

Bihar Children Act, 1982

54 of 1982

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Bihar Children Act, 1982

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PREAMBLE

An Act to provide for the care, protection, welfare, training, education and Rehabilitation of neglected or delinquent Children of the State of Bihar and for the trial of delinquent children.

Be it enacted by the Legislature of the State of Bihar in the 33rd year of the Republic of India as follows:

1. Received assent on 29.4.1982 and Published in Bihar Gazette Extraordinary No. 1218 dated 15.12.1983.

CHAPTER 1 PRELIMINARY

1. Short title, extent and commencement :-

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

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

(3) It shall come into force with immediate effect.

2. Definitions :-

In this Act unless the context otherwise requires--

(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 otherwise;

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

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

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

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

- (d) "child" means a boy or a girl who has not attained the age of sixteen years or eighteen years, respectively as the case may be;
- (e) "Childrens Court" means a Court constituted under Section 5;
- (f) "childrens home" means an institution established or certified by the State Government under Section 9 as a childrens home;
- (g) "competent authority" means, in relation to neglected children a Board constituted under Section 4 and, in relation to delinquent children a Childrens Court constituted under Section 5, and where no such Board or Childrens Court has been constituted includes any Court empowered under sub-section (3) of Section 7 to exercise the powers conferred on a Board or Childrens Court;
- (h) "dangerous drug" shall have the meaning assigned to it in the Dangerous Drugs Act, 1930 (2 of 1930);
- (i) "delinquent child" means a child who has been found to have committed an offence;
- (j) "guardian" in relation to a child includes any person who, in the opinion of the competent authority having cognizance of any proceeding in relation to a child, has, for the time being, the actual charge of or control over, that child;
- (k) "neglected child" means a child who-
 - (i) is found begging; or
 - (ii) is found without having any home or settled place of abode or any ostensible means of subsistence or is found destitute, whether he is an orphan or not; or
 - (iii) has a parent or guardian who-is unfit or unable to exercise or does not exercise proper care and control over the child; or
 - (iv) lives in a brothel or with a prostitute or frequently goes to any place used for a purpose of prostitution, or is found to associate with any prostitute or any other person who leads an immoral, drunken or polluted life; or
 - (v) has his father, mother or guardian in prison or in any custodial correctional institution under any law for any duration and he or she is unable to insure a proper growth and development of the child;
- (l) "observation home" means any institution or place established or recognized by the State Government under Section 11 as an observation home;
- (m) "offence" means an offence punishable under any law for the time being in force;
- (n) "prescribed" means prescribed by rules made under this Act;
- (o) "probation officer" means an officer appointed as a probation officer under this Act or under the Probation of Offenders Act, 1958

(20 of 1958);

(p) "special school" means an institution established or certified by the State Government under Section 10 as a special school.

(q) "supervision" in relation to a child placed under the care of any parent, guardian or other fit person under this Act, means the supervision, of that child by a probation officer for the purpose of ensuring that the child is properly looked after and that the conditions imposed by the competent authority are complied with;

(r) fit person" means-

(i) a person or an institution found fit by the competent authority to receive and take care of a child entrusted to its care and protection on terms and conditions to be prescribed by the competent authority;

(ii) a place of safety other than the above where a child may be lodged by the competent authority while his case is being processed,

(iii) under no circumstances fit person or place of safety will mean a police station, lockup or an adult jail; and

(s) all words and expressions used but not defined in this Act and defined in the Code of Criminal Procedure, 1973 (2 of 1974) shall have the meanings assigned to them in that Code.

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

CHAPTER 2 COMPETENT AUTHORITIES AND INSTITUTIONS FOR CHILDREN

4. Child Welfare Board :-

(1) The State Government may, by notification in the official Gazette 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 as

the State Government thinks fit to appoint, of whom not less than one shall be a woman and one Scheduled Caste/Scheduled Tribe and every such member shall be vested with the powers of Executive Magistrate under the Code of Criminal Procedure, 1973 (2 of 1974).

