CHAPTER-5


It can never be overemphasized that the implementation of law is the hallmark of the commitment of its makers. An overview of literature on the operations under the Children Acts reveals a wide gap between the theory and practice of juvenile justice in India. Non-implementation, lack of resources, inappropriate personnel, substandard services, and other problems, have been pointed out among the causes for the unsatisfactory implementation.

It is the fact that the main institutional mechanism for providing care and protection services to both the categories of children namely, juvenile in conflict with law and children in need of care and protection were present in all the successive legislations. For example, the provisions of children homes, observation homes, remand homes, shelter homes, special homes, after-care services, probation were contained in Provincial Children Acts, Central Children Acts, Juvenile Justice Act 1986, and in the present Juvenile Justice (Care and Protection of Children) Act 2000 as amended in 2006.

Though the Juvenile Justice (Care and Protection of Children) Act, 2000 has introduced the principle of institutionalization as a last resort along with the principle of 'restoration', the complete substitution of institutional
method of treatment in juvenile justice system is not possible.

It is to be mentioned that the provisions for establishment of various categories of homes for the treatment and care of juvenile delinquent and juvenile children were contained in the Children Acts, Children Act, 1960 and the Juvenile Justice Act, 1986. The same provisions for homes are also present in the present Juvenile Justice (Care and Protection of Children) Act, 2000. It is also to be noted that the quality of protection and care services offered through the institutional set up to the delinquent and non-delinquent children form the essential part of the implementation of the juvenile justice laws.

The analysis of the status of implementation of major provisions under various Children Acts, the Juvenile Justice Act 1986 and Juvenile Justice (Care and Protection of Children) Act 2000 is proposed to be presented as below

**Analysis of Status of Implementation**

Before the enactment of the Central Children Act 1960, the states had their own special Children Acts for the treatment, training and correction of youthful offenders. It is observed that either some of the Acts were not implemented at all for lack of effective machinery or if implemented by some of the states the implementation was not effective.

The observation made by Dr. M.S. Sabnis in the year 1954 shows that the effective programmes for reduction of criminality were not present in the homes. He equated the 'homes' with gloomy thick-walled bastilles.
Sinha Committee Report, 1968\textsuperscript{145} recommended for establishing one Remand home in each district with a minimum capacity of twenty-five children, two Children's homes in each district, two Certified schools for a group of five districts in each state.

The number of juvenile courts in 1976 stood at ninety-five even after 16 years of passing of Children Act, 1960.\textsuperscript{146}

In the year 1990, there was no juvenile court in 230 districts. In the same way, there was no juvenile welfare board in 419 districts.\textsuperscript{147}

Children in homes are maltreated, ill-treated. As a result, a delinquent often comes out of the Observation homes/Certified school as a hardened criminal rather than a reformed individual.\textsuperscript{148}

The official figures for 1985-86 mentioned 232 observation homes, 87 juvenile homes and 114 special homes. The figure was short by 1025 homes as per the Sinha Committee recommendation.\textsuperscript{149}

There are shortage of juvenile/children courts and Children Welfare Boards to cover all the districts. The institutional facilities were devoid of any well-defined criteria and norms to regulate capacity, staff, programmes, etc.


\textsuperscript{146} Juvenile/Children's Courts and Children Welfare Boards 1976, Statistical Survey', 64 Social Defence, 56 (April 1981)]

\textsuperscript{147} Statistical Survey Juvenile Courts for the year 1985-6', Table 1, 101, Social Defence, 60 (July 1990)].


No minimum standards for basic needs, living conditions or therapeutic services existed to apply equally to both governmental and non-governmental correctional institutions. In most of the states, neglected children are huddled together with juvenile delinquents at various stages of institutional care.\(^{150}\)

Total 1399 homes were required to be established in the 1987. In the year 2000, the National Institute of Social Defence reported 280 observation homes, 251 juvenile homes, 36 special homes, and 46 after-care institutions in the country, that is, a total of 613 homes for the whole of India. Accordingly, there was a shortfall of 786 homes by the time the Juvenile Justice (Care and Protection of Children) Act, 2000 was brought into force. There were 596 revenue districts in the country in the year 2001. The number fell short of 308 observation homes, 258 special homes, and 101 after-care homes even if only one home was to be established for the children in each district.\(^{151}\)

There are still many state governments and Union Territories, which are sleeping over their obligation to create an adequate infrastructure of Child Welfare Boards, Juvenile courts, Children homes, remand home, Observation homes, special/approved/certified schools, and after-care organization in order to implement their Act in close conformity with the provisions enclosed therein.\(^{152}\)

