
There is ongoing failure of the juvenile justice system in India in all the fronts. The present law on juvenile justice system is the Juvenile Justice (Care and Protection of Children) Act 2000 as amended in 2006. The provisions of this Act from the practical implementation point of view, do not make any vital departure from the earlier legislations such as the Children Act, 1960 and the Juvenile Justice Act, 1986. There has always been failure in establishing competent adjudicatory authorities, effective infrastructures in the institutional set-up, providing the quality of care and protection services, skilled personnel etc. The existence of after-care services after discharge of the children from the institutions has been negligible. The probation services are rarely utilized in the system. The principle of last resort is an unattainable philosophical goal because alternative or diversionary programmes do not exist and even if they exist, it is negligible.

The problem of implementation in terms of reaching quality of
protection and care services to both the categories of children for their ultimate rehabilitation and social reintegration has been and continue to be a far dream despite of the Apex Court's directions in many cases. The Apex Court is monitoring the implementation of the Act, 2000 from the year 1986 onwards, and various Juvenile Justice Committees have been formed by respective High Courts of the state to ensure implementation of the Act 2000, however, the government will comply with the directions of the court in paper only. Whether the court would be able to ensure quality of institutional infrastructure facilities for care and protection of children and effective non-institutional measures in the form of diversionary or alternative care services is highly doubted.

There is serious lacuna in the Act of 2000 which renders the implementation in its true aim and spirit virtually impossible. The Act has introduced in it the welfare perception and not the right perception in the system. The welfare percept in the system has been and continues to be the main stumbling block in the improvement and effective implementation of the juvenile justice system in India. This welfare perception has been effected by joining together both juvenile in conflict with law (earlier juvenile delinquent) and children in need of care and protection (earlier neglected juvenile) in one legislation for the purpose of their ultimate rehabilitation and social reintegration through institutional or non-institutional measures. This perception was introduced in the system from the date of establishment of Children's Courts in India. It empowers the state to take into custody both the categories of children for their welfare, thus, dispensing with the constitutional protection rights of effective representation. This led to create invisibility in the 'system' keeping the public at large outside the jurisdiction of juvenile justice system.
Rule 40(3) of the Beijing Rules 1985 provides that in respect of children alleged as, accused of, or recognised as having infringed the penal law, specific laws, procedures, authorities, and institutions are to be established by the member states.

Article 6 of the Convention on the Rights of the Child 1989 obliges the member states to implement the children's rights in the present convention by establishing appropriate legislative, administrative and other measures.

Article 40(3) of the Convention provides that in respect of children alleged as, accused of, or recognised as having infringed the penal laws, the State should establish specific laws, specific procedures, specific authorities and specific institutions.

The repealed Children Act 1986 provided provisions for handling juvenile delinquent and neglected juveniles both in it. It can be seen that Act 1986 was not a specific legislation in respect of children alleged as, accused of, or recognised as having infringed the penal laws. Thus, the Act 1986 was violative of Rule 40(3) and Article 40(3) of the Beijing Rules and the Convention respectively.

The Juvenile Justice (Care and Protection of Children) Act 2000 as amended in 2006 met with the same fate by including juvenile in conflict with law and children in need of care and protection both in it, hence violative of Rule 40(3) and Article 40(3) of the Beijing Rules and the Convention respectively.

With due respect it is submitted that though Arnit Das has been overruled in Pratap Singh's case, it laid down the correct meaning, nature and scope of juvenile justice as the same was in consonance with the Rule 40 (3)
and Article 40(3) of the Beijing Rules and the Convention on the Rights of the Child respectively.

The preamble to the Juvenile Justice (Care and Protection of Children) Act 2000 as amended in 2006 clearly reveals the fact that the act was passed to provide a new law relating to juvenile in conflict with law and children in need of care and protection. The act professes to provide special provisions for proper care, protection and treatment by catering to the developmental needs of children in need of care and protection. Thus, the preamble itself speaks of justice to juveniles and care, protection and treatment by catering to developmental needs to children in need of care and protection. It will not be out of place to mention here that all the provisions of the enactment are in the direction of justice to juvenile and care, protection and treatment to children in need of care and protection, though separately under different sections, chapters and by different methods.

The Supreme Court in Arnit Das held that the term juvenile justice before the onset of delinquency may refer to social justice; after the onset of delinquency, it refers to justice in its normal juridical sense. The Juvenile Justice Act provides for justice after the onset of delinquency. The societal factors leading to birth of delinquency legitimately fall within the scope of social justice. Once a boy or a girl has assumed delinquency, his or her treatment and trial at the hands of justice delivery system is taken care of by the provisions of the Juvenile Justice Act. The view so taken finds support from the preamble to the Act and the statement of objects and reasons. The preamble speaks for the Act making provisions for the things post-delinquency. Several expressions employed in the statement of objects and
reasons vocally support this view.\(^{227}\)

Therefore, the term juvenile justice is concerned with justice to juvenile exclusively and obviously it is procedural as well as substantive justice, hence should be dealt with separate legislations in compliance of Rule 40(3) and Article 40(3) of the Beijing Rules and the Convention respectively. There are plethoras of social welfare legislations in the direction of providing care and protection to the category of children in need of care and protection, important among those being Right to Education Act and recently enacted legislation on sexual offences protecting the children.

The above suggestions also find support from the definition of juvenile justice for the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offender. The Congress defines it as the juvenile justice after the onset of delinquency referred to justice in its normal juridical sense and that juvenile justice before the onset of delinquency referred to social justice. Thus, the concept of social justice was to be seen as relevant to the development of children and young persons generally and to endangered or adjudicated young offenders. The two were closely related but could be separated for purposes of discussion and training.\(^{228}\)

Therefore, from international law point of view, the term juvenile justice may be understood in terms of both, after the onset of delinquency and before the onset of delinquency. However, for the practical purposes at the municipal level both should be dealt with by a separate legislation and not by making separate provisions for both in one legislation. This suggestion find


support from the definitions of the Sixth International Congress, Article 6 and 40(3) of the Convention and Rule 40(3) of the Beijing Rules as discussed above. This will solve the problem of coordination, monitoring, evaluation etc. in the implementation of the Act 2000. This will also bring transparency in the administration of juvenile justice as well.

