

THE ORISSA CHILDREN ACT, 1981

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*THE ORISSA CHILDREN ACT, 1981

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AN ACT TO PROVIDE FOR THE CARE, PROTECTION, MAINTENANCE, WELFARE, TRAINING, EDUCATION AND REHABILITATION OF NEGLECTED AND DELINQUENT CHILDREN AND FOR THE TRIAL OF DELINQUENT CHILDREN IN THE STATE OF ORISSA

BE it enacted by the Legislature of the State of Orissa in the Thirty-third year of the Republic of India, as follows :—

CHAPTER I

PRELIMINARY

Short title,
extent and
commence-
ment.

1. (1) This Act may be called the Orissa Children Act, 1982

Definitions

(2) It extends to the whole of State of Orissa

(3) It shall come into force in whole or in part on such date as the State Government may, by notification, appoint and different dates may be appointed for different areas of the State.

2. In this Act, unless the context otherwise requires,—

(a) "begging" means—

(i) soliciting or receiving alms at any place public or private or entering on any private premises for soliciting or receiving alms whether under the pretence of singing, dancing, fortune-telling, performing tricks or selling articles or otherwise ;

(ii) exposing or exhibiting, with the object of obtaining or extorting alms, any sore, wound, injury, deformity or disease, whether of himself or of any other person or of an animal ;

(iii) allowing oneself to be used as an exhibit for the purpose of soliciting or receiving alms ;

(b) "Board" means a Child Welfare Board constituted under section 4 ;

(c) "brothel", "prostitute," "prostitution" and "public place" shall have the meaning respectively assigned to them in the Suppression of Immoral Traffic in Women and Girls Act, 1956; 104 of 1956

(d) "child" means a boy who has not attained the age of sixteen years or a girl who has not attained the age of eighteen years ;

(e) "children's court" means a court constituted under section 14;

(f) "children's home" means an institution established or certified by the Government under section 8 as a children's home ;

* For the Bill, see Orissa Gazette Extraordinary dated the 30th September 1981 (No. 19824).

- (g) "competent authority" means in relation to neglected children, a Board constituted under section 4 and, in relation to delinquent children, a children's court constituted under section 14, and, where no such Board of children's court is constituted, includes any court empowered under sub-section (2) of section 6 or sub-section (2) of section 16 to exercise the powers conferred on a Board or children's court;
- (h) "dangerous drug" shall have the meaning assigned to it in the Dangerous 2 of 1930 Drugs Act, 1930;
- (i) "delinquent child" means a child who has been found to have committed an offence;
- (j) "fit person" or "fit institution" means any person or institution (not being a police-station or jail) found fit by the competent authority to receive and take care of a child entrusted to his or its care and protection on the terms and conditions specified by the competent authority;
- (k) "Government" means the Government of the State of Orissa;
- (l) "guardian" in relation to a child includes any person who, in the opinion of the competent authority having cognizance of any proceedings in relation to a child has for the time being the actual charge of or control over that child;
- (m) "intoxicant" means any liquor or intoxicating drug as defined in the B. O. E. Act Bihar and Orissa Excise Act, 1915; 2 of 1915.
- (n) "neglected child" means a child who—
- (i) is found begging; or
 - (ii) is found without having any home or settled place of abode or any ostensible means of subsistence or is found to be a destitute, whether he is an orphan or not; or
 - (iii) has a parent or guardian who is unfit or unable to exercise or does not exercise proper care and control over the child; or
 - (iv) lives in a brothel or with prostitute or frequently goes to any place used for the purpose of prostitution, or is found to associate with a prostitute or any other person who leads an immoral, drunker or depraved life; or
 - (v) is a victim of an act which is punishable under sections 354, 355, 363, 363-A, 366, 366-A, 367 or 373 of the Indian Penal Code, 1860 45 of 1860 or under the Suppression of Immoral Traffic in Women and Girls Act, 1956; 104 of 1956;
- (o) "observation home" means any institution or place established or recognised by the Government under section 43 as an observation home;
- (p) "place of safety" means any place or institution (not being a police-station or jail), the person in charge of which is willing temporarily to receive and take care of a child and which in the opinion of the competent authority may be a place of safety for the child;
- (q) "prescribed" means prescribed by rules made under this Act;
- (r) "Probation Officer" means an officer appointed as Probation Officer under 20 of 1958 this Act or under the Probation of Offenders Act, 1958;
- (s) "special school" means an institution established or certified by the Government under section 18;

- (t) "supervision" in relation to a child placed under the care of any parent guardian or other fit person or fit institution under this Act, means the supervision of that child by a Probation Officer for the purpose of ensuring that the child is properly looked after and that the conditions imposed by the competent authority are complied with ; and
- (u) all words and expressions used but not defined in this Act and defined in the Code of Criminal Procedure, 1973 shall have the meanings assigned to 2 of 1974 them in that Code.

Continuation of inquiry in respect of a child who has ceased to be a child.

3. Where an inquiry has been initiated against a child and during the course of such inquiry the child ceases to be such, then, notwithstanding anything contained in this Act or in any other law for the time being in force, the inquiry may be continued and orders may be made in respect of such person as if such person had continued to be a child.

CHAPTER II

NEGLECTED CHILDREN

Child Welfare Boards.

4. (1) The Government may, by notification, constitute for any area specified in the notification one or more Child Welfare Boards for exercising the powers and discharging the duties conferred or imposed on such Board in relation to neglected children under this Act and Government may also alter the territorial jurisdiction of the Boards.

(2) A Board shall consist of a Chairman and such other members as the Government thinks fit to appoint, of whom at least one shall, as far as practicable, be a woman and every such member shall be vested with the powers of a Judicial Magistrate of the first class under the Code of Criminal Procedure, 1973.

Procedure, etc. in relation to the Boards.

5. (1) In the event of any difference of opinion among the members of a Board the opinion of the majority shall prevail, but where there is no such majority, the opinion of the Chairman shall prevail.

