

West Bengal Children Act, 1959

30 of 1959

[03 January 1961]

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An Act to consolidate and amend the law relating to the custody, protection, treatment and rehabilitation of juvenile delinquents and of other children in need of care and protection, the trial of juvenile delinquents and certain other matters. Whereas it is expedient to consolidate and amend the law relating to the custody, protection, treatment and rehabilitation of juvenile delinquents and of other children in need of care and protection, the trial of juvenile delinquents and certain other matters specified herein, including the education of such juvenile delinquents and other children; It is hereby enacted in the Tenth Year of the Republic of India, by the Legislature of West Bengal, as follows:-

1. Short Title, Extent And Commencement :-

(1) This Act may be called the West Bengal Children Act, 1959. (2)

It extends to the whole of West Bengal. (3) This section shall come into force at once. The remaining provisions of this Act shall come into force in such area or areas and on such date or dates as the State Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different provisions of this Act or for different areas.

2. Definitions :-

In this Act, unless there is anything repugnant in the subject or context,-- (a) "adult" means a person who is not less than eighteen years of age; (b) "borstal school" means a borstal school established or certified by the State Government under section 7, intended for the reception of juvenile delinquents of and above the age of fourteen years; (c) "certified school" means a reformatory, industrial or borstal school, certified under section 7; (d) "child" means a person who has not attained the age of eighteen years; (e) "guardian" in relation to a child includes a person who, in the opinion of the Court having cognizance of any proceeding in relation to the child has for the time being the actual charge of, or control over, that child; (f) "industrial school" means a industrial school established or certified by the State Government under section 7, intended for the reception of children of and above the age of fourteen years, who are not juvenile delinquents; (g) "juvenile court" means a court established under section 4; (h) "juvenile delinquent" means a child who has been found to have committed an offence; (i) "neglected child" means a child who-- (i) is found in any street or place of public resort begging or receiving alms; or (ii) has no home or settled place of abode or is found wandering without any ostensible means of subsistence, or is found destitute, whether he is an orphan or not; or (iii) has a parent or guardian who is unfit to exercise or does not exercise proper care and control over the child or forces, persuades, encourages or abets the child to lead an immoral or depraved life; or (iv) lives in a brothel with a prostitute or frequents a place used for the purpose of prostitution, or is found to associate with any prostitute or any other person who leads an immoral, drunken, depraved or criminal life; (j) "prescribed" means prescribed by rules made by the State Government under this Act; (k) "reception home" means any institution or place established or recognised by the State Government under section 18 for the temporary reception of a child; (l) "reformatory school" means a reformatory school established or certified by the State Government under section 7,

intended for the reception of juvenile delinquents or of children other than juvenile delinquents, who have not attained the age of fourteen years.

3. Continuation Of Proceedings In Respect Of A Child On His Attaining Eighteen Years :-

Notwithstanding anything to the contrary continued in this Act, if during the course of any proceeding under this Act a child attains the age of eighteen years, the proceeding may be continued and orders may be made under this Act in respect of him as if he was a child.

4. Juvenile Courts :-

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (Act V of 1898), the State Government may, by notification in the Official Gazette, established for any area specified in the notification one or more juvenile courts for holding inquiries regarding children in pursuance of this Act. (2) A Magistrate of the first class or a Presidency Magistrate who is considered to be suitable by the State Government shall be appointed by the State Government to preside over a juvenile court.

5. Jurisdiction :-

The powers conferred on courts by this Act shall be exercised-- (a) in any area for which a juvenile court has been established, by such court only, (b) in any other area, by-- (i) the High Court, or (ii) a Court of Session, or (iii) a Presidency Magistrate, or (iv) a Magistrate of the first class, having jurisdiction to try the case.

6. Procedure When Magistrate Or Court Is Not Empowered To Pass Order Under This Act :-

When a child is brought before a Magistrate or Court not empowered to pass an order under this Act, such Magistrate or Court shall forward the child to the nearest juvenile court or other Court or Magistrate having jurisdiction.

