

Haryana Children Act, 1974

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An Act to provide for the care, protection, maintenance, welfare, training, education and rehabilitation of neglected or delinquent children and for the trial of delinquent children in the State of Haryana.

Be it enacted by the Legislature of the State of Haryana in the Twenty-fourth Year of the Republic of India as follows :-

Chapter I

Preliminary

1. Short title, extent and commencement—(1) This Act may be called the Haryana Children Act, 1974

(2) It extends to the whole of the State of Haryana.

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

2. Definitions—In this Act, unless there is anything repugnant in the subject or context.-

(a) "begging" means -

(i) soliciting or receiving alms in a public place or entering on any private premises for the purpose of 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 score, 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 3;

(c) "brothel", "prostitute", "prostitution" and "public place" shall have the meanings respectively assigned to them in the Suppression of Immoral Traffic in Women and Girls Act, 1956 (Parliament Act 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 4;

(f) "Children's home" means an institution established or recognised by the State Government under Section 8;

(g) "Chief Child Welfare Officer" means the person appointed as such under Section 59;

(h) "competent authority" means, in relation to neglected children, a Board constituted under Section 3 and, in relation to delinquent children, a children's court constituted under Section 4, and where no such Board or children's court has been constituted,

any court empowered under sub-section (2) of Section 6 to exercise the powers conferred on a Board or children's court;

(i) "dangerous drug" shall have the meaning assigned to it in the Dangerous Drugs Act, 1930 (Central Act 2 of 1930);

(j) "delinquent child" means a child who has been found to have committed an offence;

(k) "fit person", in relation to the care of any child, includes any society or body corporate established for the reception or protection of children or the prevention of cruelty to children and undertakes to bring up or to give facilities for bringing up any child, entrusted to its care in conformity with the religion of its birth;

(l) "guardian", in relation to a delinquent child or neglected child, includes any person who in the opinion of the competent authority having cognizance of any proceedings in relation to such a child has, for the time being, the actual charge of, or control over, that child;

(m) "neglected child" means a child who -

(i) has no home, place of abode or visible means of subsistence, or its being willfully neglected by his parent or guardian;

(ii) is under the care of parent or guardian who is a leper or by reason of criminal or drunken habits is unfit to have the care of such person;

(iii) frequents the company of any reputed thief or prostitute;

(iv) is lodging or residing in or frequenting a house used by a prostitute for the purposes of prostitution;

(v) is found begging; or

(vi) is being heavily overworked or ill treated by his employer;

- (n) "observation home" means any institution or place established or recognised by the State Government under Section 10 as an observation home;
- (o) "offence" means an offence punishable under any law for the time being in force;
- (p) "prescribed" means prescribed by rules made under this Act;
- (q) "probation officer" means an officer appointed as a probation officer under this Act or under the Probation of Offenders Act, 1958 (20 of 1958);
- (r) "special school" means an institution established or recognised by the State Government under Section 9;
- (s) "supervision", in relation to a child placed under the care of any parent, guardian or other fit person under this Act, means the supervision 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;
- (t) all words and expressions used but not defined in this Act and defined in the Code of Criminal Procedure, 1893 (Central Act 5 of 1898), shall have the meanings assigned to them in that Code.

Chapter II

Competent Authorities and Institutions for Children

3. Child Welfare Boards—(1) The State 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.

(2) A Board shall consist of a Chairman and such other members, not exceeding six, as the State Government thinks fit to appoint, of whom not less than two shall be women, and every such member shall have the powers of a Magistrate of the first

class under the Code of Criminal Procedure, 1898 (Central Act 5 of 1898).

(3) The Board shall function as a bench of Magistrates and shall have the powers conferred by the Code of Criminal Procedure, 1898 (Central Act 5 of 1898), on a Magistrate of the first class.

4. Children's court—(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (Central Act 5 of 1898), the State 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) A children's court shall function as a bench of such number of Magistrates, not exceeding three, as the State Government thinks fit to appoint, of whom one shall be designated as the senior Magistrate and not less than one shall be a woman; and every such bench shall have the powers conferred by the Code of Criminal Procedure, 1898 (Central Act 5 of 1898), on a judicial Magistrate of the first class.