(2) A Board may, act notwithstanding the absence of any member of the Board and no order made by the Board shall be invalid by reason only of the absence of any member during any stage of the proceedings.

(3) No person shall be appointed as a member of the Board unless he has, in the opinion of the Government, special knowledge of child psychology and child welfare or has experience or has undergone training in dealing with neglected children.

Power of the Board.

6. (1) Where a Board has been constituted for any area, such Board shall notwithstanding anything contained in any other law for the time being in force, but save as otherwise expressly provided in this Act, have power to deal exclusively with all proceeding under this Act, relating to neglected children :

Provided that if the Government so desire, they may assign the functions of the Board to the children's court and *vice versa* :

Provided further that a Board may, if it is of opinion that it is necessary so to do having regard to the circumstances of the case, transfer and proceedings to any children's court :

Provided also that where there is any difference of opinion between Board or any other authority than Chief Judicial Magistrate of the District functioning as Board under sub-section (2) and a children's court regarding the transfer of any proceedings under the second proviso, it shall be referred to the Chief Judicial Magistrate of the District for decision and in a case where the Chief Judicial Magistrate of the District is functioning as a Board such difference of opinion shall be referred to the Court of Session and the decision of the Chief Judicial Magistrate of the District or, as the case may be, the Court of Session on such reference shall be final.

(2) Where no Board has been constituted for any area, the Government may, by notification, direct that the powers conferred on the Board by or under this Act shall be exercised in that area by any of the following authorities, namely :—

- (a) the Chief Judicial Magistrate of the District,
- (b) the Subdivisional Judicial Magistrate,
- (c) any Judicial Magistrate of the first class.

Procedure to be followed by a Magistrate not empowered under this Act.

7. (1) When any Magistrate not empowered to exercise the powers of a Board under this Act is of opinion that a person brought before him under any of the provisions of this Act (otherwise than for the purpose of giving evidence) is a child, he shall record such opinion and forward the child and the record of the proceeding to the competent authority having jurisdiction over the proceeding.

(2) The competent authority to which the proceeding is forwarded under sub-section (1) shall hold the inquiry as if the child had originally been brought before it.

Children's home.

8. (1) The Government may establish and maintain as many children's homes as may be necessary for the reception of neglected children under this Act.

(2) When the Government is of opinion that any institution, other than a children's home established under sub-section (1), is fit for the reception of neglected children under this Act, they may certify such institution as a children's home under this Act.

(3) Every children's home to which a neglected child is sent under this Act, shall not only provide the child with accommodation, maintenance and facilities for education, but also provide him with facilities for the development of his character and abilities and give him necessary training for protecting himself against moral dangers or exploitation and shall also perform such other functions as may be prescribed to ensure all-round growth and development of his personality.

(4) The Government may, by rules made under this Act, provide for the management of children's home including the standards and the nature of services to be maintained by them and the circumstances under which and the manner in which the certificate of a children's home may be granted or withdrawn.

Production of neglected children before Board.

9. (1) If any police officer, or any other person authorised by the Government in this behalf, by general or special order, is of opinion that a person is apparently a neglected child, such police officer or authorised person may take charge of that person for bringing him before a Board.

(2) When information is given to an officer-in-charge of a police-station about any neglected child found within the limits of such station, he shall enter in a book to be kept for the purpose the substance of such information and take such action thereon as he deems fit and if such officer does not propose to take charge of the child he shall forward a copy of the entry so made to the Board.

(3) Every child taken charge of under sub-section (1) shall be brought before the Board within twenty-four hours of such charge being taken excluding the time necessary for the journey from the place where the child had been taken charge of to the Board.

(4) Every child taken charge of under sub-section (1) shall, unless he is kept with his parent or guardian, be sent to an observation home (but not to a police-station or jail) until he can be brought before a Board.

Special procedure to be followed when neglected child has parent.

10. (1) If a person, who, in the opinion of the police officer or the authorised person, is a neglected child, has a parent or guardian who has the actual charge of or control over the child, the police officer or the authorised person may instead of taking charge of the child, make a report to the Board for initiating an inquiry regarding that child.

(2) On receipt of a report under sub-section (1), the Board may call upon the parent or guardian to produce the child before it and to show cause why the child should not be dealt with as a neglected child under the provisions of this Act and if it appears to the Board that the child is likely to be removed from its jurisdiction or to be concealed it may immediately order his removal (if necessary by issuing a search warrant for the immediate production of the child) to an observation home or a place of safety.

Enquiry by the Board.

11. (1) When a person alleged to be a neglected child is produced before a Board, it shall examine the police officer or the authorised person who brought the child or made the report and record the substance of such examination and hold inquiry in the prescribed manner and may make such order in relation to the child as it may deem fit.

(2) Where a Board is satisfied on enquiry that a child is a neglected child and that it is expedient so to deal with him, the Board may make an order directing the child to be sent to a children's home for the period until he ceases to be a child :

Provided that the Board may, for reasons to be recorded, extend the period of such stay, but in no case the period of stay shall extend beyond the time when the child attains the age of eighteen years, in the case of a boy, or twenty years in the case of a girl:

Provided further that the Board may, if it is satisfied that having regard to the circumstances of the case it is expedient so to do, for reasons to be recorded, reduce the period of stay to such period as it thinks fit.

(3) During the pendency of any inquiry regarding a child, the child shall, unless he is kept with his parent or guardian, be sent to an observation home or a place of safety for such period as may be specified in the order of the Board:

Provided that no child shall be kept with his parent or guardian, if in the opinion of the Board, such parent or guardian is unfit or unable to exercise or does not exercise proper care and control over the child.

Power to put neglected child under suitable custody.

12. (1) If the Board so thinks fit, it may, instead of making an order under sub-section (2) of section 11 for sending the child to a children's home, make an order placing the child under the care of a parent, guardian or any fit person or institution, on such parent, guardian or fit person, executing a bond with or without surety to be responsible for the good behaviour and well-being of the child and for the observance of such conditions as the Board may think fit to impose.