The poor quality of institutional programmes and services makes it hard to believe that treatment can take place in these institutions, and

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\(^{152}\) [S.P. Srivastava, Juvenile Justice in India: Policy, Programme and Perspective, p.83 (Ajanta Publications, 1st edn., 1989)]
children's chances of staying away from crime could be minimized.\textsuperscript{153}

The full range of specialized staff for the purpose of treatment, training and rehabilitation, consisting of psychologists, psychiatrists, social workers, vocational counselors, educational teacher and craft instructor is hardly to be seen in these institutions.\textsuperscript{154}

The children of a privileged class are rarely to be found in juvenile correctional institutions; not because they are lesser delinquent, but because they are generally not arrested, and if arrested, their parents are powerful enough to manipulate or brow bead the system to avoid any official action against their kids.\textsuperscript{155}

In the year 1996-97, 271 Juvenile Welfare Boards, 189 Juvenile Courts, 280 Observation homes, 251 Juvenile homes, 36 Special homes and 46 After-care organization functioning under the Juvenile Justice Act, in India.\textsuperscript{156}

The United Nations Committee on the Rights of the Child, the body responsible for monitoring the implementation of the United Nations Convention on the Rights of the Child observed that, Juvenile justice, however, was not seen as a top priority in many countries, and its realities are often hidden or ignored.\textsuperscript{157}

It is seen that in many jurisdictions, both delinquent and non-

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{153} ibid p.85
\item \textsuperscript{154} ibid p.86
\item \textsuperscript{155} ibid pp.81-82
\item \textsuperscript{156} [(S. Mathews- A Report of the National Consultation on Juvenile Justice, Centre for the Child and the Law, National Law School of India University, Bangalore, India, cited in Journal of the Indian Law Institute, Vol.41:3&4, 1999]
\item \textsuperscript{157} (UNICEF International Child Development Centre, Juvenile Justice: Main Issues, Innocenti Digest, Nov.1, 1997]
\end{itemize}
\end{footnotesize}
delinquent children are kept together in the Observation homes.  

Dr. Hira Singh voiced the general concern that there was a wide gap between the cherished principles and the actual practices under the Juvenile Justice Act, 1986. Most of the states had not set up the basic infrastructure consisting of juvenile welfare boards, juvenile courts, observation homes, juvenile homes, special homes and after care homes. For want of adequate measures for non-institutional care such as non-institutional probation, foster care, sponsorship, etc., institutionalization continued to be used, with all its ill effects. Despite mandatory requirements, the minimum standards for institutional care in terms of accommodation, maintenance, education, vocational training, or rehabilitation, were not spelt out in most of the states. There was no definite policy towards the manpower development of juvenile justice. The gap between rhetoric and reality further widened with the ratification of the Convention on the Rights of the Child. 

The inadequacy of the available facts and figures and the shortfall in implementation may be gauged from the fact that even in the year 2001 actual facts and figures about children covered under the Juvenile Justice (Care and Protection of Children) Act, 2000 were not available.

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160 [The papers circulated at the Consultation Meet on the JJ (C&P) Act 2000 organized by Prayas Institute of Juvenile Justice in collaboration with the Ministry of Social Justice and Empowerment in 2001 mentioned that the number of special children to be covered under the Juvenile Justice (Care and Protection of Children) Act, 2000 was unknown, cited in The Juvenile Justice System in India: From Welfare to Rights by Ved Kumari, p.231, Oxford University Press, New Delhi, 2nd edn., 2010]
The figures mentioned by the Prayas Juvenile Institute in the year 2001 were 189 juvenile courts and about 90 juvenile welfare boards.\textsuperscript{161}

On the status of implementation of Juvenile Justice Act, 1986, the following observation of Kumari Ved also reveals the true picture of the period, that is 1986 to 2004

No minimum standards for basic needs, living conditions or therapeutic services existed to apply equally to both governmental and non-governmental correctional institutions. In most of the states, neglected children are huddled together with juvenile delinquents at various stages of institutional care.\textsuperscript{162}

The Juvenile Justice Act, 1986 failed miserably on each count.\textsuperscript{163} As juvenile aid police units existed only at a few places, the ordinary police remained the primary agency for taking charge of juveniles falling within the purview of the Juvenile Justice Act, 1986.\textsuperscript{164}

The role played by volunteers, voluntary organizations, and community services has remained marginal. Neither has the government taken active steps for involving the community nor has the community shown any inclination to participate in the juvenile justice system.\textsuperscript{165}

There is absence of database and feedback network and its analysis, the juvenile justice system is more likely to be irrelevant and outdated to meet the changing demands of juveniles children.\textsuperscript{166}