5. Procedure, etc., in relation to Boards and children's courts—(1) In the event of any difference of opinion among the members of a Board or 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 chairman or of the senior Magistrate, as the case may be, shall prevail.

(2) A Board or children's court may act notwithstanding the absence of any member of the Board or, as the case may be, any Magistrate of the children's court, and no order made by the Board or children's court shall be invalid by reason only of the absence of any member or Magistrate, as the case may be, during any stage of the proceedings.

(3) No person shall be appointed as a member of the Board or as a Magistrate in the children's court unless he has in the opinion of the State Government, knowledge of child psychology and child welfare.

6. Power of Board and children's court—(1) Where a Board or a children's court has been constituted for any area, such Board or 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 neglected children or delinquent children, as the case may be.

(2) Where no Board has been constituted for any area, the powers conferred on it by or under this Act shall be exercised in that area, by the Sub-Divisional Magistrate.

(3) The powers conferred on the Board by or under this Act may also be exercised by the Deputy Commissioner and the Commissioner, when the proceedings come before them in appeal or revision.

(4) Where no children's court has been constituted for any area, the powers conferred on it by or under this Act shall be exercise in that area by the judicial Magistrate of the Ist Class specially nominated by the Sessions Judge.

(5) The powers conferred on the children's court by or under this Act may be also be exercised by the Court of Session and the High Court when the proceedings come before them in appeal or revision.

7. Procedure to be followed by Magistrates not empowered under this Act and vice versa—(1) When any Magistrate not empowered to exercise the power of a Board or a children's court under this Act is of the opinion that a person brought before him 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 proceedings to the competent authority having jurisdiction over the proceedings.

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

(3) When any children's court is of the opinion that a person brought before it is not a child, he shall record such opinion and forward the person and the record of the proceedings to the court having jurisdiction over the proceedings.

(4) The court to which the record of proceedings is forwarded under sub-section (3) shall hold the enquiry or trial, as the case may be, as if the person had originally been brought before it.

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

(2) Where the State Government is of the opinion that any institution other than an institution established under sub-section (1) is fit for the reception of the neglected children to be sent there under this Act, it may recognize such institution as a children's home for the purpose of 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 exploitation and shall also perform such other functions as may be prescribed.

(4) The State Government may, by rules made under this Act, provide for the management of children's homes and the circumstances under which, and the manner in which, the certificate of a children's home may be granted or withdrawn.

9. Special Schools—(1) The State 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 State Government is of the opinion that any institution other than an institution established under sub-section (1) is fit for the reception of the delinquent children to be sent there under this Act, it may recognize 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 the development of his character and abilities and give him necessary training for his reformation and shall also perform such other functions as may be prescribed.

(4) The State Government may, by rules made under this Act, provide for the management of special schools and the circumstances under which, and the manner in

which, the recognition of a special school may be granted or withdrawn.

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

(2) Where the State Government is of the opinion that any institution other than an institution established under sub-section (1) is fit for the temporary reception of children during the pendency of any inquiry 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 State Government may, by rules made under this Act, provide for the management of observation homes and the circumstances under which, and the manner in which, the recognition may be granted or withdrawn.

11. After-care organisations—(1) The Chief Child Welfare Officer may, by rules made under this Act, provide for the establishment or recognition of after-care organisations and may vest them with such powers as may be necessary for effectively carrying out their functions under this Act.

(2) Every such organisation shall take care of the children when they leave children's homes or special schools and shall, for the purpose of enabling them to lead an honest, industrious and useful life, take all such measures as it may deem necessary or as may be prescribed.

Chapter III

Neglected Children

12. Production of neglected children before Boards—(1) If any police officer, or any other person, authorised by the State Government in this behalf, by general or special order, is of the opinion that the person is apparently a neglected child, such

police officer or other 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 and to such other person as may be authorised under sub-section (1).

(3) Every child taken charge of under sub-section (1), shall be brought before the Board within a period of twenty-four hours of taking such charge excluding the time necessary for the journey.

(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 as required under sub-section (3).

13. Special procedure to be followed when neglected child has parent or guardian

—(1) If a person, who is the opinion of the authorised 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, he may, instead of taking charge of the child, make a report to the Board for initiating an enquiry 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 before he is produced, it may immediately order his production before the Board or removal to an observation home.

