

APPENDICES

Appendix I

THE UNLAWFUL ACTIVITIES (PREVENTION) ACT, 1967

(37 Of 1967)

[30th December, 1967]

An Act to provide for the more effective prevention of certain unlawful activities of individuals and associations ^{1/}, and dealing with terrorist activities/ and for matters connected therewith.

Be it enacted by Parliament in the Eighteenth Year of the Republic of India as follows :—

CHAPTER I PRELIMINARY

²[1. **Short title and extent.**—(1) This Act may be called the Unlawful Activities (Prevention) Act, 1967 (37 of 1967).

(2) It extends to the whole of India.

(3) Every person shall be liable to punishment under this Act for every act or omission contrary to the provisions thereof, of which he is held guilty in India.

(4) Any person, who commits an offence beyond India, which is punishable under this Act, shall be dealt with according to the provisions of this Act in the same manner as if such act had been committed in India.

(5) The provisions of this Act apply also to—

(a) citizens of India outside India;
(b) persons in the service of the Government, wherever they may be; and

(c) persons on ships and aircrafts, registered in India, wherever they may be.]

³[2. **Definitions.**—In this Act, unless the context otherwise requires—

(a) "association" means any combination or body of individuals;
(b) "cession of a part of the territory of India" includes admission of the claim of any foreign country to any such part;
(c) "Code" means the Code of Criminal Procedure, 1973 (2 of 1974);

1. Inserted by the Unlawful Activities (Prevention) Amendment Act, 2004, Section 2 (w.e.f. 21-9-2004).
2. Substituted by the Unlawful Activities (Prevention) Amendment Act, 2004, Section 4, for Sections 1, 2 and 2A (w.e.f. 21-9-2004).
3. Substituted by the Unlawful Activities (Prevention) Amendment Act, 2004, Section 4, for Sections 1, 2 and 2A (w.e.f. 21-9-2004).

- (d) "court" means a criminal court having jurisdiction, under the Code, to try offences under this Act;
- (e) "Designated Authority" means such officer of the Central Government not below the rank of Joint Secretary to that Government, or such officer of the State Government not below the rank of Secretary to that Government, as the case may be, as may be specified by the Central Government or the State Government, by notification published in the Official Gazette;
- (f) "prescribed" means prescribed by rules made under this Act;
- (g) "proceeds of terrorism" means all kinds of properties which have been derived or obtained from commission of any terrorist act or have been acquired through funds traceable to a terrorist act, irrespective of person in whose name such proceeds are standing or in whose possession they are found, and includes any property which is being used, or is intended to be used, for the purpose of a terrorist organisation;
- (h) "Property" means property and assets of every description, whether corporeal or incorporeal, movable or immovable, tangible or intangible and deeds and instruments evidencing title to, or interest in, such property or assets, and includes cash and bank account;
- (i) "secession of a part of the territory of India from the Union" includes the assertion of any claim to determine whether such part will remain a part of the territory of India;
- (j) "State Government", in relation to a Union territory, means the Administrator thereof;
- (k) "terrorist act" has the meaning assigned to it in Section 15, and the expressions "terrorism" and "terrorist" shall be construed accordingly;
- (l) "terrorist gang" means any association, other than terrorist organisation, whether systematic or otherwise, which is concerned with, or involved in, terrorist act;
- (m) "terrorist organisation" means an organisation listed in the Schedule or an organisation operating under the same name as an organisation so listed;
- (n) "Tribunal" means the Tribunal constituted under Section 5;
- (o) "unlawful activity", in relation to an individual or association, means any action taken by such individual or association (whether by committing an act or by words, either spoken or written, or by signs or by visible representation or otherwise),—
 - (i) which is intended, or supports any claim, to bring about, on any ground whatsoever, the cession of a part of the territory of India or the secession of a part of the territory of India from the Union, or which incites any individual or group of individuals to bring about such cession or secession; or
 - (ii) which disclaims, questions, disrupts or is intended to disrupt the sovereignty and territorial integrity of India; or
 - (iii) which causes or is intended to cause disaffection against

India;

(p) "unlawful association" means any association—

(i) which has for its object any unlawful activity, or which encourages or aids persons to undertake any unlawful activity, or of which the members undertake such activity; or

(ii) which has for its object any activity which is punishable under Section 153-A or Section 153-B of the Indian Penal Code, (45 of 1860), or which encourages or aids persons to undertake any such activity, or of which the members undertake any such activity :

Provided that nothing contained in sub-clause (ii) shall apply to the State of Jammu and Kashmir.

(q) words and expressions used but not defined in this Act and defined in the Code shall have the meaning respectively assigned to them in the Code.

(2) Any reference in this Act to any enactment or any provision thereof shall, in relation to an area in which such enactment or such provision is not in force, be construed as a reference to the corresponding law or the relevant provision of the corresponding law, if any, in force in that area.]

CHAPTER II UNLAWFUL ASSOCIATIONS

3. Declaration of an association as unlawful.—(1) If the Central Government is of opinion that any association is, has become, an unlawful association, it may, by notification in the official *Gazette*, declare such association to be unlawful.¹

(2) Every such notification shall specify the grounds on which it is issued and such other particulars as the Central Government may consider necessary :

Provided that nothing in this sub-section shall require the Central Government to disclose any fact which it considers to be against the public interest to disclose.

(3) No such notification shall have effect until the Tribunal has, by an order made under Section 4, confirmed the declaration made therein and the order is published in the Official *Gazette* :

Provided that if the Central Government is of opinion that circumstances exist which render it necessary for that Government to declare an association to be unlawful with immediate effect, it may, for reasons to be stated in writing, direct that the notification shall, subject to any order that may be made under Section 4, have effect from the date of its publication in the Official *Gazette*.

(4) Every such notification shall, in addition to its publication in the

1. In exercise of the powers conferred by this section, the Central Government *vide* Notification No. S.O. 190(E) dated 18th February, 1994 has declared the Jammu & Kashmir Liberation Front (JKLF) including its members, activists, armed groups, sympathizers and self-styled leaders operating inside India and abroad to be an unlawful association.

Official *Gazette*, be published in not less than one daily newspaper having circulation in the State in which the principal office, if any, of the association affected is situated, and shall be served on such association in such manner as the Central Government may think fit and all or any of the following modes may be followed in effecting such service, namely :—

- (a) by affixing a copy of the notification to some conspicuous part of the office, if any, of the association; or
- (b) by serving a copy of the notification, where possible, on the principal office-bearers, if any, of the association; or
- (c) by proclaiming by beat of drum or by means of loudspeakers, the contents of the notification in the area in which the activities of the association are ordinarily carried on; or
- (d) in such other manner as may be prescribed.

4. Reference to Tribunal.—(1) Where any association has been declared unlawful by a notification issued under sub-section (1) of Section 3, the Central Government shall, within thirty days from the date of the publication of the notification under the said sub-section, refer the notification to the Tribunal for the purpose of adjudicating whether or not there is sufficient cause for declaring the association unlawful.

(2) On receipt of a reference under sub-section (1), the Tribunal shall call upon the association affected by notice in writing to show cause, within thirty days from the date of the service of such notice, why the association should not be declared unlawful.

(3) After considering the cause, if any, shown by the association or the office-bearers or members thereof, the Tribunal shall hold an inquiry in the manner specified in Section 9 and after calling for such further information as it may consider necessary from the Central Government or from any office-bearer or member of the association, it shall decide whether or not there is sufficient cause for declaring the association to be unlawful and make, as expeditiously as possible and in any case within a period of six months from the date of the issue of the notification under sub-section (1) of Section 3, such order as it may deem fit either confirming the declaration made in the notification or cancelling the same.

(4) The order of the Tribunal made under sub-section (3) shall be published in the Official *Gazette*.

5. Tribunal.—(1) The Central Government may, by notification in the Official *Gazette*, constitute, as and when necessary, a Tribunal to be known as the "Unlawful Activities (Prevention) Tribunal" consisting of one person, to be appointed by the Central Government :

Provided that no person shall be so appointed unless he is a Judge of a High Court.

(2) If, for any reason, a vacancy (other than a temporary absence) occurs in the office of the Presiding Officer of the Tribunal, then, the Central Government shall appoint another person in accordance with the provisions of this section to fill the vacancy and the proceedings may be continued before the Tribunal from the stage at which the vacancy is filled.

(3) The Central Government shall make available to the Tribunal such staff as may be necessary for the discharge of its functions under this Act.

(4) All expenses incurred in connection with the Tribunal shall be defrayed out of the Consolidated Fund of India.

(5) Subject to the provisions of Section 9, the Tribunal shall have power to regulate its own procedure in all matters arising out of the discharge of its functions including the place or places at which it will hold its sittings.

(6) The Tribunal shall, for the purpose of making an inquiry under this Act, have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, in respect of the following matters, namely :—

(a) the summoning and enforcing, the attendance of any witness and examining him on oath;

(b) the discovery and production of any document or other material object producible as evidence;

(c) the reception of evidence on affidavits;

(d) the requisitioning of any public record from any court or office;

(e) the issuing of any commission for the examination of witnesses.

(7) Any proceeding before the Tribunal shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228 of the Indian Penal Code (45 of 1860) and the Tribunal shall be deemed to be a Civil Court for the purposes of Section 195 and ¹[Chapter XXVI] of the ²[Code.]

6. Period of operation and cancellation of notification.—(1) Subject to the provisions of sub-section (2), a notification issued under Section 3 shall, if the declaration made therein is confirmed by the Tribunal by an order made under Section 4, remain in force for a period of two years from the date on which the notification becomes effective.

(2) Notwithstanding anything contained in sub-section (1), the Central Government may, either in its own motion or on the application of any person aggrieved, at any time, cancel the notification issued under Section 3, whether or not the declaration made therein has been confirmed by the Tribunal.

7. Power to prohibit the use of funds of an unlawful association.—(1) Where an association has been declared unlawful by a notification issued under Section 3 which has become effective under sub-section (3) of that section and the Central Government is satisfied, after such inquiry as it may think fit, that any person has custody of any moneys, securities or credits which are being used or are intended to be used for the purpose of the unlawful association, the Central Government may, by order in writing, prohibit such person from paying, delivering, transferring or otherwise dealing in any manner whatsoever with such moneys, securities or credits or with any other moneys, securities or credits which may come into his custody after the making of the order, save in accordance with the

1. Substituted by the Unlawful Activities (Prevention) Amendment Act, 2004, Section 5, for "Chapter XXXV" (w.e.f. 21-9-2004).

2. Substituted by the Unlawful Activities (Prevention) Amendment Act, 2004, Section 3, for "Code of Criminal Procedure, 1898 (5 of 1898)" (w.e.f. 21-9-2004).

written orders of the Central Government and a copy of such order shall be served upon the person so prohibited in the manner specified in sub-section (3).

(2) The Central Government may endorse a copy of the prohibitory order made under sub-section (1) for investigation to any gazetted officer of the Government it may select, and such copy shall be a warrant whereunder such officer may enter in or upon any premises of the person to whom the order is directed, examine the books of such person, search for moneys, securities or credits, and make inquiries from such person or any officer, agent or servant of such person, touching the origin of any dealings in any moneys, securities or credits which the investigating officer may suspect are being used or are intended to be used for the purpose of the unlawful association.

(3) A copy of an order made under this section shall be served in the manner provided in the ¹[Code], for the service of a summons, or, where the person to be served is a corporation, company, bank or other association, it shall be served on any secretary, director or other officer or person concerned with the management thereof, or by leaving it or sending it by post addressed to the corporation, company, bank or other association at its registered office, or where there is no registered office, at the place where it carries on business.

(4) Any person aggrieved by a prohibitory order made under sub-section (1) may, within fifteen days from the date of the service of such order, make an application to the Court of the District Judge within the local limits of whose jurisdiction such person voluntarily resides or carries on business or personally works for gain, to establish that the moneys, securities or credits in respect of which the prohibitory order has been made are not being used or are not intended to be used for the purpose of the unlawful association and the Court of the District Judge shall decide the question.

(5) Except so far as is necessary for the purposes of any proceedings under this section, no information obtained in the course of any investigation made under sub-section (2) shall be divulged by any gazetted officer of the Government, without the consent of the Central Government.

(6) In this section, "security" includes a document whereby any person acknowledges that he is under a legal liability to pay money, or whereunder any person obtains a legal right to the payment of money.

8. Power to notify places used for the purpose of an unlawful association.—(1) Where an association has been declared unlawful by a notification issued under Section 3 which has become effective under sub-section (3) of that section, the Central Government may, by notification in the Official Gazette, notify any place which in its opinion is used for the purpose of such unlawful association.

Explanation.—For the purposes of this sub-section, "place" includes a house or building, or part thereof, or a tent or vessel.

(2) On the issue of a notification under sub-section (1), the District

1. Substituted by the Unlawful Activities (Prevention) Amendment Act, 2004, Section 3, for "Code of Criminal Procedure, 1898 (5 of 1898)" (w.e.f. 21-9-2004).

Magistrate within the local limits of whose jurisdiction such notified place is situate or any officer authorised by him in writing in this behalf shall make a list of all movable properties (other than wearing-apparel, cooking vessels, beds and beddings, tools of artisans, implements of husbandry, cattle, grain and food-stuffs and such other articles as he considers to be of a trivial nature) found in the notified place in the presence of two respectable witnesses.

(3) If, in the opinion of the District Magistrate, any articles specified in the list are or may be used for the purpose of the unlawful association, he may make an order prohibiting any person from using the articles save in accordance with the written orders of the District Magistrate.

(4) The District Magistrate may, thereupon, make an order that no person who at the date of the notification was not a resident in the notified place shall, without the permission of the District Magistrate, enter, or be on or in, the notified place :

Provided that nothing in this sub-section shall apply to any near relative of any person who was a resident in the notified place at the date of the notification.

(5) Where in pursuance of sub-section (4), any person is granted permission to enter, or to be on or in, the notified place, that person shall, while acting under such permission, comply with such orders for regulating his conduct as may be given by the District Magistrate.

(6) Any police officer, not below the rank of a sub-inspector, or any other person authorised in this behalf by the Central Government may search any person entering, or seeking to enter, or being on or in, the notified place and may detain any such person for the purpose of searching him :

Provided that no female shall be searched in pursuance of this sub-section except by a female.

(7) If any person is in the notified place in contravention of an order made under sub-section (4), then, without prejudice to any other proceedings which may be taken against him, he may be removed therefrom by any officer or by any other person authorised in this behalf by the Central Government.

(8) Any person aggrieved by a notification issued in respect of a place under sub-section (1) or by an order made under sub-section (3) or sub-section (4) may, within thirty days from the date of the notification or order, as the case may be, make an application to the Court of the District Judge within the local limits of whose jurisdiction such notified place is situate—

(a) for declaration that the place has not been used for the purpose of the unlawful association; or

(b) for setting aside the order made under sub-section (3) or sub-section (4),

and on receipt of the application the Court of the District Judge shall, after giving the parties an opportunity of being heard, decide the question.

9. Procedure to be followed in the disposal of applications under this Act.—Subject to any rules that may be made under this Act, the

procedure to be followed by the Tribunal in holding any inquiry under sub-section (3) of Section 4 or by a Court of the District Judge in disposing of any application under sub- section (4) of Section 7 or sub-section (8) of Section (8) shall, so far as may be, be the procedure laid down in the ¹[Code]; for the investigation of claims and the decision of the Tribunal or the Court of the District Judge, as the case may be, shall be final.

CHAPTER III OFFENCES AND PENALTIES

²10. Penalty for being member of an unlawful association, etc.—

Where an association is declared unlawful by a notification issued under Section 3 which has become effective under sub-section (3) of that section,—

(a) a person, who—

- (i) is and continues to be a member of such association; or
- (ii) takes part in meetings of such association; or

(iii) contributes to, or receives or solicits any contribution for the purpose of, such association; or

(iv) in any way assists the operations of such association,

shall be punishable with imprisonment for a term which may extend to two years, and shall also be liable to fine; and

(b) a person, who is or continues to be a member of such association, or voluntarily does an act aiding or promoting in any manner the objects of such association and in either case is in possession of any unlicensed firearms, ammunition, explosive or other instrument or substance capable of causing mass destruction and commits any act resulting in loss of human life or grievous injury to any person or causes significant damage to any property,—

(i) and if such act has resulted in the death of any person, shall be punishable with death or imprisonment for life, and shall also be liable to fine;

(ii) in any other case, shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine.]

11. Penalty for dealing with fund of an unlawful association.—

If any person on whom a prohibitory order has been served under sub-section (1) of Section 7 in respect of any moneys, securities or credits pays, delivers, transfers or otherwise deals in any manner whatsoever with the same in contravention of the prohibitory order, he shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both, and notwithstanding anything contained in the ³[Code], the court trying such contravention may also impose on the person convicted an additional fine to recover from him the amount of the moneys or credits or

1. Substituted by the Unlawful Activities (Prevention) Amendment Act, 2004, Section 3, for "Code of Criminal Procedure, 1898 (5 of 1898)" (w.e.f. 21-9-2004).
2. Substituted by the Unlawful Activities (Prevention) Amendment Act, 2004, Section 6, for Section 10 (w.e.f. 21-9-2004).
3. Substituted by the Unlawful Activities (Prevention) Amendment Act, 2004, Section 3, for "Code of Criminal Procedure, 1898 (5 of 1898)" (w.e.f. 21-9-2004).

the market value of the securities in respect of which the prohibitory order has been contravened or such part thereof as the court may deem fit.

12. Penalty for contravention of an order made in respect of a notified place.—(1) Whoever uses any article in contravention of a prohibitory order in respect thereof made under sub-section (3) of Section 8 shall be punishable with imprisonment for a term which may extend to one year, and shall also be liable to fine.

(2) Whoever knowingly and wilfully is in, or effects or attempts to effect entry into, a notified place in contravention of an order made under sub-section (4) of Section 8 shall be punishable with imprisonment for a term which may extend to one year, and shall also be liable to fine.

13. Punishment for unlawful activities.—(1) Whoever—

(a) takes part in or commits, or

(b) advocates, abets, advises or incites the commission of, any unlawful activity, shall be punishable with imprisonment for a term which may extend to seven years and shall also be liable to fine.

(2) Whoever, in any way, assists any unlawful activity of any association, declared unlawful under Section 3, after the notification by which it has been so declared has become effective under sub-section (3) of that section, shall be punishable with imprisonment for a term which may extend to five years, or with fine, or with both.

(3) Nothing in this section shall apply to any treaty, agreement or convention entered into between the Government of India and the Government of any other country or to any negotiations therefor carried on by any person authorised in this behalf by the Government of India.

14. Offences to be cognizable.—Notwithstanding anything contained in the ¹[Code], an offence punishable under this Act shall be cognizable.

²[CHAPTER IV

PUNISHMENT FOR TERRORIST ACTIVITIES

15. Terrorist act.—Whoever, with intent to threaten the unity, integrity, security or sovereignty of India or to strike terror in the people or any section of the people in India or in any foreign country, does any act by using bombs, dynamite or other explosive substances or inflammable substances or firearms or other lethal weapons or poisons or noxious gases or other chemicals or by any other substances (whether biological or otherwise) of a hazardous nature, in such a manner as to cause, or likely to cause, death of, or injuries to any person or persons or loss of, or damage to, or destruction of property or disruption of any supplies or services essential to the life of the community in India or in any foreign country or causes damage or destruction of any property or equipment used or intended to be used for the defence of India or in connection with any other purposes of the Government of India, any State Government or any of their agencies, or

1. Substituted by the Unlawful Activities (Prevention) Amendment Act, 2004, Section 3, for "Code of Criminal Procedure, 1898 (5 of 1898)" (w.e.f. 21-9-2004).