(3) The Board shall function as a Bench of Magistrates and shall have the powers conferred by the Code of Criminal Procedure, 1973 on a Judicial Magistrate of the first class.

5. Childrens Court :-

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 the State Government may, by notification in the official Gazette, constitute for any area specified in the Act, one or more childrens 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) A childrens court shall consist of a Bench of as many Magistrates as the State Government may declare, out of which one shall be designated as the Principal Judicial Magistrate. Each of such Bench shall be vested with the powers of the first class Magistrate under Criminal Procedure Code, 1973 (Act 2 of 1974).

(b) The Childrens Court will be assisted by a panel of three qualified honorary social workers as prescribed under rules, of whom at least one should be a woman and one member of the Scheduled Caste or the Scheduled Tribe.

6. Procedure etc., in relation to Boards and Childrens Courts :-

(1) In the event of a difference of opinion the members of a Board or among the Magistrates of a childrens court the opinion of the majority shall prevail, but where there is no such majority, the opinion of the Chairman or of the Chief Magistrate, as the case may be, shall prevail.

(2) A Board or Childrens Court may act notwithstanding the absence of any member of the Board or as the case may be, any Magistrate of the Childrens Court, and no order made by the Board or Childrens 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 proceeding.

(3) No person shall be appointed, as honorary social worker in the Childrens Court unless he has, in the opinion of the State

Government, special knowledge of child psychology and child welfare.

7. Power of Board and Childrens Court :-

(1) Where a Board or a Childrens 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) *The Child Welfare Board or the Childrens Court will be competent to transfer cases to each other as deemed fit by them by taking into account the circumstances in each case:

Provided, that if the Board and the Childrens Court differ at the point as to where should the proceeding be started the differences should be put up before the Sessions Judge and the order of the Sessions Judge will be final.

(3) Where no Board or Childrens Court has been constituted for any area, the powers conferred on the Board or the Childrens Court by or under this Act, shall be exercised in that area, only by the following respectively, namely:-

(a) the District Magistrate, or

(b) the Sub divisional Magistrate, or

(c) any Judicial Magistrate of the First Class.

(4) The powers conferred on the Board or Childrens Court by or under this Act may also be exercised by the High Court and the Court of Session, when the proceeding comes before them in appeal, revision or otherwise.

* Ed. As per Hindi version. In the translated English version it is missing

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

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

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

9. Childrens home :-

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

(2) Where the State Government is of 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 certify such institution as a childrens home for the purposes of this Act.

(3) Every Childrens Home to which a neglected child sent under this Act shall not only provide the child with accommodation, maintenance and facilities for education but also provide him with facilities for the development of his character and abilities and give him necessary training for protecting himself against moral dangers or exploitation and shall also perform such other function as may be prescribed to ensure his proper growth and development.

(4) The State Government may by rules made under this Act provide for the management of Childrens Home and prescribe the standard and nature of service. It may also lay down the circumstances under which and manner in which the certificate of a Childrens Home may be granted or withdrawn.

10. 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 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 certify such institution as a special school for the purposes of this Act.

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

and development.

(4) The State Government may by rules made under this Act provide for the management of special school and the standard form of circumstances under which and the manner in which the certificate of a special school may be granted or withdrawn.

11. 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) Whereas the State Government is of 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 recognize such institution as an observation home for the purpose 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 prescribe the standards of service. It may also lay down the circumstances under which and the manner in which an institution may be recognized as an observation home or the recognition may be withdrawn.

