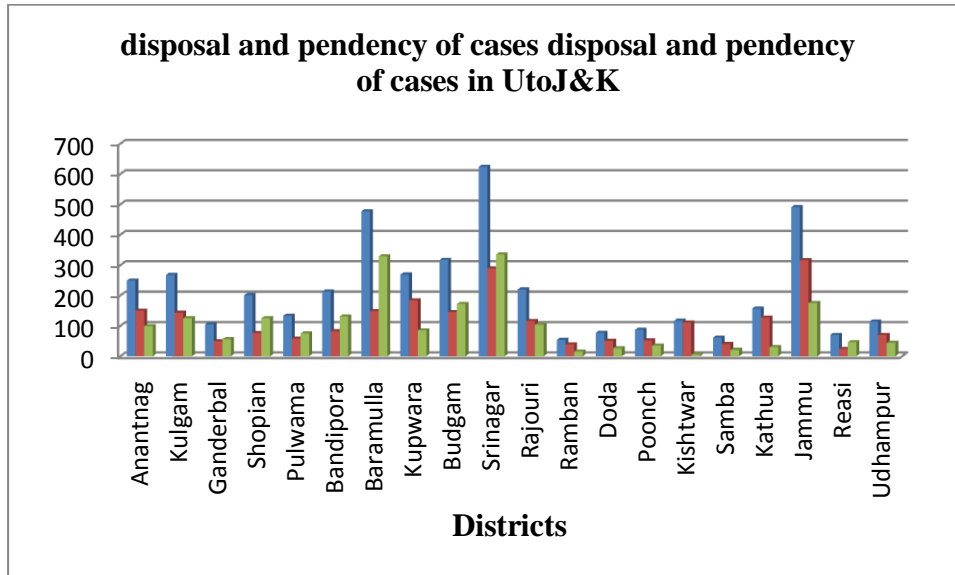


was later on superseded by the Jammu and Kashmir Juvenile Justice Act 2013. The UT of J&K is now operated in line with the Central Juvenile Justice Care and Protection of Children Act 2015, by virtue of the enactment and execution of the Re organisation Act 2019. The Juvenile Justice committee of Jammu and Kashmir high court has been instrumental in ensuring the implementation of the Juvenile Justice Act in the union territory of Jammu and Kashmir. Juvenile Justice Boards and Child welfare committees have been set up in each district. They have put in tremendous efforts in implementation of Juvenile Justice system in Jammu. Following table depicts the data regarding functioning of JJB and CWC in the Union Territory.

**The details/data regarding institutions, disposal and pendency of cases in the Juvenile Justice Boards of UT of J&K from 24-08-2018 (from the date of setting up of JJBs) till 31 August 2021 and data relating to the Children Logged in Observation Home J&K .**

S. No	District	Total No of Cases Instituted	Total No of Cases Disposed off	Total No of Cases Pending
1	Anantnag	249	150	99
2	Kulgam	268	143	125
3	Ganderbal	105	49	56
4	Shopian	201	76	125
5	Pulwama	133	58	75
6	Bandipora	213	82	131
7	Baramulla	477	148	329
8	Kupwara	269	184	85
9	Budgam	317	145	172
10	Srinagar	624	289	335
11	Rajouri	220	116	104
12	Ramban	54	39	15
13	Doda	77	51	26
14	Poonch	87	52	35
15	Kishtwar	117	111	6
16	Samba	61	40	21
17	Kathua	157	127	30
18	Jammu	491	316	175