2. Substituted by the Unlawful Activities (Prevention) Amendment Act, 2004, Section 7, for Chapter IV (w.e.f. 21-9-2004).

detains any person and threatens to kill or injure such person in order to compel the Government in India or the Government of a foreign country or any other person to do or abstain from doing any act, commits a terrorist act.

16. Punishment for terrorist act.—(1) Whoever commits a terrorist act shall,—

(a) if such act has resulted in the death of any person, be punishable with death or imprisonment for life, and shall also be liable to fine;

(b) in any other case, be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine.

17. Punishment for raising fund for terrorist act.—Whoever raises fund for the purpose of committing a terrorist act shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine.

18. Punishment for conspiracy, etc.—Whoever, conspires or attempts to commit, or advocates, abets, advises or incites or knowingly facilitates the commission of, a terrorist act or any act preparatory to the commission of a terrorist act, shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine.

19. Punishment for harbouring etc.—Whoever voluntarily harbours or conceals, or attempts to harbour or conceal any person knowing that such person is a terrorist shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to imprisonment for life, and shall also be liable to fine:

Provided that this section shall not apply to any case in which the harbour or concealment is by the spouse of the offender.

20. Punishment for being member of terrorist gang or organisation.—Any person who is a member of a terrorist gang or a terrorist organisation, which is involved in terrorist act, shall be punishable with imprisonment for a term which may extend to imprisonment for life, and shall also be liable to fine.

21. Punishment for holding proceeds of terrorism.—Whoever knowingly holds any property derived or obtained from commission of any terrorist act or acquired through the terrorist fund shall be punishable with imprisonment for a term which may extend to imprisonment for life, and shall also be liable to fine.

22. Punishment for threatening witness.—Whoever threatens any person who is a witness or any other person in whom such witness may be interested, with violence, or wrongfully restrains or confines the witness, or any other person in whom the witness may be interested, or does any other unlawful act with intent to cause any of the said acts, shall be punishable with imprisonment which may extend to three years, and shall also be liable to fine.

23. Enhanced penalties.—(1) If any person with intent to aid any terrorist contravenes any provision of, or any rule made under the

Explosives Act, 1884 (4 of 1884) or the Explosive Substances Act, 1908 (6 of 1908) or the Inflammable Substances Act, 1952 (20 of 1952) or the Arms Act, 1959 (54 of 1959), or is in unauthorised possession of any bomb, dynamite or hazardous explosive substance or other lethal weapon or substance capable of mass destruction or biological or chemical substance or warfare, he shall, notwithstanding anything contained in any of the aforesaid Acts or the rules made thereunder, be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine.

(2) Any person who, with intent to aid any terrorist, attempts to contravene or abets, or does any act preparatory to contravention of any provision of any law or rule specified in sub-section (1), shall be deemed to have contravened that provision under sub-section (1) and the provisions of that sub- section in relation to such person, have effect subject to the modification that the reference to "imprisonment for life" therein shall be construed as a reference to "imprisonment for ten years".

CHAPTER V

FORFEITURE OF PROCEEDS OF TERRORISM

24. Forfeiture of proceeds of terrorism.—(1) No person shall hold or be in possession of any proceeds of terrorism.

(2) Proceeds of terrorism, whether held by a terrorist or by any other person and whether or not such terrorist or other person is prosecuted or convicted for any offence under Chapter IV or Chapter VI, shall be liable to be forfeited to the Central Government or the State Government, as the case may be, in the manner provided under this Chapter.

25. Powers of investigating officer and Designated Authority and appeal against order of Designated Authority.—(1) If an officer investigating an offence committed under Chapter IV or Chapter VI, has reason to believe that any property in relation to which an investigation is being conducted, represents proceeds of terrorism, he shall, with the prior approval in writing of the Director General of the Police of the State in which such property is situated, make an order seizing such property and where it is not practicable to seize such property, make an order of attachment directing that such property shall not be transferred or otherwise dealt with except with the prior permission of the officer making such order, or of the Designated Authority before whom the property seized or attached is produced and a copy of such order shall be served on the person concerned.

(2) The investigation officer shall duly inform the Designated Authority within forty-eight hours of the seizure or attachment of such property.

(3) The Designated Authority before whom the seized or attached property is produced shall either confirm or revoke the order of seizure or attachment so issued within a period of sixty days from the date of such production:

Provided that an opportunity of making a representation by the person whose property is being seized or attached shall be given.

(4) In the case of immovable property attached by the investigating officer, it shall be deemed to have been produced before the Designated Authority, when the investigating officer notifies his report and places it at the disposal of the Designated Authority.

(5) The investigating officer may seize and detain any cash to which this Chapter applies if he has reasonable grounds for suspecting that—

- (a) it is intended to be used for the purposes of terrorism; or
- (b) it forms the whole or part of the resources of a terrorist organisation :

Provided that the cash seized under this sub-section by the investigating officer shall be released within a period of forty-eight hours beginning with the time when it is seized unless the matter involving the cash is before the Designated Authority and such Authority passes an order allowing its retention beyond forty-eight hours.

Explanation.—For the purposes of this sub-section, "cash" means—

- (a) coins or notes in any currency;
- (b) postal orders;
- (c) traveller's cheques;
- (d) banker's drafts; and
- (e) such other monetary instruments as the Central Government or, as the case may be, the State Government may specify by an order made in writing.

(6) Any person aggrieved by an order made by the Designated Authority may prefer an appeal to the court within a period of thirty days from the date of receipt of the order, and the court may either confirm the order of attachment of property or seizure so made or revoke such order and release the property.

26. Court to order forfeiture of proceeds of terrorism.—Where any property is seized or attached on the ground that it constitutes proceeds of terrorism and the court confirms the order in this regard under sub-section (6) of section 25, it may order forfeiture of such property, whether or not the person from whose possession it is seized or attached, is prosecuted in a court for an offence under Chapter IV or Chapter VI.

27. Issue of show cause notice before forfeiture of proceeds of terrorism.—(1) No order forfeiting any proceeds of terrorism shall be made under section 26 unless the person holding or in possession of such proceeds is given a notice in writing informing him of the grounds on which it is proposed to forfeit the proceeds of terrorism and such person is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of forfeiture and is also given a reasonable opportunity of being heard in the matter.

(2) No order of forfeiture shall be made under sub-section (1), if such person establishes that he is a *bona fide* transferee of such proceeds for value without knowing that they represent proceeds of terrorism.

(3) It shall be competent for the court to make an order in respect of the property seized or attached,—

- (a) directing it to be sold if it is a perishable property and the

provisions of section 459 of the Code shall, as nearly as may be practicable, apply to the net proceeds of such sale;

(b) nominating any officer of the Central Government or the State Government, in the case of any other property, to perform the function of the Administrator of such property subject to such conditions as may be specified by the court.

28. Appeal.—(1) Any person aggrieved by an order of forfeiture under section 26 may, within one month from the date of the receipt of such order, appeal to the High Court within whose jurisdiction, the court, which passed the order appealed against, is situated.

(2) Where an order under section 26 is modified or annulled by the High Court or where in a prosecution instituted for any offence under Chapter IV or Chapter VI, the person against whom an order of forfeiture has been made under section 26 is acquitted, such property shall be returned to him and in either case if it is not possible for any reason to return the forfeited property, such person shall be paid the price therefor as if the property had been sold to the Central Government with reasonable interest calculated from the day of seizure of the property and such price shall be determined in the manner prescribed.

29. Order of forfeiture not to interfere with other punishments.—The order of forfeiture made under this Chapter by the court, shall not prevent the infliction of any other punishment to which the person affected thereby is liable under Chapter IV or Chapter VI.

30. Claims by third party.—(1) Where any claim is preferred or any objection is made to the seizure or attachment of any property under section 25 on the ground that such property is not liable to seizure or attachment, the Designated Authority before whom such property is produced, shall proceed to investigate the claim or objection:

Provided that no such investigation shall be made where the Designated Authority considers that the claim or objection is designed to cause unnecessary delay.

(2) Where an appeal has been preferred under sub-section (6) of section 25 and any claimant or objector establishes that the property specified in the notice issued under section 27 is not liable to be forfeited under this Chapter, the said notice shall be withdrawn or modified accordingly.

31. Powers of Designated Authority.—The Designated Authority, acting under the provisions of this Chapter, shall have all the powers of a civil court required for making a full and fair inquiry into the matter before it.

32. Certain transfers to be null and void.—Where, after the issue of an order under section 25 or issue of a notice under section 27, any property referred to in the said order or notice is transferred by any mode whatsoever, such transfer shall, for the purpose of the proceedings under this Chapter, be ignored and if such property is subsequently forfeited, the transfer of such property shall be deemed to be null and void.

33. Forfeiture of property of certain persons.—(1) Where any person is accused of an offence under Chapter IV or Chapter VI, it shall be

open to the court to pass an order that all or any of the properties, movable or immovable or both, belonging to him, shall, during the period of such trial, be attached, if not already attached under this Chapter.

(2) Where a person has been convicted of any offence punishable under Chapter IV or Chapter VI, the court may, in addition to awarding any punishment, by order in writing, declare that any property, movable or immovable or both, belonging to the accused and specified in the order, shall stand forfeited to the Central Government or the State Government, as the case may be, free from all encumbrances.

34. Company to transfer shares to Government.—Where any share in a company stands forfeited to the Central Government or the State Government, as the case may be, under this Chapter, then, the company shall, on receipt of the order of the court, notwithstanding anything contained in the Companies Act, 1956 (1 of 1956), or the articles of association of the company, forthwith register the Central Government or the State Government, as the case may be, as the transferee of such share.

CHAPTER VI

TERRORIST ORGANISATIONS

35. Amendment of Schedule, etc.—(1) The Central Government may, by order, in the Official Gazette,—

(a) add an organisation in the Schedule;

(b) add also an organisation to the Schedule, which is identified as a terrorist organisation in a resolution adopted by the Security Council under Chapter VII of the Charter of the United Nations, to combat international terrorism;

(c) remove an organisation from the Schedule;

(d) amend the Schedule in some other way.

(2) The Central Government shall exercise its power under clause (a) of sub-section (1) in respect of an organisation only if it believes that it is involved in terrorism.

(3) For the purposes of sub-section (2), an organisation shall be deemed to be involved in terrorism if it—

(a) commits or participates in acts of terrorism, or

(b) prepares for terrorism, or

(c) promotes or encourages terrorism, or

(d) is otherwise involved in terrorism.

36. Denotification of a terrorist organisation.—(1) An application may be made to the Central Government for the exercise of its power under clause (c) of sub-section (1) of section 35 to remove an organisation from the Schedule.

(2) An application under sub-section (1) may be made by—

(a) the organisation, or

(b) any person affected by inclusion of the organisation in the Schedule as a terrorist organisation.

(3) The Central Government may prescribe the procedure for

admission and disposal of an application made under this section.

(4) Where an application under sub-section (1) has been rejected the applicant may apply for a review to the Review Committee constituted by the Central Government under sub-section (1) of Section 37 within one month from the date of receipt of the order of such refusal by the applicant.

(5) The Review Committee may allow an application for review against rejection to remove an organisation from the Schedule, if it considers that the decision to reject was flawed when considered in the light of the principles applicable on an application for judicial review.

(6) Where the Review Committee allows review under sub-section (5) by or in respect of an organisation, it may make an order to such effect.

(7) Where an order is made under sub-section (6), the Central Government shall, as soon as the certified copy of the order is received by it, make an order removing the organisation from the Schedule.

37. Review Committees.—(1) The Central Government shall constitute one or more Review Committees for the purposes of section 36.

(2) Every such Committee shall consist of a Chairperson and such other members not exceeding three and possessing such qualifications as may be prescribed.

(3) A Chairperson of the Committee shall be a person who is, or has been, a Judge of a High Court, who shall be appointed by the Central Government and in the case of appointment of a sitting Judge, the concurrence of the Chief Justice of the concerned High Court shall be obtained.

38. Offence relating to membership of a terrorist organisation.—(1) A person, who associates himself, or professes to be associated, with a terrorist organisation with intention to further its activities, commits an offence relating to membership of a terrorist organisation:

Provided that this sub-section shall not apply where the person charged is able to prove—

(a) that the organisation was not declared as a terrorist organisation at the time when he became a member or began to profess to be a member; and

(b) that he has not taken part in the activities of the organisation at any time during its inclusion in the Schedule as a terrorist organisation.

(2) A person, who commits the offence relating to membership of a terrorist organisation under sub-section (1), shall be punishable with imprisonment for a term not exceeding ten years, or with fine, or with both.

39. Offence relating to support given to a terrorist organisation.—(1) A person commits the offence relating to support given to a terrorist organisation,—

(a) who, with intention to further the activity of a terrorist organisation,—

- (i) invites support for the terrorist organisation, and
- (ii) the support is not or is not restricted to provide money

or other property within the meaning of section 40; or

(b) who, with intention to further the activity of a terrorist organisation, arranges, manages or assists in arranging or managing a meeting which he knows is—

(i) to support the terrorist organisation, or

(ii) to further the activity of the terrorist organisation, or

(iii) to be addressed by a person who associates or professes to be associated with the terrorist organisation; or

(c) who, with intention to further the activity of a terrorist organisation, addresses a meeting for the purpose of encouraging support for the terrorist organisation or to further its activity.

(2) A person, who commits the offence relating to support given to a terrorist organisation under sub-section (1), shall be punishable with imprisonment for a term not exceeding ten years, or with fine, or with both.

40. Offence of raising fund for a terrorist organisation.—(1) A person commits the offence of raising fund for a terrorist organisation, who, with intention to further the activity of a terrorist organisation,—

(a) invites another person to provide money or other property, and intends that it should be used, or has reasonable cause to suspect that it might be used, for the purposes of terrorism; or

(b) receives money or other property, and intends that it should be used, or has reasonable cause to suspect that it might be used, for the purposes of terrorism; or

(c) provides money or other property, and knows, or has reasonable cause to suspect, that it would or might be used for the purposes of terrorism.

Explanation.—For the purposes of this sub-section, a reference to provide money or other property includes of its being given, lent or otherwise made available, whether or not for consideration.

(2) A person, who commits the offence of raising fund for a terrorist organisation under sub-section (1), shall be punishable with imprisonment for a term not exceeding fourteen years, or with fine, or with both.

CHAPTER VII

MISCELLANEOUS

41. Continuance of association.—An association shall not be deemed to have ceased to exist by reason only of any formal act of its dissolution or change of name but shall be deemed to continue so long as any actual combination for the purposes of such association continues between any members thereof.

42. Power to delegate.—The Central Government may, by notification in the Official Gazette, direct that all or any of the powers which may be exercised by it under Section 7, or Section 8, or both, shall, in such circumstances and under such conditions, if any, as may be specified in the notification, be exercised also by any State Government and the State Government may, with the previous approval of the Central Government, by order in writing, direct that any power which has been directed to be

exercised by it shall, in such circumstances and under such conditions, if any, as may be specified in the direction, be exercised by any person subordinate to the State Government as may be specified therein.

43. Officers competent to investigate offences under Chapters IV and VI.—Notwithstanding anything contained in the Code, no police officer,—

(a) in the case of the Delhi Special Police Establishment, constituted under sub-section (1) of section 2 of the Delhi Special Police Establishment Act, 1946, (25 of 1946), below the rank of a Deputy Superintendent of Police or a police officer of equivalent rank;

(b) in the metropolitan areas of Mumbai, Kolkata, Chennai and Ahmedabad and any other metropolitan area notified as such under sub-section (1) of section 8 of the Code, below the rank of an Assistant Commissioner of Police;

(c) in any case not relatable to clause (a) or clause (b), below the rank of a Deputy Superintendent of Police or a police officer of an equivalent rank,

shall investigate any offence punishable under Chapter IV or Chapter VI.

44. Protection of witnesses.—(1) Notwithstanding anything contained in the Code, the proceedings under this Act may, for reasons to be recorded in writing, be held *in camera* if the court so desires.

(2) A court, if on an application made by a witness in any proceeding before it or by the Public Prosecutor in relation to such witness or on its own motion, is satisfied that the life of such witness is in danger, it may, for reasons to be recorded in writing, take such measures as it deems fit for keeping the identity and address of such witness secret.

(3) In particular, and without prejudice to the generality of the provisions of sub-section (2), the measures which a court may take under that sub-section may include—

(a) the holding of the proceedings at a place to be decided by the court;

(b) the avoiding of the mention of the name and address of the witness in its orders or judgments or in any records of the case accessible to public;

(c) the issuing of any directions for securing that the identity and address of the witness are not disclosed;

(d) a decision that it is in the public interest to order that all or any of the proceedings pending before such a court shall not be published in any manner.

(4) Any person, who contravenes any decision or direction issued under sub-section (3), shall be punishable with imprisonment for a term which may extend to three years, and shall also be liable to fine.

45. Cognizance of offences.—No court shall take cognizance of any offence—

(i) under Chapter III without the previous sanction of the Central Government or any officer authorised by the Central Government in this behalf;

(ii) under Chapter IV and VI without the previous sanction of the Central Government or, as the case may be, the State Government, and where such offence is committed against the Government of a foreign country without the previous sanction of the Central Government.

46. Admissibility of evidence collected through the interception of communications.—Notwithstanding anything contained in the Indian Evidence Act, 1872 (1 of 1872) or any other law for the time being in force,

the evidence collected through the interception of wire, electronic or oral communication under the provisions of the Indian Telegraph Act, 1885 (13 of 1885) or the Information Technology Act, 2000 (21 of 2000) or any other law for the time being in force, shall be admissible as evidence against the accused in the court during the trial of a case:

Provided that the contents of any wire, electronic or oral communication intercepted or evidence derived therefrom shall not be received in evidence or otherwise disclosed in any trial, hearing or other proceeding in any court unless each accused has been furnished with a copy of the order of the competent authority under the aforesaid law, under which the interception was directed, not less than ten days before trial, hearing or proceeding:

Provided further that the period of ten days may be waived by the judge trying the matter, if he comes to the conclusion that it was not possible to furnish the accused with such order ten days before the trial, hearing or proceeding and that the accused shall not be prejudiced by the delay in receiving such order.

47. Bar of jurisdiction.—(1) Save as otherwise expressly provided in this Act, no proceeding taken under this Act by the Central Government or the District Magistrate or any officer authorised in this behalf by the Central Government or the District Magistrate, shall be called in question in any civil court in any suit or application or by way of appeal or revision, and no injunction shall be granted by any civil court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

(2) Notwithstanding anything contained in sub-section (1), no civil court or other authority shall have, or be entitled to exercise, any jurisdiction, powers or authority in relation to the matters referred to in section 36.

48. Effect of Act and rules, etc., inconsistent with other enactments.—The provisions of this Act or any rule or order made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or any instrument having effect by virtue of any enactment other than this Act.

49. Protection of action taken in good faith.—No suit, prosecution or other legal proceeding shall lie against—

(a) the Central Government or a State Government or any officer or authority of the Central Government or State Government or District Magistrate or any officer authorised in this behalf by the Government or the District Magistrate or any other authority on whom

powers have been conferred under this Act, for anything which is in good faith done or purported to be done in pursuance of this Act or any rule or order made thereunder; and

(b) any serving or retired member of the armed forces or para-military forces in respect of any action taken or purported to be taken by him in good faith, in the course of any operation directed towards combating terrorism.

50. Saving.—Nothing in this Act shall affect the jurisdiction exercisable by, or the procedure applicable to, any court or other authority under any law relating to the navy, army or air force or other armed forces of the Union.

51. Impounding of passport and arms licence of person charge-sheeted under the Act.—Notwithstanding anything contained in any other law for the time being in force, the passport and the arms licence of a person, who is charge-sheeted for having committed any offence under this Act, shall be deemed to have been impounded for such period as the court may deem fit.

52. Power to make rules.—(1) The Central Government may, by notification in the Official *Gazette*, make rules for carrying out the provisions of this Act.