12. Comprehensive organization of aftercare :-

The State Government shall provide for the following through rules framed under this Act;

(a) To establish institutions or to recognize them for Aftercare and the powers to be exercised by them for the effective execution of their duties under this Act;

(b) Scheme of the programme for the Aftercare to be run by such Aftercare institutions for looking after the children, after leaving the Children Home or the special school and to make them able to live an useful, honest and laborious life;

(c) Report to be prepared and put up by the probation officer for the need and kind, its period and supervision of such child before releasing the child from the Children Home or the special school and the report to be submitted by the probation officer regarding

the progress of each such child;

(d) The standard and kind of services to be provided by such Aftercare organization; and

(e) Any other necessary matters regarding the scheme of effective execution of the Aftercare programme of the children.

CHAPTER 3 NEGLECTED CHILDREN

13. Production of neglected children before Boards :-

(1) If any police officer or any other person authorized by the State Government in this behalf by general or special order, is of opinion that a 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 of 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 made to the Board.

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

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

14. Special procedure to be followed when neglected child has parent :-

(1) If a person who in the opinion of the probation officer, police officer or the authorized person is a neglected child, has a parent or guardian who has the actual charge of or control over the child, the police officer or the authorized person 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 it may immediately order his removal (if necessary by issuing a search warrant for the immediate production of the child) to an observation home.

15. Enquiry by Board regarding neglected children :-

(1) When a person alleged to be a neglected child is produced before a Board, it shall examine the probation officer/police officer or the authorized 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 childrens 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 twenty years:

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 a fit person for such period as may be specified in order of the Board.

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

16. 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 15 for sending the child to a childrens home, make an order placing the child under the care of a parent guardian or other fit person, or such parent, guardian or fit person executing a bond with or without surety to be responsible for the good behavior 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.

17. 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 Section 15 and Section 16 shall, as far as may be, apply to such proceedings.

CHAPTER 4 DELINQUENT CHILDREN

18. Bail and custody of children :-

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

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

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

19. Information to parent or guardian or 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 Childrens Court before which the child will appear; and
- (b) the probation officer of such arrest in order to enable him to obtain information, regarding the antecedents and family history of the child and other material circumstances likely to be of assistance to the childrens court for making the enquiry.

20. Enquiry by childrens court regarding delinquent children :-

Where a child having been charged with an offence appears or is produced before a Childrens Court, the childrens court shall hold the enquiry in accordance with the provisions of Section 39 and may, subject to the provisions of this Act, make such order in relation to the child as it deems fit.

21. Orders that may be passed regarding delinquent children :-

(1) Where a childrens court is satisfied on enquiry that a children has committed an offence, then, notwithstanding anything to the contrary contained in any other law for the time being in force, the childrens court may, if it so 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 executing a bond, with or without surety as that court may require, for the good behavior 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 and 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 child:

Provided that the childrens court may, if it is satisfied that having regard to the nature of the offence and the circumstances to be recorded reduce the period of stay to such period as it thinks fit:

Provided further that the childrens 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 twenty years.

(d) Such a child, who is of age more than fourteen years and is able to work, may be asked to pay a fine up to Rs. 500.

(2) Where an order under clause (b) or clause (d) of sub-section (1) is made, the childrens court may, if it is of opinion that in the interests 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 childrens court on receiving a report from the probation officer or otherwise, that the delinquent child has not been of good behavior 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 childrens court making a supervision order under sub-section (2) shall explain to the child and the parent, guardian or other fit person, as the case may be under whose care the child has been placed, the terms and conditions of the order and shall forthwith furnish one copy of the supervision order to the child, the parent, guardian or other fit person, as the case may be, the sureties, if any, and the probation officer.

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

22. Orders 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 who has attained the age of fourteen years has committed an offence and the Childrens Court is satisfied that the offence committed is of so serious a nature or his conduct and behavior 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 is suitable or sufficient, the Childrens Court may order the delinquent child to be kept in safe custody in such place and manner as it thinks fit and shall report the case for the orders of the State Government.

(2) On receipt of a report from a childrens 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 and on such conditions as it think fit: Provided that the period of detention so ordered shall not exceed the maximum period of imprisonment to which the child could have been sentenced for the offence committed.