\textsuperscript{161} ibid
\textsuperscript{162} [Ved Kumari, The Juvenile Justice System in India: From Welfare to Rights, p.229 (Oxford University Press, New Delhi, 1st edn., 2004)]
\textsuperscript{163} ibid p.295
\textsuperscript{164} ibid p.296
\textsuperscript{165} ibid p.301
\textsuperscript{166} ibid p.302
The juvenile justice system has not responded to changing trends in the juvenile delinquency patterns and the legislation has retained the same stance since the enactment of the Central Children Act 1960.\textsuperscript{167}

The invisibility of operations under the juvenile justice system does little to change the negative attitude of the general public. The periodical reports of mismanagement, exploitation, or abuse of children in the state institutions generate criticism of the state but not an outcry for protection of children.\textsuperscript{168}

The juvenile justice system mechanically sends the children to its institutions, notorious for their custodial nature and mismanagement.\textsuperscript{169}

Substantive as well as statistical information is lacking about the type, quality, and availability of services vis-à-vis the demands of juvenile justice.\textsuperscript{170}

Due attention has not been given to the development of preventive measures such as assistance to families in trouble, which is one of the major contributory factors leading to delinquency and maladjustment among children. Very few after-care services are available.\textsuperscript{171}

On the issue of implementation of juvenile justice system, Gus Martin lamented as follows

\begin{itemize}
  \item \textsuperscript{167} ibid
  \item \textsuperscript{168} ibid p.306
  \item \textsuperscript{169} ibid p.322
  \item \textsuperscript{170} ibid p.5
  \item \textsuperscript{171} ibid p.228
\end{itemize}
Unfortunately, there are many stories describing incompetence, mistreatment, corruption, and cover-ups within dysfunctional juvenile justice. Such problems and consequences pose ongoing challenges for the proper implementation of justice for juveniles.\footnote{172}

Gus Martin observed that, in the Indian juvenile justice system corruption and unequal treatment are the rule rather than the exception.\footnote{173}

Erika Rickard made the following observations on the implementation of juvenile justice system in India

One of the more pernicious of the Government of India's flaws, lack of oversight flourishes in the juvenile justice system. Physical abuse, corruption, and abuse of power dominate the system from police to incarceration to legal proceedings.\footnote{174}

The demographics of the children in observation homes throughout the country clearly demonstrates that the vast majority of juveniles have been arrested for petty theft and police arrest many of those on far less than a reasonable suspicion.\footnote{175}

Abuse of children occurs within the observation homes\footnote{176}

Mr. Dilip Bora, Ex-IGP (CID), Assam while delivering speech in a Workshop-cum-Seminar\footnote{177} stated

\begin{flushleft}
\footnotetext[172]{\strut Gus Martin, Juvenile Justice-Process and Systems, p.18 (Sage Publications, USA, 2005)}
\footnotetext[173]{\strut ibid p.361}
\footnotetext[175]{\strut ibid}
\footnotetext[176]{\strut ibid p.8}
\footnotetext[177]{\strut [Workshop-cum-Seminar on 'Furthering Justice Delivery Standards for Children' conducted by Legal Assistance Forum in association with UNICEF, Guwahati, 15th March, 2008]}
\end{flushleft}
I do not believe that juvenile crimes have come down. I have a reservation with data 2001-2006. Juvenile in conflict with law are put as normal criminal and that is why data shows less percentage. Most of the Juvenile in conflict with law are very poor, living in slum areas like railway stations etc. having no parents. Our society is not caring. We are very good in giving charity for religious purposes but not for juveniles.

Abuse of children occurs within the Observation homes as well. Lack of supervision and limited staff, combined with a lack of training, strained relations between home staff and children.\(^{178}\)

There is not even one special home in Assam. Thus when it come to adjudication of serious offences like murder or rape, at best the Juvenile Justice Board can establish the guilt but cannot order a reformative intervention.\(^{179}\)

Some of the children are being used by the officials. Juvenile Justice Board is unnecessarily detaining some of them in Delhi. Some of them have run away from remand homes.\(^{180}\)

A plethora of laws provide for an improvement in the welfare of India's children. As in a number of areas of government intervention, it is, however, in implementation that the State has failed miserably. In early July, the Supreme Court opined that implementation of the Juvenile Justice (Care and Protection of Children) Act, 2000 had been pathetic. The law looks good only


\(^{179}\) (Study on Juvenile Offences in Kamrup District, Assam, 07th Oct., 2009, Snehalaya, Don Bosco, Dhirenpara, Guwahati, p.22)