14. Inquiry by Board regarding neglected children—(1) When a person alleged to be a neglected child is produced before a Board, it shall examine the person who brought the child or made the report and record the substance of such examination and

hold the enquiry in the prescribed manner and may make such orders in relation to the child as it may deem fit.

(2) Where a Board is satisfied on inquiry 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 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 to exercise or does not exercise proper care and control over the child.

15. Power to commit neglected child to suitable custody—(1) If the Board so thinks fit, it may, instead of making an order under sub-section (2) of Section 14 for sending the child to the children's home, make an order placing the child under the care of a parent, guardian or other fit person, on such 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.

16. Uncontrollable children—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 and make such further inquiry as it may deem fit and the provisions of Sections 14 and 15 shall, as far as may be, apply to such proceedings.

Chapter IV

Delinquent Children

17. Bail and custody of children—(1) When a child accused of any non-bailable offence is arrested, appears or is brought before a children's court such person shall, notwithstanding anything contained in the Code of Criminal Procedure, 1898 (Central Act 5 of 1898), or in any other law for the time being in force, be released on bail with or without surety but he shall not be so released if there appear reasonable grounds for believing that the release is likely to bring him into association with any reputed criminal or that his release would defeat the purpose of this Act.

(2) Notwithstanding anything contained in sub-section (1), when a child, who is a girl, is arrested on a charge of a non-bailable offence and cannot be brought forthwith before a court, the officer-in-charge of a police station who has made the arrest or before whom the girl is produced shall release her at once, if any person who is in his opinion is a sufficient surety and enters into a bond for such sum of money as the officer considers sufficient to produce her before the court and to appear in her stead if required at the police station.

(3) When such person having been arrested is not released on bail under sub-section (2), he shall be kept in an observation home in the prescribed manner until he can be brought before a children's court.

(4) 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 for such period during the pendency of the inquiry as may be specified in the order.

18. Information to parent or guardian and probation officer—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 be produced; 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.

19. Inquiry by children's court regarding delinquent children—The children's court shall hold an inquiry against the child charged with an offence, in accordance with the provisions of Section 37 and may, subject to the provisions of this Act, make such order in relation to the child as it deems fit.

20. Orders that may be passed regarding delinquent children—(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 thinks fit, -

(a) allow the child to go home after advice or admonition;

(b) direct the child to be released on probation of good conduct and placed under the care of any parent, guardian, or other fit person on his 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;

(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 he ceases to be a child:

Provided that the 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 of 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;

(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) of sub-section (1) is made, the children's court may, if it is of opinion that in the interest of the child and of 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 persuasion of the child to ensure that religious instruction contrary to the religious persuasion of the child is not imparted to him.

(5) Where a child is found to have committed an offence punishable with fine and the children's court is of the opinion that the case would be best met by the imposition of a fine, whether with or without any other punishment, the court may in any case, and shall if the child is under fourteen years of age, order that the fine be paid by the parent or guardian of the child, unless the court is satisfied that the parent or guardian cannot be found or that he has not caused the commission of the offence by neglecting to exercise due care of the child.

(6) An order under this section may be made against a parent or guardian, who, having been required to attend, has failed to do so, but save as aforesaid no such order shall be made without giving the parent or guardian an opportunity of being heard.

(7) Where a parent or guardian is directed to pay a fine under this section, the amount may be recovered in accordance with the provisions of the Code of Criminal Procedure, 1989 (Central Act 5 of 1989).

(8) A parent or guardian may appeal against any such order as if the order were a sentence passed in the proceedings against him.

21. Orders that may not be passed against delinquent children—(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 at the time of the commission of the offence was of the age of fourteen years or above and the children's court is satisfied that the offence committed is of so serious a 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 the observation home or with the parent, guardian or a fit person, on such conditions as may be imposed and shall report the case for the orders of the State Government.

(2) On receipt of a report from a children's court under sub-section (1), the State Government may make such arrangement in respect of the child as it deems proper and may order such delinquent child to be detained at such place, on such conditions and for such period as it thinks 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.