7. Establishment And Certification Of Schools :-

(1) The State Government may establish and maintain as many reformatory, industrial and borstal schools as it may consider necessary for the reception of juvenile delinquents and of other children, who may be sent there in pursuance of this Act. (2) Where the State Government is of opinion that any reformatory, industrial or borstal school not established under sub-section (1) is

fit for the reception of juvenile delinquents or of other children dealt with under this Act, the State Government may certify such school to be a reformatory, industrial or borstal school, as the case may be, for the purpose of this Act. (3) Reformatory schools established or certified under sub-section (1) or sub-section (2) shall be of two different classes namely:-- (a) reformatory schools for the reception of juvenile delinquents, and (b) reformatory schools for the reception of children other than juvenile delinquents.

8. Management Of Schools :-

(1) For the control and management of every school established under sub-section (1) of section 7, a superintendent and a committee of as many persons including the superintendent as the State Government may fix shall be appointed by the State Government, and the numbers of such committee shall be deemed to be the managers of the school for the purposes of this Act. (2) The appointment of persons connected with the control and management of any school certified under sub-section (2) of section 7 shall be made with the approval of the State Government and the persons whose appointment is so approved shall be deemed to be the managers of the school for the purposes of this Act.

9. Board Of Visitors :-

(1) For every school established or certified under section 7, 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 to record their comments on any matter they may think fit for the consideration of the managers 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. (2) Copies of comments of the Board of Visitors referred to in sub-section (1) shall, as soon as may be after they are recorded, be forwarded by the managers of the school to the State Childrens Board referred to in section 10.

10. State Childrens Board :-

The State Government shall appoint a Board to be called the State Childrens Board, West Bengal, constituted in such manner and consisting of such number of members as may be prescribed, to advise the State Government generally in regard to the administration of this Act and more particularly in regard to the

control and management of the schools established or certified under section 7, after considering the comments of the various Boards of Visitors forwarded to it under sub-section (2) of section 9.

11. Inspection Of Schools :-

(1) The State Government may appoint a Chief Inspector of reformatory, industrial and borstal schools and as many Inspectors and Assistant Inspectors as it thinks fit, to assist the Chief Inspector: Provided that one of such Inspectors and Assistant Inspectors shall be a woman. (2) Every such school shall be inspected at least once in every three months by the Chief Inspector or by an Inspector or Assistant Inspector: Provided that when any school is used for the reception of girls only, such inspection shall be conducted either by the Chief Inspector or by an Inspector or Assistant Inspector who is a woman.

12. Medical Examination Of Inmates Of Schools :-

Every inmate of a school established or certified under section 7 shall, as soon as may be after admission therein and at such intervals thereafter as may be prescribed and also whenever so required by the managers of the school, be examined by a Medical Officer authorised in this behalf by the State Government, and a report of such medical examination shall forthwith be sent by the Medical Officer to the managers of the school as well as to the Chief Inspector. Provided that in the case of schools for the reception of girls only such Medical Officer shall, whenever practicable, be a woman.

13. Power To State Government To Withdraw Certificate :-

The State Government, if dissatisfied with the conditions and management of a certified school and after considering any representation which may be submitted by the managers thereof, may by notice served on the managers declare that the certificate is withdrawn with effect from such date as may be specified in the notice and on such notice being served the school shall cease to be a certified school from such date: Provided that the State Government may, instead of so withdrawing the certificate in respect of any certified school, by order, prohibit the admission of juvenile delinquents or other children to the school for such time as may be specified in the order or until the order is revoked.

14. Surrender Of Certificate By Managers :-

The managers of a certified school may, after giving six months

notice in writing to the State Government, through the Chief Inspector, of their intention so to do, surrender the certificate of the school and on such surrender the school cease to be a certified school.

15. Effect Of Withdrawal Or Surrender Of Certificate Or Of A Prohibitory Order :-

No juvenile delinquent or other child shall be received into a certified school after the date of the receipt, by the managers of the school, of a notice of withdrawal of the certificate of the school, or after the date of issue of a notice of intended surrender of the certificate or after the date of receipt of a prohibitory order under the proviso to section 13, during the period for which such order remains operative: Provided that the obligation of the managers of the school, mentioned in section 17, shall, except so far as the State Government may otherwise direct, continue until the withdrawal or surrender of the certificate takes effect.