\(^{180}\) ('Supreme Court's ire over non-implementation of Juvenile Welfare Act', July 9, 2010, PTI, New Delhi)
on paper. It is a matter of shame that despite the profusion of laws and rules, street children continue to be abused by the police and the inmates of remand institutions and children's homes by the staff therein.\footnote{\textit{Legislating for Children's Welfare}, Economic & Political Weekly, Vol. XLV No.32, August 07, 2010}

Annexure-I to the affidavit\footnote{The affidavit available at– supremecourtofindia.nic.in, Accessed on 12 Oct. 2011} filed in the month of April 2011 by National Commission for Protection of Child Rights before the Supreme Court of India in Sampurna Behrua's case in W.P. (Civil) No. 473 of 2005, showing the State-wise status of implementation of major provisions of Juvenile Justice (Care and Protection of Children) Act, 2000 gives the following picture as to the status of implementation on all-India basis-

- Total States including the Union Territories (UTs)- 34
- Total Districts – 619
- Child Welfare Committees (CWCs)- 537
- Juvenile Justice Boards (JJBs)- 559
- Special Juvenile Police Units (SJPUs)- 632
- Inspection Committees- 149
- Observation Homes- 273 (60 Maharashtra, 33 Rajasthan, 26 Gujarat)
- Special Homes- 56
- Children Homes- 1433 (1076 Maharashtra, 63 Rajasthan, 56 Karnataka and 46 Orissa)
- Shelter Homes- 176
- After-care Institutions- 44
- Specialized Adoption Agency (SAA)- 283
- State Child Protection Society (SCPS)- 13 States
- District Child Protection Units (DCPUs)- Constituted in 5 States
States and Union Territories not received funds from ICPS during 2010-11 Plan Andaman & Nicobar, Andhra Pradesh, Chhattisgarh, Dadra & Nagar Haveli, Daman & Diu, Goa, Himachal Pradesh, Jharkhand, Lakshadweep, Puducherry, Sikkim, Uttarakhand and West Bengal.

States received fund from ICPS during 2011-12 -Punjab and Uttar Pradesh.

State Advisory Boards (SABs) - Many States have not constituted the Advisory Boards.

Third and Fourth Combined Periodic Report\(^{183}\) on the Convention on the Rights of the Child, 2011, by Ministry of Women and Child Development, Government of India presents the following figures of the number of homes and the children year-wise on all-India basis

- 2002-03  625 homes and 38,821 children
- 2003-04  623 homes and 38,749 children
- 2004-05  593 homes and 40,739 children
- 2005-06  675 homes and 38,359 children
- 2006-07  711 homes and 39,962 children
- 2007-08  794 homes and 46,957 children.

Justice Verma Committee\(^{184}\) Recommendations of January 23, 2013, shows that Juvenile homes and Observation homes are not functioning in the aim and spirit of Juvenile Justice Act. The Report also shows that the


\(^{184}\) (Justice Verma Committee Report on Amendments to Criminal Law, 23 January 2013, para 3, p.419)
competent authorities like Child Welfare Committee and Juvenile Welfare Board have not been constituted in each district yet. The infrastructural facilities in homes, the quality of food, the quality of counselling, and psychotherapy are not at place even as on date though the Act was passed in the year 2000. The Committee also recommended that it is the primary duty of the state to implement the Act, 2000. The Committee also expressed its shock over the children being forced into bonded labourer and beggary.

The Committee highlighting the importance of the judiciary recommended that it is time for the judiciary to step in to discharge the constitutional mandate of enforcing fundamental rights and the implementation of the rule of law relating to children. It further recommended that the Chief Justice of the High Court in every state could devise the appropriate machinery for administration and supervision of these homes in consultation with experts in the field. For the safety and physical security of children, women, persons with disabilities, inmates of mental homes and widows, monitoring by the judiciary is necessary. The immediate and ultimate guardianship of such persons has to be with court, founded on the principle of parens patriae.\textsuperscript{185}

At the outset, it is necessary to mention that the establishment of different categories of homes was prescribed under the provincial and state Children Acts. Juvenile Justice Act, 1986 also had the provisions for establishment of homes. The present Act, i.e. Juvenile Justice (Care and Protection of Children) Act 2000 too has the same provisions for establishment of homes.

\textsuperscript{185} ibid p.420
Once the government cannot establish basic infrastructures for providing care and protection services, the quality of care and protection services are a far dream.