(3) Save as provided in this Act, the word "conviction" and "sentence" shall cease to be used in relation to children dealt with under this Act and any reference in any enactment to a person convicted, a conviction or a sentence shall, in the case of a child, be constructed as a reference to a person found guilty of an offence, a finding of guilt or an order made upon such a finding, as the case may be.

22. Proceeding under Chapter VIII of Criminal Procedure Code not competent against child—Notwithstanding anything to the contrary contained in the Code of Criminal Procedure, 1898 (Central Act 5 of 1898), no proceeding shall be instituted and no order shall be passed against a child under Chapter VIII of the said Code.

23. No joint trial of child and person not a child—(1) Notwithstanding anything contained in section 239 of the Code of Criminal Procedure, 1898 (Central Act 5 of 1898), 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) If a child is accused of an offence for which under Section 239 of the Code of Criminal Procedure, 1898 (Central Act 5 of 1898), 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 the other person.

24. Removal of disqualification attaching to conviction—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 of an offence under such law.

25. Special provision in respect of pending cases—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 has been satisfied on inquiry under this Act that the child has committed the offence.

chapter V

Procedure of Commencement Authorities Generally and Appeals and Revision from Orders of such Courts

26. Sittings, etc., of Board and children's courts—(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 (4) of Section 6 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.

27. Persons who may be present before competent authority—(1) Save as provided in this Act, no person shall be present at any sitting of a competent authority, except -

(a) an 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

(c) such other persons 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 or the child himself should withdraw, the competent authority may give such direction, and if such 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 or public prosecutor shall be entitled to appear before a competent authority in any case or proceeding before it, except with the permission of that authority.

28. Attendance of parent or guardian of child—Any 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.

29. Dispensing with attendance of child—If, at any stage during the course of an inquiry, a competent authority is satisfied that the 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 his absence.

30. Committal to approved place of child suffering from dangerous disease and its future disposal—(1) When a child, brought before a competent authority under this Act, is found to be suffering from a disease requiring prolonged medical treatment or physical or mental disorder 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 Lepers Act, 1898 (Central Act 3 of 1898), or the Indian Lunacy Act, 1912 (Central Act 4 of 1912), as the case may be.

(3) Where a child is treated and cured under sub-section (1), the competent authority before restoring him to his partner in marriage, parent or guardian, as the case may be, shall where it is satisfied that such action will be in the interest of the said child, call upon his partner in marriage, parent or guardian, as the case may be, to satisfy the court by submitting to medical examination that such partner, parent or guardian will not re-infect the child in respect of whom the order has been passed.

31. Presumption and determination of age—(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 a 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 purposes of this Act be deemed to be the true age of that person.

32. Circumstances to be taken into consideration in making orders under the Act—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 is 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, should be taken into consideration in the interest of the child :

Provided that in the case of child accused of an offence, the above circumstances shall be taken into consideration after the children's court has recorded a finding that he has committed the offence :

Provided further that if no report of the probation officer is received within ten weeks of his being informed under Section 18, it shall be open to the children's court to proceed without it.

33. Sending child outside jurisdiction—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 of 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 itself.

34. Reports to be treated as confidential—The report of the probation officer or any circumstance consider by the competent authority under Section 32 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 person an opportunity of producing such evidence as may be relevant to the matter stated in the report.

35. Prohibition of publication of names, etc., of children involved in proceeding under the Act—(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 for reasons to be recorded in writing, the authority holding the inquiry may permit such disclosure, if in its opinion such disclosure is in the interest of the child.

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

36. Appeals—(1) Subject to the provisions of this section, any person aggrieved by an order made under this Act may, within a period of thirty days from the date of such order, exclusive of the time requisite for obtaining a copy thereof, prefer an appeal -

(i) to the court of session against the order passed by the children's court; and

(ii) to the District Magistrate against the order passed by the Board :

Provided that the appellate authority may entertain the 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 made 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 passed in appeal under this Section.

37. Procedure in inquiries and appeals—(1) 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, 1898 (Central Act 5 of 1898), for trials in summons cases.

(2) Save as otherwise expressly provided by or under this Act, the procedure to be followed in hearing appeals shall be, as far as practicable, in accordance with the provisions of the Code of Criminal Procedure, 1898 (Central Act 5 of 1898).