16. Disposal Of Inmates When School Ceases To Be Certified :-

When a school ceases to be a certified school, the juvenile delinquents or other children detained therein may, by order of the State Government, be discharged unconditionally or on such conditions as the State Government may impose, or be transferred to some other reformatory, industrial or borstal school whether located in the State or not in accordance with the provisions of this Act.

17. Obligation Of The Managers :-

It shall be the duty of the managers of every reformatory, industrial or borstal school to provide the juvenile delinquents and other children detained therein with accommodation, maintenance and such other facilities as may be prescribed for their education, training and welfare.

18. Reception Homes :-

(1) The State Government may, establish and maintain as many reception homes as it may consider necessary for the temporary reception of juvenile delinquents and of other children. (2) If the State Government is of opinion that any institution or place not established under sub-section (1) is fit for the temporary reception of juvenile delinquents or of other children, the State Government may by order recognise such institution or place as a reception home for the purposes of this Act and may by like order withdraw

such recognition.

19. Disposal Of Inmates When Reception Homes Cease To Be Recognised :-

When a reception home ceases to be a recognised reception home by reason of withdrawal of recognition or otherwise, the juvenile delinquents or the other children detained therein may, by order of the State Government, be discharged unconditionally or on such conditions as the State Government may impose or be transferred to some other reception home in accordance with the provisions of this Act.

20. After-Care Organisations :-

(1) The State Government may, in accordance with such rules as may be in this behalf, establish or recognise after-care organisations for the welfare, training and social and economic rehabilitation of juvenile delinquents and other children discharge from reformatory, industrial or borstal schools. (2) The powers and duties of after-care organisations established or recognised under sub-section (1) shall be such as may be prescribed.

21. Probation Officers :-

(1) The State Government may appoint as many Probation Officers as it may think fit to visit juvenile delinquents and other children taken charge of: (i) by after-care organisations established or recognised under section 20, or (ii) by parents, guardians or other persons, having been temporarily released from reformatory, industrial or borstal schools on probation on the execution of bonds or otherwise, and to report to the State Government as to the conduct of such juvenile delinquents and other children and the circumstances in which they live. (2) The Probation Officers appointed under sub-section (1) shall have such other powers and duties as may be prescribed.

22. Bail And Custody Of Children Pending Inquiry :-

(1) When a child is arrested or detained on a charge for any offence, whether bailable or not, or appears or is brought before a Court, such child may be released on bail with or without sureties, but he shall not be so released if there appear reasonable grounds for believing that the release is likely to bring him under the influence of any criminal or expose him to moral danger or defeat the ends of justice. (2) When such a child 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 a

reception home in the prescribed manner, but not in the police-station or jail, until he can be brought before a Court: Provided that such child shall be produced before the nearest Court having jurisdiction within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the Court. (3) When such child is not released on bail under sub-section (1) by the Court, it shall, instead of committing him to prison, order him to be sent to a reception home during the pendency of the inquiry into the charge against him.

23. Information To, And Attendance To Court Of Parent Or Guardian :-

When a child is arrested, the officer-in-charge of the police-station to which he is brought, shall forthwith inform the parent or guardian, if he can be found, of such arrest and shall cause him to be summoned to the Court before which the child will appear: Provided that nothing in this section shall be deemed to require the attendance of the mother or the female guardian of the child if, according to the local manners and customs, she does not appear in public, but any such person may appear before the Court by a duly authorised pleader or agent.

24. Sentence That May Not Be Passed Against Juvenile Delinquents :-

Notwithstanding anything to the contrary contained in any law for the time being in force,-- (1) no juvenile delinquent shall be sentenced to death; (2) no juvenile delinquent shall be sentenced to imprisonment or committed to prison in default of payment of fine or in default of furnishing security: Provided that where the Court is satisfied that the offence committed by the juvenile delinquent is of so serious a nature or that he is so unruly or of so depraved a character that he is not a fit person to be sent to a reformatory or borstal school, the Court may sentence him to imprisonment for a period not exceeding the maximum period of imprisonment to which he could have been sentenced for the offence committed, and the Court shall report the case to the State Government and direct the juvenile delinquent to be detained in such custody as it may think fit; and (3) on receipt of a report from the Court under clause (2), the State Government may make such arrangement in respect of such juvenile delinquent as it deems proper and may at any time order him to be released from custody on such conditions, if any, as the State Government may think fit to impose.