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

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

24. No joint trial of child and person not a child :-

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

25. Removal of disqualification attaching to conviction :-

Notwithstanding anything contained in any other law, in force at that time, 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.

26. Transfer of pending cases to children court :-

All such cases or proceedings, which are pending in any Court on the date of the enforcement of this Act shall be transferred to the children court of their respective areas from the same date.

CHAPTER 5 PROCEDURE OF COMPETENT AUTHORITIES GENERALLY AND APPEALS AND REVISIONS FROM ORDERS OF SUCH COURTS

27. Sitting etc. of Boards and Childrens Courts :-

(1) A Board or a Childrens Court shall hold its sitting 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, or as the case may be, a childrens court under sub-section (2) of Section 7 shall while holding any 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 a 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.

28. Person 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) any officer of the competent authority; or
- (b) the parties to the inquiry before the competent authority, the parent or guardian of the child and other persons directly concerned in the inquiry including police officers, and
- (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 including the police officers, legal practitioners, the present guardian or the child himself should withdraw, the competent authority may give such direction, and if any person refuses to comply with such direction, the competent authority may have him removed and may, for this purpose, cause to be used such force as may be necessary.

(3) No legal practitioner shall be entitled to appear before a Board

in any case or proceedings before it except with the special permission of that Board.

29. 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.

30. 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 the absence of the child.

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

(1) When a child who has been brought before a competent authority under this Act is found to be suffering from a disease requiring prolonged medical treatment or physical or mental complaint that will respond to treatment, the competent authority may send the child to any place recognized to be an approved place in accordance with the rules made under the 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 has scars on his face due to age is of unsound mind, he shall be dealt with under the provisions of the Lepers Act, 1898 (3 of 1898) or the Indian Lunacy Act, 1912 (4 of 1912), as the case may be.

(3) Where a competent authority has taken action under subsection (1) in the case of a child suffering from an infectious or contagious disease, the competent authority before restoring the said child to his partner in marriage, if there has been such, or to the 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 or the guardian as the case may be to satisfy the Court by submitting to medical examination that such partner or guardian will not re-infect the child in respect of whom the order has been passed.

32. 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.

33. Circumstances to be taken into consideration in making order 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, require to be taken into consideration in the interests of the child:

Provided that in the case of a delinquent child, the above circumstances shall be taken into consideration after the Childrens Court has recorded a finding against the child 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 19, it shall be open to the childrens court to proceed without it.

34. Sending a child outside his 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 the due inquiry that it is expedient so to do send the child back to a relative or other person who is fit and willing to

receive him at his ordinary place of residence and exercise proper care and control over him notwithstanding that such place or residence is outside the jurisdiction of the competent authority and the competent authority exercising jurisdiction over the place to which the child is sent shall in respect of any matter arising subsequently have the same powers in relation to the child as if the original order has been passed by itself.

35. Reports to be treated as confidential :-

The report of the probation officer or any circumstances considered by the competent authority under Section 33 shall be treated as confidential:

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

36. Prohibition of publication of names etc. of children involved in any proceeding under the Act :-

(1) No report in any newspaper, magazine or news sheet of any inquiry regarding a child 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 two thousand rupees or sentence for imprisonment up to six months or with both.

37. Appeals :-

(1) Subject to the provisions of this section any person aggrieved by an order made by a competent authority under this Act may within thirty days from the date of such order prefer an appeal to the Court of Session:

Provided that the Court of Session may entertain 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 childrens court in respect of child alleged to have committed an offence; or
- (b) any order made by a Board in respect of a finding that a person is not a neglected child.

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

38. Revision :-

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

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

39. Procedure in inquires, appeals and revision proceedings :-

(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, 1973 (2 of 1974) for trial in summon cases.