(2) At the time of making an order under sub-section (1) or at any time subsequently, the Board may, in addition, make an order that the child be placed under supervision for any period not exceeding three years in the first instance.

(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), if at any time it appears to the Board, on receiving a report from the Probation Officer or otherwise, that there has been a breach of any of the conditions imposed by it in respect of the child, it may, after making such inquiry as it deems fit, order the child to be sent to a children's home.

Uncontrollable children.

13. Where a parent or guardian of a child complains to the Board that he is not able to exercise proper care and control over the child and the Board is satisfied on inquiry that proceedings under this Act should be initiated regarding the child, it may send the child to an observation home or place of safety and make such further inquiry as it may deem fit and the provisions of section 11 and section 12 shall, as far as may be, apply to such proceedings.

CHAPTER III

DELINQUENT CHILDREN

Children's court.

14. (1) Notwithstanding anything contained in the Code of Criminal Procedure 1973, the Government may, by notification, constitute for any area specified in the notification, one or more children's courts for exercising the powers and discharging the duties conferred or imposed on such court in relation to delinquent children under this Act. 2 of 1974

(2) The children's court shall consist of such number of Magistrates forming a Bench as the Government think fit to appoint of whom one shall be designated as the senior Magistrate and every such Bench shall have the powers conferred by the Code of Criminal Procedure, 1973 on a Judicial Magistrate of the first class. 2 of 1974

(3) Every children's court shall be assisted by a panel of two honorary social workers possessing such qualifications as may be prescribed, of whom at least one shall be a woman, and such panel shall be appointed by the Government.

Procedure, etc. in relation to children's court.

15. (1) In the event of any difference of opinion among the Magistrates of a children's court, the opinion of the majority shall prevail, but where there is no such majority, the opinion of the senior Magistrate shall prevail.

(2) The children's court may act notwithstanding the absence of any Magistrate thereof and no order made by the children's court shall be invalid by reason only of the absence of any Magistrate during any stage of the proceeding.

(3) No person shall be appointed as a Magistrate of the children's court unless he has, in the opinion of the Government, special knowledge of child psychology and child welfare or has undergone training dealing with the delinquent children.

Power of children's courts.

16. (1) Where a children's court has been constituted for any area such court shall, notwithstanding anything contained in any other law for the time being in force but save as otherwise expressly provided in this Act, have power to deal exclusively with all proceedings under this Act relating to delinquent children:

Provided that if the Government so desire they may assign the functions of the Court to the Board:

Provided further that a children's court may, if it is of opinion that it is necessary so to do having regard to the circumstances of the case, transfer any proceedings to any Board:

Provided also that where there is any difference of opinion between children's court or any other authority other than Chief Judicial Magistrate of the District functioning as children's court under sub-section (2) and a Board regarding the transfer of any proceedings under the second proviso, it shall be referred to the Chief Judicial Magistrate of the District for decision, and in a case where Chief Judicial Magistrate of the District is functioning as a children's court, such difference of opinion shall be referred to the Court of Session and the decision of the Chief Judicial Magistrate of the District or, as the case may be, the Court of Session on such reference shall be final.

(2) Where no children's court has been constituted for any area the Government may, by notification, direct that the powers conferred on the children's court by or under this Act shall be exercised in that area by any of the following authorities namely:—

- (a) the Chief Judicial Magistrate of the District,
- (b) the Subdivisional Judicial Magistrate,
- (c) any Judicial Magistrate of the first class.

Procedure to be followed by a Magistrate not empowered under this Act.

17. (1) When any Magistrate not empowered to exercise the powers of a children's court under this Act is of opinion that a person brought before him under any of the provisions of this Act or under any other law (otherwise than for the purpose of giving evidence) is a child, he shall record such opinion and forward the child and the record of the proceeding to the competent authority having jurisdiction over the proceeding.

(2) The competent authority to which the proceeding is forwarded under sub-section (1) shall hold the inquiry as if the child had originally been brought before it.

Special schools.

18. (1) The Government may establish and maintain as many special schools as may be necessary, for the reception of delinquent children under this Act.

(2) Where the Government is of opinion that any institution other than a special school established under sub-section (1) is fit for the reception of delinquent children under this Act, it may certify such institution as a special school for the purposes of this Act.

(3) Every special school to which a delinquent child is sent under this Act shall not only provide the child with accommodation, maintenance and facilities for education but also provide him with facilities for the development of his character and abilities and give him necessary training for his reformation and for becoming self reliant and shall also perform such other functions as may be prescribed to ensure all-round growth and development of his personality.

(4) The Government may, by rules made under this Act, provide for the management of special schools including the standards and the nature of services to be maintained by them and the circumstances under which, and the manner in which, the certificate of a special school may be granted or withdrawn.

(5) For every school established or certified, the State Government shall appoint a Board of Visitors, constituted in such manner and consisting of such number of members as may be prescribed, to visit the school and record their comments on any matter they may think fit for the consideration of the management of the school, and for this purpose any member of the Board of Visitors shall have the right to visit the school at any time between the hours of sunrise and sunset.

(6) Copies of comments by the Board referred to in sub-section (5) shall, as soon as may be, after they are recorded, be forwarded by the management of the school to the Board.

Bail and custody of children.

19. (1) When any person accused of a bailable or non-bailable offence and apparently a child is arrested or detained or appears or is brought before a children's court, such person shall, notwithstanding anything contained in the Code of Criminal Procedure, 1973, or in any other law for the time being in force, be released on bail 2 of 1974 with or without surety but he shall not be so released if there appears reasonable grounds for believing that the release is likely to bring him into association with any reputed criminals or expose him to moral danger or that his release would defeat the ends of justice.

(2) When such person having been arrested is not released on bail under sub-section (1) by the officer-in-charge of the police-station, such officer shall cause him to be kept in an observation home or a place of safety in the prescribed manner (but not in police-station or Jail) until he can be brought before a children's court.