25. Inquiry By Court Regarding Juvenile Delinquents :-

Where a child having been charged with an offence appears or is produced before a Court, the Court shall hold the inquiry in accordance with the provisions in the Code of Criminal Procedure, 1898 (Act V of 1898), for the trial of a summons case.

26. Orders That May Be Passed Regarding Juvenile Delinquents :-

(1) Where the Court is satisfied on inquiry that a child has committed an offence, then notwithstanding any provision to the contrary relating to the punishment for such offence contained in any law for the time being in force, the Court may-- (a) make an order directing the juvenile delinquent to be sent to a reformatory or borstal school, as the case may be, to be detained there for a period which shall not be less than two or more than five years: Provided that where a juvenile delinquent attains the age of fourteen years before the expiry of the period of his stay in a reformatory school he shall be transferred to a borstal school to be detained there for the unexpired period: Provided further that the State Government may, if satisfied on the report of the managers of a school about the need for further detention of a child who has been dealt with as a juvenile delinquent, extend the term of his detention to any period not beyond the age of twenty-one years and may transfer him, if necessary having regard to his age, from a reformatory to a borstal school; or (b) make an order discharging the juvenile delinquent after due admonition; or (c) direct the juvenile delinquent to be released on probation of good conduct and placed under the care of a parent, guardian or other person considered by the Court to be a fit person on such parent, guardian or other person executing a bond, with or without sureties as a Court may require, for the good behaviour and proper training of the juvenile delinquent for a period not exceeding three years; or (d) order the juvenile delinquent, if he is above the age of fourteen years and is lawfully employed, to pay such fine not exceeding one hundred rupees as the Court may think fit to impose and in default of payment to be detained in a borstal school for such period as the Court may direct; or (e) order the parent or guardian on the juvenile delinquent, if such delinquent be under fourteen years of age, to pay such fine not exceeding one hundred rupees as the Court may think fit to impose, provided that no such order shall be passed unless the Court is satisfied that the parent or guardian has failed to exercise proper control or has neglected the juvenile

delinquent and that he has sufficient means to pay the fine imposed. (2) Where the Court makes an order under clause (c) sub-section (1), it may further direct that the juvenile delinquent be placed under the supervision of a person to be appointed by the Court with his consent for such period as may be specified in the order: Provided that if at any time within three years of such order it appears to the Court on receiving information from the person appointed by the Court or otherwise that the juvenile delinquent has not been of good behaviour, it may, after such inquiry as it deems fit, order the juvenile delinquent to be sent to a reformatory or borstal school to be detained there for such period, as the Court may direct. (3) An order under clause (e) of sub-section (1) 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. (4) Any order directing that a parent or guardian shall pay a fine under this section may be executed in accordance with the provisions of the Code of Criminal Procedure, 1898 (Act V of 1898).

27. Proceedings Under Chapter VIII Of Act V Of 1898 Not To Be Instituted Against Child :-

Notwithstanding anything to the contrary contained in the Code of Criminal Procedure, 1898, no proceeding shall be instituted and no order shall be passed against a child under Chapter VIII of the said Code.

28. Prohibition Of Joint Trial Of Child And Adult :-

(1) Notwithstanding anything to the contrary contained in section 239 of the Code of Criminal Procedure, 1898, or any other law for the time being in force, no child shall be charged with, or tried for, any offence together with an adult. (2) Where a child and an adult are accused of an offence for which under section 239 of the Code of Criminal Procedure, 1898, or any other law for the time being in force, they would, but for the prohibition contained in sub-section(1), be charged and tried together, the Court taking cognizance of the offence shall direct separate trials of the child and the adult.

29. Production Of A Neglected Child Before Court :-

(1) Any police officer or other person authorised by the State Government in this behalf may, if there are reasonable grounds to believe that a person is a neglected child, take that child into

custody for bringing him before a Court. (2) Every child taken into custody under sub-section (1) shall be brought before a Court within a period of twenty-four hours of such taking into custody excluding the time necessary for the journey to the Court from the place where the child has been taken into custody.