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

40. Power to amend orders :-

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

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

CHAPTER 6 SPECIAL OFFENCES IN RESPECT OF CHILDREN

41. Punishment for cruelty to child :-

Whoever, having the actual charge of or control over a child, assaults, abandons, exposes or willfully neglects the child or causes or procures him to be assaulted, abandoned exposed or neglected in a manner likely to cause such child unnecessary mental and physical suffering shall be punishable with imprisonment for a term which may extend to one year, or with fine, or with both.

42. Employment of children for begging :-

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

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

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

43. Penalty for giving intoxicating liquor or dangerous drug to a 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 two thousand rupees or imprisonment up to six months or with both.

44. Exploitation of child employees :-

Whoever ostensibly 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 two thousand rupees or imprisonment up to six

months or with both.

CHAPTER 7 MISCELLANEOUS

45. 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 neglected or delinquent child to be discharged from the childrens home or special school, either absolutely or on such conditions as it may think fit to impose.

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

(a) a neglected child to be transferred from one childrens home to another;

(b) a delinquent child to be transferred from a special school to another or from a special school to a borstal school where such school exists or from a special school to a childrens home.

(c) a child who has been released on license which has been revoked or forfeited, to be sent to the special school or childrens home from which he was released or to any other childrens home special school or borstal school:

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

(3) 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.

46. Transfers between childrens home etc. under the Act and childrens home etc. of a like nature in different parts of India :-

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

(2) The State Government may by general or special order, provide for the reception in a childrens home or special school within the State of a neglected child or delinquent child detained in a childrens 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 childrens home or special school under this Act.

47. 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 childrens home in pursuance of this Act is suffering from leprosy or is of unsound 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 which he has to be kept in custody under the order of the competent authority or for such further period as may be certified by a medical officer to be necessary for the proper treatment of the child.

(2) Where it appears to the 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 childrens home from which he was removed or if the child is no longer liable to be kept in custody, order him to be discharged.

48. Placing out on license

:-

(1) When a child is kept in a childrens home or special school, the State Government may, if it so thinks fit, release the child from the childrens home or special school and grant him a written license for such period and on such conditions as may be specified in the license permitting him to live with, or under the supervision of, any responsible person named in the license willing to receive and to take charge of him a view to educate him and train him for some useful trade or calling.

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

(3) The State Government may, at any time, by order in writing revoke any such license and order the child to return to the childrens home or special school from which he was released or to any other childrens 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 license granted under sub-section (1).

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

(5) The time during which a child is absent from a special school or childrens home in pursuance of a license 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 childrens home:

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

49. Provision in respect of escaped children :-

Notwithstanding anything to the contrary contained in any other law for the time being in force or in any provision existing before the commencement of this Act, any Police Officer may take charge without warrant of child who has escaped from a special school or a childrens home or from the care of a person under this Act and shall send the child back to the special school or the childrens home or the person, as the case may be, and proceeding shall be instituted in respect of the child by reason of such escape but the special school, childrens 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.

50. Contribution by parents :-

(1) The competent authority which makes an order for sending a neglected child or a delinquent child to a childrens 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, if able to do so, 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 125 of the Code of Criminal Procedure, 1973 (2 of 1974), 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 125 of the Code of Criminal Procedure, 1973 (2 of 1974).

51. 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.

52. 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 who is undergoing any sentence of imprisonment at the commencement of this Act shall, in lieu of undergoing such sentence be sent to a special school or be kept in safe custody in such place and manner as the State Government think fit, for the remainder of the period of the sentence; and the provisions of this Act shall apply to the child as if he had been ordered by a Childrens Court to be sent to such special school or, as the case may be ordered to be detailed under sub-section (2) of Section 22.

53. Appointment of officers :-

(1) The State Government may appoint as many probation officers for the inspection of the special school, childrens home, observation homes or after-care organizations and such other officers as it may deem necessary for carrying out the purposes of this Act.

(2) The officers appointed under the Act shall be trained in social work, the relevant qualification will be prescribed under the rule framed under the Act.