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

(a) the service of notices or orders issued or made under this Act and the manner in which such notices or orders may be served, where the person to be served is a corporation, company, bank or other association;

(b) the procedure to be followed by the Tribunal or a District Judge in holding any inquiry or disposing of any application under this Act;

(c) determination of the price of the forfeited property under sub-section (2) of section 28;

(d) the procedure for admission and disposal of an application under sub-section (3) of section 36;

(e) the qualifications of the members of the Review Committee under sub-section (2) of section 37; and

(f) any other matter which is required to be, or may be, prescribed.

53. Orders and rules to be laid before both Houses of Parliament.—Every order and every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the order or rule or both Houses agree that the order or rule should not be made, the order or rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however,

that any such modification or annulment shall be without prejudice to the validity of anything previously done under that order or rule.

THE SCHEDULE

[See sections 2 (l), (m) and 35]

TERRORIST ORGANISATIONS

1. Babbar Khalsa International.
 2. Khalistan Commando Force.
 3. Khalistan Zindabad Force.
 4. International Sikh Youth Federation.
 5. Lashkar-E-Taiba/Pasban-E-Ahle Hadis.
 6. Jaish-E-Mohammed/Tahrik-E-Furqan.
 7. Harkat-Ul-Mujahideen/Harkat-Ul-Ansar/Harkat-Ul-Jehad-E-Islami.
 8. Hizb-Ul-Mujahideen/Hizb-Ul-Mujahideen Pir Panjal Regiment.
 9. Al-Umar-Mujahideen.
 10. Jammu and Kashmir Islamic Front.
 11. United Liberation Front of Assam (ULFA).
 12. National Democratic Front of Bodoland (NDFB).
 13. People's Liberation Army (PLA).
 14. United National Liberation Front (UNLF).
 15. People's Revolutionary Party of Kangleipak (PREPAK).
 16. Kangleipak Communist Party (KCP).
 17. Kanglei Yaol Kanba Lup (KYKL).
 18. Manipur People's Liberation Front (MPLF).
 19. All Tripura Tiger Force.
 20. National Liberation Front of Tripura.
 21. Liberation Tigers of Tamil Eelam (LTTE).
 22. Students Islamic Movement of India.
 23. Deendar Anjuman.
 24. Communist Party of India (Marxist-Leninist)—People's War, All Its Formations and Front Organisations.
 25. Maoist Communist Centre (MCC), All its Formations and Front Organisations.
 26. Al Badr.
 27. Jamiat-Ul-Mujahidden.
 28. Al-Qaida.
 29. Dukhtaran-E-Millat (DEM).
 30. Tamil Nadu Liberation Army (TNLA).
 31. Tamil National Retrieval Troops (TNRT).
 32. Akhil Bharat Nepali Ekta Samaj (ABNES).]
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Appendix II

THE CONSERVATION OF FOREIGN EXCHANGE AND PREVENTION OF SMUGGLING ACTS, 1974

(Act No. 52 of 1974)

[13th December, 1974]

An Act to provide for preventive detention in certain cases for the purposes of conservation and augmentation of foreign exchange and prevention of smuggling activities and for matters connected therewith.

WHEREAS violations of foreign exchange regulations and smuggling activities are having an increasingly deleterious effect on the national economy and thereby a serious adverse effect on the security of the State.

AND WHEREAS having regard to the persons by whom and the manner in which such activities or violations are organised and carried on, and having regard to the fact that in certain areas which are highly vulnerable to smuggling, smuggling activities of a considerable magnitude are clandestinely organised and carried on, it is necessary for the effective prevention of such activities and violations to provide for detention of persons concerned in any manner therewith,

Be it enacted by Parliament in the Twenty-fifth Year of the Republic of India as follows :—

1. Short title, extent and commencement.—(1) This Act may be called the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974.

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

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

(a) "appropriate Government" means, as respects a detention order made by the Central Government or by an officer of the Central Government or a person detained under such order, the Central Government, and as respects a detention order made by a State Government or by an officer of a State Government or a person detained under such order, the State Government;

(b) "detention order" means an order made under Section 3;

(c) "foreigner" has the same meaning as in the Foreigners Act, 1946 (31 of 1946);

(d) "Indian customs waters" has the same meaning as in clause (28) of Section 2 of the Customs Act, 1962 (52 of 1962);

- (e) "smuggling" has the same meaning as in clause (39) of Section 2 of the Customs Act, 1962, and all its grammatical variations and cognate expressions shall be construed accordingly;
- (f) "State Government", in relation to a Union territory, means the Administrator thereof;
- (g) any reference in this Act to a law which is not in force in the State of Jammu and Kashmir shall, in relation to that State, be construed as a reference to the corresponding law, if any, in force in that State.

3. Power to make orders detaining certain persons.—(1) The Central Government or the State Government or any officer of the Central Government, not below the rank of a Joint Secretary to that Government, specially empowered for the purposes of this section by that Government, or any officer of the State Government, not below the rank of a Secretary to that Government, specially empowered for the purposes of this section by that Government, may, if satisfied, with respect to any person (including a foreigner), that, with a view to preventing him from acting in any manner prejudicial to the conservation or augmentation of foreign exchange or with a view to preventing him from—

- (i) smuggling goods, or
- (ii) abetting the smuggling of goods, or
- (iii) engaging in transporting or concealing or keeping smuggled goods, or
- (iv) dealing in smuggled goods otherwise than by engaging in transporting or concealing or keeping smuggled goods, or
- (v) harbouring persons engaged in smuggling goods or in abetting the smuggling of goods,

it is necessary so to do, make an order directing that such person be detained :

Provided that no order of detention shall be made on any of the grounds specified in this sub-section on which an order of detention may be made under Section 3 of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 or under Section 3 of the Jammu and Kashmir Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Ordinance, 1988. (J. & K. Ordinance 1 of 1988).

(2) When any order of detention is made by a State Government or by an officer empowered by a State Government, the State Government shall, within ten days, forward to the Central Government a report in respect of the order.

(3) For the purposes of clause (5) of Article 22 of the Constitution, the communication to a person detained in pursuance of a detention order of the grounds on which the order has been made shall be made as soon as may be after the detention, but ordinarily not later than five days, and in exceptional circumstances and for reasons to be recorded in writing, not later than fifteen days, from the date of detention.

4. Execution of detention orders.—A detention order may be executed at any place in India in the manner provided for the execution of

warrants of arrest under the Code of Criminal Procedure, 1973 (2 of 1974).

5. Power to regulate place and conditions of detention.—Every person in respect of whom a detention order has been made shall be liable—

- (a) to be detained in such place and under such conditions including conditions as to maintenance, interviews or communication with others, discipline and punishment for breaches of discipline, as the appropriate Government may, by general or special order, specify; and
- (b) to be removed from one place of detention to another place of detention, whether within the same State or in another State by order of the appropriate Government :

Provided that no order shall be made by a State Government under clause (b) for the removal of a person from one State to another State except with the consent of the Government of that other State.

5-A. Grounds of detention severable.—Where a person has been detained in pursuance of an order of detention under sub-section (1) of Section 3 which has been made on two or more grounds, such order of detention shall be deemed to have been made separately on each of such grounds and accordingly—

- (a) such order shall not be deemed to be invalid or inoperative merely because one or some of the grounds is or are—
 - (i) vague,
 - (ii) non-existent,
 - (iii) not relevant,
 - (iv) not connected or not proximately connected with such person, or
 - (v) invalid for any other reason whatsoever,

and it is not, therefore, possible to hold that the Government or officer making such order would have been satisfied as provided in sub-section (1) of Section 3 with reference to the remaining ground or grounds and made the order of detention;

- (b) the Government or officer making the order of detention shall be deemed to have made the order of detention under the said sub-section (1) after being satisfied as provided in that sub-section with reference to the remaining ground or grounds.

6. Detention order not to be invalid or inoperative on certain grounds.—No detention order shall be invalid or inoperative merely by reason—

- (a) that the person to be detained thereunder is outside the limits of the territorial jurisdiction of the Government or the officer making the order of detention, or
- (b) that the place of detention of such person is outside the said limits.

7. Powers in relation to absconding persons.—(1) If the appropriate Government has reason to believe that a person in respect of whom a detention order has been made has absconded or is concealing himself so that the order cannot be executed, the Government may—

- (a) make a report in writing of the fact to a Metropolitan Magistrate or a Magistrate of the first class having jurisdiction in the place where the said person ordinarily resides; and thereupon the provisions of Sections 82, 83, 84 and 85 of the Code of Criminal Procedure, 1973 (2 of 1974), shall apply in respect of the said person and his property as if the order directing that he be detained were a warrant issued by the Magistrate;
- (b) by order notified in the Official *Gazette* direct the said person to appear before such officer, at such place and within such period as may be specified in the order; and if the said person fails to comply with such direction, he shall, unless he proves that it was not possible for him to comply therewith and that he had, within the period specified in the order, informed the officer mentioned in the order of the reason which rendered compliance therewith impossible and of his whereabouts, be punishable with imprisonment for a term which may extend to one year or with fine or with both.

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), every offence under clause (b) of sub-section (1) shall be cognizable.

8. Advisory Board.—For the purposes of sub-clause (a) of clause (4), and sub-clause (c) of clause (7) of Article 22 of the Constitution,—

- (a) the Central Government and each State Government shall, wherever necessary, constitute one or more Advisory Boards each of which shall consist of a Chairman and two other persons possessing the qualifications specified in sub-clause (a) of clause (4) of Article 22 of the Constitution;
- (b) save as otherwise provided in Section 9, the appropriate Government shall, within five weeks from the date of detention of a person under a detention order make a reference in respect thereof to the Advisory Board constituted under clause (a) to enable the Advisory Board to make the report under sub-clause (a) of clause (4) of Article 22 of the Constitution :—
- (c) the Advisory Board to which a reference is made under clause (b) shall after considering the reference and the materials placed before it and after calling for such further information as it may deem necessary from the appropriate Government or from any person called for the purpose through the appropriate Government, from the person concerned, and if, in any particular case, it considers it essential so to do or if the person concerned desires to be heard in person, after hearing him in person, prepare its report specifying in a separate paragraph thereof its opinion as to whether or not there is sufficient cause for the detention of the person concerned and submit the same within eleven weeks from the date of detention of the person concerned;
- (d) when there is a difference of opinion among the members forming the Advisory Board the opinion of the majority of such members shall be deemed to be the opinion of the Board;

- (e) a person against whom an order of detention has been made under this Act shall not be entitled to appear by any legal practitioner in any matter connected with the reference to the Advisory Board, and the proceedings of the Advisory Board and its report, excepting that part of the report in which the opinion of the Advisory Board is specified, shall be confidential;
- (f) in every case where the Advisory Board has reported that there is in its opinion sufficient cause for the detention of a person, the appropriate Government may confirm the detention order and continue the detention of the person concerned for such period as it thinks fit and in every case where the Advisory Board has reported that there is in its opinion no sufficient cause for the detention of the person concerned, the appropriate Government shall revoke the detention order and cause the person to be released forthwith.

9. Cases in which and circumstances under which persons may be detained for period longer than three months without obtaining the opinion of Advisory Board.—(1) Notwithstanding anything contained in this Act, any person (including a foreigner) in respect of whom an order of detention is made under this Act at any time before the ¹[31st of July, 1996] may be detained without obtaining, in accordance with the provisions of sub-clause (a) of clause (4) of Article 22 of the Constitution, the opinion of an Advisory Board for a period longer than three months but not exceeding six months from the date of his detention, where the order of detention has been made against such person with a view to preventing him from smuggling goods or abetting the smuggling of goods or engaging in transporting or concealing or keeping smuggled goods and the Central Government or any Officer of the Central Government, not below the rank of an Additional Secretary to that Government, specially empowered for the purpose of this section by that Government, is satisfied that such person,—

- (a) smuggles or is likely to smuggle goods into, out of or through any area highly vulnerable to smuggling; or
- (b) abets or is likely to abet the smuggling of goods into, out of or through any area highly vulnerable to smuggling; or
- (c) engages or is likely to engage in transporting or concealing or keeping smuggled goods in any area highly vulnerable to smuggling,

and makes a declaration to that effect within five weeks of the detention of such person.

Explanation 1.—In this sub-section, "area highly vulnerable to smuggling" means,—

- (i) the Indian customs waters, contiguous to the States of Goa, Gujarat, Karnataka, Kerala, Maharashtra, Tamil Nadu and the Union territories of Daman and Diu and Pondicherry;
- (ii) the inland area fifty kilometres in width from the coast of India falling within the territories of the States of Goa, Gujarat, Karnataka, Kerala, Maharashtra, Tamil Nadu and the Union

1. Substituted by Act No. 52 of 1993, S. 2 (w.e.f. 25-6-1993).

- territories of Daman and Diu and Pondicherry;
- (iii) the inland area fifty kilometres in width from the India-Pakistan border in the State of Gujarat, Jammu and Kashmir, Punjab and Rajasthan;
 - (iv) the customs air port of Delhi; and
 - (v) such further or other Indian customs waters, or inland area not exceeding one hundred kilometres in width from any other coast or border of India, or such other customs station, as the Central Government may, having regard to the vulnerability of such waters, area or customs station, as the case may be, to smuggling, by notification in the Official *Gazette*, specify in this behalf.

Explanation 2.—For the purposes of Explanation 1, "customs airport" and "customs station" shall have the same meaning as in clauses (10) and (13) of Section 2 of the Customs Act, 1962 (52 of 1962), respectively.

(2) In the case of any person detained under a detention order to which the provisions of sub-section (1) apply, Section 8 shall have effect subject to the following modifications, namely—

- (i) in clause (b), for the words "shall, within five weeks", the words "shall, within four months and two weeks" shall be substituted;
- (ii) in clause (c),—
 - (1) for the words "the detention of the person concerned", the words "the continued detention of the person concerned" shall be substituted;
 - (2) for the words "eleven weeks", the words "five months and three weeks" shall be substituted;
- (iii) in clause (f), for the words "for the detention", at both the places where they occur, the words "for the continued detention" shall be substituted.

10. Maximum period of detention.—The maximum period for which any person may be detained in pursuance of any detention order to which the provisions of Section 9 do not apply and which has been confirmed under clause (f) of Section 8 shall be a period of one year from the date of detention or the specified period, whichever period expires later and the maximum period for which any person may be detained in pursuance of any detention order to which the provisions of Section 9 apply and which has been confirmed under clause (f) of Section 8 read with sub-section (2) of Section 9 shall be a period of two years from the date of detention or the specified period, whichever period expires later :

Provided that nothing contained in this section shall affect the power of the appropriate Government in neither case to revoke or modify the detention order at any earlier time.

Explanation.—In this section and in Section 10-A, "specified period" means the period during which the Proclamation of Emergency issued under clause (1) of Article 352 of the Constitution on the 3rd day of December, 1971 and the Proclamation of Emergency issued under that clause on the 25th day of June, 1975, are both in operation.

10-A. Extension of period of detention.—(1) Notwithstanding anything contained in any other provision of this Act, the detention of every person detained under a detention order which has been confirmed under clause (f) of Section 8 before the commencement of the Conservation of Foreign Exchange and Prevention of Smuggling Activities (Amendment) Act, 1976, and which is in force immediately before such commencement shall, unless his detention has been continued by the appropriate Government under the said clause for a period shorter than one year from the date of his detention, continue until the expiry of a period of one year from the date of his detention under such order or until the expiry of the specified period, whichever period expires later :

Provided that nothing contained in this sub-section shall affect the power of the appropriate Government to revoke or modify such detention order at any earlier time.

(2) Notwithstanding anything contained in any other provision of this Act, the detention of every person detained under a detention order which has been confirmed under clause (f) of Section 8 read with sub-section (2) of Section 9 before the commencement of the Conservation of Foreign Exchange and Prevention of Smuggling Activities (Amendment) Act, 1976, and which is in force immediately before such commencement, shall, unless his detention has been continued by the appropriate Government under the said clause (f) read with the said sub-section (2), for a period shorter than two years from the date of his detention, continue until the expiry of a period of two years from the date of his detention under such order or until the expiry of the specified period, whichever period expires later :

Provided that nothing contained in this sub-section shall affect the power of the appropriate Government to revoke or modify such detention order at any earlier time.

11. Revocation of detention orders.—(1) Without prejudice to provisions of Section 21 of the General Clauses Act, 1897 (10 of 1897), a detention order may, at any time, be revoked or modified—

- (a) notwithstanding that the order has been made by an officer of a State Government, by that State Government or by the Central Government;
- (b) notwithstanding that the order has been made by an officer of the Central Government or by a State Government, by the Central Government.

(2) The revocation of a detention order shall not bar the making of another detention order under Section 3 against the same person.

12. Temporary release of persons detained.—(1) The Central Government may, at any time, direct that any person detained in pursuance of a detention order made by that Government or an officer subordinate to that Government or by a State Government or by an officer subordinate to a State Government, may be released for any specified period either without conditions or upon such conditions specified in the direction as that person accepts, and may, at any time, cancel his release.

(1-A) A State Government may, at any time, direct that any person detained in pursuance of a detention order made by that Government or by

an officer subordinate to that Government may be released for any specified period either without conditions or upon such conditions specified in the direction as that person accepts, and may, at any time, cancel his release.

(2) In directing the release of any person under sub-section (1) or sub-section (1-A), the Government directing the release may require him to enter into a bond with sureties for the due observance of the conditions specified in the direction.

(3) Any person released under sub-section (1) or sub-section (1-A) shall surrender himself at the time and place, and to the authority, specified in the order directing his release or cancelling his release, as the case may be.

(4) If any person fails without sufficient cause to surrender himself in the manner specified in sub-section (3), he shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both.

(5) If any person released under sub-section (1) or sub-section (1-A) fails to fulfil any of the conditions imposed upon him under the said sub-section or in the bond entered into by him, the bond shall be declared to be forfeited and any person bound thereby shall be liable to pay the penalty thereof.

(6) Notwithstanding anything contained in any other law and save as otherwise provided in this section, no person against whom a detention order made under this Act is in force shall be released whether on bail or bail bond or otherwise.

12-A. Special provisions for dealing with emergency.—(1) Notwithstanding anything contained in this Act or any rules of natural justice, the provisions of this section shall have effect during the period of operation of the Proclamation of Emergency issued under clause (1) of Article 352 of the Constitution on the 3rd day of December, 1971, or the Proclamation of Emergency issued under that clause on the 25th day of June, 1975, or a period of twenty four months from the 25th day of June, 1975, whichever period is the shortest.

(2) When making an order of detention under this Act against any person after the commencement of the Conservation of Foreign Exchange and Prevention of Smuggling Activities (Amendment) Act, 1975, the Central Government or the State Government or, as the case may be, the officer making the order of detention shall consider whether the detention of such person under this Act is necessary for dealing effectively with the emergency in respect of which the Proclamations referred to in sub-section (1) have been issued (hereafter in this section referred to as the emergency) and if, on such consideration, the Central Government or the State Government or, as the case may be, the officer is satisfied that it is necessary to detain such person for effectively dealing with the emergency, that Government or officer may make a declaration to that effect and communicate a copy of the declaration to the person concerned :

Provided that where such declaration is made by an officer, it shall be reviewed by the appropriate Government within fifteen days from the date of making of the declaration and such declaration shall cease to have effect unless it is confirmed by that Government, after such review, within the said

period of fifteen days.

(3) The question whether the detention of any person in respect of whom a declaration has been made under sub-section (2) continues to be necessary for effectively dealing with the emergency shall be reconsidered by the appropriate Government within four months from the date of such declaration and thereafter at intervals not exceeding four months, and if, on such reconsideration, it appears to the appropriate Government that the detention of the person is no longer necessary for effectively dealing with the emergency, the Government may revoke the declaration.