30. Procedure To Be Followed When Neglected Child Has A Parent Or Guardian :-

(1) If a neglected child has a parent or guardian, the police officer or a person authorised under sub-section (1) of section 29 may, instead of taking the child into custody under that sub-section, make a report to a Court for an inquiry regarding the child. (2) on receipt of a report under sub-section (1) or on its own knowledge or information a Court 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 Court that the child is likely to be removed from its jurisdiction or to be concealed, it may issue a warrant for taking the child into custody and for sending him to a reception home.

31. Inquiry By Court Regarding Neglected Children And Power Of Committal To Reformatory Or Industrial School :-

(1) When a neglected child is produced before a Court, it shall examine the police officer or the authorised person, as the case may be, who produced the child before the Court or made the report, and record the substance of such examination and may send the child to a reception home pending further inquiries. (2) On the date fixed for such further inquiries or on any subsequent date to which the proceeding may be adjourned, the Court shall hear and record all evidence which may be adduced and consider any cause which may be shown under sub-section (2) of section 30. (3) If the Court is satisfied on such inquiry that the child is a neglected child and that it is expedient to deal with him accordingly, the Court may make an order directing that the child shall be sent to and kept in a reformatory or an industrial school, as the case may be, and that the period of this stay in such school shall, save as hereinafter otherwise provided, extend up to the time when he attains the age of eighteen years: Provided that the Court may, for reasons to be recorded in writing shorten the period of his stay in a reformatory or an industrial school: Provided further that where a child attains the age of fourteen years before the expiry of the period of his stay in a reformatory school, he shall be

transferred to an industrial school, to be kept therefor the unexpired period.

32. Power To Commit Neglected Child To Suitable Custody

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(1) The Court may, instead of making an order under sub-section(3) of section 31, make an order directing the child to be placed under the care of the parent or the guardian or any other person considered by the Court to be a fit person, on such parent, guardian or other person executing a bond with or without sureties, for the good behaviour and proper training of the child for such period and on such condition as may be specified in the order. (2) When making an order under sub-section (1) or at any time thereafter, the Court may also direct that the child be placed under the supervision of a person to be appointed by the Court with his consent for such period as may be specified in the order: Provided that if at any time within such period it appears to the Court on receiving information from the person appointed by the Court or otherwise that the child has not been of good behaviour or that there has been a breach of any of the conditions of the bond, it may, after such inquiry as it deems fit, order him to be sent to a reformatory or industrial school, as the case may be, to be kept there until he attains the age of eighteen years.

33. Power Of State Government To Direct Release Of A Neglected Child Kept In A Reformatory Or Industrial School

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The State Government may make an order directing the release, on such conditions as may be specified in the order, of a child, who, having been dealt with by a Court under sub-section (3) of section 31 or under the proviso to sub-section (2) of section 32 has been kept in a reformatory or industrial school.

34. Uncontrollable Children :-

Where a parent or guardian of a child complains to a Court that he is not able to control the child, the Court may send the child to a reception home pending inquiry into the case and may on completion of the inquiry make an order under sub-section (3) of section 31.

35. Contribution Of Parent Or Guardian For Maintenance :-

(1) The Court, which makes an order for sending a juvenile delinquent or other child to a reformatory, industrial or borstal school or for placing a juvenile delinquent or other child under the

care of a fit person other than a parent or guardian may order the parent or the guardian who is responsible for the maintenance of such juvenile delinquent or child to pay such sum to such person or such authority as it may direct for his maintenance. (2) The Court, before making any order under sub-section (1), shall inquire into the circumstances of the parent or guardian in his presence, or when his personal attendance is dispensed with, in the presence of his pleader or agent. (3) Where an order for the maintenance of a juvenile delinquent or other child has been made under section 488 of the Code of Criminal Procedure, 1898 (Act V of 1898), the Court shall not make an order under sub-section (1) 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 or such authority as it may direct and such sums shall be applied by him or it towards the maintenance of the juvenile delinquent or other child. (4) An 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. Explanation.--The parent or guardian of a juvenile delinquent or other child shall, for the purposes of this section include, in the case of illegitimacy, his putative father.