38. Power to amend orders—(1) Any competent authority may either on its own motion or on an application received in this behalf, amend any order as to the institution to which a child is to be sent or 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 arising errors therein from any accidental slip or omission may, at any time, be corrected by the competent authority either on its own motion or on an application received in this behalf.

Chapter VI

Special Offences against Children and their Prevention

39. Punishment for cruelty to children—(1) Whoever, having attained the age of eighteen years and having the actual charge of, or control over, a child, assaults, abandons, exposes or neglects the child or causes or procures him to be assaulted, abandoned, exposed or neglected in a manner likely to cause such child unnecessary suffering or injury to his health shall be punishable with imprisonment of either

description for a term which may extend to six months or with fine which may extend to two hundred rupees or with both.

(2) Whoever, being an employer of a child, overworks him to an extent or ill-treats him in a manner, so as to cause injury to his health, shall be punishable with imprisonment of either description for a term which may extend to six months or with fine which may extend to two hundred rupees or with both.

(3) For the purposes of this section injury to health includes injury to, or loss of, sight or hearing and injury to limb or organ of the body and any mental derangement, and a parent or other person legally liable to maintain a child shall be deemed to have neglected him in a manner likely to cause injury to his health if he, having means to provide adequate food, clothing, medical and or lodging for the child, fails to make such provision.

(4) A person may be convicted of an offence under this Section notwithstanding the actual suffering or injury to health was obviated by the action of another person.

(5) Nothing in this section shall be constructed to take away or affect the right of any parent, teacher or other person having the lawful control or charge of a child to administer punishment to such child.

40. Penalty for being drunk while in charge of child—If any person is found drunk on any highway or other public place whether a building or not or on any premise licensed for the sale of liquor while having the charge of a child and if such person is incapable by reasons of his drunkenness of taking due care of the child, he may be arrested and shall, if the child is under that age, be punishable with fine which may extend to fifty rupees.

41. Penalty for giving intoxicating liquor or dangerous drug to child—Whoever gives or causes to be given to any child any intoxicating liquor in a public place or any dangerous drug, except upon the order of a duly qualified medical practitioner or in case of sickness or other urgent cause, shall be punishable with fine which may extend to five hundred rupees.

42. Seizure by police officer of any liquor, drug, cigarettes, etc—It shall be the duty of a police officer to seize any intoxicating liquor, dangerous drug, bidis, cigarettes, tobacco or smoking mixture in the possession of a child whom he finds taking or smoking in any street or public place and any liquor, dangerous drug, bidis, cigarettes, tobacco or smoking mixture so seized shall be forfeited to the State Government and every such police officer shall, however, be authorised to search only a male child.

43. Penalty for allowing child to smoke, drink, etc—Whoever, having the actual charge of, or control over, a child allows or encourages that child to smoke or drink any intoxicating liquor or dangerous drug shall be punishable with imprisonment of either description for a term which may extend to one month or with fine which may extend to fifty rupees or with both.

44. Penalty for inciting child to bet—Whoever incites or attempts to incite a child to make, any bet or wager or to enter into or take any share or interest in any getting or wagering transaction shall be punishable with imprisonment of either description for a term which may extend to one month or with fine which may extend to one hundred rupees or with both.

45. Penalty for taking pawan from child—Whoever takes an article in pawan from a child whether offered by that child on his own behalf or on behalf of any other person shall be punishable with imprisonment of either description for a term which may extend to one month or with fine which may extend to one hundred rupees or with both.

46. Exploitation of child employees—Whoever procures a child for the purpose of any employment and withholds the earnings of the child or uses such earnings for his own purposes shall be punishable with fine which may extend to one thousand rupees.

47. Cognizance of certain offences—Offences punishable under sections 40, 41, 43, 44, 45 and 46 shall be cognizable.

Chapter VII

Miscellaneous

48. Power of State Government to discharge and transfer children—(1) The State Government may, notwithstanding anything contained in this Act, at any time, order :-

(a) a neglected or delinquent child to be discharged from the children's home or special school either absolutely or on such conditions as it may think fit to impose;

(b) a delinquent child over the age of sixteen years to be transferred in the interest of discipline or for other special reason to a Borstal Institution established under the Punjab Borstal Act, 1926 (Punjab Act 11 of 1926) :

Provided that the whole detention of the delinquent child shall not be increased by transfer.