The historical accident of handling neglected juveniles, earlier known as status offenders along with the juvenile delinquents took place when the first Juvenile Court Act of 1905 was passed in America. The act made provisions to deal with both the categories of children, delinquent and non-delinquent together. England followed the pursuit and passed the Children Act of 1908 providing measures for handling both the categories of children together. Before the Act 1908, there were separate enactments dealing with both the categories of children, for example, the Industrial Schools Act and Reformatory Schools Act. The first dealt with neglected children and the second with the delinquent children. India followed the pursuit and dealt separately both the categories of children. The Apprentice Act 1850 provides measures for neglected children and the Reformatory Schools Act 1897 dealt with delinquent juveniles. Thereafter, the Children Acts started from 1920 up to 1985 and then Juvenile Justice Act 1986 and lastly Juvenile Justice (Care and Protection of Children) Act 2000. Like Act of 2000, all these enactments provided provisions for handling of both the categories of children into single legislation.

India had the opportunity to make separate legislation for juvenile in conflict with law after its ratification of Convention, 1989. It appears that all the jurisdictions across the countries have failed to understand Article 6 and Article 40(3) of the Convention, 1989 which mandates for establishment of
specific legislation for administering justice to juvenile delinquent.

The investigator finds that all the other impediments in the implementation of the Act, 2000 flow from this main stumbling block.

**Act 2000 is violative of Constitutional Due-Process Rights**

Claude Noreiga has rightly stated as below

First, if the juvenile justice system is viewed to provide a civil remedy, many of the rights that are protected by the Constitution in criminal cases becomes inapplicable because the remedy is to provide care and protection to the juvenile. Secondly, when the juvenile justice system is viewed to provide a punitive criminal remedy, many of the civil rights normally available to the juvenile may be limited. By limiting the rights of juveniles under both civil and criminal methodologies simultaneously however, the juvenile justice system functions to give juveniles the worst of both worlds

**Invisibility created in the system appears to be the contributive factor in the malfunctioning of Juvenile Justice System**

Sections 51, 21 and 67 of the Act of 2000 can suitably be amended to bring transparency in the administration of juvenile justice. It is the transparency which contributes good functioning and the laws and rules are meant to bring transparency in the administration of justice. Reports to be confidential- should be exception and not the rule. In the light of the fact of ongoing failure of juvenile justice system, the invisibility created by law without not based on any research should go a change.

---

Ongoing Failure

The analysis of status of implementation of major provisions of the Indian juvenile justice legislations from 1951 to 2013 as carried out by the investigator in Chapter-5, clearly establishes the fact of ongoing failure of Indian juvenile justice system.

The following report on the status of implementation by the Ministry of Women and Child Development, Government of India admits that there is lack of prevention, poor planning and coordination, services are negligible relative to the needs, poor infrastructure, inadequate human resources, serious service gaps, weak accountability, monitoring and evaluation.

Minimum age of criminal responsibility

Section 27 (Bare Act, 2011, Current Publications, Mumbai) of the Code of Criminal Procedure, 1973 provides that offences which are not punishable with death or imprisonment for life, committed by any person who at the date when he appears or is brought before the court is under the age of sixteen years, may be tried by the court of a Chief Judicial Magistrate, or by any court specially empowered under the Children Act, 1960 (60 of 1960), or any other law for the time being in force providing for the treatment, training and rehabilitation of youthful offenders.

The Code of Criminal Procedure (Amendment) Act, 2010 left this provision untouched.

Thus, a person of sixteen years age not charged for an offence
punishable with death or life imprisonment, can be tried by the ordinary criminal court and be punished accordingly on conviction.

Provision of section 83 (Bare Act, Central Law Publications, Allahabad, 2010) of the Indian Penal Code, 1860 provides that nothing is an offence which is done by a child above seven years of age and under twelve, who has not attained sufficient maturity of understanding to judge the nature and consequences of his conduct on that occasion. It means, upon proof of sufficient maturity, a child above seven years of age and under twelve can be punished for the offence charged. This section 83 continues to be effective as on date.

**Juvenile justice system in India is concerned primarily not with juvenile in conflict with law but juvenile in need of care and protection**

The official figure of 1985-86 shows that there were total 114 special homes in India.\(^ {231}\)

As per National Institute of Social Defence report in 1987, there were total 36 number of special homes in India.\(^ {232}\)

The official figures of 1996-97 showed the availability of 36 numbers of Special Homes functioning under the Juvenile Justice Act in India.\(^ {233}\)

---


As per Annexure-I to the affidavit\(^{234}\) 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,\(^{235}\) there were total 1982 number of homes including 56 number of special homes in India.

There is not even one special home in Assam.\(^{236}\)

Table 13\(^{237}\) shows that total 5077 number of juvenile delinquents (including Union Territories) were sent to Special homes during 2007.

Third and Fourth Combined Periodic Report\(^{238}\) on the Convention on the Rights of the Child, 2011, by Ministry of Women and Child Development, Government of India presents the following year-wise figures of the number of homes and the children on all-India basis

<table>
<thead>
<tr>
<th>Year</th>
<th>Homes</th>
<th>Children</th>
</tr>
</thead>
<tbody>
<tr>
<td>2002-03</td>
<td>625 homes</td>
<td>38,821 children</td>
</tr>
<tr>
<td>2003-04</td>
<td>623 homes</td>
<td>38,749 children</td>
</tr>
<tr>
<td>2004-05</td>
<td>593 homes</td>
<td>40,739 children</td>
</tr>
<tr>
<td>2005-06</td>
<td>675 homes</td>
<td>38,359 children</td>
</tr>
<tr>
<td>2006-07</td>
<td>711 homes</td>
<td>39,962 children</td>
</tr>
<tr>
<td>2007-08</td>
<td>794 homes</td>
<td>46,957 children</td>
</tr>
</tbody>
</table>

Therefore, during 2007, the total 41,880 number of non-delinquent children were processed through 794 children homes and 5077 number of juvenile delinquents were processed through 56 number of special homes. On the basis of the above analysis, it appears that there is no serious problem of juvenile delinquency in India that is the reason there are only 56 special homes in India covering 619 districts. The Act, 2000 mandates the state to establish one home in each district. As per the above analysis report, there are 619 districts in India.