The official figures on status of implementation of major provisions under the Children Acts and the Juvenile Justice Act, 1986 during the period 1985 to 2001 as shown above, are vague and misleading. Sinha Committee Report of 1968 did not have any meaning for the government. Juvenile justice system institutions were not established in each district despite the recommendations of the Committee.

Juvenile (Care and Protection of Children) Act, 2000 as shown above in the affidavit and Third Periodic Report is self-explanatory and contradictory. One important finding is this that the Government of India in the affidavit filed before the Supreme Court has shown total 1938 number of homes, whereas, in the Third and Fourth Periodic Report on Convention on the Rights of the Child, it has shown total 794 number of homes in India. The investigator submits that a further research work is to be carried out to find out the reasons for this anomaly.

The Juvenile Justice (Care and Protection of Children) Act, 2000 was brought in compliance of Convention on the Rights of the Child, 1989. It repealed the earlier Juvenile Justice Act, 1986. It was further amended in 2006 and 2010. However, the implementation is very serious concern even in the year 2012 and the Supreme Court of India is constantly looking in to the implementation of this law in Sampurna Behrua's case.

Based on resolution passed in year 2006 and reiterated in 2009 in the Conference of Chief Justice of India, several High Courts have constituted
Juvenile Justice Committees which are monitoring implementation of Juvenile Justice Act, 2000 in their jurisdiction. Juvenile Justice Committees of Delhi High Court is considered a model in this regard.

The Ministry of Women and Child Development has itself admitted the following major shortcomings and gaps in existing child protection institutions, policies prorams and their implementation at all levels. It also admitted that the minimal government structure that exists is rigid and a lot of time and energy are spent on maintaining the structure itself rather than concentrating on programatic outcomes. Existing programmes and schemes are marked by limitations such as 186

Lack of prevention

Policies, programmes and structures to prevent children from falling into difficult circumstances are mostly lacking. This pertains both to policies to strengthen and empower poor and vulnerable families to cope with economic and social hardship and challenges and thus be able to take care of their children.

Poor planning and coordination

(a) Poor implementation of existing laws and legislations

186 (Government of India, Integrated Child Protection Scheme, Ministry of Women and Child Development)
(b) Lack of linkages with essential lateral services for children, for example, education, health, police, judiciary, services for the disabled, etc.

c) No mapping has been done of the children in need of care and protection or of the services available for them at the district/city/state levels

d) Lack of coordination and convergence programmes/services

e) Weak supervision, monitoring and evaluation of the juvenile justice system.

Services are negligible relative to the needs

(a) Most of the children in need of care and protection, as well as their families do not get any support and services

(b) Resources for child protection are meager.

c) Little interventions for children affected by HIV/AIDS, drug abuse, militancy, disasters (both manmade and natural), abused and exploited children and children of vulnerable groups like sex workers, prisoners, migrant population and other socially vulnerable groups, etc.

d) Little interventions for children with special needs, particularly mentally challenged children.

Poor infrastructure

(a) Structures mandated by legislation are often inadequate;
(b) Lack of institutional infrastructure to deal with child protection

(c) Inadequate number of Child Welfare Committees and Juvenile Justice Boards

(d) Existing Child Welfare Committees and Juvenile Justice Boards not provided with requisite facilities for their efficient functioning, resulting in delayed enquiries and disposal of cases.

**Inadequate human resources**

Inappropriate appointments to key child protection services leading to inefficient and non-responsive services

**Serious service gaps**

(a) Improper use of institution in contravention to government guidelines

(b) Lack of support services to families at risk making children vulnerable

(c) Lack of standards of care (accommodation, sanitation, leisure, food, etc. in all institutions

(d) Lack of commitment to implement and monitor standards of care in institutions

(e) Most 24 hour shelters do not provide all the basic facilities required, specially availability of shelter, food and mainstream education

(f) Not all programmes address issues of drug abuse, HIV/AIDS and sexual abuse related vulnerabilities of children

(g) None of the existing schemes address the needs of child beggars or children used for begging
(h) No mechanism for child protection at community level or involvement of communities and local bodies in programmes and services

(i) Serious service and infrastructure gaps leading to few adoptions

(j) Cumbersome and time consuming adoption services

(k) Aftercare and rehabilitation programme for children below 18 years are not available in all states

(l) Majority of services are of poor or extremely poor quality.

**Weak accountability, monitoring and evaluation**

(a) Reporting mechanism and accountability are not clearly defined and are rarely enforced in most of the programmes and schemes

(b) Monitoring mechanisms are not in place

(c) Data required for planning, policy making and monitoring is not available

(d) Evaluation is rarely done.

**Conclusion**

It is apparent from the above analysis that the Juvenile Justice System in India is dysfunctional.