(3) When such person is not released on bail under sub-section (1) by the children's court, it shall, instead of committing him to prison, make an order sending him to an observation home or a place of safety for such period during the pendency of the inquiry regarding him as may be specified in the order.

Information to parent or guardian or Probation Officer.

20. Where a child is arrested, the Officer-in-charge of the police-station to which the child is brought shall, as soon as may be after the arrest, inform—

- (a) the parent or guardian of the child, if he can be found of such arrest and direct him to be present at the children's court before which the child will appear, and
- (b) the Probation Officer, of such arrest in order to enable him to obtain information regarding the antecedents and family history of the child and other material circumstances likely to be of assistance to the children's court for making the inquiry.

Inquiry by the children's court regarding delinquent children.

21. Where a child having been charged with an offence appears or is produced before a children's court, the children's court shall hold the inquiry in accordance with the provisions of Chapter IV and may, subject to the provisions of this Act, make such order in relation to the child as it deems fit.

Orders that may be passed regarding delinquent children.

22. (1) Where a children's court is satisfied on inquiry that a child has committed an offence, then, notwithstanding anything to the contrary contained in any other law for the time being in force, the children's court may, if it so thinks fit,—

- (a) allow the child to go home after advice or admonition ; or
- (b) direct the child to be released on probation or good conduct and be placed under the care of any parent, guardian or other fit person on such parent, guardian or other fit person executing a bond, with or without surety, as the court may require, for the good behaviour and well-being of the child for any period not exceeding three years ; or
- (c) make an order directing the child to be sent to a special school—
 - (i) in the case of a boy over fourteen years of age or of a girl [over sixteen years of age for a period of not less than three years ;
 - (ii) in the case of any other child, for the period until it ceases to be a child :

Provided that a children's court may, if it is satisfied that having regard to the nature of the offence and the circumstances of the case it is expedient so to do, for reasons to be recorded, reduce the period of stay to such period as it thinks fit :

Provided further that the children's court may, for reasons to be recorded, extend the period of such stay, but in no case the period of stay shall extend beyond the time when the child attains the age of eighteen years, in the case of a boy, or twenty years, in the case of a girl ; or

- (d) order the child to pay a fine if he is over fourteen years of age and earns money.

(2) Where an order under clause (b) or clause (d) or sub-section (1) is made, the children's court may, if it is of opinion that in the interest of the child and the public it is expedient so to do, in addition make an order that the delinquent child shall remain under the supervision of a Probation Officer named in the order during such period, not exceeding three years, as may be specified therein, and may in such supervision order impose such conditions as it deems necessary for the due supervision of the delinquent child :

Provided that if at any time afterwards it appears to the children's court on receiving a report from the Probation Officer or otherwise, that the delinquent child has not been of good behaviour during the period of supervision, it may, after making such inquiry as it deems fit, order the delinquent child to be sent to a special school.

(3) The children's court making a supervision order under sub-section (2) shall explain to the child and the parent, guardian or other fit person, as the case may be, under whose care the child has been placed, the terms and conditions of the order and shall forthwith furnish one copy of the supervision order to the child, the parent, guardian or other fit person, as the case may be, the sureties, if any, and the Probation Officer.

(4) In determining the special school or any person to whose custody a child is to be committed or entrusted under this Act, the court shall pay due regard to the religious denomination of the child to ensure that religious instruction contrary to the religious persuasion of the child is not imparted to him.

Orders that may not be passed against delinquent children.

23. (1) Notwithstanding anything to the contrary contained in any other law for the time being in force, no delinquent child shall be sentenced to death or imprisonment or committed to prison in default of payment of fine or in default of furnishing security:

Provided that where a child who has attained the age of fourteen years has committed an offence and the children's court is satisfied that the offence committed is of so serious nature or that his conduct and behaviour have been such that it would not be in his interest or in the interest of other children in a special school to send him to such special school and that none of the other measures provided under this Act is suitable or sufficient, the children's court may order the delinquent child to be kept in safe custody in such place and manner as it thinks fit and shall report the case for the orders of the Government.

(2) On receipt of the report from the children's court under sub-section (1), the Government may make such arrangement in respect of the child as they deem proper and may order such delinquent child to be detained at such place and on such conditions as they think fit :

Provided that the period of detention so ordered shall not exceed the maximum period of imprisonment to which the child could have been sentenced for the offence committed.

Proceeding under Chapter VIII of the Criminal Procedure Code not competent against child.

24. Notwithstanding anything to the contrary contained in the Code of Criminal Procedure, 1973, no proceeding shall be instituted and no order shall be passed against a child under Chapter VIII of the said Code. 2 of 1974

No joint trial of child and person not a child.

25. (1) Notwithstanding anything contained in section 223 of the Code of Criminal Procedure, 1973, or in any other law for the time being in force no child shall be charged with or tried for, any offence together with a person who is not a child. 2 of 1974

(2) If a child is accused of an offence for which under section 223 of the Code of Criminal Procedure, 1973 or any other law for the time being in force, such child and any person who is not a child would, but for the prohibition contained in sub-section (1), have been charged and tried together, the court taking cognizance of that offence shall direct separate trials of the child and such other person. 2 of 1974

Removal of disqualification on a teaching conviction.

26. Notwithstanding anything contained in any other law, a child who has committed an offence and has been dealt with under the provisions of this Act shall not suffer disqualification, if any, attaching to a conviction for an offence under such law.

Special provision in respect of pending cases.

27. Notwithstanding anything contained in this Act, all proceedings in respect of a child pending in any court in any area on the date on which this Act comes into force in that area, shall be continued in that court as if this Act had not been passed and if the court finds that the child has committed an offence, it shall record such finding and, instead of passing any sentence in respect of the child, forward the child to the children's court which shall pass orders in respect of that child in accordance with the provisions of this Act as if it had been satisfied on inquiry under this Act that the child has committed the offence.