\(^{234}\) (The affidavit available at– supremecourtofindia.nic.in, accessed on- 12 Oct. 2011)
\(^{235}\) [W.P. (Civil) No. 473 of 2005]
\(^{236}\) (Study on Juvenile Offences in Kamrup District of Assam, p.22, Snehalaya, Don Bosco, Dhirenpara, Guwahati, 7th Oct., 2009)
\(^{237}\) [Source- The Registrar General of India, cited in Table 13 to Ahmad Siddiqui’s Criminology & Penology by SMA Qadri, pp.267-268, Eastern Book Company, Lucknow, 6th edn., 2009]
The above analysis shows the fact that the total number of homes in India as indicated in the affidavit was 1982 whereas the total number of homes in India as indicated in the Third and Fourth Periodic Report was 794. It is important to mention here that the affidavit report and the Third and Fourth periodic report are of the year 2011.

The table also shows that in Assam total 1155 number of juvenile delinquents were arrested and total 228 number of juveniles were sent to special homes whereas a study conducted by Snehalaya in the year 2009 shows that there is not even a single special home in Assam.

The above-mentioned Third and Fourth Periodic Report shows that the total 46957 number of children (both, delinquent and non-delinquent) were processed through the homes during 2007-08 and as per the above-mentioned Table 13 (Source- Registrar General of India), total 5077 number of juvenile delinquents were sent to special homes during 2007.

Therefore, during 2007, the total 41,880 number of non-delinquent children were processed through 794 children homes and 5077 number of juvenile delinquents were processed through 56 number of special homes.

On the basis of the above analysis, it appears that there is no serious problem of juvenile delinquency in India that is the reason there are only 56 special homes in India covering 619 districts. The Act, 2000 mandates the state to establish one home in each district. As per the above analysis report, there are 619 districts in India.

---

239 (Study on Juvenile Offences in Kamrup District of Assam, p.22, Snehalaya, Don Bosco, Guwahati, 7th Oct., 2009)
The analysis report reveals the fact that there is coordination between central government and the state only in paper reporting not in terms of establishing the machinery and infrastructure to achieve the aim and objects for which the juvenile justice system is continuously been maintained despite of its being dysfunctional.

The study also reveals the fact that there is no data on the number of children in India in need of care and protection.

**Convention on the Rights of the Child and Juvenile Justice System in India**

Juvenile justice system is not Convention on the Rights of the Child as is mistakably understood by all the legal reformers, legislators and non-governmental organisations working in the field of drafting juvenile justice legislation. The addition of juvenile in conflict with law and children in need of care and protection in juvenile justice system appears to be the main cause of chaos. For the administration of juvenile justice, there is only one ministry and for the children in need of care and protection there are 10-15 ministries. The ministries brings the Juvenile Justice (Care and Protection of Children) Act, 2000 under Integrated Child Protection Scheme, it appears to be unconstitutional. There is no provision for Integrated Child Protection Services in the Juvenile Justice (Care and Protection of Children) Act, 2000. It appears that whenever the serious report of dysfunctioning is brought before the media and court about the instances of the sexual abuse or exploitation of children, the government comes out without any research with some sort of schemes and programmes etc. to bluff the citizenry that now the things will be changed but the fact is it is the repetition of false promises.
Administration of Juvenile Justice

It cannot be doubted that when there is inconsistency in legal concepts, inconsistency in the administration of justice is bound to occur. The same is true in the case of juvenile justice laws and in turn, in the juvenile justice system.

The juvenile justice system is said to be developed as a separate branch of administration of justice, may be called administration of juvenile justice. But the paradox is this that nowhere the Constitution provides the provisions about administration of juvenile justice as such.

Constitutional Validity of Legislation and the Responsibility to bear the Expenses on Juvenile Justice System

The subject-matter juvenile justice is not included in any of the three Lists of the Constitution of India i.e. Union, State or Concurrent. On overall reading of the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000 as amended in 2006 and the Juvenile Justice (Care and Protection of Children) Rules 2007, it can rightly be said that juvenile justice is neither administration of civil justice nor administration of criminal justice. However, in view of Entry 97 of the Union List to Schedule Seven of Constitution of India, the Union Parliament is competent to make laws in respect of the subject-matter not covered under List-II and Concurrent List. Apart from that, in view of Entry 12 in Union List to the Seventh Schedule (United Nations Organization), the Parliament is competent to make laws in respect of administration of juvenile justice to give effect to international conventions and covenants. Therefore, from this point of view, the Juvenile Justice (Care and Protection of Children) Act, 2000 is constitutional one. But
there is a serious doubt as to the responsibility to bear the full expenses in the implementation of the Juvenile Justice (Care and Protection of Children) Act, 2000. As a matter of fact, since, the administration of juvenile justice is the subject-matter of List-I, that is Union List, the obligation is on the part of the Union of India to bear the full expenses for the implementation of the present Juvenile Justice Act in its true letter and spirit. But it is seen that the Union of India bears only 50% of the expenditure incurred for the implementation/enforcement of this social welfare legislation, that is, the Juvenile Justice (Care and Protection of Children) Act, 2000 which seems to be unconstitutional.

**Constitutionality of Application of Criminal Law to Juvenile in need of Care and Protection**

The subject-matter administration of justice; constitution and organization of all courts except the Supreme Court and High Courts in Entry 11A of the Concurrent List means civil and criminal administration of justice and not administration of juvenile justice which is completely distinct from the former.