(4) In making any consideration, review or reconsideration under sub-section (2) or (3), the appropriate Government or officer may, if such Government or officer considers it to be against the public interest to do otherwise, act on the basis of the information and materials in its or his possession without disclosing the facts or giving an opportunity of making a representation to the person concerned.

(5) It shall not be necessary to disclose to any person detained under a detention order to which the provisions of sub-section (2) apply, the grounds on which the order has been made during the period the declaration made in respect of such person under that sub-section is in force, and, accordingly, such period shall not be taken into account for the purposes of sub-section (3) of Section 3.

(6) In the case of every person detained under a detention order to which the provisions of sub-section (2) apply, being a person in respect of whom a declaration has been made thereunder, the period during which such declaration is in force shall not be taken into account for the purpose of computing—

- (i) the periods specified in clauses (b) and (c) of Section 8;
- (ii) the periods of "one year" and "five weeks" specified in sub-section (1), the period of "one year" specified in sub-section (2) (i), and the period of "six months" specified in sub-section (3), of Section 9.

13. Protection of action taken in good faith.—No suit or other legal proceedings shall lie against the Central Government or a State Government, and no suit, prosecution or other legal proceedings shall lie against any person, for anything in good faith done or intended to be done in pursuance of this Act.

14. Repeal.—The Maintenance of Internal Security (Amendment) Ordinance, 1974 (11 of 1974), shall, on the commencement of this Act, stand repealed and accordingly the amendments made in the Maintenance of Internal Security Act, 1971 (26 of 1971), by the said Ordinance shall, on such commencement, cease to have effect.

LIST OF AMENDING ACTS

1. The Conservation of Foreign Exchange and Prevention of Smuggling Activities (Amendment) Act, 1975 (35 of 1975) (c.f.o. 1-7-1975).
2. The Conservation of Foreign Exchange and Prevention of Smuggling Activities (Amendment) Act, 1976 (20 of 1976) (c.f.o. 12-12-1975).

3. The Conservation of Foreign Exchange and Prevention of Smuggling Activities (Amendment) Act, 1976 (90 of 1976) (c.f.o. 16-6-1976).
 4. The Conservation of Foreign Exchange and Prevention of Smuggling Activities (Amendment) Act, 1984 (58 of 1984) (c.f.o. 13-7-1984).
 5. The Conservation of Foreign Exchange and Prevention of Smuggling Activities (Amendment) Act, 1987 (23 of 1987) (c.f.o. 2-7-1987).
 6. The Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Amendment) Act, 1988 (46 of 1988) (c.f.o. 4-7-1988).
 7. The Conservation of Foreign Exchange and Prevention of Smuggling Activities (Amendment) Act, 1990 (27 of 1990) (c.f.o. 30-7-1990).
 8. The Conservation of Foreign Exchange and Prevention of Smuggling Activities (Amendment) Act, 1993 (52 of 1993) (c.f.o. 25-6-1993).
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Appendix III

THE IMMORAL TRAFFIC (PREVENTION) ACT, 1956

[ACT NO. 104 OF 1956]

[AS AMENDED BY ACT NO. 44 OF 1986]

An Act to provide in pursuance of the International Convention signed at New York on the 9th day of May, 1950, for the prevention of immoral traffic

Be it enacted by Parliament in the Seventh Year of the Republic of India as follows :—

The Act has been drastically amended by Act No. 44 of 1986. The Provisions of the Amendment Act 44 of 1986 came into force w.e.f. 26-1-1987, *vide* Notification No. GSR 50(E), dated 21-1-1987. The following Statement of Object and Reasons was appended to the Bill No. XXX of 1986.

Statement of Objects and Reasons.—The Suppression of Immoral Traffic in Women and Girls Act, 1956 was enacted in pursuance of the International Convention for the Suppression of the Traffic in persons and of the Exploitation of the Prostitution of Others signed at New York on 9th May, 1950. It was amended in 1978 to make good some inadequacies in the implementation of the Act in the light of experience gained in its implementation. Despite the amendments to the Act in 1978, it has been felt that enforcement of the Act has not been effective enough to deal with the problem of immoral traffic in all its dimensions. Suggestions have been made to Government by voluntary organisations working for women, advocacy groups and various individuals urging the enlargement of the scope of the Act, to make penal provisions more stringent and to provide for certain minimum standards for correctional treatment and rehabilitation of the victims. In view of the aforementioned suggestions, it is proposed to widen the scope of the Act to cover all persons, whether male or female who are exploited sexually for commercial purposes and to make further amendments in the Act. The main amendments proposed are as follows :—

- (a) it is proposed to change the name of the Act to "The Immoral Traffic (Prevention) Act" in view of the widening of the scope of the Act to cover all persons, whether male or female, who are exploited sexually for commercial purposes;
- (b) it is proposed to make the offences under the Act involving children and minors more stringent by enhancing the period of imprisonment when offences are committed against children and minors;
- (c) trafficking police officers appointed under the Act will be empowered to investigate offence having inter-State

ramifications;

- (d) licensing authorities are being empowered to cancel licences of hotels where children or minors are detected to be used for purposes of prostitution;
- (e) in cases of seduction in custody, the punishment is sought to be enhanced to that laid down for rape in the Indian Penal Code;
- (f) Sections 10 and 12 of the Act, providing for the facility of release of convicted persons on probation of good conduct or after due admonition and on security from habitual offenders for good behaviour are proposed to be omitted from the Act;
- (g) provision is being made for medical examination of all persons removed from a brothel after a search has been carried out under Section 15;
- (h) it is proposed to provide that women or girls removed in pursuance of a search made under Section 15 shall be interrogated only by women police officers and where no women police officers are available, they shall be interrogated only in the presence of a woman social worker;
- (i) enabling provisions are being added in the Act to empower the Central Government to set up special courts with jurisdiction to try offences which have inter-State ramifications.

2. The other amendments proposed are minor or consequential in nature.

1. Short title, extent and commencement.—(1) This Act may be called The Immoral Traffic (Prevention), Act, 1956.

(2) It extends to the whole of India.

(3) This section shall come into force at once, and the remaining provisions of this Act shall come into force on such date as the Central Government may, by notification in the Official Gazette appoint.

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

- (a) "brothel" includes any house, room, conveyance, or place or any portion of any house, room, conveyance, or place, which is used for purposes of sexual exploitation or abuse for the gain of another person or for the mutual gain of two or more prostitutes;
- (aa) "child" means a person who has not completed the age of sixteen years;
- (b) "corrective institution" means an institution, by whatever name called (being an institution established or licensed as such under Section 21), in which persons, who are in need of correction, may be detained under this Act, and includes a shelter where under-trials may be kept in pursuance of this Act.

* * * *

- (c) "magistrate" means a magistrate specified in the second column of the Schedule as being competent to exercise the powers conferred by the section in which the expression occurs and which is specified in the first column of the Schedule;
- (ca) 'major' means a person who has completed the age of 18 years.

- (cb) "minor" means a person who has completed the age of sixteen years but has not completed the age of eighteen years;
- (d) "prescribed" means prescribed by rules made under this Act;
- (e) * * * *
- (f) "prostitution" means the sexual exploitation or abuse of persons for commercial purposes and the expression "prostitute" shall be construed accordingly;
- (g) "protective home" means an institution, by whatever name called (being an institution established or licensed as such under Section 21), in which persons, who are in need of care and protection, may be kept under this Act, and where appropriate technically qualified persons, equipment and other facilities have been provided but does not include—
 - (i) a shelter where undertrials may be kept in pursuance of this Act, or
 - (ii) a corrective institution;
- (h) "public place" means any place intended for use by, or accessible to, the public and includes any public conveyance;
- (i) "special police officer" means a police officer appointed by or on behalf of the State Government to be incharge of police duties within a specified area for the purpose of this Act;
- (j) "trafficking police officer" means a police officer appointed by the Central Government under sub-section (4) of Section 13.

2-A. Rule of construction regarding enactments not extending to Jammu and Kashmir.—Any reference in this Act to a law which is not in force in the State of Jammu and Kashmir shall, in relation to that State, be construed as a reference to the corresponding law, if any, in force in that State.

3. Punishment for keeping a brothel or allowing premises to be used as a brothel.—(1) Any person who keeps or manages, or acts or assists in the keeping or management of, a brothel, shall be punishable on first conviction with rigorous imprisonment for a term of not less than one year and not more than three years and also with fine which may extend to two thousand rupees and in the event of a second or subsequent conviction, with rigorous imprisonment for a term of not less than two years and not more than five years and also with fine which may extend to two thousand rupees.

- (2) Any person who—
 - (a) being the tenant, lessee, occupier or person in charge of any premises, uses, or knowingly allows any other person to use, such premises or any part thereof as a brothel, or
 - (b) being the owner, lessor or landlord of any premises or the agent of such owner, lessor or landlord, lets the same or any part thereof with the knowledge that the same or any part thereof is intended to be used as a brothel, or is wilfully a party to the use of such premises or any part thereof as a brothel,

shall be punishable on first conviction with imprisonment for a term which

may extend to two years and with fine which may extend to two thousand rupees and in the event of a second or subsequent conviction, with rigorous imprisonment for a term which may extend to five years and also with fine.

(2-A) For the purposes of sub-section (2), it shall be presumed, until the contrary is proved that any person referred to in clause (a) or clause (b) of that sub-section, is knowingly allowing the premises or any part thereof to be used as a brothel or as the case may be, has knowledge that the premises or any part thereof are being used as a brothel, if,—

- (a) a report is published in a newspaper having circulation in the area in which such person resides to the effect that the premises or any part thereof have been found to be used for prostitution as a result of a search made under this Act; or
- (b) a copy of the list of all things found during the search referred to in clause (a) is given to such person.

(3) Notwithstanding anything contained in any other law for the time being in force, on conviction of any person referred to in clause (a) or clause (b) of sub-section (2) of any offence under that sub-section in respect of any premises or any part thereof, any lease or agreement under which such premises have been leased out or are held or occupied at the time of the commission of the offence, shall become void and inoperative with effect from the date of the said conviction.

4. Punishment for living on the earnings of prostitution.—(1)

Any person over the age of eighteen years who knowingly lives, wholly or in part, on the earnings of the prostitution of any other person shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both and where such earnings relate to the prostitution of a child or a minor shall be punishable with imprisonment for a term of not less than seven years and not more than ten years.

(2) Where any person over the age of eighteen years is proved—

- (a) to be living with, or to be habitually in the company of, a prostitute; or
- (b) to have exercised control, direction or influence over the movements of a prostitute in such a manner as to show that such person is aiding, abetting or compelling his prostitution; or
- (c) to be acting as a tout or piinp on behalf of a prostitute,

it shall be presumed, until the contrary is proved, that such person is knowingly living on the earnings of prostitution of another person within the meaning of sub-section (1).

5. Procuring, inducing or taking person for the sake of prostitution.—(1) Any person who—

- (a) procures or attempts to procure a person whether with or without his consent, for the purpose of prostitution; or
- (b) induces a person to go from any place, with the intent that he may for the purpose of prostitution become the inmate of, or frequent, a brothel;
- (c) takes or attempts to take a person or causes a person to be taken,

from one place to another with a view to his carrying on, or being brought up to carry on prostitution; or

(d) causes or induces a person to carry on prostitution :

shall be punishable on conviction with rigorous imprisonment for a term of not less than three years and not more than seven years and also with fine which may extend to two thousand rupees, and if any offence under this sub-section is committed against the will of any person, the punishment of imprisonment for a term of seven years shall extend to imprisonment for a term of fourteen years :

Provided that if the person in respect of whom an offence committed under this sub-section,—

- (i) is a child, the punishment provided under this sub-section shall extend to rigorous imprisonment for a term of not less than seven years but may extend to life; and
- (ii) is a minor, the punishment provided under this sub-section shall extend to rigorous imprisonment for a term of not less than seven years and not more than fourteen years;

(2) * * * *

(3) An offence under this section shall be triable—

- (a) in the place from which a person is procured, induced to go, taken or caused to be taken or from which an attempt to procure or take such person is made; or
- (b) in the place to which he may have gone as a result on the inducement or to which he is taken or caused to be taken or an attempt to take him is made.

6. Detaining a Person in premises where prostitution is carried on.—

(1) Any person who detains any other person, whether with or without his consent.

(a) in any brothel, or

(b) in or upon any premises with intent that such person may have sexual intercourse with a person who is not the spouse of such person,

shall be punishable on conviction, with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine :

Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than seven years.

(2) Where any person is found with a child in a brothel, it shall be presumed, unless the contrary is proved, that he has committed an offence under sub-section (1).

(2-A) Where a child or minor found in a brothel, is, on medical examination, detected to have been sexually abused, it shall be presumed unless the contrary is proved, that the child or minor has been detained for purposes of prostitution or, as the case may be, has been sexually exploited

for commercial purposes.

(3) A person shall be presumed to detain a woman or girl in a brothel or in or upon any premises for the purpose of sexual intercourse with a man other than her lawful husband, if such person, with intent to compel or induce her to remain there,—

- (a) withholds from her any jewellery, wearing apparel, money or other property belonging to her, or
- (b) threatens her with legal proceedings if she takes away with her any jewellery, wearing apparel, money or other property lent or supplied to her by or by the direction of such person.

(4) Notwithstanding any law to the contrary, no suit, prosecution or other legal proceeding shall lie against such woman or girl at the instance of the person by whom she has been detained, for the recovery of any jewellery, wearing apparel or other property alleged to have been lent or supplied to or for such woman or girl or to have been pledged by such woman or girl or for the recovery of any money alleged to be payable by such woman or girl.

7. Prostitution in or in the vicinity of public places.—(1) Any person, who carries on prostitution and the person with whom such prostitution is carried on, in any premises—

- (a) which are within the area or areas, notified under sub-section (3), or,
- (b) which are within a distance of two hundred metres of any place of public religious worship, educational institution, hostel, hospital, nursing home or such other public place of any kind as may be notified in this behalf by the Commissioner of Police or Magistrate in the manner prescribed,

shall be punishable with imprisonment for a term which may extend to three months.

(1-A) Where an offence committed under sub-section (1) is in respect of a child or minor, the person committing the offence shall be punishable with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine :

Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than seven years.

(2) Any person who—

- (a) being the keeper of any public place knowingly permits prostitutes for purposes of their trade to resort to or remain such place; or
- (b) being the tenant, lessee, occupier or person in charge of any premises referred to in sub-section (1) knowingly permits the same or any part thereof to be used for prostitution; or
- (c) being the owner, lessor or landlord of any premises referred to in sub-section (1), or the agent of such owner, lessor or landlord, lets the same or any part thereof with the knowledge that the same or any part thereof may be used for prostitution, or is

wilfully a party to such use, shall be punishable on first conviction with imprisonment for a term which may extend to three months, or with fine which may extend to two hundred rupees, or with both, and in the event of a second or subsequent conviction with imprisonment for a term which may extend to six months and also with fine which may extend to two hundred rupees, and if the public place or premises happen to be a hotel, the licence for carrying on the business of such hotel under any law for the time being in force shall also be liable to be suspended for a period of not less than three months but which may extend to one year :

Provided that if an offence committed under this sub-section is in respect of a child or minor in a hotel, such licence shall also be liable to be cancelled.

Explanation.—For the purposes of this sub-section, "hotel" shall have the meaning as in clause (6) of Section 2 of the Hotel-Receipts Tax Act, 1980 (54 of 1980).

(3) The State Government may, having regard to the kinds of persons frequenting any area or areas in the State, the nature and the density of population therein and other relevant considerations, by notification in the official *Gazette*, direct that prostitution shall not be carried on in such area or areas as may be specified in the notification.

(4) Where a notification is issued under sub-section (3) in respect of any area or areas, the State Government shall define the limits of such area or areas in the notification with reasonable certainty.

(5) No such notification shall be issued so as to have effect from a date earlier than the expiry of a period of ninety days after the date on which it is issued.

8. Seducing or soliciting for purpose of prostitution.—Whoever, in any public place or within sight of, and in such manner as to be seen or heard from any public place, whether from within any building or house or not—

- (a) by words, gestures, wilful exposure of his person (whether by sitting by a window or on the balcony of a building or house or in any other way), or otherwise tempts or endeavours to tempt, or attracts or endeavours to attract the attention of, any person for the purpose of prostitution; or
- (b) solicits or molests any person, or loiters or acts in such manner as to cause obstruction or annoyance to persons residing nearby or passing by such public place or to offend against public decency, for the purpose of prostitution,

shall be punishable on first conviction with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both, and in the event of a second or subsequent conviction, with imprisonment for a term which may extend to one year, and also with fine which may extend to five hundred rupees :

Provided that where an offence under this section is committed by a man, he shall be punishable with imprisonment for a period of not less than seven days but which may extend to three months.

9. Seduction of a person in custody.—Any person who having the custody, charge or care of any of, or a position of authority over any person cause or aids or abets the seduction for prostitution of that person shall be punishable on conviction with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine :

Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than seven years.

(2) * * * *

10. Release on probation of good conduct or after due admonition. [Omitted].

10-A. Detention in a corrective institution.—Where—

- (a) a female offender is found guilty of an offence under Section 7 or Section 8; and
- (b) the character, state of health and mental condition of the offender and the other circumstances of the case are such that it is expedient that she should be subjected to detention for such term and such instruction and discipline as are conducive to her correction,

it shall be lawful for the court to pass, in lieu of a sentence of imprisonment, an order for detention in corrective institution for such term, not being less than two years and not being more than five years, as the court thinks fit :

Provided that before passing such an order—

- (i) the court shall give an opportunity to the offender to be heard and shall also consider any representation which the offender may make to the court as to the suitability of the case for treatment in such an institution, as also the report of the Probation Officer appointed under the Probation of Offenders Act, 1958 (20 of 1958); and
- (ii) the court shall record that it is satisfied that the character, state of health and mental condition of the offender and the other circumstances of the case are that the offender is likely to benefit by such instruction and discipline as aforesaid.

(2) Subject to the provisions of sub-section (3), the provisions of the Code of Criminal Procedure, 1973 (2 of 1974), relating to appeal, reference and revision, and of the Limitation Act, 1963 (36 of 1963), as to the period within which an appeal shall be filed, shall apply in relation to an order of detention under sub-section (1) as if the order had been a sentence of imprisonment for the same period as the period for which the detention was ordered.

(3) Subject to such rules as may be made in this behalf, the State Government or authority authorised in this behalf may, at any time after the expiration of six months from the date of an order for detention in a corrective institution, if it is satisfied that there is a reasonable probability that the offender will lead a useful and industrious life, discharge her from such an institution, without condition or with such conditions as may be considered fit, and grant her a written licence in such form as may be

prescribed.

(4) The conditions on which an offender is discharged under sub-section (3), may include requirements relating to residence of the offender and supervision over the offender's activities and movements.

11. Notification of address of previously convicted offenders.—(1) When any person having been convicted—

- (a) by a court in India of an offence punishable under this Act or punishable under Section 363, Section 365, Section 366, Section 366-A, Section 366-B, Section 367, Section 368, Section 370, Section 371, Section 372 or Section 373 of the Indian Penal Code (45 of 1860), imprisonment for a term of two years or upwards; or
- (b) by a court or tribunal in any other country of an offence which would, if committed in India, have been punishable under this Act or under any of the aforesaid sections with imprisonment for a like term,

is within a period of five years after release from prison, again convicted of any offence punishable under this Act or under any of those sections with imprisonment for a term of two years or upwards by a court, such court may if it thinks fit, at the time of passing the sentence of imprisonment on such person, also order that his residence, and any change of, or absence from, such residence, after release be notified according to rules made under Section 23 for a period not exceeding five years from the date of expiration of that sentence.

(2) If such conviction is set aside on appeal or otherwise, such order shall become void.

(3) An order under this section may also be made by an Appellate Court or by the High Court when exercising its powers of revision.