CHAPTER IV

PROCEDURE OF COMPETENT AUTHORITIES GENERALLY

Sittings, etc. of Boards and Children's Courts.

28. (1) A Board or a Children's Court shall hold its sittings at such place, on such day and in such manner as may be prescribed.

(2) A Magistrate empowered to exercise the powers of a Board under sub-section (2) of section 6 or of a Children's Court under sub-section (2) of section 16, as the case may be, shall, while holding an inquiry regarding a child under this Act, as far as practicable, sit in a building or room different from that in which the ordinary sittings of Civil and Criminal Courts are held, or on different days or at times different from those at which the ordinary sittings of such Courts are held.

Persons who may be present before competent authority.

29. (1) Save as provided in this Act, no person shall be present at any sitting of a competent authority, except—

- (a) any officer of the competent authority; or
- (b) the parties to the inquiry before the competent authority, the parent or guardian of the child and other persons directly concerned in the inquiry including Police Officers and legal practitioners;
- (c) such other person as the competent authority may permit to be present.

(2) Notwithstanding anything contained in sub-section (1), if at any stage during an inquiry, a competent authority considers it to be expedient in the interest of the child or on grounds of decency or morality that any person including the police officers, legal practitioner, the parent, guardian or the child himself should withdraw, the competent authority may give such direction and if any person refuses to comply with such direction, the competent authority may have him removed and may, for this purpose, cause to be used such force as may be necessary.

(3) No legal practitioner shall be entitled to appear before a Board in any case or proceeding before it, except with the special permission of that Board.

Presence of parent or guardian at the proceeding.

30. A competent authority before which a child is brought under any of the provisions of this Act, may whenever it so thinks fit, require any parent or guardian having the actual charge of, or control over, the child to be present at any proceeding in respect of the child.

Dispensing with attendance of child.

31. If, at any stage during the course of an inquiry, a competent authority is satisfied that attendance of the child is not essential for the purpose of the inquiry the competent authority may dispense with his attendance and proceed with the inquiry in the absence of the child.

Committal to approved place of child suffering from dangerous disease and its future disposal.

32. (1) When a child who has been brought before a competent authority under this Act is found to be suffering from a disease requiring prolonged medical treatment or from physical or mental complaint that will respond to treatment, the competent authority may send the child to any place recognised to be an approved place in accordance with the rules made under this Act for such period as it may think necessary for the required treatment.

(2) Where a child is found to be suffering from leprosy or is of unsound mind he shall be dealt with under the provisions of the Leprosy Act, 1898 or the Indian Lunacy Act, 1912, as the case may be.

3 of 1898
4 of 1912

(3) Where a competent authority has taken action under sub-section (1) in the case of a child suffering from an infectious or contagious disease, the competent authority before restoring the said child to his partner in marriage, if there has been marriage, or to the guardian, as the case may be, shall, where it is satisfied that such action will

be in the interest of the child, call upon his partner in marriage or the guardian, as the case may be, to satisfy the court by submitting to medical examination that such partner or guardian will not reinfect the child in respect of whom the order has been passed.

Presumption and determination of age.

33 (1) Where it appears to a competent authority that a person brought before it under any of the provisions of this Act (otherwise than for the purpose of giving evidence) is a child, the competent authority shall make due inquiry as to the age of that person and for that purpose shall take such evidence as may be necessary and shall record a finding whether the person is a child or not, stating his age as nearly as may be.

(2) No order of the competent authority shall be deemed to have become invalid merely by any subsequent proof that the person in respect of whom the order has been made is not a child, and the age recorded by the competent authority to be the age of the person so brought before it shall, for the purpose of this Act, be deemed to be the true age of that person.

Circumstances to be taken into consideration in making orders

34. In making any order in respect of a child under this Act, a competent authority shall take into consideration the following circumstances, namely:—

- (a) The age of the child;
- (b) The circumstances in which the child has been living;
- (c) The reports made by the Probation Officer;
- (d) The religious persuasion of the child;
- (e) Such other circumstances as may, in the opinion of the competent authority require to be taken into consideration in the interest of the child.

Provided that in the case of a delinquent child, the above circumstances shall be taken into consideration after the Children's Court has recorded a finding that the child has committed an offence:

Provided further that if no report of the Probation Officer is received within ten weeks of his being informed under section 20 it shall be open to the Children's Court to proceed without it.

Sending a child outside jurisdiction.

35. In the case of a neglected or delinquent child whose ordinary place of residence lies outside the jurisdiction of the competent authority before which he is brought, the competent authority may, if satisfied after due inquiry that it is expedient so to do, send the child back to a relative or other person who is fit and willing to receive him at his ordinary place of residence and exercise proper care and control over him, notwithstanding that such place or residence is outside the jurisdiction of the competent authority, and the competent authority exercising jurisdiction over the place to which the child is sent shall, in respect of any matter arising subsequently, have the same powers in relation to the child as if the original order had been passed by it self.

Reports and consideration of circumstances to be treated as confidential.

36. The report of the Probation Officer or any circumstance considered by the competent authority under section 34 shall be treated as confidential:

Provided that the competent authority may, if it so thinks fit, communicate the substance thereof to the child or his parent or guardian and may give such child, parent or guardian an opportunity of producing such evidence as may be relevant to the matter stated in the report.

Prohibition of publication of name etc. of children involved in any proceeding under the Act.

37. (1) No report in any newspaper, magazine or news sheet of any inquiry or investigation regarding a child involved in any proceeding under this Act, shall disclose the name, address or school or any other particulars calculated to lead to the identification of the child nor shall any picture of any such child be published:

Provided that nothing in this section shall affect the *bona fide* publication of any report of any such proceeding in any scientific journal or other publication devoted exclusively to the protection or welfare of children.

(2) Any person contravening the provisions of sub-section (1) shall be punishable with fine which may extend to one thousand rupees.

Procedure of summons cases applicable.