The subjects administration of justice, constitution and organisation of all courts”, except the Supreme Court and the High Courts appears in the List-III at sl. no.11A (Concurrent List) to the Seventh Schedule of the Constitution of India. It is quite clear from the List-III itself that justice which is administered through the court is only the administration of justice as envisaged under the Constitution. Therefore, the administration of juvenile justice should be the part and parcel of administration of adult criminal justice as envisaged in the Constitution.
Jurisprudentially, the administration of justice covers both the aspects of justice, i.e. administration of civil justice and administration of criminal justice and justice to the delinquent children below eighteen is covered under the administration of criminal justice. The Constitution does not envisage any separate administration of justice to juvenile delinquent or juvenile in conflict with law as such.

The administration of criminal justice involves the application of penal code, criminal procedure and criminal courts. It is seen that the Criminal Procedure Codes has been applied throughout the successive stages of development of Juvenile Justice system and continue to be applied to children in need of care and protection, earlier known at the beginning, as status offenders and subsequently juvenile delinquent.


The Criminal Procedure Codes has been applied throughout the successive stages of development of juvenile justice system and continue to be applied even by social welfare workers attached to the criminal courts or welfare boards or welfare committees.

The Criminal Procedure Code is the part and parcel of criminal law. Its application to the non-delinquent that too by a non-judicial agency is misconceived and vague, leading to uncertainty in the legal system.

The due process rights of both the categories of children while taking into 'custody' has been dispensed with under the juvenile justice system in the disguise of care and protection by applying the outdated principle of parens patriae.
Substantive and Procedural Law

Children rights are usually procedural in nature and designed only to permit parents and children to assist State intervention.\textsuperscript{240}

Juvenile Justice Act is more or less a procedural law applicable to the investigation, enquiry or trials of offence, relating to juvenile.\textsuperscript{241}

However, the juvenile justice system has completely destroyed the distinction between substantive law and procedural law, the important legal concepts, necessary to sustain a legal system.

Substantive and Procedural Rights vis-à-vis Social Justice

From the global perspective, the concepts juvenile justice or children rights as envisaged under the various international instruments, particularly the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), 1985 and the United Nations Convention on the Rights of the Child 1989, there is no ambiguity in understanding the concept juvenile justice or children rights as both are synonymous. However, if the same concepts are incorporated in municipal legislation \textit{in toto}, confusion and chaos is bound to occur in the legal system.

Therefore, from the global perspective, the term juvenile justice after onset of delinquency refers to justice in juridical sense, that is remedial justice, or may be called fundamental or legal rights or civil and political rights as envisaged in the International Covenant on Civil and Political Rights 1966


and juvenile justice before the onset of delinquency refers to preventive justice that is social justice or welfare justice which is not remedial in nature means a right without any remedy as envisaged in the International Covenant on Economic, Social and Cultural Rights 1966. It is important to note in this context that all legal and constitutional rights are children's rights but all children's rights from the global perspective, are not the legal or fundamental rights of the children.

**The economic, social and cultural rights of the children are not justiciable rights**

The Government of India has ratified the Convention on the Rights of the Child on December 11, 1992 with reservation. Economic, social and cultural rights of the child has not been fully accepted as a justiciable right like civil and political rights of the children.\(^{242}\)

From the legal system point of view, juvenile justice in its normal juridical sense that is procedural justice or right and juvenile justice in the sense of social justice that is welfare justice, should not be clubbed together in one statute as has been done in the past and continue to be done in the present in all the jurisdictions including India. Therefore, the child who has been accused of or found to have committed an offence and the child who has not been accused of or found to have committed any offence should not be talked, discussed, handled and treated together for whatsoever reason there may be, of course without compromising the philosophy of care and protection.

The handling and treatment of both the categories of children together

by a single legislation, has created the perennial problems of establishing basic infrastructures, coordination, monitoring, evaluation, accountability, social auditing, and visibility under the Juvenile Justice system.

**The Juvenile Justice (Care and Protection of Children) Act, 2000 is not the sole repository**

The Juvenile Justice Act, 1986 was called human rights legislation. The Juvenile Justice (Care and Protection of Children) Act, 2000 is also considered to be human rights legislation. It has been observed by Ved Kumari, that the Juvenile Justice (Care and Protection of Children) Act, 2000 was the sole repository of providing care and protection to all the children in India. Many jurists, legal research scholars, legal academicians, non-governmental organisations, bar and bench, too have the same opinion. There is vagueness in such an understanding as because there are other plethoras of laws relating to children providing directly or indirectly the philosophy of care and protection as professed to be envisaged under the Juvenile Justice (Care and Protection of Children) Act, 2000.


The above Report brings shadow over the possibility of implementing the important provisions, such as coordination, monitoring, evaluation, accountability, social auditing, civil society partnership etc. as mandated under the Juvenile Justice (Care and Protection of Children) Act, 2000 as amended in 2006.

The intention of the Legislature on Juvenile Justice is not clear

Provision of section 83 244 of the Indian Penal Code, 1860 provides that nothing is an offence which is done by a child above seven years of age and under twelve, who has not attained sufficient maturity of understanding to

---


244 (Bare Act, Central Law Publications, Allahabad, 2010)
judge the nature and consequences of his conduct on that occasion. It means, upon proof of sufficient maturity, a child above seven years of age and under twelve can be punished for the offence charged. This section 83 continues to be effective as on date.

Section 27 of the Code of Criminal Procedure, 1973 states that any offence not punishable with death or imprisonment for life, committed by any person who at the date when appears or is brought before the court, is under the age of 16 years, may be tried by the court of a Chief Judicial Magistrate or by any court specially empowered under the Children Act, 1960, or any other law for the time being in force providing for the treatment, training and rehabilitation of youthful offenders. Section 29-B was a like provision in the Code of Criminal Procedure, 1898. It is most surprising that the Code of Criminal Procedure, 1973 has been amended in 2005, but section 27 was not altered to bring it in conformity with existing juvenile legislation.245

**Juvenile Justice is discretionary, as such violative of Constitution**

The World Conference for the welfare and protection of children was held in London in 1902. In this conference, the Congress considered that if due care of neglected children is not taken, there is probability of their turning towards delinquency. Thus, the conference links delinquency with neglect.

