ABSTRACT

Research Problem

There has been 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 questionable.

In this background, the research study was undertaken to find out the stumbling block in the effective implementation of the major provisions of the Act, 2000.

Method adopted in Research Study

In this study, the doctrinal research method was adopted.

Summary of the Finding

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 single 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 Juvenile Justice 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 creating specific authorities in respect of children alleged as, accused of, or recognised as having infringed the penal laws. Thus, the Act 1986 was in contravention of Rule 40(3) of the Beijing Rules.

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 contravenes Rule 40(3) and Article 40(3) of the Beijing Rules and the Convention respectively.

The above mentioned provisions of the Beijing Rules, 1985 and the
Conventions, 1989 also find support from the definition of juvenile justice clarified by the Sixth United Nations Congress in 1980. According to it, juvenile justice after the onset of delinquency referred to justice in its normal juridical sense and juvenile justice before the onset of delinquency referred to social justice. It further said that the two were closely related but could be separated for purposes of discussion and training.

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 single legislation. This suggestion find support from the definitions of the Sixth International Congress, Articles 6 and 40(3) of the Convention and Rule 40(3) of the Beijing Rules as discussed above. The bifurcation of both the categories of children into two separate legislations will solve the problem of rights of constitutional protection as available to an adult accused person. Further, it will go to solve the problems of transparency in the system which will ultimately go to solve the problem of implementation, coordination, monitoring, accountability, evaluation etc.