36. Placing Out Juvenile Delinquent Or Other Child :-

(1) When a juvenile delinquent or other child is kept in a reformatory, industrial or borstal school, the State Government may, if it thinks fit, order that he be released from such school on such conditions as may be specified in the order and permit him to live with, or under the supervision of, any responsible person, named in the order willing to take charge of him with a view to training him for some useful trade or calling. (2) An order under sub-section (1) shall be in force for the period specified therein or until it is revoked. (3) The State Government may, at any time, revoke an order made under sub-section (1) and direct the juvenile delinquent or other child to return to his school: Provided that where a juvenile delinquent or other child, who was released from a reformatory school has already attained the age of fourteen years, he shall, on such revocation of the order under sub-section (1) be directed to be sent to a borstal school or an industrial school, as the case may be. (4) When an order has been revoked and the juvenile delinquent or other child refuses or fails to return to the school to which he is directed under sub-section (3) to return, the State Government may cause him to be arrested and taken back to the school. (5) The period during which a juvenile delinquent or other

child is allowed to stay out as aforesaid shall be deemed to be part of the period of his stay in the school.

37. Permission To A Juvenile Delinquent Or Other Child To Live Temporarily With His Parent Or Guardian :-

(1) The State Government or any authority to which the State Government may delegate its powers in this behalf, may, on the recommendation of the managers of the school, permit a juvenile delinquent or other child sent to a reformatory, industrial or borstal school to live under the charge of his parent or guardian for any period not exceeding thirty days at a time excluding the time required for journeys and the days of departure from, and the arrival at, the school: Provided that such permission shall not be granted, unless-- (i) the juvenile delinquent or other child has completed at least two years of stay in a reformatory, industrial or borstal school and his conduct has been in the opinion of the managers of the school uniformly satisfactory; (ii) the parent or guardian of such juvenile delinquent or other child executes a bond with or without sureties as the managers of the school may require, for the return of the juvenile delinquent or other child to the school on the expiry of the period for which he is permitted to live under the charge of such parent or guardian as the case may be; and (iii) in the case of a second or subsequent permission, not less than one year has elapsed from the date of the expiry of the previous permission. (2) A juvenile delinquent or other child, who is permitted to live under the charge of his parent or guardian under sub-section (1) shall return on the due date to the school. (3) The period during which a juvenile delinquent or other child is permitted to live under the charge of his parent or guardian under sub-section (1), shall be deemed to be part of the period of his stay in the school, provided that he returns to the school on the due date and his conduct has been found to be satisfactory during the period for which he was permitted so to live. (4) Notwithstanding anything to the contrary in any law for the time being in force, any police officer not below the rank of an Assistant Sub-Inspector may without warrant take charge of a juvenile delinquent or other child, who fails to return to a reformatory, industrial or borstal school, as the case may be, after the expiry of the period for which he has been permitted under sub-section (1) to live under the charge of his parent or guardian and take him back to the school.

38. Escaped Children :-

Notwithstanding anything to the contrary contained in any law for

the time being in force, any police officer may, without warrant, take charge of a juvenile delinquent or other child, who has escaped from a reception home, reformatory, industrial or borstal school or from the custody of a person under whom he was placed by an order under this Act, and shall send him back to that home, school or person, as the case may be, and no proceeding shall be instituted or offence registered in respect of the juvenile delinquent or other child for such escape, but the authorities of the home or school or the person may, after giving information to the Court which passed the orders in respect of the juvenile delinquent or other child, take, subject to any orders that the Court may pass, such steps against him as may be deemed necessary by such authority or person.

39. Discharge And Transfer :-

(1) The State Government may, at any time, order a juvenile delinquent or other child to be discharged from a reformatory, industrial or borstal school, either absolutely or on such conditions as the State Government may think fit to impose. (2) The State Government may order-- (a) a juvenile delinquent or other child to be transferred from one reformatory school to another, or from one industrial school to another, or from one borstal school to another whether located within the State or not: Provided that a juvenile delinquent or other child domiciled in the State shall not, in the absense of any special reasons, be transferred to a school outside the State; (b) a juvenile delinquent or other child, the order for whose release has been revoked, to be sent to the reformatory, industrial or borstal school from which he was released or to any other reformatory, industrial or borstal school, as the case may be, so, however, that no such juvenile delinquent or other child shall, if he was attained the age of fourteen years, be directed to be sent to a reformatory school.