Following the above conference, England passed the Children Act of 1908 providing legal provision for a remand, or committal to custody in place of detention for delinquent children and for care of children in need of care and

---

It is accepted that the Children Acts\textsuperscript{8} (infra) in India followed the English Act of 1908. The shift in the intention of the legislature to link neglected juvenile and juvenile delinquent is not seen in the Act of 1986 (repealed) or the existing Act of 2000. It is the family of the child who is neglected and so they need care and protection. If the family is taken care of, the problem of neglect and destitution is automatically solved. Therefore, linking the neglect and destitution with crime is unconstitutional as it discriminates between poor and rich children.

The juvenile justice system is discretionary and violative of Constitution's equality clause in the sense that it pre-supposes the relationship of delinquency and destitution or abused or exploited child means in the eyes of legislators, it is children in need of care and protection who come in to conflict with law. This assumption cannot be allowed to continue as the same might have some relation long back but not now.

[\textit{Report of the Proceeding of Third International Congress, 1902}, cited in \textit{Juvenile Delinquency: A Comparative Study} by A.D. Attar, Chap.II (Popular Prakashan, Bombay, 1964)] Thus, this is the point where the Congress emphasized the linkage of neglected juveniles and juvenile delinquency.

It goes without saying that the importance of any enactment lies in the certainty of its provisions and not the benefits conferred in the provisions of the enactment. Thus, the confusion and chaos created by uncertainty in the

provisions of the juvenile justice laws is a stumbling block in the effective implementation of juvenile justice system.

**A Foreign Justice System**

The Apprentice Act of 1850 dealt with both, the delinquents and destitute children. Madras Children Act of 1920 also allowed the state to have legal guardianship over dependent and neglected children. The Juvenile Justice Act like the Children Acts, created a two-tier system for processing delinquent and neglected/dependent children.\(^{247}\)

It may be seen that in England, the first Apprentices Act was passed in 1802 and after 48 years, India passed the Apprentices Act, 1850. The English Reformatory School Act was passed in 1854 while the Indian Reformatory Schools Act was passed in 1870. The next English Reformatory School Act was passed in 1893 and following it, the Indian Reformatory Schools Act was passed in 1897. The first English Children Act was passed in 1908, while in India, after twelve years, Madras passed the first Children Act in 1920.\(^{248}\)

The Declaration of Geneva, 1924 awakened public interest in the protection and care of the child. The Declaration proclaimed that mankind owes to the child the best it can give. The result was that the Bengal Children Act of 1922 and the Bombay Children Act of 1924 were passed by respective provincial legislatures, soon after the Madras Children Act, 1920.\(^{249}\)


\(^{248}\) [A.D. Attar, Juvenile Delinquency: A Comparative Study, Chap.II (Popular Prakashan, Bombay, 1964)]

\(^{249}\) [S.P. Srivastava, Juvenile Justice in India: Policy, Programme and Perspective, p.46 (Ajanta Publications, New Delhi, 1989)]
The English Children and Young Persons Act was passed in 1933, while the Bombay Children Act, 1924 was revised and the Bombay Children Act, 1948 was passed.  


Preamble to the Juvenile Justice (Care and Protection of Children) Act, 2000 shows that the Act was brought into force to give effect to the provisions of United Nations Convention on the Rights of the Child 1989 along with other international instruments such as Beijing Rules 1985, Juveniles Deprived of their Liberty Rules 1990 and the Riyadh Guidelines 1990.  

Thus, it is seen that before independence India closely followed the English juvenile justice laws and after-independence it has tried to incorporate into its domestic law the provisions of international standard and norms on juvenile justice, however, deliberately avoiding the incorporation of certain important provisions in those international instruments, for e.g., due-process rights, principle of fair trial, minimum age of criminal responsibility, social, economic and cultural rights of the children, respecting the rights of parents or guardians in the matter of custody of children in need of care and protection,

---


249 [S.P. Srivastava, Juvenile Justice in India: Policy, Programme and Perspective, p.46 (Ajanta Publications, New Delhi, 1989)]


251 [Dr. N.V. Paranjape, Criminology and Penology, p.365 (Central Law Publication, Allahabad, 10th edn, 1998)]
supports to the family of juvenile in conflict with law or children in need of care and protection etc.

**Convention on the Rights of the Child does not prohibit punishment**

Article 37(a) of the Convention on the Rights of the Child, 1989 provides that neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age.

Rule 5.1 of the Beijing Rules, 1985 provides that any reaction to juvenile offenders shall always be in proportion to the circumstances of both the offenders and the offence.

Juvenile justice is therefore not founded, contrary to a widespread misconception, on a lenient approach as such but on responses to juvenile offending that encourage a process of behavioural change by helping the child or young person to feel accountable for his or her actions and understand their impact on others; foster integration rather than alienation; hence, avoid the involvement of the formal court system and, above all, to purely punitive responses such as deprivation of liberty wherever possible, and give special importance to constructive community-based solutions.²⁵²

Rule 5.1 of the Beijing Rules provide that any reaction to juvenile offenders shall always be in proportion to the circumstances of both, the offenders and the offence. It means the Convention on the Rights of the Child, 1989 does not exempt the child below 18 years who is found to have committed felony from punishment. In this context, it is not understood why

---

²⁵² (Innocenti Digest, UNICEF International Child Development Centre, p.4, Nov.1, 1997)
the Government of India has completely exempted the juvenile in conflict with law from punishment, even in cases of serious offences committed by them which sometimes shocks the conscience of the whole society. Not even that, the philosophy as contained in the provisions of Juvenile Justice (Care and Protection of Children) Act, 2000 is worth-mentioning here below.