(4) Any person charged with a breach of any rule referred to in sub-section (1) may be tried by a magistrate of competent jurisdiction in the district in which the place last notified as his residence is situated.

12. Security for good behaviour from habitual offenders. [Omitted].

13. Special police officer and advisory body.—(1) There shall be for each area to be specified by the State Government in this behalf a special police officer appointed by or on behalf of that Government for dealing with offences under this Act in that area.

(2) The special police officer shall not be below the rank of an Inspector of Police.

(2-A) The District Magistrate may, if he considers it necessary or expedient so to do, confer upon any retired police or military officer all or any of the powers conferred by or under this Act on a special police officer, with respect to particular cases or classes of cases or to cases generally.

Provided that no such power shall be conferred on—

- (a) a retired police officer unless such officer, at the time of his retirement, was holding a post not below the rank of an inspector;
- (b) a retired military officer unless such officer at the time of his

retirement was holding a post not below the rank of a commissioned officer.

(3) For the efficient discharge of his functions in relation to offences under this Act—

- (a) the special police officer of an area shall be assisted by such number of subordinate police officers (including women police officer wherever practicable) as the State Government may think fit; and
- (b) the State Government may associate with the special police officer a non-official advisory body consisting of not more than five leading social welfare workers of that area (including women social welfare workers wherever practicable) to advise him on questions of general importance regarding the working of this Act.

(4) The Central Government may, for the purpose of investigating any offence under this Act or under any other law for the time being in force dealing with sexual exploitation of persons committed in more than one State, appoint such number of police officers as trafficking police officers and they shall exercise all the powers and discharge all the functions as are exercisable by special police officers under this Act with the modification that they shall exercise such powers and discharge such functions in relation to the whole of India.

14. Offences to be cognizable.—Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), any offence punishable under this Act shall be deemed to be a cognizable offence within the meaning of that Code :

Provided that, notwithstanding anything contained in that Code,—

- (i) arrest without warrant may be made only by the special police officer or under his direction or guidance, or subject to his prior approval;
- (ii) when the special police officer requires any officer subordinate to him to arrest without warrant otherwise than in his presence any person for an offence under this Act, he shall give that subordinate officer an order in writing, specifying the person to be arrested and the offence for which the arrest is being made; and the latter officer before arresting the person shall inform him of the substance of the order and, on being required by such person, show him the order;
- (iii) any police officer not below the rank of sub-inspector specially authorised by the special police officer may, if he has reason to believe that on account of delay involved in obtaining the order of the special police officer, any valuable evidence relating to any offence under this Act is likely to be destroyed or concealed, or the person who has committed or is suspected to have committed the offence is likely to escape, or if the name and address of such a person is unknown or there is reason to suspect that a false name or address has been given, arrest the person concerned without such order, but in such a case he shall report, as soon

as may be, to the special police officer the arrest and the circumstances in which the arrest was made.

15. Search without warrant.—(1) Notwithstanding anything contained in any other law for the time being in force, whenever the special police officer or the trafficking police officer, as the case may be, has reasonable grounds for believing that an offence punishable under this Act has been or is being committed in respect of a person living in any premises, and that search of the premises with warrant cannot be made without undue delay, such officer may, after recording the grounds of his belief, enter and search such premises without a warrant.

(2) Before making a search under sub-section (1), the special police officer or the trafficking police officer, as the case may be, shall call upon two or more respectable inhabitants (at least one of whom shall be a woman) of the locality in which the place to be searched is situate, to attend and witness the search and may issue an order in writing to them or any of them so to do :

Provided that the requirement as to the respectable inhabitants being from the locality in which the place to be searched is situate shall not apply to a woman required to attend and witness the search.

(3) Any person who, without reasonable cause, refuses or neglects, to attend and witness a search under this section, when called upon to do so by an order in writing delivered or tendered to him, shall be deemed to have committed an offence under Section 187 of the Indian Penal Code (45 of 1860).

(4) The special police officer or the trafficking police officer, as the case may be, entering any premises under sub-section (1) shall be entitled to remove therefrom all the persons found therein.

(5) The special police officer or the trafficking police officer, as the case may be, after removing the person under sub-section (4) shall forthwith produce him before the appropriate magistrate.

(5-A) Any person who is produced before a magistrate under sub-section (5), shall be examined by a registered medical practitioner for the purposes of determination of the age of such person, or for the detection of any injuries as a result of sexual abuse or for the presence of any sexually transmitted disease.

Explanation.—In this sub-section "registered medical practitioner" has the same meaning as in the Indian Medical Council Act, 1956.

(6) The special police officer or the trafficking police officer, as the case may be, and other persons^s taking part in, or attending, and witnessing a search shall not be liable to any civil or criminal proceedings against them in respect of anything lawfully done in connection with, or for the purpose of the search.

(6-A) The special police officer or the trafficking police officer, as the case may be, making a search under this section shall be accompanied by at least two women police officers, and where any woman or girl removed under sub-section (4) is required to be interrogated, it shall be done by a woman police officer and if no woman police officer is available, the interrogation shall be done only in the presence of a lady member of a

recognised welfare institution or organisation.

Explanation.—For the purposes of this sub-section and Section 17-A, "recognised welfare institution or organisation" means such institution or organisation as may be recognised in this behalf by the State Government.

(7) The provision of the Code of Criminal Procedure, 1973 (2 of 1974), shall, so far as may be, apply to any search under this section as they apply to any search made under the authority of a warrant issued under Section 94 of the said Code.

16. Rescue of person.—(1) Where a magistrate has reason to believe from information received from the police or any other person authorised by the State Government in this behalf or otherwise, that any person is living, or is carrying on, or is being made to carry on, prostitution in a brothel, he may direct a police officer not below the rank of a sub-inspector to enter such brothel, and to remove therefrom such person, and produce before him.

(2) The police officer, after removing the person, shall forthwith produce him, before the magistrate issuing the order.

17. Intermediate custody of person, removed under Section 15 or rescued under Section 16.—(1) When the special police officer removing a person, under sub-section (4) of Section 15 or a police officer rescuing a person, under sub-section (1) of Section 16, is for any reason unable to produce him before the appropriate magistrate as required by sub-section (5) of Section 15, or before the magistrate issuing the order under sub-section (2) of Section 16, he shall forthwith produce him before the nearest magistrate of any class, who shall pass such orders as he deems proper for his safe custody until he is produced before the appropriate magistrate, or, as the case may be, the magistrate issuing the order :

Provided that no person shall be—

- (i) detained in custody under this sub-section for a period exceeding ten days from the date of the order under this sub-section; or
- (ii) restored to or placed in the custody of a person who may exercise a harmful influence over him.

(2) Where the person, is produced before the appropriate magistrate under sub-section (4) of Section 15 or the magistrate under sub-section (2) of Section 16, he shall, after giving him an opportunity of being heard, cause an inquiry to be made as to the correctness of the information received under sub-section (1) of Section 16, the age, character and antecedents of the person and the suitability of his parents, guardian or husband for taking charge of him and the nature of the influence which the conditions in his home are likely to have on him if he is sent home, and, for this purpose, he may direct a probation officer appointed under the Probation of Offenders Act, 1958 (20 of 1958), to inquire into the above circumstances and into the personality of the person and the prospects of his rehabilitation.

(3) The magistrate may, while an inquiry is made into a case under sub-section (2) pass such orders as he deems proper for the safe custody of the person :

Provided that where a person rescued under Section 16 is a child or minor, it shall be open to the magistrate to place such child or minor in any institution established or recognised under any Children Act for the time

being in force in any State for the safe custody of children :

Provided further that, no person, shall be kept in custody for this purpose for a period exceeding three weeks from the date of such an order, and no person shall be kept in the custody of a person likely to have a harmful influence over him.

(4) Where the magistrate is satisfied, after making an inquiry as required under sub-section (2),—

- (a) that the information received is correct; and
- (b) that he is in need of care and protection,

he may, subject to the provisions of sub-section (5), make an order that such person be detained for such period, being not less than one year and not more than three years, as may be specified in the order, in a protective home, or in such other custody as he shall, for reasons to be recorded in writing, consider suitable :

Provided that such custody shall not be that of a person or body of persons of a religious persuasion different from that of the person and that charge of a protective home, may be required to enter into a bond which may, where necessary and feasible, contain undertakings based on directions relating to the proper care, guardianship, education, training and medical and psychiatric treatment of the person as well as supervision by a person appointed by the court, which will be in force for a period not exceeding three years.

(5) In discharging his functions under sub-section (2), a magistrate may summon a panel of five respectable persons, three of whom, shall, wherever practicable, be women, to assist him; and may, for this purpose, keep a list of experienced social welfare workers, particularly women social welfare workers, in the field of [suppression of]¹ immoral traffic in person.

(6) An appeal against an order made under sub-section (4) shall lie to the Court of Session whose decision on such appeal shall be final.

17-A. Conditions to be observed before placing persons rescued under Section 16 to parents or guardians.—Notwithstanding anything contained in sub-section (2) of Section 17, the magistrate making an inquiry under Section 17 may, before passing an order for handing over any person rescued under Section 16 to the parents, guardian or husband, satisfy himself about the capacity or genuineness of the parents, guardian or husband to keep such person by causing an investigation to be made by a recognised welfare institution or organisation.

18. Closure of brothel and eviction of offenders from the premises.—(1) A magistrate may, on receipt of information from the police or otherwise, that any house, room, place or any portion thereof within a distance of two hundred metres of any public place referred to in sub-section (1) of Section 7, is being run or used as a brothel by any person, or is being used by prostitutes for carrying on their trade, issue notice on the owner, lessor or landlord of such house, room, place or portion or the agent of the owner, lessor or landlord or on the tenant, lessee, occupier of, or any other person in charge of such house, room, place or portion, to show cause within seven days of the receipt of the notice why the same should not be attached

1. In view of change in the long title should be now "Prevention of."

for improper user thereof; and if, after hearing the person concerned, the magistrate is satisfied that the house, room, place or portion is being used as a brothel or for carrying on prostitution, then the magistrate may pass orders—

- (a) directing eviction of the occupier within seven days of the passing of the order from the house, room, place or portion;
- (b) directing that before letting it out during the period of one year, or in a case where a child or minor has been found in such house, room, place or portion during a search under Section 15, during the period of three years, immediately after the passing of the order, the owner, lessor or landlord or the agent of the owner, lessor or landlord shall obtain the previous approval of the magistrate :

Provided that, if the magistrate finds that the owner, lessor or landlord as well as the agent of the owner, lessor or landlord, was innocent of the improper user of the house, room, place or portion, he may cause the same to be restored to the owner, lessor or landlord, or the agent of the owner, lessor or landlord, with a direction that the house, room, place or portion shall not be leased out, or otherwise given possession of, to or for the benefit of the person who was allowing the improper user therein.

(2) A court convicting a person of any offence under Section 3 or Section 7 may pass orders under sub-section (1), without further notice to such person to show cause as required in that sub-section.

(3) Orders passed by the magistrate or court under sub-section (1) or sub-section (2) shall not be subject to appeal and shall not be stayed or set aside by the order of any court, civil or criminal, and the said orders shall cease to have validity after the expiry of one year, or three years, as the case may be :

Provided that where a conviction under Section 3 or Section 7 is set aside in appeal on the ground that such house, place or any portion thereof is not being run or used as a brothel or is not being used by prostitutes for carrying on their trade, any order passed by the trial Court under sub-section (1) shall also be set aside.

(4) Notwithstanding anything contained in any other law for the time being in force, when a magistrate passes an order under sub-section (1), or a court passes an order under sub-section (2), any lease or agreement under which the house, room, place or portion is occupied at the time shall become void and inoperative.

(5) When an owner, lessor or landlord, or the agent of such owner, lessor or landlord fails to comply with a direction given under clause (b) of sub-section (1) he shall be punishable with fine which may extend to five hundred rupees or when he fails to comply with a direction under the proviso to that sub-section, he shall be deemed to have committed an offence under clause (b) of sub-section (2) of Sections 3 or clause (c) of sub-section (2) of Section 7, as the case may be, and punished accordingly.

19. Application for being kept in a protective home or provided care and protection by court.—(1) A person who is carrying on, or is being made to carry on, prostitution, may make an application, to the

magistrate within the local limits of whose jurisdiction he is carrying on, or is being made to carry on, prostitution, for an order that he may be—

- (a) kept in a protective home, or
- (b) provided care and protection by the court in the manner specified in sub-section (3).

(2) The magistrate may, pending inquiry under sub-section (3), direct that the person be kept in such custody as he may consider proper, having regard to the circumstances of the case.

(3) If the magistrate, after hearing the applicant and making such inquiry as he may consider necessary, including an inquiry by a Probation Officer appointed under the Probation of Offenders Act, 1958 (20 of 1958), into the personality, conditions of home and prospects of rehabilitation of the applicant, is satisfied that an order should be made under this section, he shall for reasons to be recorded, make an order that the applicant be kept,—

- (i) in a protective home, or
- (ii) in a corrective institution, or
- (iii) under the supervision, of a person appointed by the magistrate, for such period as may be specified in the order.

20. Removal of prostitute from any place.—(1) A magistrate on receiving information that any person residing in or frequenting any place within the local limits of his jurisdiction is a prostitute may record the substance of the information received and issue a notice to such person requiring him to appear before the magistrate and show cause why he should not be required to remove himself from the place and be prohibited from re-entering it.

(2) Every notice issued under sub-section (1) shall be accompanied by a copy of the record aforesaid, and the copy shall be served along with the notice on the person against whom the notice is issued.

(3) The magistrate shall after the service of the notice referred to in sub-section (2), proceed to inquire into the truth of the information received, and after giving the person an opportunity of adducing evidence, take such further evidence, as he thinks fit, and if upon such inquiry it appears to him that such person is a prostitute and that it is necessary in the interest of the general public that such person should be required to remove himself therefrom and be prohibited from re-entering the same, the magistrate shall by order in writing communicate to the person in the manner specified therein, require him after a date (to be specified in the order) which shall not be less than seven days from the date of the order, to remove himself from the place to such place whether within or without the local limits of his jurisdiction, by such route or routes and within such time as may be specified in the order and also prohibit him from re-entering the place without the permission in writing of the magistrate having jurisdiction over such place.

(4) Whoever—

- (a) fails to comply with an order issued under this section, within the period specified therein, or whilst an order prohibiting him from re-entering a place without permission is in force, re-enters the place without such permission, or

- (b) knowing that any person has, under this section, been required to remove himself from the place and has not obtained the requisite permission to re-enter it, harbours or conceals such person in the place,

shall be punishable with fine which may extend to two hundred rupees and in the case of a continuing offence with an additional fine which may extend to twenty rupees for every day after the first during which she or he has persisted in the offence.

21. Protective homes.—(1) The State Government may in its discretion establish as many protective homes and corrective institutions under this Act as it thinks fit and such homes and institutions when established, shall be maintained in such manner as may be prescribed.

(2) No person or no authority other than the State Government shall, alter the commencement of this Act, establish or maintain any protective home or corrective institution except under and in accordance with the conditions of a licence issued under this section by the State Government.

(3) The State Government may, on application made to it in this behalf by a person or authority, issue to such person or authority a licence in the prescribed form for establishing and maintaining or as the case may be, for maintaining a protective home or corrective institution and a licence so issued may contain such conditions as the State Government may think fit to impose in accordance with the rules made under this Act :

Provided that any such condition may require that the management of the protective home or corrective institution shall, wherever practicable, be entrusted to women :

Provided further that a person or authority maintaining any protective home at the commencement of this Act shall be allowed a period of six months from such commencement to make an application for such licence.

Provided also that a person or authority maintaining any corrective institution at the commencement of the Suppression of Immoral Traffic in Women and Girls (Amendment) Act, 1978 (46 of 1978), shall be allowed a period of six months from such commencement to make an application for such licence.

(4) Before issuing a licence the State Government may require such officer or authority as it may appoint for the purpose, to make a full and complete investigation in respect of the application received in this behalf and report to it the result of such investigation and in making any such investigation the officer or authority shall follow such procedure as may be prescribed.

(5) A licence, unless sooner revoked, shall remain in force for such period as may be specified in the licence and may, on application made in this behalf at least thirty days before the date of its expiration be renewed for a like period.

(6) No licence issued or renewed under this Act shall be transferable.

(7) Where any person or authority to whom a licence has been granted under this Act or any agent or servant of such person or authority commits a breach of any of the conditions thereof or any of the provisions of this Act or of any of the rules made under this Act, or where the State Government

is not satisfied with the condition, management or superintendence of any protective home or corrective institution the State Government may, without prejudice to any other penalty which may have been incurred under this Act, for reasons to be recorded, revoke the licence by order in writing :

Provided that no such order shall be made until an opportunity is given to the holder of the licence to show cause why the licence shall not be revoked.

(8) Where a licence in respect of a protective home or corrective institution has been revoked under the foregoing sub-section such protective home shall cease to function from the date of such revocation.

(9) Subject to any rules that may be made in this behalf, the State Government may also vary or amend any licence issued or renewed under this Act.

(9-A) The State Government or any authority authorised by it in this behalf may, subject to any rules that may be made in this behalf, transfer an inmate of a protective home to another protective home or to a corrective institution or an inmate of a corrective institution to another corrective institution or to a protective home, where such transfer is considered desirable having regard to the conduct of the person to be transferred, the kind of training to be imparted and other circumstances of the case :

Provided that—

- (a) no person who is transferred under this sub-section shall be required to stay in the home or institution to which he is transferred for a period longer than she was required to stay in the home or institution from which she was transferred;
- (b) reasons shall be recorded for every order of transfer under this sub-section.

(10) Whoever establishes or maintains a protective home or corrective institution except in accordance with the provisions of this section, shall be punishable in the case of a first offence with fine which may extend to one thousand rupees and in the case of second or subsequent offence with imprisonment for a term which may extend to one year, or with fine which may extend to two thousand rupees or with both.

21-A. Production of records.—Every person or authority who is licensed under sub-section (3) of Section 21 to establish or maintain, or, as the case may be, for maintaining, protective home or corrective institution shall whenever required by a court, produce the records and other documents maintained by such home or institution before such court.

22. Trials.—No court, inferior to that of metropolitan magistrate or a judicial magistrate of the first class shall try any offence under Section 3, Section 4, Section 5, Section 6, Section 7 or Section 8.

22-A. Power to establish Special Courts.—(1) If the State Government is satisfied that it is necessary for the purpose of providing for speedy trial of offences under this Act in any district or metropolitan area, it may, by notification in the official Gazette and after consultation with the High Court, establish one or more Courts of Judicial Magistrates of the first class, or as the case may be, Metropolitan Magistrates, in such district or metropolitan area.

(2) Unless otherwise directed by the High Court, a court established under sub-section (1) shall exercise jurisdiction only in respect of cases under this Act.

(3) Subject to the provisions of sub-section (2), the jurisdiction and powers of the presiding officer of a court established under sub-section (1) in any district or metropolitan area shall extend throughout the district or the metropolitan area, as the case may be.

(4) Subject to the foregoing provisions of the section, a court established under sub-section (1) in any district or metropolitan area shall be deemed to be a court established under sub-section (1) of Section 11, or, as the case may be, sub-section (1) of Section 16, of the Code of Criminal Procedure, 1973 (2 of 1974) and the provisions of that Code shall apply accordingly in relation to such courts.

Explanation.—In this section, "High Court" has the same meaning as in clause (e) of Section 2 of the Code of Criminal Procedure, 1973 (2 of 1974).

22-AA. Power of Central Government to establish special courts.—(1) If the Central Government is satisfied that it is necessary for the purpose of providing for speedy trial of offences under this Act and committed in more than one State, it may, by notification in the official Gazette and after consultation with the High Court concerned, establish one or more courts of Judicial Magistrates of the first class or Metropolitan Magistrates for the trial of such offences.