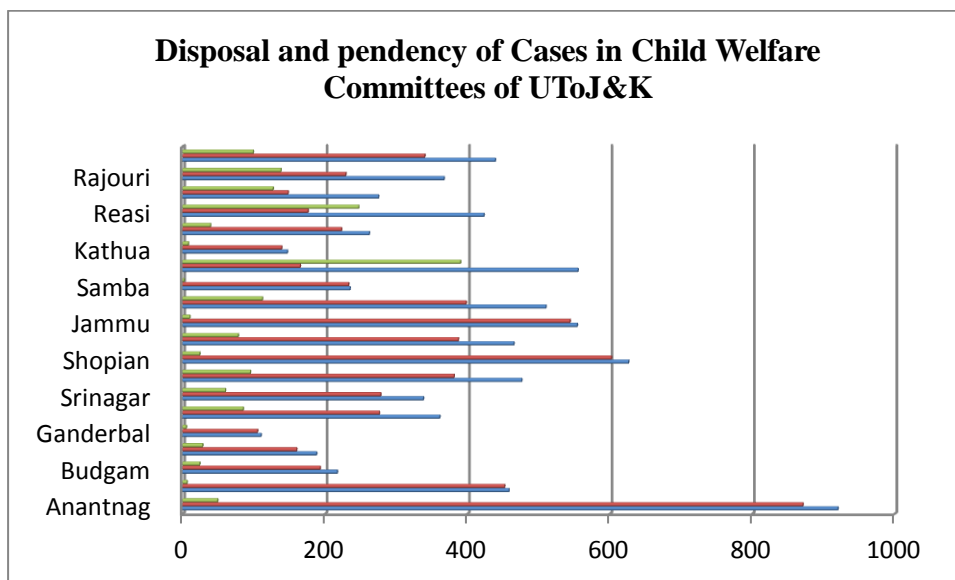
19	Reasi	70	24	46
20	Udhampur	114	70	44
<b>Total</b>		<b>4304</b>	<b>2270</b>	<b>2034</b>



According to the data above, Juvenile Justice Boards have resolved 52.74 percent of the cases that have been presented to them. However, there is a 47.25 percent backlog.

S.No	District	Total No of Cases Instituted	Total No of Cases Disposed off	Total No of Cases Pending
1	Anantnag	920	871	49
2	Kulgam	458	452	6
3	Budgam	217	193	24
4	Bandipora	188	160	28
5	Ganderbal	110	105	5
6	Pulwama	361	276	85
7	Srinagar	338	278	60
8	Baramulla	476	381	95
9	Shopian	626	602	24
10	Kupwara	465	387	78

11	Jammu	554	544	10
12	Ramban	510	398	112
13	Samba	235	233	2
14	Poonch	555	165	390
15	Kathua	147	139	8
16	Kishtwar	262	223	39
17	Reasi	423	176	247
18	Udhampur	275	148	127
19	Rajouri	367	229	138
20	Doda	439	340	99
<b>Total</b>		<b>7926</b>	<b>6300</b>	<b>1626</b>



In terms of the work of child welfare committees, they have disposed 79.48 percent of the cases and have just a 20.51 percent backlog.

## Conclusion

Children are the nation's most valuable human resource. The nation's future success is determined on how well its youth perform and execute. Juvenile Justice System in Jammu and Kashmir is gaining momentum. Necessary infrastructure has been created. Districts have appointed members to Juvenile Justice Boards and Child Welfare Committees. Improvements have been made to the conditions of juvenile homes, the effectiveness of the Selection-cum-Oversight Committee, and the establishment of Special Juvenile Police units. The changes brought by Amendment Act 2021 are a welcome step, however, it must be kept in mind that Adoption is not a business, and children are not commodities or merchandise. Adoption necessitates a judicial court's *parens patriae* involvement to ensure the child's wellbeing. This cannot be left to bureaucracy, which is managed by administrative workers with no judicial experience or ability to determine children's well-being. Also, the government and concerned stakeholders need to expedite their efforts so as to ensure that juvenile justice system functions in an effective manner. Some of the suggestions that will help in improving the system are:

- Children should be exposed to training and counseling sessions so that they can develop their interests and skills in order to find work and support themselves.
- Orientation classes, seminars, and awareness programs about psychological and socio-cultural factors of criminal behavior, as well as the link between delinquent behavior and mental health difficulties, should be organized.