**Justice system is concerned more with children in need of care and protection**

The effective infrastructure for diversionary programmes have been non-existent throughout the successive stages of new developments in Juvenile Justice system. Therefore, the importance of institutions under the juvenile justice system cannot be overlooked.

Having gained the knowledge through the review of various literatures, reports, comments and data as to the status of implementation and after having analysed the same, the investigator is shocked to find that why this dysfunctional justice system has been allowed to continue for the past 60 years.

It is also the fact that the major provisions like Children homes, Special homes, Observation homes, Shelter homes or Remand homes, probation, foster care services, after-care services etc. as of Juvenile Justice (Care and Protection of Children) Act, 2000 were very much present in the Children Act 1960 and the Juvenile Justice Act 1986 as well. However, the paradox is this that, even the Apex Court of the country is not able to get the major provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000 implemented in true aim and spirit of the Act.
Annexure-I to the affidavit 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 (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

537 Child Welfare Committees; 559 Juvenile Justice Boards; 632 Special Juvenile Police Units; 149 Inspection Committees; 273 Observation Homes (60 Maharashtra, 33 Rajasthan, 26 Gujarat); 56 Special Homes; 1433 Children Homes (1076 Maharashtra, 63 Rajasthan, 56 Karnataka and 46 Orissa); 176 Shelter Homes; 44 After-care Institutions; and 283 Specialized Adoption Agency. (The affidavit available at supremecourtofindia.nic.in, Accessed on 12 Oct. 2011)

Third and Fourth Combined Periodic Report 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

<table>
<thead>
<tr>
<th>Year</th>
<th>Homes</th>
<th>Children</th>
</tr>
</thead>
<tbody>
<tr>
<td>2002-03</td>
<td>625</td>
<td>38,821</td>
</tr>
<tr>
<td>2003-04</td>
<td>623</td>
<td>38,749</td>
</tr>
<tr>
<td>2004-05</td>
<td>593</td>
<td>40,739</td>
</tr>
<tr>
<td>2005-06</td>
<td>675</td>
<td>38,359</td>
</tr>
<tr>
<td>2006-07</td>
<td>711</td>
<td>39,962</td>
</tr>
</tbody>
</table>
2007-08 794 homes and 46,957 children.  

Thus, it is seen from the above that the Government of India has in its Third and Fourth Combined Periodic Report on the Convention on the Rights of the Child 2011 shown total 794 number of homes in India and in the same year in the affidavit filed in the month of April before the Supreme Court by the Government of India through National Commission for the Protection of Child Rights, reveals the fact that there are total 1938 (1076 in Maharashtra alone) number of homes in India.

Therefore, whether the total 794 number of homes as shown in the Third and Fourth Combined Periodic Report is the correct figure or total 1938 number of homes as shown in the said Affidavit before the Supreme Court is the correct figure? It is for the Government of India to clarify the matter.

Further, the said Third and Fourth Combined Periodic Report shows that during the period 2002-03 to 2007-08, total number of juveniles and children processed through the homes were 2,43,587, that is average 4,598 juveniles and children were processed per year.

The UNICEF figures indicate that in 1999, the numbers of children below 18 years of age was 398,306,000.

India reported to have 446,646,000 children below the age of eighteen years in the year 2007.

---


256 [State of World’s Children, 2009, UNICEF]
India accounts for 50% of the world's hungry and over 46% of its children are undernourished.  

In view of the above analysis, where total 4000-5000 juveniles and children are processed in a year through all the homes in India, the genuineness of showing serious concern over non-implementation from all the quarters even including the Supreme Court of India is highly doubted.

The stories of plight of the children in the institutions needs no explanation. Physical and sexual abuse of children in the various institutions under juvenile justice system is also not uncommon.

Even the natural guardians of the children cannot be presumed that they are always the well-wisher of their children. The rule of law is applicable even to the parents while handling their children. Then, how the state can be presumed that they are always the well-wisher of all the children in their jurisdiction. There has to be transparency in the behaviour of all the authorities of the state and it is the rule of law that can do the needful. Therefore, before taking into custody any child before 18 years even for welfare, they must be afforded with all the rights as available to an adult person.

Under these circumstances, it is reasonable to doubt on the promises for providing care and protection to juvenile in conflict with law and all the children in need of care and protection for which the Juvenile Justice (Care and Protection of Children) Act, 2000 was brought into force. Therefore, it is necessary to extend the adult due process right to all the children taken into custody for whatsoever purposes which will in turn enable to introduce the principle of visibility in the existing juvenile justice system.

[‘Forget MDG, Celebrate CWG’, Economic & Political Weekly, Vol.XLV No. 40 (Oct.2-8, 2010)]
The Beijing Rules, 1985 and Convention on the Rights of the Child, 1989 provide provisions for extending suitable support and assistance to the deserving family of the child in trouble and child in need of care. The Juvenile Justice (Care and Protection of Children) Act, 2000 and the Juvenile Justice (Care and Protection of Children) Rules, 2007 both are silent as to this issue.

All the international instruments provide that before taking into custody of the children in need of care and protection, except in emergent cases, the consent of the family of the child must be respected. Both the Juvenile Justice (Care and Protection of Children) Act, 2000 and the Juvenile Justice (Care and Protection of Children) Rules, 2007 are silent as to this issue.

Dispensation of due process rights (representation by lawyer) to the children in trouble and children in need is only an exception and not the rule as mandated by all the relevant international instruments, but the same has been made as a rule and not the exception under Juvenile Justice (Care and Protection of Children) Act, 2000 and the Juvenile Justice (Care and Protection of Children) Rules, 2007.

The blanket application of the principle of parens patriae in the modern constitutional and democratic setup, without ensuring due process rights is a hazardous affair. The Constitution does not exempt the state from not extending the due process rights to the children or juvenile taken into custody for supposed care and protection.