(2) The provisions of Section 22-A, shall, so far as may be, apply to the courts established under sub-section (1), as they apply to courts established under that section.

22-B. Power of court to try cases summarily.—Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the State Government may, if it considers it necessary to do so, direct that offences under this Act shall be tried in a summary way by a magistrate including the presiding officer of a court established under sub-section (1) of Section 22-A and the provisions of Sections 262 to 265 (both inclusive) of the said Code, shall, as far as may be, apply to such trial :

Provided that in the case of any conviction in a summary trial under this section, it shall be lawful for the magistrate to pass a sentence of imprisonment for a term not exceeding one year :

Provided further that when at the commencement of, or in the course of, a summary trial under this section, it appears to the magistrate that the nature of the case is such that a sentence of imprisonment for a term exceeding one year may have to be passed or that it is, for any other reason, undesirable to try the case summarily, the magistrate shall, after hearing the parties record an order to the effect and thereafter recall any witness, who may have been examined and proceed to hear or rehear the case in the manner provided by the said Code.

23. Power to make rules.—(1) The State Government may, by notification in the official Gazette, make rules for carrying on the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for—

- (a) the notification of any place as a public place;
- (b) the placing in custody of persons for whose safe custody orders have been passed under sub-section (1) of Section 17 and their maintenance;
- (bb) the discharge of an offender under sub-section (3) of Section 10-A from a corrective institution and the form of licence to be granted to such offender;
- (c) the detention and keeping in protective homes or, as the case may be, in corrective institutions of persons under this Act and their maintenance;
- (d) the carrying out of the provisions of Section 11 regarding notification of residence or change of or absence of a residence by released convicts;
- (e) the delegation of authority to appoint the special police officer under sub-section (1) of Section 13;
- (f) the carrying into effect of the provisions of Section 18;
- (g)(i) the establishment, maintenance, management and superintendence of protective homes and corrective institutions under Section 21 and the appointment, powers and duties of persons employed in such homes or institutions;
- (ii) the form in which an application for a licence may be made and the particulars to be contained in such application;
- (iii) the procedure for the issue or renewal of a licence, the time within which such licence shall be issued or renewed and the procedure to be followed in making a full and complete investigation in respect of an application for a licence;
- (iv) the form of a licence and the conditions to be specified therein;
- (v) the manner in which the accounts of a protective home and a corrective institution shall be maintained and audited;
- (vi) the maintenance of registers and statements by a licensee and the form of such registers and statements;
- (vii) the care, treatment, maintenance, training, instruction, control and discipline of the inmates of protective homes and corrective institutions;
- (viii) the visits to and communication with such inmates;
- (ix) the temporary detention of persons sentenced to detention in protective homes or in corrective institutions until arrangements are made for sending them to such homes or institutions;
- (x) the transfer of an inmate from—
 - (a) one protective home to another, or to a corrective institution,
 - (b) one corrective institution to another or to a protective home under sub-section (9-A) of Section 21;
- (xi) the transfer in pursuance of an order of the court from a protective home or a corrective institution to a prison of a person found to be incorrigible or exercising bad influence upon other inmates of the protective home or the corrective institution and

- the period of her detention in such prison;
- (xii) the transfer to a protective home or corrective institution or persons sentenced under Section 7 or Section 8 and the period of their detention in such home or institution;
 - (xiii) the discharge of inmates from a protective home or corrective institution either absolutely or subject to conditions, and their arrest in the event of breach of such conditions;
 - (xiv) the grant of permission to inmates to absent themselves for short periods;
 - (xv) the inspection of protective homes and corrective institutions and other institutions in which persons may be kept, detained and maintained;
 - (h) any other matter which has to be, or may be, prescribed.

(3) In making any rule under clause (d) or clause (g) of sub-section (2) the State Government may provide that a breach thereof shall be punishable with fine which may extend to two hundred and fifty rupees.

(4) All rules made under this Act shall, as soon as may be after they are made, be laid before the State Legislature.

24. Act not to be in derogation of certain other Acts.—Nothing in this Act shall be construed to be in derogation of the provisions of the Reformatory Schools Act, 1897 (8 of 1897) or any State Act enacted in modification of the said Act or otherwise, relating to juvenile offenders.

25. Repeal and savings.—(1) As from the date of the coming into force in any State of the provisions other than Section 1 of this Act, all State Acts relating to suppression of immoral traffic in persons or to the prevention of prostitution, in force in that State immediately before such date shall stand repealed.

(2) Notwithstanding the repeal by this Act or any State Act referred to in sub-section (1), anything done or any action taken (including any direction given, any register, rule or order made, any restriction imposed) under the provision of such State Act shall in so far as such thing or action is not inconsistent with the provisions of this Act be deemed to have been done or taken under the provisions of this Act as if the said provisions were in force when such thing was done or such action was taken and shall continue in force accordingly until superseded by anything done or any action taken under this Act.

Explanation.—In this section the expression ‘State Act’ includes a Provincial Act.

THE SCHEDULE

[See Section 2(c)]

Section	Magistrate competent to exercise the powers
7(1)	District Magistrate.
11(4)	Metropolitan Magistrate or Judicial Magistrate of the first class.

*

* * *

- 15(5) Metropolitan Magistrate, Judicial Magistrate of the first class, District Magistrate or Sub-Divisional Magistrate.
- 16 Metropolitan Magistrate, Judicial Magistrate of the first class District Magistrate or Sub-Divisional Magistrate.
- 18 District Magistrate or Sub-Divisional Magistrate.
- 19 Metropolitan Magistrate, Judicial Magistrate of the first class, District Magistrate or Sub-Divisional Magistrate.
- 20 District-Magistrate, Sub-Divisional Magistrate or any Executive Magistrate specially empowered by the State Government.
- 22-B Metropolitan Magistrate, or Judicial Magistrate of the first class.
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THE DOWRY PROHIBITION ACT, 1961

(ACT 28 OF 1961)

[20th May, 1961]

An Act to prohibit the giving or taking of dowry

Be it enacted by Parliament in the Twelfth Year of the Republic of India as follows :

1. Short title, extent and commencement.—(1) This Act may be called the Dowry Prohibition Act, 1961.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. Definition of 'dowry'.—In this Act, "dowry" means any property or valuable security given or agreed to be given either directly or indirectly—

(a) by one party to a marriage to the other party to the marriage; or

(b) by the parent of either party to a marriage or by any other person, to either party to the marriage or to any other person,

at or before or any time after the marriage in connection with the marriage of the said parties, but does not include dower or *mahr* in the case of persons to whom the Muslim Personal Law (*Shariat*) applies.

Explanation I.— * **

Explanation II.—The expression "valuable security" has the same meaning as in Section 30 of the Indian Penal Code (45 of 1860).

3. Penalty for giving or taking dowry.—(1) If any person, after the commencement of this Act, gives or takes or abets the giving or taking of dowry, he shall be punishable with imprisonment for a term which shall not be less than five years, and with fine which shall not be less than fifteen thousand rupees or the amount of the value of such dowry, whichever is more :

Provided that the Court may, for adequate and special reasons to be recorded in the judgment, impose a sentence of imprisonment for a term of less than five years.

(2) Nothing in sub-section (1) shall apply to, or in relation to,—

(a) presents which are given at the time of a marriage to the bride (without any demand having been made in that behalf) :

Provided that such presents are entered in a list maintained in accordance with the rules made under this Act;

(b) presents which are given at the time of a marriage to the bridegroom (without any demand having been made in that behalf) :

Provided that such presents are entered in a list maintained in accordance with the rules made under this Act :

Provided further that where such presents are made by or on behalf of the bride or any person related to the bride, such presents are of a customary nature and the value thereof is not excessive having regard to the financial status of the person by whom, or on whose behalf, such presents are given.

4. Penalty for demanding dowry.—If any person demands, directly or indirectly, from the parents or other relatives or guardian of a bride or bridegroom, as the case may be, any dowry, he shall be punishable with imprisonment for a term which shall not be less than six months, but which may extend to two years and with fine which may extend to ten thousand rupees :

Provided that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months.

4-A. Ban on advertisement.—If any person—

- (a) offers through any advertisement in any newspaper, periodical, journal or through any other media, any share in his property or of any money or both as a share in any business or other interest as consideration for the marriage of his son or daughter or any other relative;
- (b) prints or publishes or circulates any advertisement referred to in clause (a),

he shall be punishable with imprisonment for a term which shall not be less than six months, but which may extend to five years, or with fine which may extend to fifteen thousand rupees :

Provided that the Court may, for adequate and special reasons to be recorded in the judgment, impose a sentence of imprisonment for a term of less than six months.

5. Agreement for giving or taking dowry to be void.—Any agreement for the giving or taking of dowry shall be void.

6. Dowry to be for the benefit of the wife or her heirs.—(1) Where any dowry is received by any person other than the woman in connection with whose marriage it is given, that person shall transfer it to the woman—

- (a) if the dowry was received before marriage, within three months after the date of marriage; or
- (b) if the dowry was received at the time of or after the marriage, within three months after the date of its receipt; or
- (c) if the dowry was received when the woman was a minor, within three months after she has attained the age of eighteen years, and pending such transfer, shall hold it in trust for the benefit of the woman.

¹(2) If any person fails to transfer any property as required by sub-section (1) within the time limit specified therefor, or as required by sub-section (3) he shall be punishable with imprisonment for a term which

1. Substituted by Act No. 63 Sec. 5(b).

shall not be less than six months, but which may extend to two years or with fine which shall not be less than five thousand rupees, but which may extend to ten thousand rupees or with both.

(3) Where the woman entitled to any property under sub-section (1) dies before receiving it, the heirs of the woman shall be entitled to claim it from the person holding it for the time being :

Provided that where such woman dies within seven years of her marriage, otherwise than due to natural causes, such property shall,—

- (a) if she has no children, be transferred to her parents; or
- (b) if she has children, be transferred to such children and pending such transfer, be held in trust for such children.

(3-A) Where a person convicted under sub-section (2) for failure to transfer any property as required by sub-section (1) or sub-section (3) has not, before his conviction under that sub-section, transferred such property to the woman entitled thereto or, as the case may be her heirs, parents or children the Court shall, in addition to awarding punishment under that sub-section, direct, by order in writing, that such person shall transfer the property to such woman or, as the case may be her heirs, parents or children within such period as may be specified in the order, and if such person fails to comply with the direction within the period so specified, an amount equal to the value of the property may be recovered from him as if it were a fine imposed by such Court and paid to such woman or, as the case may be, her heirs, parents or children.

(4) Nothing contained in this section shall affect the provisions of Section 3 or Section 4.

7. Cognizance of offences.—(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—

- (a) no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence under this Act;
- (b) no court shall take cognizance of an offence under this Act except upon—
 - (i) its own knowledge or a police report of the facts which constitute an offence, or
 - (ii) a complaint by the person aggrieved by the offence or a parent or other relative of such person, or by any recognized welfare institution or organisation;
- (c) it shall be lawful for a Metropolitan Magistrate or a Judicial Magistrate of the first class to pass any sentence authorised by this Act on any person convicted of any offence under this Act.

Explanation.—For the purposes of this sub-section, "recognized welfare institution or organisation" means a social welfare institution or organisation recognised in this behalf by the Central or State Government.

(2) Nothing in Chapter XXXVI of the Code of Criminal Procedure, 1973 (2 of 1974) shall apply to any offence punishable under this Act.

(3) Notwithstanding anything contained in any law for the time being in force, a statement made by the person aggrieved by the offence shall not subject such person to a prosecution under this Act.

8. Offences to be cognizable for certain purposes and to be

non-bailable and non-compoundable.—(1) The Code of Criminal Procedure, 1973 (2 of 1974) shall apply to offences under this Act as if they were cognizable offences—

- (a) for the purposes of investigation of such offences; and
- (b) for the purposes of matters other than—
 - (i) matters referred to in Section 42 of that Code; and
 - (ii) the arrest of a person without a warrant or without an order of a Magistrate.

(2) Every offence under this Act shall be non-bailable and non-compoundable.

8-A. Burden of proof in certain cases.—Where any person is prosecuted for taking or abetting the taking of any dowry under Section 3, or the demanding of dowry under Section 4, the burden of proving that he had not committed an offence under these sections shall be on him.

8-B. Dowry Prohibition Officers.—(1) The State Government may appoint as many Dowry Prohibition Officers as it thinks fit and specify the areas in respect of which they shall exercise their jurisdiction and powers under this Act.

(2) Every Dowry Prohibition Officer shall exercise and perform the following powers and functions, namely :—

- (a) to see that the provisions of this Act are complied with;
- (b) to prevent, as far as possible, the taking or abetting the taking of, or the demanding of, dowry;
- (c) to collect such evidence as may be necessary for the prosecution of persons committing offences under the Act; and
- (d) to perform such additional functions as may be assigned to him by the State Government, or as may be specified in the rules made under this Act.

(3) The State Government may, by notification in the Official Gazette, confer such powers of a police officer as may be specified in the notification on the Dowry Prohibition Officer who shall exercise such powers subject to such limitations and conditions as may be specified by rules made under this Act.

(4) The State Government may, for the purpose of advising and assisting Dowry Prohibition Officers in the efficient performance of their functions under this Act, appoint an Advisory Board consisting of not more than five social welfare workers (out of whom at least two shall be women) from the area in respect of which such Dowry Prohibition Officer exercises jurisdiction under sub-section (1).

9. Power to make rules.—(i) The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for—

- (a) the form and manner in which, and the persons by whom, any list of presents referred to in sub-section (2) of Section 3 shall be maintained and all other matters connected therewith; and
- (b) the better co-ordination of policy and action with respect to the

administration of this Act.

(3) Every rule made under this section shall be laid as soon as may be after it is made before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two successive sessions, and if before the expiry of the session in which it is so laid or the session immediately following both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be, so however that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

10. Power of State Government 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, 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 additional functions to be performed by the Dowry Prohibition Officers under sub-section (2) of Section 8-B;
- (b) limitations and conditions subject to which a Dowry Prohibition Officer may exercise his functions under sub-section (3) of Section 8-B.

(3) Every rule made by the State Government under this section shall be laid as soon as may be after it is made before the State Legislature.

THE DOWRY PROHIBITION (MAINTENANCE OF LIST OF PRESENTS TO THE BRIDE AND BRIDEGROOM) RULES, 1985

G.S.R. 664(E), Dated 19th August, 1985.—In exercise of the powers conferred by Section 9 of the Dowry Prohibition Act, 1961 (28 of 1961), the Central Government hereby makes the following rules, namely—

1. Short title and commencement.—(1) These rules may be called the Dowry Prohibition (Maintenance of Lists of Presents to the Bride and Bridegroom) Rules, 1985.

(2) They shall come into force on the 2nd day of October, 1985 being the date appointed for the coming into force of the Dowry Prohibition (Amendment) Act, 1984 (63 of 1984).

2. Rules in accordance with which lists of presents are to be maintained.—(i) The list of presents which are given at the time of the marriage to the bride shall be maintained by the bride.

(2) The list of presents which are given at the time of marriage to the bridegroom shall be maintained by the bridegroom.

(3) Every list of presents referred to in sub-rule (1) or sub-rule (2)—

- (a) shall be prepared at the time of marriage or as soon as possible after the marriage,
- (b) shall be in writing;
- (c) shall contain,—
 - (i) a brief description of each present;

- (ii) the approximate value of the present;
 - (iii) the name of the person who has given the present; and
 - (iv) where the person giving the present is related to the bride or bridegroom, a description of such relationship;
- (d) shall be signed by both the bride and the bridegroom.

Explanation 1.—Where the bride is unable to sign, she may affix her thumb-impression in lieu of her signature after having the list read out to her and obtaining the signature, on the list, of the person who has so read out the particulars contained in the list.

Explanation 2.—Where the bridegroom is unable to sign, he may affix his thumb-impression in lieu of his signature after having the list read out to him and obtaining the signature, on the list of the person who has so read out the particulars contained in the list.

(4) The bride or the bridegroom may, if she or he so desires, obtain on either or both of the lists referred to in sub-rule (1) or sub-rule (2) the signature or signatures of any other person or persons present at the time of the marriage.

RELEVANT PROVISIONS OF INDIAN PENAL CODE, 1860

304-B. Dowry Death.—(1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death.

Explanation.—For the purposes of this sub-section, "dowry" shall have the same meaning as in Section 2 of the Dowry Prohibition Act, 1961.

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.

498-A. Husband or relative of husband of a woman subjecting her to cruelty.—Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation—For the purposes of this section, "cruelty" means—

- (a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or
 - (b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.
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THE PROBATION OF OFFENDERS ACT, 1958

[ACT 20 OF 1958]

[16th May, 1958]

An Act to provide for the release of offenders on probation or after due admonition and for matters connected therewith.

Statement of Objects and Reasons.—The question of release of offenders on probation of good conduct instead of sentencing them to imprisonment has been under consideration for some time. In 1931, the Government of India prepared a draft of Probation of Offenders Bill and circulated it to the then Local Governments for their views. However, owing to pre-occupation with other more important matters, the Bill could not be proceeded with. Later in 1934, the Government of India informed Provincial Governments that there was no prospect of Central legislation being undertaken at the time and there would be no objection to the Provinces undertaking such legislation themselves. A few Provinces accordingly enacted their own probation laws.

2. In several States, however, there are no separate probation laws at all. Even in States where there are probation laws, they are not uniform nor are they adequate to meet the present requirements. In the meantime, there has been an increasing emphasis on the reformation and rehabilitation of the offender as a useful and self-reliant member of society without subjecting him to the deleterious effects of jail life. In view of the wide-spread interest in the probation system in the country, this question has been re-examined and it is proposed to have a Central law on the subject which should be uniformly applicable to all the States.

3. It is proposed to empower Courts to release an offender after admonition in respect of certain specified offences. It is also proposed to empower Courts to release on probation, in all suitable cases, an offender found guilty of having committed an offence not punishable with death or imprisonment for life. In respect of offenders under 21 years of age, special provision has been made putting restrictions on their imprisonment. During the period of probation, offenders will remain under the supervision of probation officers in order that they may be reformed and become useful members of society. The Bill seeks to achieve these objects. (Vide Gazette of India, Part II, Section 2, Extra., dated Nov. 11, 1957, p. 842).

Be it enacted by Parliament in the Ninth Year of the Republic of India as follows :—

1. Short title, extent and commencement.—(1) This Act may be called the Probation of Offenders Act, 1958.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

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

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

- (a) "Code" means the Code of Criminal Procedure, 1898 (5 of 1898);¹
- (b) "probation officer" means an officer appointed to be a probation officer or recognised as such under Section 13;
- (c) "prescribed" means prescribed by rules made under this Act;
- (d) words and expressions used but not defined in this Act and defined in the Code of Criminal Procedure, 1898 (5 of 1898),² shall have the meanings respectively assigned to them in that Code.

3. Power of court to release certain offenders after admonition.—When any person is found guilty of having committed an offence punishable under Section 379 or Section 380 or Section 381 or Section 404 or Section 420 of the Indian Penal Code (45 of 1860), or any offence punishable with imprisonment for not more than two years, or with fine, or with both, under the Indian Penal Code or any other law, and no previous conviction is proved against him and the court by which the person is found guilty is of opinion that, having regard to the circumstances of the case including the nature of the offence and the character of the offender, it is expedient so to do, then, notwithstanding anything contained in any other law for the time being in force, the court may, instead of sentencing him to any punishment or releasing him on probation of good conduct under Section 4 release him after due admonition.

Explanation.—For the purposes of this section, previous conviction against a person shall include any previous order made against him under this section or Section 4.