(3) It shall be the duty of the probation officer-

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

(b) to visit neglected and delinquent children at such intervals as the probation officer may think fit;

(c) to report to the competent authority as to the behavior of any neglected or delinquent child;

(d) to advise and assist neglected or delinquent children and if necessary endeavor to find them suitable employment;

(e) where a neglected or delinquent child is placed under the care of any person on certain conditions, to see whether such conditions are being complied with; and

(f) to perform such other duties as may be prescribed.

(4) Any officer empowered in this behalf by the State Government may enter any special school, childrens home, observation homes or after care organization 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.

54. Officers appointed under the Act to be public servants :-

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 (45 of 1860).

55. Procedure in respect of bonds :-

The provisions of Chapter 33 of the Code of Criminal Procedure, 1973 (2 of 1974), shall as far as may be, apply to bonds taken under this Act.

56. Delegation of powers :-

The State Government may, by general or special order, direct that any power exercisable by it under this Act 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 the State Government.

57. Protection of action taken in good faith :-

No suit or other legal proceeding shall lie against the State Government or any Probation Officer or other officer appointed under this Act in respect of anything which is in good faith done or intended to be done in pursuance of this Act or any rules or orders made thereunder.

58. Act 8 of 1897 and certain provisions of Act 2 of 1974 not to apply :-

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

(2) The Womens and Childrens Institutions (Licensing) Act, 1956 (105 of 1956), shall not apply to any childrens home, special school or observation homes established and maintained under this Act.

59. Power to make rules :-

(1) The State Government may by notification in the Official Gazette, make rules to carry out the purpose of this Act.

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

(a) the places at which, the days on which the time at which and the manner in which a competent authority may hold its sittings;

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

(c) the circumstances in which, and the conditions subject to which an institution may be certified as a special school or a childrens home or recognized as an observation home, and the certification or recognition withdrawn;

(d) the internal management of special schools, childrens homes

and observation homes;

(e) the functions and responsibilities of special school, childrens homes and observation homes;

(f) the inspection of special schools, childrens homes, observation homes and after care organization;

(g) the establishment, management and functions of after care organizations, the circumstances in which and the conditions subject to which, an institution may be recognized as an after care organization;

(h) the qualifications and duties of probation officers;

(i) the recruitment and training of persons appointed to carry out the purposes of this Act and the terms and conditions of their service;

(j) the conditions subject to which a 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 competent authority;

(k) the manner in which contribution for the maintenance of a child may be ordered to be paid by a parent or guardian;

(l) the conditions under which a child may be placed out on license and the form and conditions of such license,

(m) the conditions subject to which children 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) Every rule made under this section shall be laid, as soon as may be after it is made, before each House of the State Legislature while it is in session for a total period of fourteen days which may be comprised in one session or in two successive sessions, and if, before expiry of the session in which it is so laid or the session immediately following, both the offices agree in making any modification in the rule or both the Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of 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 under that rule.

60. Repeals and savings :-

(1) Immediately, before the date on which this Act comes into force in any area, there is in force in that area, any law corresponding to this Act, that law shall stand repealed on the said date: Provided

that such repeal shall not effect-

(a) the previous operation of the law so repealed or anything duly done or suffered there under; or

(b) any right, privilege, obligation or liability acquired, accrued or incurred under the law so repealed; or

(c) any penalty, forfeiture or punishment incurred in respect of any offence committed against the law so repealed; or

(d) any investigation, legal proceeding, or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid and any such investigation, legal proceeding or remedy as may be instituted, continued or enforced and any such penalty, forfeiture or punishment as may be imposed, as if this Act had not been passed.

(2) The Bihar Children Ordinance, 1982 (Bihar Ordinance No. 28 of 1981) is hereby repealed.

(3) Notwithstanding such repeal, anything done or any action taken in exercise of any power conferred by or under this Act shall be deemed to have been done or taken in the exercise of powers conferred by or under this Act as if this Act were in force on the day on which such thing or action was done or taken.