The welfare perception of juvenile justice system led to development of the law of invisibility leading to difficulty in collection of important data for further reformation in law.
Rights of the Accused under the Indian Legal System

Rights of the accused contained in Articles 14, 20 (1) & (3), 21, 22(1) & (2), 32, 226 of the Constitution of India, 1950 are replica of the Articles 3, 5, 7, 8, 9, 20, 11(1) & (2) of Universal Declaration of Human Rights, 1948. \(^{258}\)

The present juvenile justice system institutions which in essence do not differ much from prison or jail because it has the same philosophy of correction by way of offering care and protection to delinquent (juvenile in conflict with law) and specially to non-delinquent (children in need of care and protection). The adult accused persons either in custody or in jail are not denied their due process rights. Therefore, the principle of fair trial as available in the administration of adult criminal justice, should be extended in the administration of juvenile justice to the delinquent children (juvenile in conflict with law). The welfare justice or social justice to non-delinquent (children in need of care and protection) should be provided through separate legislation in the line of other various welfare legislations as available to different categories of children for their care and protection.

The philosophy of care and protection to juvenile in conflict with law can be taken care of by the existing judicial courts and process. The separate set of existing machinery in juvenile justice system shows that the magistrates or the judges of the criminal court do not have heart, love, kindness, sympathy, tolerance etc and are incompetent to deal the cases of offences committed by a person below 18 years. In fact, it is the judicial officers who have kind heart, love, affection, tolerance, expert in humanity and more capable of rendering justice to juvenile delinquent. What is needed is the establishment of proper infrastructures by the government to enable the court to pass suitable dispositional order. Ultimately, it is the Supreme Court which is monitoring the implementation of the major provision of the juvenile justice laws.

1. None of the international instruments on Juvenile Justice system have suggested to deal with both, juvenile justice system before onset of juvenile delinquency and after onset of delinquency (preventive and remedial), together into one enactment. The reason is obvious that the legal system has to maintain the distinction between substantive law and procedural law. The Juvenile Justice system has become hybrid law which is mixture of both substantive and procedural law creating confusion and chaos in the implementation and in the administration of justice. The constitution does not talk about administration of juvenile justice but certainly talks about the welfare of children. Justice has to be taken to mean as procedural justice which implies constitutional due process rights to anyone taken into custody for whatsoever reasons and the same cannot be suppressed in the name of welfare, care and protection. For the reason that law cannot be allowed to run on a system of belief and faith. The rules and regulations are meant to bring transparency in the administration and the violation of the rules and regulations brings the presumption of malafideness on part of the authority that is executive, legislature, judiciary or quasi-judicial authorities and it is the due process right of the person who has been taken into custody is the rules to bring transparency in the administration of juvenile justice.

infrastructures by the government to enable the court to pass suitable
dispositional order. Ultimately, it is the Supreme Court which is monitoring
the implementation of the major provision of the juvenile justice laws.

1. None of the international instruments on Juvenile Justice system
have suggested to deal with both, juvenile justice system before onset of
juvenile delinquency and after onset of delinquency (preventive and
remedial), together into one enactment. The reason is obvious that the legal
system has to maintain the distinction between substantive law and
procedural law. The Juvenile Justice system has become hybrid law which is
mixture of both substantive and procedural law creating confusion and chaos
in the implementation and in the administration of justice. The constitution
does not talk about administration of juvenile justice but certainly talks about
the welfare of children. Justice has to be taken to mean as procedural justice
which implies constitutional due process rights to anyone taken into custody
for whatsoever reasons and the same cannot be suppressed in the name of
welfare, care and protection. For the reason that law cannot be allowed to run
on a system of belief and faith. The rules and regulations are meant to bring
transparency in the administration and the violation of the rules and
regulations brings the presumption of malafidesness on part of the authority
that is executive, legislature, judiciary or quasi-judicial authorities and it is the
due process right of the person who has been taken into custody is the rules to
bring transparency in the administration of juvenile justice.

2) Juvenile Justice System- Justice legislation and welfare
legislation. We have plethora of welfare legislation for children. For example
Factory Act, 1948, Prohibition of Labour Act, 1986, recently brought Sexual
Offences Act, Right to Education Act, 2009, Protections in Indian Penal Code,
many other welfare legislations. They are not concerned with administration of justice but concerned with welfare justice or distributive justice, therefore administration of justice is concerned with corrective justice and not distributive justice in the proper sense of jurisprudence.

**Act, 2000 does not cover all the rights**


Section 25 of the same Act provides that for the purpose of providing speedy trial of offences against children or of violation of child rights, the State government may with the concurrence of the Chief Justice of the High Court, by notification specify at least a court in the state, or specify, for each district, a court of Session to be a Children's Court to try the said offences.

The Government of India deposited its instruments of accession to United Nations Convention on the Rights of the Child, 1989 on December 11, 1992 with the United Nation's Secretary-General. The instrument contains the following declaration

While fully subscribing to the objectives and purposes of the convention, realizing that certain of the rights of the child, namely, those pertaining to the economic, social and cultural rights can only be progressively implemented in the developing countries, subject to the extent of available resources and within the framework of international cooperation.

---

The Government of India undertakes to the measures to progressively implement the provisions of Article 32, particularly paragraph 2(a), in accordance with its national legislation and relevant international instruments to which it is a State Party.²⁶⁰

Therefore, it can safely be concluded that the provisions of Juvenile Justice (Care and Protection of Children) Act, 2000 as amended in 2006, Juvenile Justice (Care and Protection of Children) Rules, 2007, the various State Rules, National Commission for Protection of Children Act, 2000 are not the law in Jurisprudential sense (except coming under the definitions of offences against the child) but only abstract moral rights and moral duties which, in fact, should not find any place in legislations, either supreme or subordinate to make the law consistence.

**Juvenile justice system in India has punitive philosophy**

Section 82 of the Indian Penal Code, 1860 provides that nothing is an offence which is done by a child under seven years of age.

Section 83 of the Indian Penal Code, 1860 provides that nothing is an offence which is done by a child above seven years of age and under twelve, who has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct on that occasion.