38. Save as otherwise expressly provided by this Act, a competent authority while holding any inquiry under any of the provisions of this Act, shall follow such procedure as may be prescribed and subject thereto, shall follow as far as may be, the procedure laid down in the Code of Criminal Procedure, 1973 for trial in summons cases.

2 of 1974

Power to amend order.

39. (1) Without prejudice to the provisions for appeal and revision under this Act any competent authority may, either on its own motion or on an application received in this behalf, amend any order as to the person under whose care or supervision a child is to be placed under this Act.

(2) Clerical mistakes in orders passed by a competent authority or errors arising therein from any accidental slip or omission may, at any time, be corrected by the competent authority either on its own motion or on any application received in this behalf.

CHAPTER V

APPEAL AND REVISION

Appeals

40. (1) Subject to the provisions of this section, any person aggrieved by an order made by a competent authority under this act may, within thirty days from the date of such order, prefer an appeal to the court of session :

Provided that the court of session may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(2) No appeal shall lie from—

- (a) any order of acquittal by the children's court in respect of a child alleged to have committed an offence ; or
- (b) any order made by a Board in respect of a finding that a person is not a neglected child.

(3) No second appeal shall lie from any order of the court of session passed in appeal under this section.

Revision

41. The High Court may, at any time, either on its own motion or on an application received in this behalf, call for the records of any proceeding in which any competent authority or court of session has passed an order for the purpose of satisfying itself as to the legality or propriety of any such order and may pass such order in relation thereto as it thinks fit :

Provided that the High Court shall not pass an order under this section prejudicial to any person without giving him a reasonable opportunity of being heard.

Procedure in hearing appeals and revisions.

42. (1) Save as otherwise expressly provided by or under this Act, the procedure to be followed in hearing appeals or revision proceedings under this Act shall, as far as 2 of 1974 practicable, be in accordance with the provisions of the Code of Criminal Procedure, 1973.

(2) The powers conferred on the children's court or on the Board or any Judicial magistrate by or under section 6 or 16 may also be exercised by the High Court and the Court of sessions when the proceeding comes before them in appeal, revision or otherwise.

CHAPTER VI

OBSERVATION HOMES AND AFTER-CARE ORGANISATIONS

Observation homes.

43. (1) The Government may establish and maintain as many observation home as may be necessary for the temporary reception of children during the pendency of any inquiry regarding them under this Act.

(2) Where the Government is of opinion that any institution other than an observation home established under sub-section (1) is fit for the temporary reception of children during the pendency of any enquiry regarding them under this Act, it may recognise such institution as an observation home for the purposes of this Act.

(3) Every observation home to which a child is sent under this Act shall not only provide the child with accommodation, maintenance and facilities for medical examination and treatment, but also provide him with facilities for useful occupation.

(4) The Government may, by rules made under this Act, provide for the management of observation homes including the standards and the nature of services to be maintained by them and the circumstances under which and the manner in which, an institution may be recognised as an observation home or the recognition may be withdrawn.

After-care
organisa-
tions.

44. The Government may, by rules made under this Act, provide—

- (a) for the establishment or recognition of after-care organisations and the powers that may be exercised by them for effectively carrying out their functions under this Act;
- (b) for a scheme of after-care programme to be followed by such after-care organisations for the purpose of taking care of children after they leave children's homes or special schools and for the purpose of enabling them to lead an honest, industrious and useful life;
- (c) for the preparation and submission of a report by the Probation Officer in respect of each child prior to his discharge from a children's home or special school, as the case, may be, regarding the necessity and nature of after-care of such child, period of such after-care, supervision thereof and for the submission of a report by the Probation Officer on the progress of each such child;
- (d) for the standards and the nature of services to be maintained by such after-care organisations;
- (e) for such other matters as may be necessary for the purpose of effectively carrying out the scheme of after-care programme of children.

CHAPTER VII

SPECIAL OFFENCES IN RESPECT OF CHILDREN

Punishment
for cruelty to
child.

45. (1) Whoever, having the actual charge of or control over, a child, assaults, abandons, exposes or wilfully neglects the child or causes or procures him to be assaulted, abandoned exposed or neglected in a manner likely to cause such child unnecessary mental and physical suffering shall on conviction, be punishable with imprisonment for a term which may extend to six months, or with fine, or with both.

(2) No court shall take cognizance of an offence punishable under sub-section (1) unless the complaint is filed with the previous sanction of the Government or of an officer authorised by them in this behalf.

Employment
of children
for beggi-
ng.

46. (1) Whoever employs or uses any child for the purposes of begging or causes any child to beg shall be punishable with imprisonment for a term which may extend to one year, or with fine, or with both.

(2) Whoever, having the actual charge of, or control over a child, abets the commission of the offence punishable under sub-section (1), shall be punishable with imprisonment for a term which may extend to one year, or with fine, or with both.

(3) The offence punishable under this section shall be cognizable.

Female child
exposed to
the risk of
seduction.

47. Save as otherwise provided in sections 97 and 98 of the Code of Criminal Procedure, 1973, if it appears to any criminal court on the complaint of any person or otherwise that a female child is, with or without the knowledge of parent or guardian, exposed to the risk of seduction or prostitution, the court may direct the parent or guardian to enter into a recognition bond to exercise due care and supervision over such child. 2 of 1974

Penalty for
giving into-
xicant, liquor
or dangerous
drugs to a
child.

48. Whoever gives or causes to be given to any child any liquor or intoxicant in a public place or any dangerous drug except upon the prescription of a duly qualified medical practitioner or in case of sickness or other urgent cause, shall, on conviction be punishable with fine which may extend to two thousand rupees.

Exploitation of child employees.

49. Whoever ostensibly procures a child for the purpose of any employment and withholds the earnings of a child or uses such earnings for his own purposes shall, on conviction, be punishable with fine which may extend to one thousand rupees.

Allowing child to reside in brothel, etc.