4. Power of court to release, certain offenders on probation of good conduct.—(1) When any person is found guilty of having committed an offence not punishable with death or imprisonment for life and the court by which the person is found guilty is of opinion that, having regard to the circumstances of the case including the nature of the offence and the character of the offender, it is expedient to release him on probation of good conduct, then, notwithstanding anything contained in any other law for the time being in force, the court may, instead of sentencing him at once to any punishment, direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period, not exceeding three years, as the court may direct, and in the meantime to keep the peace and be of good behaviour :

Provided that the court shall not direct such release of an offender unless it is satisfied that the offender or his surety, if any, has a fixed place of abode or regular occupation in the place over which the court exercises jurisdiction or in which the offender is likely to live during the period for

1. Now Code of Criminal Procedure, 1973 (2 of 1974).

2. Now Code of Criminal Procedure, 1973 (2 of 1974).

which he enters into the bond.

(2) Before making any order under sub-section (1), the court shall take into consideration the report, if any, of the probation officer concerned in relation to the case.

(3) When an order under sub-section (1) is made, the court may, if it is of opinion that in the interests of the offender and of the public it is expedient so to do, in addition pass a supervision order directing that the offender shall remain under the supervision of a probation officer named in the order during such period, not being less than one year, as may be specified therein, and may in such supervision order impose such conditions as it deems necessary for the due supervision of the offender.

(4) The court making a supervision order under sub-section (3) shall require the offender, before he is released, to enter into a bond, with or without sureties, to observe the conditions specified in such order and such additional conditions with respect to residence, abstention from intoxicants or any other matter as the court may, having regard to the particular circumstances, consider fit to impose for preventing a repetition of the same offence or a commission of other offences by the offender.

(5) The court making a supervision order under sub-section (3) shall explain to the offender the terms and conditions of the order and shall forthwith furnish one copy of the supervision order to each of the offenders, the sureties, if any, and the probation officer concerned.

5. Power of court to require released offenders to pay compensation and costs.—(1) The court directing the release of an offender under Section 3 or Section 4, may, if it thinks fit, make at the same time a further order directing him to pay—

(a) such compensation as the court thinks reasonable for loss or injury caused to any person by the commission of the offence; and

(b) such costs of the proceedings as the court thinks reasonable.

(2) The amount ordered to be paid under sub-section (1) may be recovered as a fine in accordance with the provisions of Sections 386 and 387 of the Code.

(3) A civil court trying any suit, arising out of the same matter for which the offender is prosecuted, shall take into account any amount paid or recovered as compensation under sub-section (1) in awarding damages.

6. Restrictions on imprisonment of offenders under twenty-one years of age.—(1) When any person under twenty-one years of age is found guilty of having committed an offence punishable with imprisonment (but not with imprisonment for life), the court by which the person is found guilty shall not sentence him to imprisonment unless it is satisfied that, having regard to the circumstances of the case including the nature of the offence and the character of the offender, it would not be desirable to deal with him under Section 3 or Section 4, and if the court passes any sentence of imprisonment on the offender, it shall record its reasons for doing so.

(2) For the purpose of satisfying itself whether it would not be desirable to deal under Section 3 or Section 4 with an offender referred to in sub-section (1), the court shall call for a report from the probation officer and

consider the report, if any, and other information available to it relating to the character and physical and mental conditions of the offender.

7. Report of probation officer to be confidential.—The report of a probation officer referred to in sub-section (2) of Section 4 or sub-section (2) of Section 6 shall be treated as confidential :

Provided that the court may, if it so thinks fit, communicate the substance thereof to the offender and may give him an opportunity of producing such evidence as may be relevant to the matter stated in the report.

8. Variation of conditions of probation.—(1) If, on the application of a probation officer, any court which passes an order under Section 4 in respect of an offender is of opinion that in the interests of the offender and the public it is expedient or necessary to vary the conditions of any bond entered into by the offender, it may, at any time during the period when the bond is effective, vary the bond by extending or diminishing the duration thereof so, however, that it shall not exceed three years from the date of the original order or by altering the conditions thereof or by inserting additional conditions therein :

Provided that no such variation shall be made without giving the offender and the surety or sureties mentioned in the bond an opportunity of being heard.

(2) If any surety refuses to consent to any variation proposed to be made under sub-section (1), the court may require the offender to enter into a fresh bond and if the offender refuses or fails to do so, the court may sentence him for the offence of which he was found guilty.

(3) Notwithstanding anything hereinbefore contained, the court which passes an order under Section 4 in respect of an offender may, if it is satisfied on an application made by the probation officer, that the conduct of the offender has been such as to make it unnecessary that he should be kept any longer under supervision, discharge the bond or bonds entered into by him.

9. Procedure in case of offender failing to observe conditions of bond.—(1) If the court which passes an order under Section 4 in respect of an offender or any court which could have dealt with the offender in respect of his original offence has reason to believe, on the report of a probation officer or otherwise, that the offender has failed to observe any of the conditions of the bond or bonds entered into by him, it may issue a warrant for his arrest or may, if it thinks fit, issue a summons to him and his sureties, if any, requiring him or them to attend before it at such time as may be specified in the summons.

(2) The court before which an offender is so brought or appears may either remand him to custody until the case is concluded or it may grant him bail, with or without surety, to appear on the date which it may fix for hearing.

(3) If the court, after hearing the case, is satisfied that the offender has failed to observe any of the conditions of the bond or bonds entered into by him, it may forthwith—

(a) sentence him for the original offence; or

- (b) where the failure is for the first time, then, without prejudice to the continuance in force of the bond, impose upon him a penalty not exceeding fifty rupees.
- (4) If a penalty imposed under clause (b) of sub-section (3) is not paid within such period as the court may fix, the court may sentence the offender for the original offence.

10. Provision as to sureties.—The provisions of Sections 122, 126, 126-A, 406-A, 514, 514-A, 514-B and 515 of the Code shall, so far as may be, apply in the case of bonds and sureties given under this Act.

11. Courts competent to make order under the Act, appeal and revision and powers of courts in appeal and revision.—(1) Notwithstanding anything contained in the Code or any other law, an order under this Act may be made by any court empowered to try and sentence the offender to imprisonment and also by the High Court or any other court when the case comes before it on appeal or in revision.

(2) Notwithstanding anything contained in the Code, where an order under Section 3 or Section 4 is made by any court trying the offender (other than a High Court), an appeal shall lie to the court to which appeals ordinarily lie from the sentences of the former court.

(3) In any case where any person under twenty-one years of age is found guilty of having committed an offence and the court by which he is found guilty declines to deal with him under Section 3 or Section 4, and passes against him any sentence of imprisonment with or without fine from which no appeal lies or is preferred, then, notwithstanding anything contained in the Code or any other law, the court to which appeals ordinarily lie from the sentences of the former court may, either of its own motion or on an application made to it by the convicted person or the probation officer, call for and examine the record of the case and pass such order thereon as it thinks fit.

(4) When an order has been made under Section 3 or Section 4 in respect of an offender, the Appellate Court or the High Court in the exercise of its power of revision may set aside such order and in lieu thereof pass sentence on such offender according to law :

Provided that the Appellate Court or the High Court in revision shall not inflict a greater punishment than might have been inflicted by the court by which the offender was found guilty.

12. Removal of disqualification attaching to conviction.—Notwithstanding anything contained in any other law, a person found guilty of an offence and dealt with under the provisions of Section 3 or Section 4 shall not suffer disqualification, if any, attaching to a conviction of an offence under such law :

Provided that nothing in this section shall apply to a person who, after his release under Section 4, is subsequently sentenced for the original offence.

13. Probation officers.—(1) A probation officer under this Act shall be—

- (a) a person appointed to be a probation officer by the State Government or recognised as such by the State Government; or

- (b) a person provided for this purpose by a society recognised in this behalf by the State Government; or
 - (c) in any exceptional case, any other person who, in the opinion of the court, is fit to act as a probation officer in the special circumstances of the case.
- (2) A court which passes an order under Section 4 or the district magistrate of the district in which the offender for the time being resides may, at any time, appoint any probation officer in place of the person named in the supervision order.

Explanation.—For the purposes of this section, a presidency town shall be deemed to be a district and chief presidency magistrate shall be deemed to be the district magistrate of that district.

(3) A probation officer, in the exercise of his duties under this Act, shall be subject to the control of the district magistrate of the district in which the offender for the time being resides.

14. Duties of probation officers.—A probation officer shall, subject to such conditions and restrictions, as may be prescribed,—

- (a) inquire, in accordance with any directions of a court, into the circumstances or home surroundings of any person accused of an offence with a view to assist the court in determining the most suitable method of dealing with him and submit reports to the court;
- (b) supervise probationers and other persons placed under his supervision and, where necessary, endeavour to find them suitable employment;
- (c) advise and assist offenders in the payment of compensation of costs ordered by the court;
- (d) advise and assist, in such cases and in such manner as may be prescribed, persons who have been released under Section 4; and
- (e) perform such other duties as may be prescribed.

15. Probation officers to be public servants.—Every probation officer and every other officer appointed in pursuance of this Act shall be deemed to be public servants within the meaning of Section 21 of the Indian Penal Code (45 of 1860).

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

17. Power to make rules.—(1) The State Government may, with the approval of the Central Government, by notification in the Official Gazette, make rules to carry out the purposes of this Act.

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

- (a) appointment of probation officers, the terms and conditions of their service and the area within which they are to exercise

jurisdiction;

- (b) duties of probation officers under this Act and the submission of reports by them;
- (c) the conditions on which societies may be recognised for the purposes of clause (b) of sub-section (1) of Section 13;
- (d) the payment of remuneration and expenses to probation officers or of a subsidy to any society which provides probation officers; and
- (e) any other matter which is to be, or may be, prescribed.

(3) All rules made under this section shall be subject to the condition of previous publication and shall, as soon as may be after they are made, be laid before the State Legislature.

18. Saving of operation of certain enactments.—Nothing in this Act shall affect the provisions of Section 31 of the Reformatory Schools Act, 1897 (8 of 1897), or sub-section (2) of Section 5 of the Prevention of Corruption Act, 1947 (2 of 1947)¹ or of any law in force in any State relating to juvenile offenders or borstal schools.

19. Section 562² of the Code not to apply in certain areas.—Subject to the provisions of Section 18, Section 562 of the Code shall cease to apply to the States or parts thereof in which this Act is brought into force.

1. Now see corresponding provisions of Prevention of Corruption Act, 1988.
2. Now Section 360 of Code of Criminal Procedure, 1973.

Appendix VI

THE JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2000

[Act No. 56 of 2000]

[30th December, 2000]

An Act to consolidate and amend the law relating to juveniles in conflict with law and children in need of care and protection, by providing for proper care, protection and treatment by catering to their development needs, and by adopting a child-friendly approach in the adjudication and disposition of matters in the best interest of children and for their ultimate rehabilitation through various institutions established under this enactment.

WHEREAS the Constitution has, in several provisions, including clause (3) of Article 15, clauses (e) and (f) of Article 39, Articles 45 and 47, impose on the State a primary responsibility of ensuring that all the needs of children are met and that their basic human rights are fully protected;

AND WHEREAS, the General Assembly of the United Nations has adopted the Convention on the Rights of the Child on the 20th November, 1989;

AND WHEREAS, the Convention on the Rights of the Child has prescribed a set of standards to be adhered to by all States parties in securing the best interests of the child;

AND WHEREAS, the Convention on the Rights of the Child emphasises social reintegration of child victims, to the extent possible, without resorting to judicial proceedings;

AND WHEREAS, the Government of India has ratified the Convention on the 11th December, 1992.

AND WHEREAS, it is expedient to re-enact the existing law relating to juveniles bearing in mind the standards prescribed in the Convention on the Rights of the Child, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, 1985 (the Beijing Rules), the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (1990), and all other relevant international instruments.

BE IT enacted by Parliament in the Fifty-first Year of the Republic of India as follows :—

CHAPTER I PRELIMINARY

1. Short title, extent and commencement.—(1) This Act may be called the Juvenile Justice (Care and Protection of Children) Act, 2000.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

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

- (a) "advisory board" means a Central or a State advisory board or a district and city level advisory board, as the case may be, constituted under Section 62;
- (b) "begging" means—
 - (i) soliciting or receiving alms in a public place or entering into any private premises for the purpose of soliciting or receiving alms, under any pretence;
 - (ii) exposing or exhibiting with the object of obtaining or extorting alms, any sore, wound, injury, deformity or disease, whether of himself, or of any other person or of an animal;
- (c) "Board" means a Juvenile Justice Board constituted under Section 4;
- (d) "child in need of care and protection" means a child—
 - (i) who is found without any home or settled place or abode and without any ostensible means of subsistence,
 - (ii) who resides with a person (whether a guardian of the child or not) and such person—
 - (a) has threatened to kill or injure the child and there is a reasonable likelihood of the threat being carried out, or
 - (b) has killed, abused or neglected some other child or children and there is a reasonable likelihood of the child in question being killed, abused or neglected by that person,
 - (iii) who is mentally or physically challenged or ill child or children suffering from terminal diseases or incurable diseases having no one to support or look after,
 - (iv) who has a parent or guardian and such parent or guardian is unfit or incapacitated to exercise control over the child,
 - (v) who does not have parent and no one is willing to take care of or whose parents have abandoned him or who is missing and run away child and whose parents cannot be found after reasonable inquiry,
 - (vi) who is being or is likely to be grossly abused, tortured or exploited for the purpose of sexual abuse or illegal acts,
 - (vii) who is found vulnerable and is likely to be inducted into drug abuse or trafficking,
 - (viii) who is being or is likely to be abused for unconscionable gains,
 - (ix) who is victim of any armed conflict, civil commotion or natural calamity;
- (e) "children's home" means an institution established by a State Government or by voluntary organisation and certified by that

- Government under Section 34;
- (f) "Committee" means a Child Welfare Committee constituted under Section 29;
- (g) "competent authority" means in relation to children in need of care and protection a Committee and in relation to juveniles in conflict with law a Board;
- (h) "fit institution" means a governmental or a registered non-governmental organisation or a voluntary organisation prepared to own the responsibility of a child and such organisation is found fit by the competent authority;
- (i) "fit person" means a person, being a social worker or any other person, who is prepared to own the responsibility of a child and is found fit by the competent authority to receive and take care of the child;
- (j) "guardian", in relation to a child, means his natural guardian or any other person having the actual charge or control over the child and recognised by the competent authority as a guardian in course of proceedings before that authority;
- (k) "juvenile" or "child" means a person who has not completed eighteenth year of age;
- (l) "juvenile in conflict with law" means a juvenile who is alleged to have committed an offence;
- (m) "local authority" means Panchayats at the village and Zila Parishad at the district level and shall also include a Municipal Committee or Corporation or a Cantonment Board or such other body legally entitled to function as local authority by the Government;
- (n) "narcotic drug" and "psychotropic substance" shall have the meanings respectively assigned to them in the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985);
- (o) "observation home" means a home established by a State Government or by a voluntary organisation and certified by that State Government under Section 8 as an observation home for the juvenile in conflict with law;
- (p) "offence" means an offence punishable under any law for the time being in force;
- (q) "place of safety" means any place or institution (not being a police lock-up or jail), the person incharge of which is willing temporarily to receive and take care of the juvenile and which, in the opinion of the competent authority, may be a place of safety for the juvenile;
- (r) "prescribed" means prescribed by rules made under this Act;
- (s) "probation officer" means an officer appointed by the State Government as a probation officer under the Probation of Offenders Act, 1958 (20 of 1958);
- (t) "public place" shall have the meaning assigned to it in the Immoral Traffic (Prevention) Act, 1956 (104 of 1956);

- (u) "shelter home" means a home or a drop-in-centre set up under Section 37;
- (v) "special home" means an institution established by a State Government or by a voluntary organisation and certified by that Government under Section 9;
- (w) "special juvenile police unit" means a unit of the police force of a State designated for handling of juveniles or children under Section 63;
- (x) "State Government", in relation to a Union territory, means the Administrator of that Union territory appointed by the President under Article 239 of the Constitution;
- (y) 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 respectively assigned to them in that Code.

3. Continuation of inquiry in respect of juvenile who has ceased to be a juvenile.—Where an inquiry has been initiated against a juvenile in conflict with law or a child in need of care and protection and during the course of such inquiry the juvenile or 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 juvenile or a child.

CHAPTER II

JUVENILE IN CONFLICT WITH LAW

4. Juvenile Justice Board.—(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the State Government may, by notification in the Official *Gazette*, constitute for a district or a group of districts specified in the notification, one or more Juvenile Justice Boards for exercising the powers and discharging the duties conferred or imposed on such Boards in relation to juveniles in conflict with law under this Act.

(2) A Board shall consist of a Metropolitan Magistrate or a Judicial Magistrate of the first class, as the case may be, and two social workers of whom at least one shall be a woman, forming a Bench and every such Bench shall have the powers conferred by the Code of Criminal Procedure, 1973 (2 of 1974), on a Metropolitan Magistrate or, as the case may be, a Judicial Magistrate of the first class and the Magistrate on the Board shall be designated as the principal Magistrate.

(3) No Magistrate shall be appointed as a member of the Board unless he has special knowledge or training in child psychology or child welfare and no social worker shall be appointed as a member of the Board unless he has been actively involved in health, education, or welfare activities pertaining to children for at least seven years.

(4) The term of office of the members of the Board and the manner in which such member may resign shall be such as may be prescribed.

(5) The appointment of any member of the Board may be terminated after holding inquiry, by the State Government, if—

- (i) he has been found guilty of misuse of power vested under this Act,
- (ii) he has been convicted of an offence involving moral turpitude, and such conviction has not been reversed or he has not been granted full pardon in respect of such offence,
- (iii) he fails to attend the proceedings of the Board for consecutive three months without any valid reason or he fails to attend less than three-fourth of the sittings in a year.

5. Procedure, etc., in relation to Board.—(1) The Board shall meet at such times and shall observe such rules of procedure in regard to the transaction of business at its meetings, as may be prescribed.

(2) A child in conflict with law may be produced before an individual member of the Board, when the Board is not sitting.

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

Provided that there shall be at least two members including the principal Magistrate present at the time of final disposal of the case.

(4) In the event of any difference of opinion among the members of the Board in the interim or final disposition, the opinion of the majority shall prevail, but where there is no such majority, the opinion of the principal Magistrate shall prevail.

6. Powers of Juvenile Justice Board.—(1) Where a Board has been constituted for any district or a group of districts, such Board shall, notwithstanding anything contained in any other law for the time being in force but save as otherwise expressly provided in this Act, have power to deal exclusively with all proceedings under this Act relating to juvenile in conflict with law.

(2) The powers conferred on the Board 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.

7. Procedure to be followed by a Magistrate not empowered under the Act.—(1) When any Magistrate not empowered to exercise the powers of a Board under this Act is of the opinion that a person brought before him under any of the provisions of this Act (other than for the purpose of giving evidence), is a juvenile or the child, he shall without any delay record such opinion and forward the juvenile or the child and the record of the proceeding to the competent authority having jurisdiction over the proceeding.

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

8. Observation homes.—(1) Any State Government may establish and maintain either by itself or under an agreement with voluntary organisations, observation homes in every district or a group of districts, as

may be required for the temporary reception of any juvenile in conflict with law during the pendency of any inquiry regarding them under this Act.

(2) Where the State Government is of opinion that any institution other than a home established or maintained under sub-section (1), is fit for the temporary reception of juvenile in conflict with law during the pendency of any inquiry regarding them under this Act, it may certify such institution as an observation home for the purposes of this Act.

(3) The State Government may, by rules made under this Act, provide for the management of observation homes, including the standards and various types of services to be provided by them for rehabilitation and social integration of a juvenile, and the circumstances under which, and the manner in which, the certification of an observation home may be granted or withdrawn.

(4) Every juvenile who is not placed under the charge of parent or guardian and is sent to an observation home shall be initially kept in a reception unit of the observation home for preliminary inquiries, care and classification for juveniles according to his age group, such as seven to twelve years, twelve to sixteen years and sixteen to eighteen years, giving due considerations to physical and mental status and degree of the offence committed, for further induction into observation home.