40. Presumption And Determination Of Age :-

Whenever a person is brought before a Court to be dealt with under any of the provisions of this Act as a child the Court shall make due inquiry as to the age of that person and also, for the purposes of section 41, as to his religious persuasion and shall, after taking such evidence as may be forthcoming, record a finding whether the person is a child or not and what his age is. The age so found by the Court shall, for the purposes of this Act be deemed to be the true age of such person.

41. Restriction On Account Of Religious Persuasion Of Child

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No child shall, in pursuance of an order under this Act, be sent to or placed in charge of any person professing, or a certified school run by a person or persons belonging to a religious persuasion different from that of the child.

42. Care Of Children :-

If it appears to the Court, on the complaint of any person, that a child is being treated with cruelty or exposed to moral danger by, or within the knowledge of, or with the connivance of, the parent or guardian or that a child, being a girl, is exposed, within the knowledge of, or with the connivance of, her parent or guardian, to the risk of seduction or prostitution, the Court may direct the parent or guardian to enter into a recognizance to exercise due care and supervision in respect of such child.

43. Penalty For Abetting Escape Of Child From Custody :-

(1) Whoever-- (a) knowingly assists or induces, directly or indirectly, a juvenile delinquent or other child to escape from a reception home, or a reformatory, industrial or borstal school or from the custody of the person under whom he is placed by an order under this Act; or (b) knowingly harbours, conceals, or prevents from returning to such home or school or to such person a juvenile delinquent or other child who has so escaped, or knowingly assists in doing so; shall be punishable with imprisonment for a term which may extend to six months or with fine not exceeding five hundred rupees or with both. (2) All offences under sub-section (1) shall be cognizable.

44. Penalty For Cruelty To Child :-

If a person, having the custody, charge or care of a child under the provisions of this Act, assaults, ill-treats, abandons or exposes such child, or causes such child to be assaulted, ill-treated, neglected, abandoned or exposed in a manner likely to cause such child physical or mental suffering or injury, he shall be punishable with imprisonment for a term not exceeding two years or with fine not exceeding two hundred rupees or with both.

45. Children Accompanying Mothers In Prison :-

(1) When any woman having children is remanded to jail custody being accused of an offence or on conviction for an offence or on any other ground, the Court or other authority remanding her to such custody, on being satisfied that the father of the children if

living, is unable to take charge of or to look after them, or that there is no suitable friend or relation who can take charge of and look after them, may notwithstanding anything in any other law, order that-- (a) any such children not being more than two years of age, may be allowed to accompany the woman to the prison, and (b) any such children above two years of age may be sent to and kept in a reception home or a reformatory school for children other than juvenile delinquents or an industrial school, as the Court or other authority may think fit, as if such children were neglected children. (2) If any such woman as aforesaid is released from prison on bail or otherwise, the Court or other authority may, on application made by her, direct the release of the children kept in a reception home, or a reformatory or industrial school in pursuance of an order made under sub-section (1).

46. Procedure In Respect Of Bonds :-

The provisions of Chapter XLII of the Code of Criminal Procedure, 1898 (Act V of 1898), shall, so far as may be, apply to bonds taken under this Act.

47. Transfer Of Children Suffering From Leprosy, Tuberculosis Or Unsoundness Of Mind :-

(1) If in the opinion of the Medical Officer authorised by the State Government a child kept in a reformatory, industrial or borstal school in pursuance of this Act is suffering from leprosy, tuberculosis or unsoundness of mind, the State Government may order his removal to a suitable hospital or other place for being kept there for such period as may be necessary for the proper treatment of the child. (2) When in the opinion of the Medical Officer authorised by the State Government such a child is cured, the State Government 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 school from which he was removed or, if the child is no longer liable to be kept in custody, order him to be discharged.