(2) Upon the transfer of a delinquent child to a Borstal Institution, the provisions of the Punjab Borstal Act, 1926 (Punjab Act 11 of 1926), shall apply to such child as if he had been originally ordered to be detained in a Borstal Institution under that Act.

(3) The Chief Child Welfare Officer 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 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 or to any other children's home or special school.

(4) The State Government may, notwithstanding anything contained in this Act, at any time, discharge a child from the care of any person under whom he was placed under this Act either absolutely or on such conditions as the State Government may think fit

to impose.

49. Transfer of children to other States and vice versa—(1) The State Government may direct any neglected child or delinquent child to be transferred from any children's home, or special school within the State to any other children's home special school or institution of a like nature in any other State with the consent of the Government of that State.

(2) That State Government may by general or special order, provide for the reception in a children's home or special school within the State 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.

50. Transfer of children of unsound mind or suffering from leprosy—(1) Where it appears to the State Government that any child kept in a special school or children's home is suffering from leprosy or is of un-sound mind, the State 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 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 State Government that the child is cured of leprosy or of unsoundness of mind, it 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.

51. Boarding out of children—The Manager of a special school to which a child under the age of eight years is sent may, with the consent of the Chief Child Welfare Officer, board the child out with any suitable person until the child reaches the age of ten years and thereafter for such longer period, with the consent of the Chief Child

Welfare Officer, as the Manager considers to be advisable in the interest of the child subject to the exercise by the Manager of such powers as to supervision, recall and otherwise as may be prescribed; and where a child is so boarded out he shall nevertheless be deemed for the purpose of this Act to be a child detained in the special school, and the provisions of this Act shall apply accordingly, subject to such necessary adaptations as may be made by the State Government.

52. Placing out on licence—(1) When a child is kept in a children's home or special school, the Chief Child Welfare Officer may, if he so thinks 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 educate him and train him for some useful trade or calling.

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

(3) The Chief Child Welfare Officer 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 was directed so to return, the Chief Child Welfare Officer, 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 for which he fails to return shall be excluded in computing the time during which he is liable to be kept in custody.

53. Provision in respect of escaped children—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 immediately 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 Manager of 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.

54. Penalty for abetting escape of children—Whoever -

(a) Knowingly assists or induces, directly or indirectly, a child detained in or placed out on licence from a children's home or special School to escape from the children's home or special school or from any person with whom he is placed out on licence or from the person with whom he is boarded out under the provisions of this Act; and

(b) knowingly harbours, conceals or prevents from returning to the children's home or special school or to any person with whom he is placed out on licence or with whom he is boarded out under this Act, a child who has so escaped or knowingly assists in so doing;

shall be punishable with imprisonment of either description for a term which may extend to two months or with fine which may extend to two hundred rupees or with both.

55. Contribution by parents—(1) The competent authority which makes an order for sending a neglected child or a delinquent child to a children's home or a 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 to his maintenance in

the prescribed manner.

(2) The competent authority before making any order under sub-section (1) shall 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 purposes 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 488 of the Code of Criminal Procedure, 1898 (Central Act 5 of 1898), the competent authority shall not ordinarily make an order for contribution against the putative 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 person as 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 488 of the Code of Criminal Procedure, 1898 (Central Act 5 of 1898).

56. Control of custodian over child—Any person in whose custody a child is placed in pursuance of this Act shall, while the order is in force, have the 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 married except with the permission of the competent authority.

57. Delinquent child undergoing sentence at commencement of the Act—In any area in which this Act is brought into force, the State Government may direct that a

delinquent child undergoing a 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 State Government thinks, 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 21.

58. Management of observation homes, children homes and special schools—(1) For the control and management of every observation home, children home and special school established under this Act, a superintendent and a committee of visitors shall be appointed by the State Government and such superintendent and the committee collectively shall be deemed to be the manager of the observation home, children's home or special school, as the case may be, for the purposes of this Act.