Section 27 of the Code of Criminal Procedure, 1973 states that any offence not punishable with death or imprisonment for life, committed by any person who at the date when appears or is brought before the court, is under the age of 16 years, may be tried by the Court of a Chief Judicial Magistrate or

by any court specially empowered under the Children Act, 1960, or any other
law for the time being in force providing for the treatment, training and
rehabilitation of youthful offenders.

Section 2(k) of the Juvenile Justice (Care and Protection of Children)
Act, 2000 defines juvenile or child as a person who has not completed 18 years
of age.

Section 2(l) of the Juvenile Justice Act 2000 defines juvenile in conflict
with law as a juvenile who is alleged to have committed an offence and has not
completed 18 years of age as on the date of commission of such offence.

Rule 3 (2) (I) of Juvenile Justice (Care and Protection of Children)
Rules, 2007 provides the benefit of presumption of innocence to a juvenile in
conflict with law.

It is most surprising that in 2010, the amendment was effected in the
Code of Criminal Procedure, 1973 but no amendment was made in Section
27.

Therefore, in view of the above provisions of Indian Penal Code, Code
of Criminal Procedure and Juvenile Justice Rules, it is clear that the
institutions are meant for punishment to juvenile in conflict with law.

**Absence of Due-process rights in Indian juvenile justice system**

As per the Juvenile Justice (Care and Protection of Children) Act 2000,
the juvenile or child is not permitted to be represented by lawyer.

Article 37(d) of the Convention on the Rights of the Child, 1989
provides that every child deprived of his or her liberty shall have the right to
prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

Rule 11(a) of the Juvenile Deprived of their Liberty Rules, 1990 provides that the deprivation of liberty means any form of detention or imprisonment or the place of a person in a public or private custodial setting, from which this person is not permitted not to leave at will, by order of any judicial, administrative or other public authority.

Article 40 (2) (iii) of the Convention on the Rights of the Child, 1989 does not recognise full rights of legal representation to juvenile or child deprived of their liberty.

**Hidden Agenda**

The above research analysis shows that neither the central government nor the state government is sincere in either bringing out the legislations on juvenile justice or their implementation. It is proved beyond doubt that there is some hidden agenda in their policies and that appears to be just to please the United Nations Organisation. That hidden agenda appears to be the expectation of loan/ grant from the International Monetary Fund or World Bank by the Government of India. That appears to be the main reason behind passing juvenile justice laws in a haste manner without any research just to show the international organisation that they are also interested for the cause of children. But the above analysis shows that the state does not have will to help the poor and destitute children.

Juvenile justice in India means human rights discourse, occasional
seminars and workshops, conferences, symposium etc. The infrastructures and protection and care services have been negligible from the date of inception of the system. The physical, mental and sexual abuse of the children within and outside the system needs no mention.

**No one in India appears to be serious for protection and care of both the categories of children**

There is no contact with the children within or outside the institutions. Everything is done on paper, discourses are delivered at various platforms without there being any participation by the beneficiaries. The news of occasional seminars and workshops for training and capacity-building are rampant.

**There is no concept of system in the juvenile justice system**

System implies continuity. It involves the functioning of the institutions in an organized and systematic manner introducing transparency and accountability. In the juvenile justice system there is no transparency and accountability. It is very strange that the whole scenario of the system is quite visible to all but still the government, central or states do not find any problem with them.

**Community is not willing to participate in the process**

There is nothing to show in India that community is willing to participate in the process of treatment, training, care, protection and rehabilitation of juveniles convicted of serious offences.
Custody period is not sufficient

Within three years how the juvenile in conflict with law and children in need of care and protection can be rehabilitated and reintegrated into the society. This clearly shows that everything is just formality and nothing else.

The definition of children in need of care and protection

The definition includes all the children below eighteen years needing care and protection. In that case, what will happen to other plethora's of existing laws for the children in need of care and protection? Children in need of care and protection falls under different ministries. How it is possible that how the Juvenile Justice Act will take care of all those children in need of care and protections falling under ministries with different mechanism. Therefore, the juvenile justice legislations are passed simply just to please the international community and more particularly United Nations Organisation.

Public including stakeholders are not truly committed

There is evidence to show that there is regular contact with both the categories of children either within or without juvenile justice institutions. In fact, it is the contact which creates sensitivity in a human being. Therefore, without being sensitive all the stakeholders are operating nothing else but a huge machine.

Awareness

There is no awareness among the children about their rights and welfare. This dissemination among the children in need of care and protection India is not a priority for all the stakeholders.
Inconsistency

The juvenile justice is neither civil justice nor criminal justice. However, it is partially civil and partially criminal. It is partially substantive and partially procedural. It is partially formal and partially informal. It is partially punitive and partially welfare. It is partially municipal law and partially international law. Partially it applies the principle of care and protection and partially it applies prevention through custody. The result is inconsistency rendering the legislation incapable of being implemented in its true aim and spirit.

Protection of Society

The legislation has compromised with the protection of the society from dangerous and desperate juvenile offenders. The government is willing to see the suffering of innocent people from serious offences committed by the juvenile delinquents. If the government is making laws to protect the life, property, chastity of the society at large from the crime committed below eighteen years, in that case the government would be annoying the United Nations Organisation which may result into economic sanction. If the government is protecting is satisfying the United Nations Organisation by ratifying treaties and by showing that it has incorporated the Conventions on the Rights of the Child, in that case the government is betraying its innocent people from the serious crimes committed by children below 18 years.

It is surprising to note that without having effective juvenile justice institutions, alternative or diversionary schemes or programmes and after-care services, how the government can dare to eliminate completely the idea of punishment from the juvenile justice system. The dangerous and serious
child offender cannot be rehabilitated and socially reintegrated within the three years of statutory period of custody. In the result it can be said that there is no true intention of the government or the stakeholders for providing protection and care services to both the categories of children. Therefore, juvenile justice system is a philosophy and nothing else.