50. Whoever allows or permits a child over the age of four years to reside in or frequently go to a brothel shall, on conviction, be punishable with imprisonment of either description for a term which may extend to two years or with fine which may extend to one thousand rupees or with both.

Causing or encouraging seduction etc.

51. Whoever having the actual charge of or control over a girl under the age of eighteen years causes or encourages the seduction (which shall include inducement to indulge in immoral behaviour or prostitution) of that girl or causes or encourages any one other than her husband to have sexual intercourse with her, shall, on conviction be punishable with imprisonment of either description for a term which may extend to two years or with fine which may extend to two thousand rupees or with both.

Explanation—For the purposes of this section, a person shall be deemed to have caused or encouraged the seduction of a girl or to have induced her to behave immorally if he has allowed the girl to live with or enter or continue in the employment of any prostitute or a person of immoral character.

Immoral behaviour with girl, etc.

52. Whoever seduces or indulges in immoral behaviour with a girl under the age of eighteen years shall, on conviction be punishable with imprisonment of either description for a term which may extend to two years or with fine which may extend to two thousand rupees or with both.

CHAPTER VIII

MISCELLANEOUS

Power of Government to discharge and transfer children.

53. (1) The Government may, notwithstanding anything contained in this Act, at any time, order a neglected or delinquent child to be discharged from the children's home or special school as, the case may be, either unconditionally or on such conditions as they may think fit to impose.

(2) The Government may, notwithstanding anything contained in this Act, order—

- (a) a neglected child to be transferred from one children's home to another;
- (b) a delinquent child to be transferred from one special school to another or from a special school to a borstal school or from a special school to a children's home;
- (c) a child who has been released on licence which has been revoked or forfeited, to be sent to the special school or children's home from which he was released to any other children's home or special school or borstal school, as the case may be:

Provided that the total period of the stay of the child in a children's home or special school or borstal school shall not be increased by such transfer.

(3) The Government may, notwithstanding anything contained in this Act, but subject to rules made in that behalf, at any time, discharge a child from the care of any person under whom he was placed under this Act either unconditionally or on such conditions as the Government may think fit to impose.

Transfer of neglected or delinquent child to or from another State.

54. (1) The Government may direct any neglected child or delinquent child to be transferred from any children's home or special school within the State of Orissa to any children's home, special school or institution of like nature in any other State with the consent of the Government of that State.

(2) The Government may, by general or special order, provide for the reception in a children's home or special school within the State of Orissa, of a neglected child or delinquent child detained in a children's home or special school or institution of a like nature in any other State where the Government of that State makes an order for such transfer, and upon such transfer the provisions of this Act shall apply to such child as if he had been originally ordered to be sent to such children's home or special school under this Act.

Treatment
of children
of unsound
mind or
suffering
from
Leprosy.

55. (1) Where it appears to the Government that any child kept in a special school or children's home in pursuance of this Act is suffering from leprosy or is of unsound mind the Government may order his removal to a leper asylum or mental hospital or other place of safe custody for being kept there for the remainder of the term for which he has to be kept in custody under the orders of the competent authority or for such further period as may be certified by a Medical Officer to be necessary for the proper treatment of the child.

(2) Where it appears to the Government that the child is cured of leprosy or of unsoundness of mind, they may, if the child is still liable to be kept in custody, order the person having charge of the child to send him to the special school or children's home from which he was removed, or, if the child is no longer liable to be kept in custody, order him to be discharged.

Placing out
on licence.

56. (1) When a child is kept in a children's home or special school, the Government may, if they so think fit, release the child from the children's home or special school and grant him a written licence for such period and on such conditions as may be specified in the licence, permitting him to live with, or under the supervision of, any responsible person named in the licence willing to receive and take charge of him with a view to educating him and training him for some useful trade or calling.

(2) A licence granted under sub-section (1) shall be in force for the period specified in the licence or until revoked or forfeited by the breach of any of the conditions on which it was granted.

(3) The Government may, at any time, by order in writing revoke any such licence and order the child to return to the children's home or special school from which he was released or to any other children's home or special school and shall do so at the desire of the person with whom or under whose supervision the child has been permitted to live in accordance with a licence granted under sub-section (1).

(4) When a licence has been revoked or forfeited and the child refuses or fails to return to the special school or children's home to which he has been directed to return, the Government may, if necessary cause him to be taken charge of and to be taken back to the special school or children's home.

(5) The time during which a child is absent from a special school or children's home in pursuance of a licence granted under this section shall be deemed to be part of the time for which he is liable to be kept in custody in the special school or children's home:

Provided that when a child has failed to return to the special school or children's home on the licence being revoked or forfeited, the time which elapses after his failure so to return, shall be excluded in computing the time during which he is liable to be kept in custody.

Provision in
respect of
escaped
children.

57. Notwithstanding anything to the contrary contained in any other law for the time being in force, any police officer may take charge without warrant of a child who has escaped from a special school or a children's home or from the care of a person under whom he was placed under this Act and shall send the child back to the special school or the children's home or that person, as the case may be, and no proceeding shall be instituted in respect of the child by reason of such escape but the special school, or children's home or the person may, after giving the information to the competent authority which passed the order in respect of the child, take such steps against the child as may be deemed necessary.

Contribution
by parents.

58. (1) The competent authority which makes an order for sending a neglected child or a delinquent child to a children's home or special school or placing the child under the care of a fit person, may make an order requiring the parent or other person liable to maintain the child, to contribute towards his maintenance, if able to do so, in the prescribed manner.

(2) The competent authority shall, before making any order under sub-section (1), inquire into the circumstances of the parent or other person liable to maintain the child and shall record evidence, if any, in the presence of the parent or such other person, as the case may be.

(3) The person liable to maintain a child shall, for the purpose of sub-section (1), include in the case of illegitimacy, his putative father:

Provided that where the child is illegitimate and an order for his maintenance has been made under section 125 of the Code of Criminal Procedure, 1973 in respect of a neglected or a delinquent child the competent authority shall not ordinarily make an order for contribution against the father but may order the whole or any part of the sums accruing due under the said order for maintenance to be paid to such persons may be named by the competent authority and such sum shall be paid by him towards the maintenance of the child.

