CHAPTER-8

SUGGESTIONS AND CONCLUSIONS

Suggestions

Bifurcation of the Juvenile Justice (Care and Protection of Children) Act 2000

There is difference between disease and symptom. It is the disease which is to be cured and not the symptom to cure a person. The same is true with the juvenile justice system in all the jurisdictions. The malfunctioning of the juvenile justice system from the beginning of its inception may be considered as a symptom and not the disease in itself. In other words, the malfunctioning of the system has to be located in the law itself which has given birth to the system. Law is law. The distinction has to be maintained between law and morality. The main attribute of law is sanction which empowers a person by way of remedy against the wrongdoer or the criminal.

The law has to be seen in terms of empowerment. The legislation providing benefits without making anyone accountable for its breach cannot be said to be a legislated law.

The legislated law can be equated with a chaste woman. If the law is adulterated, it becomes an unchaste law or adulterated law. The juvenile
justice laws has been and continue to be an unchaste or adulterated law and that is the disease to be cured.

When a delinquent child and non-delinquent child came to be treated at par under the philosophy of providing care and protection by making provisions in a sole legislation, the law becomes unchaste or adulterated one giving birth to uncertainty in the justice system.

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.

It appears that there has been and still is some hidden agenda of the state behind inclusion of non-delinquent children in the juvenile justice legislation which is juridically meant for juvenile delinquent. The reasons may be attributed to the followings.

It is in the knowledge of the state that many juvenile delinquents after they have committed crimes go undetected, unapprehended and hence unpunished. It is also within the knowledge of the state that it cannot solve the problem of poverty. In understanding of the state, poverty, neglect and destitution lead to delinquent behaviour.

Thus, the agenda of the state appears to be prevention through custody into juvenile justice institutions and not the one providing care and protection. Therefore, it appears that it is the custody of the non-delinquent children which is the main agenda of the state under the disguise of care and protection of children and in turn dispensing with the constitutional requirements of due process rights.
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 the 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.
This is serious lacuna in the Act of 2000 which renders the implementation in its true aim and spirit virtually impossible. 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.

Since the social and economic justice finds place in the chapter Directive Principles of State Policy of the Constitution of India and the establishment of meaningful juvenile justice institutions involves a heavy financial burden on the part of the states, the monitoring of implementation by the Supreme Court of India and the Juvenile Justice Committees constituted by state High Courts will not bring any fruitful results. The judiciary can certainly help in releasing the children from the jail and also in improving a bit in the juvenile justice institutions. If the government is not providing the
protection and care services to the children, the judiciary cannot punish the
government for its contempt.

If invisibility is removed from the system by giving the right to the
children in custody to be represented by a lawyer, the whole truth behind the
system will come into light. Drawing adverse presumption against the lawyer
sounds not good. The advocate community is very sensitive for the cause of
the plight of the children in the country. It is the individual representation
which will bring transparency in the administration of justice and not the
representation by way of Public Interest Litigation.

Consistency, sustainability and the applicability are the essence of a
legal system. A sole legislation providing mixture of civil and criminal
administration of justice, rights and welfare, substantive law and procedural
law, formal and informal proceedings, judicial and administrative bodies is
not in the interest of children, legal system, judiciary, executive as well as
administration. Therefore, the Juvenile Justice (Care and Protection of
Children) Act 2000 must go change by bifurcating by taking out the children
in need of care and protection outside of the jurisdiction of juvenile justice
system.

It would also be not out of place to mention here that even in the
philosophy of sentencing to adult criminals has gone change. The ultimate
idea of awarding punishment to them is their rehabilitation and social
reintegration. Thus, on the ground of care, protection and welfare of the
children in need of care and protection, does not by itself permits the state to
handle and deal with them along with the juvenile delinquent and that too
through a sole legislation.
It is suggested that the separation of children in need of care and protection from the justice legislation is the only solution to the problems of establishment of adjudicatory authorities, implementation, coordination, accountability and monitoring etc.

If the children in need of care and protection are dealt with separate legislations other than justice legislations, the problem of rights of constitutional protection is solved automatically. In that case both the categories of children will have full rights of constitutional protection in the case of custody.

Corruption is the main disease which has shaken the fabric of the whole society. Since the corruption prevails in the government, the private and public institutions and every walk of life, any system of the government cannot be allowed to run on belief and faith. The presumption of good faith in favour of the personal taking care of the institutions cannot be drawn. Therefore, it is the time where the government or private agencies should not be allowed to run on belief, faith and good faith. Let the rule of law prevail in every nook and corner of the juvenile justice system.

The bifurcation will solve the problem of invisibility. The juvenile justice system maintains confidentiality without any reasonable basis. The concept 'stigma' is a tool in the hands of the state keeping public outside its jurisdiction and play whatever it wants under the umbrella of care and protection philosophy. Keeping in view the class and category of children processed through the institutions, the principle of removal of stigma seems to have no meaning. Moreover, the word stigma is attached to sentiments. It is
not the opinion of the children themselves but the opinion of the state and this is also one of the hidden philosophies of the state to cover up their misdeeds in the name of welfare of children. The views of children also have not been taken on the point of stigma.

There are plethora of laws in the direction of care, protection and welfare of the children. The Child Labour (Prohibition) Act, the Factories Act, the Right to Education Act, the recently passed Sexual Offences Act, Child Marriage Act, the National Commission for Protection of Children Rights Act, offences that can be committed against the children under the Indian Penal Code etc. are examples of those. Hence there seems to be no genuine reason for clubbing children in need of care and protection with juvenile in conflict with law.

The analysis of status of implementation as discussed in chapter 5 and the findings as derived in chapter 7 of this research study clearly shows that there cannot be a blanket application of the doctrine of parens patriae.

It is suggested that the rule of law shall prevail everywhere in all the actions either executive, judicial or administrative. It should have precedents over the blanket application of care, protection and welfare philosophy which dispenses with the various constitutional protections as available to an adult accused person or any other person taken into custody by the state.

The idea of bifurcation also find place in the provisions of international instruments more particularly in hard law that is the Convention on the Rights of the Child 1989.

Rule 40(3) of the Beijing Rules 1985 obliges the member states to
establish procedures, authorities, and institutions in respect of children alleged as, accused of, or recognised as having infringed the penal law or specific laws.

Article 6 of the Convention on the Rights of the Child 1989 obliges the member states to implement the children's rights recognized 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 law, the State should establish specific laws, procedures, authorities and institutions.

The subject item at 11A in the Concurrent List to the Constitution of India provides for administration of justice, constitution and organisation of all courts, except the Supreme Court and High Courts. It clearly discloses the fact that the administration of justice relates to law and court. In other words, administration of justice through the court.

From the above provisions of the international conventions and the Constitution, in the administration of justice, the justice which is purely welfare in nature cannot be included. In the administration of justice the elements of care, protection and welfare may be provided but that comes after the wrong or offence has been committed and not before that. Therefore, the welfare or social justice is not possible to be implemented through administration of justice.

The Convention on the Rights of the Child provides for specific laws, procedures and authorities in the administration of justice in respect of
children accused of having committed a crime.

**Conclusion**

The research study finds that the stumbling block which impedes the effective implementation of the juvenile justice system in India is arbitrary and illegal inclusion of children in need of care and protection with the juvenile in conflict with law in one legislation for the purpose of administering justice to both of them. The study finds that this is in contravention of the Convention on the Rights of the Child and the Constitution of India as explained above.

It is hoped that if this suggestion is implemented, the problems of inconsistency, implementation, coordination, monitoring, accountability and the constitutional due process rights would automatically stand solved.