48. Appeal :-

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1898, an appeal from an order made by a Court under the provisions of this Act shall lie-- (a) if passed by a Magistrate other than a Presidency Magistrate to the Sessions Judge; (b) if passed by a Court of Session or by a Presidency Magistrate, to the High Court. (2) The period of limitation for an appeal under sub-section (1) shall be thirty days in the case of appeals to Courts

other than the High Court, and sixty days in the case of an appeal to the High Court from the date of the order appealed against. (3) The provisions of sections 5 and 12 of the Indian Limitation Act, 1908 (Act IX of 1908), shall apply to such appeals.

49. Removal Of Disqualification Attaching To Conviction Of Child For An Offence :-

Notwithstanding anything contained in any other law, the conviction of a child shall not be regarded as a disqualification attaching to conviction for an offence.

50. Power To Make Rules :-

(1) The State Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act. (2) In particular or without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-- (a) the place at which, the days on which and the manner and conditions in which a Juvenile Court may hold its sittings; (b) the procedure to be followed by the Court in holding inquiries under this Act; (c) the establishment, certification and maintenance of reformatory, industrial or borstal schools; (d) the establishment, recognition and maintenance of reception homes including special reception homes for foundlings and after-care organisations; (e) the internal management, discipline and inspection of such schools, homes and organisations including the medical examination of the inmates of such schools, homes and organisations and their segregation on grounds of health as well as on the basis of sex; (f) the officers to be appointed to carry out the purposes of this Act, their powers and duties and the terms and conditions of their service; (g) the constitution and procedure of Boards of Visitors referred to in section 8 and of the State Childrens Board referred to in section 10; (h) the mode and procedure of payment of the contribution by parents or other persons responsible for the maintenance of juvenile delinquents and other children; (i) the conditions subject to which children may be placed under the care of any person under this Act and the obligations of such persons towards the children so placed; (j) any other matter which has to be, or may be prescribed. (3) All rules made under this Act shall be subject to the condition of previous publication and such publication shall be made not less than one month before the date on which the rules come into force.

51. Repeals And Savings :-

The Reformatory Schools Act, 1897, (VIII of 1897), in so far as it applies to any area in West Bengal, the Bengal Children Act, 1922(Ben. Act II of 1922), the Bengal Borstal Schools Act, 1928(Ben. Act I of 1928) and the West Bengal Vagrancy Act, 1943 (Ben. Act VII of 1943), in so far as it applies to neglected children, shall stand repealed: Provided that-- (a) all reformatory, industrial or borstal schools established or certified under any of the aforesaid Acts shall, on such repeal, be deemed to have been established or certified, as the case may be, under sub-section (2) of section 7 of this act; (b) all cases, proceedings or appeals pending before any Court under any of the aforesaid Acts shall, on such repeal, be continued and disposed of by the said Court notwithstanding anything in this Act as if they were cases, proceeding and appeals under this Act; (c) all appeals against orders of Courts appointed or established under any of the aforesaid Acts shall, on such repeal be deemed to be appeals from made by Courts under this Act and shall be presented to Courts empowered to hear appeals under this Act and shall be disposed of accordingly; (d) all licences granted under any of the aforesaid Acts shall, on such appeal, be deemed to have been granted under this Act; (e) any appointment, notification, notice, order, rule or form made or issued under any of the aforesaid Acts shall, on such repeal, continued in force and be deemed to have been made or issued under the provisions of this Act, in so far as it is not inconsistent with the provisions of this Act and shall continue in force unless and until it is superseded by any appointment, notification, notice, order, rule or form made or issued under this Act.

52. Provision For Removal Of Difficulties :-

(1) If any difficulty arises in relation to the application of this Act or in giving effect to the provisions of this Act, the State Government may, by order notified in the Official Gazette, make such provisions not inconsistent with the purposes of this Act as appear to it to be necessary or expedient for removing that difficulty. (2) The power conferred under sub-section (1) shall not be exercised by the Sate Government after the expiry of three years from the date of commencement of this Act. (3) Any order made under sub-section (1) may be made so as to be retrospective to any date not earlier than the date of commencement of this Act.