(4) Any order made under this section may be enforced in the same manner as an order under section 125 of the Code of Criminal Procedure, 1973. 2 of 1974

Control of
custodian
overchild.

59. Any person in whose custody a child is placed in pursuance of this Act shall, while the order is in force, have like control over the child as he would have if he were his parent and shall be responsible for his maintenance and the child shall continue in his custody for the period stated by the competent authority, notwithstanding that he is claimed by his parent or any other person:

Provided that no child while in such custody shall be given in marriage except with the permission of the competent authority.

Delinquent
child under-
going sent-
ence at
commence-
ment of the
Act.

60. In any area in which this Act is brought into force, the Government may direct that a delinquent child who is undergoing any sentence of imprisonment at the commencement of this Act shall, in lieu of undergoing such sentence, be sent to a special school or be kept in safe custody in such place and manner as the Government think fit for the remainder of the period of the sentence, and the provisions of this Act shall apply to the child as if he had been ordered by a children's court to be sent to such special school, or, as the case may be, ordered to be detained under sub-section (2) of section 23.

Probation
officers and
their duties.

61. (1) The Government may appoint as many probation officers for the inspection of special schools, children's home, observation homes or after-care organisations and such other officers as it may deem necessary for carrying out the purposes of this Act.

(2) It shall be the duty of the Probation Officer—

- (a) to inquire, in accordance with the direction of a competent authority, into the antecedents and family history of any child accused of an offence with a view to assisting the authority in making inquiry;
- (b) to visit neglected and delinquent children at such intervals as the Probation officer may think fit;
- (c) to report to the competent authority as to the behaviour of any neglected or delinquent child;
- (d) to advise and assist neglected or delinquent children and, if necessary, endeavour to find them suitable employment;
- (e) where a neglected or delinquent child is placed under the care of any person on certain conditions, to see whether such conditions are being complied with; and
- (f) to perform such other duties as may be prescribed.

(3) Any officer appointed in this behalf by the Government, may enter any special school, children's home, observation home or after-care organisation and make a complete inspection thereof in all its departments and of all papers, records, registers and accounts relating thereto and shall submit a report of such inspection to the Government.

Officers
appointed
to be public
servants.

62. Probation Officers and other officers appointed in pursuance of this Act shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code, 1860.

Procedure
in respect of
Bonds.

63. The provisions of Chapter XXXIII of the Code of Criminal Procedure, 1973 shall, as far as may be, apply to bonds taken under this Act, until provisions in that behalf are made by rules framed under this Act. 2 of 1974

Delegation
of powers.

64. The Government may, by general or special order, direct that any power exercisable by them under this Act, except the power under section 66 to make rules shall, in such circumstances and on such conditions, if any, as may be specified in the order, be exercisable also by any authority prescribed under the rules.

Protection
of action
taken in
good faith.

65. No suit or other legal proceeding shall lie against the Government or that authority prescribed under the rules to whom powers are delegated by the Government under section 64 or any Probation Officer or other officer appointed under this Act in respect of anything which is in good faith done or intended to be done in pursuance of this Act or of any rules or orders made thereunder.

Act 8 of 1897
and certain
provision of
Act 2 of 1974
not to apply.

66. (1) The Reformatory Schools Act, 1897 and section 27 of the Code of 1897 Criminal Procedure, 1973 shall cease to apply to any area in which this Act has been brought into force.

(2) The Women's and Children's institutions (Licensing) Act, 1956 shall not apply to any Children's home, special school or observation home established and maintained under this Act.

Power to
make rules.

67. (1) The Government may, by notification, make rules to carry out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

- (a) the places at which, the days on which, the time at which and the manner in which, a competent authority may hold its sittings;
- (b) the procedure to be followed by a competent authority in holding inquiries under this Act and the mode of dealing with children suffering from dangerous diseases or mental complaints;
- (c) the circumstances in which and the conditions subject to which, an institution may be certified as a special school or a children's home or recognised as an observation home, and the certification or recognition withdrawn ;
- (d) the internal management of special schools, children's homes and observation homes and the standards and the nature of services to be maintained by them ;
- (e) the functions and responsibilities of special schools, children's homes and observation homes ;
- (f) the inspection of special schools, children's homes, observation homes and after-care organisations ;
- (g) the establishment, management and functions of after-care organisations and the circumstances in which and the conditions subject to which an institution may be recognised as an after-care organisation and such other matters as are referred to in section 44 ;
- (h) the qualifications and duties of Probation Officers ;
- (i) the recruitment and training of persons appointed to carry out the purposes of this Act and the terms and conditions of their service ;
- (j) the conditions subject to which a neglected or delinquent child may be escorted from one place to another and the manner in which a child may be sent outside the jurisdiction of a competent authority ;
- (k) the manner in which contribution for the maintenance of a child may be ordered to be paid by a parent or guardian ;
- (l) the conditions under which a child may be placed out on licence and the form and conditions of the licence ;
- (m) the condition under which children may be placed under the care of any parent, guardian or other fit person or fit institution under this Act and the obligations of such persons or institutions towards the children so placed ; and
- (n) any other matter which has to be or may be, prescribed.

Repeal

68. If, immediately before the date of enforcement of all or any of the provisions of this Act in any area, there is in force in that area, any law corresponding to this Act, that law shall, to the extent it corresponds to the provisions of this Act as enforced in that area, stand repealed on the said date:

Provided that the repeal shall not affect—

- (a) the previous operation of any law so repealed or anything duly done or suffered thereunder, or
- (b) any right, privilege, obligation or liability acquired, accrued or incurred under any law so repealed; or
- (c) any penalty, forfeiture or punishment incurred in respect of any offence committed against any law so repealed; or
- (d) any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid,

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed, as if this Act had not been passed.