(2) The governing body of an observation home, children's home or special school recognised under this Act shall be deemed to be its manager for the purposes of this Act.

59. Appointment of officers—(1) The State Government may, for the purposes of this Act, by notification, appoint the Chief Child Welfare Officer, Probation Officers and such other officers as it may deem fit.

(2) The powers and duties of the Chief Child Welfare Officer, Probation Officers and other officers appointed under this Act shall be such as are provided in this Act or as may be prescribed.

(3) It shall be the duty of Probation Officer -

(a) to inquire, in accordance with the direction of competent authority, into the antecedents and family history of any child accused of an offence, with a view to assist the authority in making the inquiry;

(b) to visit neglected and delinquent child 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 child and, if necessary, endeavour to find him suitable employment;
- (e) where a neglected or delinquent child 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.

Explanation. - In this sub-section, neglected child shall mean a child against whom an order has been passed by the competent authority.

(4) Any officer empowered in this behalf by the State Government may enter any special school, children's home, observation home and make a complete inspection thereof in all its departments and of all papers, registers and accounts relating thereto and shall submit the report of such inspection to the State Government.

60. Officers appointed under the Act to be public servants—The Chief Child Welfare Officer, 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 (Central Act 45 of 1860).

61. Effect of withdrawal of recognition—When a recognition in respect of a children's home or special school is withdrawn under the provisions of this Act, the children detained therein shall be, either discharged absolutely, or on such conditions as the State Government may impose, or transferred by order of the State Government to some other children's home or special school in accordance with the provisions of this Act.

62. Procedure in respect of bonds—The provisions of Chapter XLII of the Code of Criminal Procedure, 1898 (Central Act 5 of 1898), shall, as far as may be, apply to bonds taken under this Act.

63. Delegation of powers—(1) the State Government may, by general or special order, direct that any power exercisable by it under this Act other than that under Section 67 shall, in such circumstances and under such conditions, if any, as may be specified in the order, be exercisable also by the Chief Child Welfare Officer.

(2) The Chief Child Welfare Officer may, by general or special order, direct that any power exercisable by him under this Act, or the rules made thereunder shall, in such circumstances and under such conditions, if any, as may be specified in the order, be exercisable also by an officer subordinate to him.

64. Protection of action taken in good faith—No suit or other legal proceedings shall lie against the State Government or the Chief Child Welfare Officer or 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 any rules or orders made thereunder.

65. Certain Central Acts not to apply—(1) The Reformatory Schools Act, 1897 (Central Act 8 of 1897), and Sections 29B and 399 of the Code of Criminal Procedure, 1898 (Central Act 5 of 1898), 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 (Central Act 105 of 1956), shall not apply to any children's home, special school or observation home established and maintained under this Act.

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

67. Power to make rules—(1) The State 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 sitting;

(b) the procedure to be followed by a competent authority in holding inquiries under this Act : and the mode of dealing with children suffering with dangerous diseases or mental disorder;

(c) the circumstances in which, and the conditions subject to which, and institution may be recognised as a special school or a children's home or an observation home, and the recognition withdrawn;

(d) the internal management of special schools, children's homes and observation homes;

(e) the functions and responsibilities of special schools, children's homes and observation homes;

(f) the inspection of special schools, children's homes and observation homes;

(g) the qualifications and duties of Probation Officers;

(h) the powers and duties of the Chief Child Welfare Officer, Probation Officers or other officers appointed under this Act;

(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 girl who is 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 boarded out or placed out on licence and the form and conditions of such licence;

(m) the conditions subject to which childrens may be placed under the care of any parent, guardian or other fit person under this Act and the obligations of such persons towards the children so placed.

(n) any other matter which has to be, or may be, prescribed.

(3) All rules made under this Act shall be laid, as soon as may be after they are so made, before the House of the State Legislature while it is in session for a period of not less than fourteen days, which may be comprised in one session or two successive sessions, and if, before the expiry of the session in which they are so laid or the session immediately following, the House of the State Legislature makes any modification in any of such rules or resolves that any such rule should not be made, such rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done thereunder.

68. Repeal—The East Punjab Children Act, 1949, in its application to the State of Haryana, is hereby repealed.