9. Special homes.—(1) Any State Government may establish and maintain either by itself or under an agreement with voluntary organisations, special homes in every district or a group of districts, as may be required for reception and rehabilitation of juvenile in conflict with law under this Act.

(2) Where the State Government is of opinion that any institution other than a home established or maintained under sub-section (1), is fit for the reception of juvenile in conflict with law to be sent there under this Act, it may certify such institution as a special home for the purposes of this Act.

(3) The State Government may, by rules made under this Act, provide for the management of special homes, including the standards and various types of services to be provided by them which are necessary for re-socialisation of a juvenile, and the circumstances under which, and the manner in which, the certification of a special home may be granted or withdrawn.

(4) The rules made under sub-section (3) may also provide for the classification and separation of juvenile in conflict with law on the basis of age and the nature of offences committed by them and his mental and physical status.

10. Apprehension of juvenile in conflict with law.—(1) As soon as a juvenile in conflict with law is apprehended by police, he shall be placed under the charge of the special juvenile police unit of the designated police officer who shall immediately report the matter to a member of the Board.

(2) The State Government may make rules consistent with this Act,—

(i) to provide for persons through whom (including registered voluntary organisations) any juvenile in conflict with law may be produced before the Board;

(ii) to provide the manner in which such juvenile may be sent to an

observation home.

11. Control of custodian over juvenile.—Any person in whose charge a juvenile is placed in pursuance of this Act shall, while the order is in force have the control over the juvenile as he would have if he were his parents, and shall be responsible for his maintenance, and the juvenile shall continue in his charge for the period stated by competent authority, notwithstanding that he is claimed by his parents or any other person.

12. Bail of juvenile.—(1) When any person accused of a bailable or non-bailable offence, and apparently a juvenile, is arrested or detained or appears or is brought before a Board, such person shall, notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) 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 known criminal or expose him to moral, physical or psychological danger or that his release would defeat the ends of justice.

(2) When such person having been arrested is not released on bail under sub-section (1) by the officer incharge of the police station, such officer shall cause him to be kept only in an observation home in the prescribed manner until he can be brought before a Board.

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

13. Information to parent, guardian or probation officer.—Where a juvenile is arrested, the officer incharge of the police station or the special juvenile police unit to which the juvenile is brought shall, as soon as may be after the arrest, inform—

- the parent or guardian of the juvenile, if he can be found, of such arrest and direct him to be present at the Board before which the juvenile will appear; and
- the probation officer of such arrest to enable him to obtain information regarding the antecedents and family background of the juvenile and other material circumstances likely to be of assistance to the Board for making the inquiry.

14. Inquiry by Board regarding juvenile.—(1) Where a juvenile having been charged with the offence is produced before a Board, the Board shall hold the inquiry in accordance with the provisions of this Act and may make such order in relation to the juvenile as it deems fit :

Provided that an inquiry under this section shall be completed within a period of four months from the date of its commencement, unless the period is extended by the Board having regard to the circumstances of the case and in special cases after recording the reasons in writing for such extension.

15. Order that may be passed regarding juvenile.—(1) Where a Board is satisfied on inquiry that a juvenile has committed an offence, then, notwithstanding anything to the contrary contained in any other law for the time being in force, the Board may, if it thinks so fit,—

- (a) allow the juvenile to go home after advice or admonition following appropriate inquiry against and counselling to the parent or the guardian and the juvenile;
- (b) direct the juvenile to participate in group counselling and similar activities;
- (c) order the juvenile to perform community service;
- (d) order the parent of the juvenile or the juvenile himself to pay a fine, if he is over fourteen years of age and earns money;
- (e) direct the juvenile to be released on probation of good conduct and placed under the care of any parent, guardian or other fit person, on such parent, guardian or other fit person executing a bond, with or without surety, as the Board may require, for the good behaviour and well-being of the juvenile for any period not exceeding three years;
- (f) direct the juvenile to be released on probation of good conduct and placed under the care of any fit institution for the good behaviour and well-being of the juvenile for any period not exceeding three years;
- (g) make an order directing the juvenile to be sent to a special home,—
 - (i) in the case of juvenile, over seventeen years but less than eighteen years of age for a period of not less than two years;
 - (ii) in case of any other juvenile for the period until he ceases to be a juvenile :

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

(2) The Board shall obtain the social investigation report on juvenile either through a probation officer or a recognised voluntary organisation or otherwise, and shall take into consideration the findings of such report before passing an order.

(3) Where an order under clause (d), clause (e) or clause (f) of sub-section (1) is made, the Board may, if it is of opinion that in the interests of the juvenile and of the public, it is expedient so to do, in addition make an order that the juvenile in conflict with law 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 juvenile in conflict with law :

Provided that if at any time afterwards it appears to the Board on receiving a report from the probation officer or otherwise, that the juvenile in conflict with law has not been of good behaviour during the period of supervision or that the fit institution under whose care the juvenile was placed is no longer able or willing to ensure the good behaviour and well-being of the juvenile it may, after making such inquiry as it deems fit, order the juvenile in conflict with law to be sent to a special home.

(4) The Board shall while making a supervision order under sub-section (3), explain to the juvenile and the parent, guardian or other fit person or fit institution, as the case may be, under whose care the juvenile has been placed, the terms and conditions of the order and shall forthwith furnish one copy of the supervision order to the juvenile, the parent, guardian or other fit person or fit institution, as the case may be, the sureties, if any, and the probation officer.

16. Order that may not be passed against juvenile.—(1)

Notwithstanding anything to the contrary contained in any other law for the time being in force, no juvenile in conflict with law shall be sentenced to death or life imprisonment, or committed to prison in default of payment of fine or in default of furnishing security :

Provided that where a juvenile who has attained the age of sixteen years has committed an offence and the Board is satisfied that the offence committed is so serious in nature or that his conduct and behaviour have been such that it would not be in his interest or in the interest of other juveniles in a special home to send him to such special home and that none of the other measures provided under this Act is suitable or sufficient, the Board may order the juvenile in conflict with law to be kept in such place of safety and in such manner as it thinks fit and shall report the case for the order of the State Government.

(2) On receipt of a report from a Board under sub-section (1), the State Government may make such arrangement in respect of the juvenile as it deems proper and may order such juvenile to be kept under protective custody at such place and on such conditions as it thinks fit :

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

17. Proceeding under Chapter VIII of the Code of Criminal Procedure not competent against juvenile.—Notwithstanding anything to the contrary contained in the Code of Criminal Procedure, 1973 (2 of 1974) no proceeding shall be instituted and no order shall be passed against the juvenile under Chapter VIII of the said Code.

18. No joint proceeding of juvenile and person not a juvenile.—(1) Notwithstanding anything contained in Section 223 of the Code of Criminal Procedure, 1973 (2 of 1974) or in any other law for the time being in force, no juvenile shall be charged with or tried for any offence together with a person who is not a juvenile.

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

19. Removal of disqualification attaching to conviction.—(1) Notwithstanding anything contained in any other law, a juvenile 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.

(2) The Board shall make an order directing that the relevant records of such conviction shall be removed after the expiry of the period of appeal or a reasonable period as prescribed under the rules, as the case may be.

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

21. Prohibition of publication of name, etc. of juvenile involved in any proceeding under the Act.—(1) No report in any newspaper, magazine, news-sheet or visual media of any inquiry regarding a juvenile in conflict with law under this Act shall disclose the name, address or school or any other particulars calculated to lead to the identification of the juvenile nor shall any picture of any such juvenile 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 juvenile.

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

22. Provision in respect of escaped juvenile.—Notwithstanding anything to the contrary contained in any other law for the time being in force, any police officer may take charge without warrant of a juvenile in conflict with law who has escaped from a special home or an observation home or from the care of a person under whom he was placed under this Act, and shall be sent back to the special home or the observation home or that person, as the case may be; and no proceeding shall be instituted in respect of the juvenile by reason of such escape, but the special home, or the observation home or the person may, after giving the information to the Board which passed the order in respect of the juvenile, take such steps in respect of the juvenile as may be deemed necessary under the provisions of this Act.

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

24. Employment of juvenile or child for begging.—(1) Whoever employs or uses any juvenile or the child for the purpose or causes any juvenile to beg shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine.

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

25. Penalty for giving intoxicating liquor or narcotic drug or psychotropic substance to juvenile or child.—Whoever gives, or cause to be given, to any juvenile or the child any intoxicating liquor in a public place or any narcotic drug or psychotropic substance except upon the order of duly qualified medical practitioner or in case of sickness shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine.

26. Exploitation of juvenile or child employee.—Whoever ostensibly procures a juvenile or the child for the purpose of any hazardous employment keeps him in bondage and withholds his earnings or uses such earning for his own purposes shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine.

27. Special offences.—The offences punishable under sections 23, 24, 25, and 26 shall be cognizable.

28. Alternative punishment.—Where an act or omission constitutes an offence punishable under this Act and also under any other Central or State Act, then, notwithstanding anything contained in any law for the time being in force, the offender found guilty of such offences shall be liable to punishment only under such Act as provides for punishment which is greater in degree.

CHAPTER III CHILD IN NEED OF CARE AND PROTECTION

29. Child Welfare Committee.—(1) The State Government may, by notification in Official Gazette, constitute for every district or group of districts, specified in the notification, one or more Child Welfare Committee for exercising the powers and discharge the duties conferred on such Committees in relation to child in need of care and protection under this Act.

(2) The Committee shall consist of a Chairperson and four other members as the State Government may think fit to appoint, of whom at least one shall be a woman and another, an expert on matters concerning children.

(3) The qualifications of the Chairperson and the members, and the tenure for which they may be appointed shall be such as may be prescribed.

(4) The appointment of any member of the Committee may be terminated, after holding inquiry, by the State Government, if—

- (i) he has been found guilty of misuse of power vested under this Act;
- (ii) he has been convicted of an offence involving moral turpitude, and such conviction has not been reversed or he has not been granted full pardon in respect of such offence;
- (iii) he fails to attend the proceedings of the Committee for consecutive three months without any valid reason or he fails to

attend less than three-fourth of the sittings in a year.

(5) The Committee shall function as a Bench of Magistrates and shall have the powers conferred by the Code of Criminal Procedure, 1973 (2 of 1974) on a Metropolitan Magistrate or, as the case may be, a Judicial Magistrate of the first class.

30. Procedure, etc., in relation to Committee.—(1) The Committee shall meet at such times and shall observe such rules of procedure in regard to the transaction of business at its meetings, as may be prescribed.

(2) A child in need of care and protection may be produced before an individual member for being placed in safe custody or otherwise when the Committee is not in session.

(3) In the event of any difference of opinion among the members of the Committee at the time of any interim decision, the opinion of the majority shall prevail but where there is no such majority the opinion of the Chairperson shall prevail.

(4) Subject to the provisions of sub-section (1), the Committee may act, notwithstanding the absence of any member of the Committee, and no order made by the Committee shall be invalid by reason only of the absence of any member during any stage of the proceeding.

31. Powers of Committee.—(1) The Committee shall have the final authority to dispose of cases for the care, protection, treatment, development and rehabilitation of the children as well as to provide for their basic needs and protection of human rights.

(2) Where a Committee has been constituted for any area, such Committee shall, notwithstanding anything contained in any other law for the time being in force but save as otherwise expressly provided in this Act, have the power to deal exclusively with all proceedings under this Act relating to children in need of care and protection.

32. Production before Committee.—(1) Any child in need of care and protection may be produced before the Committee by one of the following persons :—

- (i) any police officer or special juvenile police unit or a designated police officer;
- (ii) any public servant;
- (iii) childline, a registered voluntary organisation or by such other voluntary organisation or an agency as may be recognised by the State Government;
- (iv) any social worker or a public spirited citizen authorised by the State Government; or
- (v) by the child himself.

(2) The State Government may make rules consistent with this Act to provide for the manner of making the report to the police and to the Committee and the manner of sending and entrusting the child to children's home pending the inquiry.

33. Inquiry.—(1) On receipt of a report under Section 32, the Committee or any police officer or special juvenile police unit or the

designated police officer shall hold an inquiry in the prescribed manner and the Committee, on its own or on the report from any person or agency as mentioned in sub-section (1) of Section 32, may pass an order to send the child to the children's home for speedy inquiry by a social worker or child welfare officer.

(2) The inquiry under this section shall be completed within four months of the receipt of the order or within such shorter period as may be fixed by the Committee :

Provided that the time for the submission of the inquiry report may be extended by such period as the Committee may, having regard to the circumstances and for the reasons recorded in writing, determine..

(3) After the completion of the inquiry if the Committee is of the opinion that the said child has no family or ostensible support, it may allow the child to remain in the children's home or shelter home till suitable rehabilitation is found for him or till he attains the age of eighteen years.

34. Children's homes.—(1) The State Government may establish and maintain either by itself or in association with the voluntary organisations, children's homes, in every district or group of districts, as the case may be, for the reception of child in need of care and protection during the pendency of any inquiry and subsequently for their care, treatment, education, training, development and rehabilitation.

(2) The State Government may, by rules made under this Act, provide for the management of children's homes including the standards and the nature of services to be provided by them, and the circumstances under which, and the manner in which, the certification of a children's home or recognition to a voluntary organisation may be granted or withdrawn.

35. Inspection.—(1) The State Government may appoint inspection committees for the children's homes (hereinafter referred to as the inspection committees) for the State, a district and city, as the case may be, for such period and for such purposes as may be prescribed.

(2) The inspection committee of a State, district or of a city shall consist of such number of representatives from the State Government, local authority, Committee, voluntary organisations and such other medical experts and social workers as may be prescribed.

36. Social auditing.—The Central Government or State Government may monitor and evaluate the functioning of the Children's homes at such period and through such persons and institutions as may be specified by that Government.

37. Shelter homes.—(1) The State Government may recognise, reputed and capable voluntary organisations and provide them assistance to set up and administer as many shelter homes for juveniles or children as may be required.

(2) The shelter homes referred to in sub-section (1) shall function as drop-in-centres for the children in the need of urgent support who have been brought to such homes through such persons as are referred to in sub-section (1) of section 32.

(3) As far as possible, the shelter homes shall have such facilities as may be prescribed by the rules.

38. Transfer.—(1) If during the inquiry it is found that the child hails from the place outside the jurisdiction of the Committee, the Committee shall order the transfer of the child to the competent authority having jurisdiction over the place of residence of the child.

(2) Such juvenile or the child shall be escorted by the staff of the home in which he is lodged originally.

(3) The State Government may make rules to provide for the travelling allowance to be paid to the child.

39. Restoration.—(1) Restoration of and protection to a child shall be the prime objective of any children's home or the shelter home.

(2) The children's home or a shelter home, as the case may be, shall take such steps as are considered necessary for the restoration of and protection to a child deprived of his family environment temporarily or permanently where such child is under the care and protection of a children's home or a shelter home, as the case may be.

(3) The Committee shall have the powers to restore any child in need of care and protection to his parent, guardian, fit person or fit institution, as the case may be, and give them suitable directions.

Explanation.—For the purposes of this section "restoration of child" means restoration to—

- (a) parents;
- (b) adopted parents;
- (c) foster parents.

CHAPTER IV REHABILITATION AND SOCIAL REINTEGRATION

40. Process of rehabilitation and social reintegration.—The rehabilitation and social reintegration of a child shall begin during the stay of the child in a children's home or special home and the rehabilitation and social reintegration of children shall be carried out alternatively by (i) adoption, (ii) foster care, (iii) sponsorship, and (iv) sending the child to an after-care organisation.

41. Adoption.—(1) The primary responsibility for providing care and protection to children shall be that of his family.

(2) Adoption shall be resorted to for the rehabilitation of such children as are orphaned, abandoned, neglected and abused through institutional and non-institutional methods.

(3) In keeping with the provisions of the various guidelines for adoption issued from time to time by the State Government, the Board shall be empowered to give children in adoption and carry out such investigations as are required or giving children in adoption in accordance with the guidelines issued by the State Government from time to time in this regard.

(4) The children's homes or the State Government run institutions for orphans shall be recognised as an adoption agencies both for scrutiny and placement of such children for adoption in accordance with the guidelines issued under sub-section (3).

(5) No child shall be offered for adoption—

- (a) until two members of the Committee declare the child legally free for placement in the case of abandoned children,
 - (b) till the two months period for reconsideration by the parent is over in the case of surrendered children, and
 - (c) without his consent in the case of a child who can understand and express his consent.
- (6) The Board may allow a child to be given in adoption—
- (a) to a single parent, and
 - (b) to parents to adopt a child of same sex irrespective of the number of living biological sons or daughters.

42. Foster care.—(1) The foster care may be used for temporary placement of those infants who are ultimately to be given for adoption.

(2) In foster care, the child may be placed in another family for a short or extended period of time, depending upon the circumstances where the child's own parent usually visit regularly and eventually after the rehabilitation, where the children may return to their own homes.

(3) The State Government may make rules for the purposes of carrying out the scheme of foster care programme of children.

43. Sponsorship.—(1) The sponsorship programme may provide supplementary support to families, to children's homes and to special homes to meet medical, nutritional, educational and other needs of the children with a view to improving their quality of life.

(2) The State Government may make rules for the purposes of carrying out various schemes of sponsorship of children, such as individual to individual sponsorship, group sponsorship or community sponsorship.

44. After-care organisation.—The State Government may, by rules made under this Act, provide—

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

or the child :

Provided that any rule made under this section shall not provide for such juvenile or child to stay in the after-care organisation for more than three years :

Provided further that a juvenile or child over seventeen years of age but less than eighteen years of age would stay in the after-care organisation till he attains the age of twenty years.

45. Linkages and co-ordination.—The State Government may make rules to ensure effective linkages between various governmental, non-governmental, corporate and other community agencies for facilitating the rehabilitation and social reintegration of the child.

CHAPTER V MISCELLANEOUS

46. Attendance of parent or guardian of juvenile or child.—Any competent authority before which a juvenile or the 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 juvenile or the child to be presented at any proceeding in respect of the juvenile or the child.

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

48. Committal to approved place of juvenile or child suffering from dangerous diseases and his future disposal.—(1) When a juvenile or the 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 juvenile or the child to any place recognised to be an approved place in accordance with the rules made under this Act for such period as it may think necessary for the required treatment.

(2) Where a juvenile or the child is found to be suffering from leprosy, sexually transmitted disease, Hepatitis B, open cases of tuberculosis and such other diseases or is of unsound mind, he shall be dealt with separately through various specialised referral services or under the relevant laws as such.

49. Presumption and determination of age.—(1) Where it appears to a competent authority that person brought before it under any of the provisions of this Act (otherwise than for the purpose of giving evidence) is a juvenile or the child, the competent authority shall make due inquiry so as to the age of that person and for that purpose shall take such evidence as may be necessary (but not an affidavit) and shall record a finding whether the person is a juvenile or the 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 juvenile or the child, and the age recorded by the competent authority to be the age of person so brought before it, shall for the purpose of this Act, be deemed to be the true age of that person.

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

51. Reports to be treated as confidential.—The report of the probation officer or social worker considered by the competent authority shall be treated as confidential :

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

52. 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 Board in respect of a juvenile alleged to have committed an offence; or
- (b) any order made by a Committee in respect of a finding that a person is not a neglected juvenile.

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

53. Revision.—The High Court may, at any time, either of its own motion or on an 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.

54. Procedure in inquiries, 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 trials in summons 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).

55. Power to amend orders.—(1) Without prejudice to the provisions for appeal and revision under this Act, any competent authority may, on an application received in this behalf, amend any order as to the institution to which a juvenile or the child is to be sent or as to the person under whose care or supervision a juvenile or the child is to be placed under this Act :

Provided that there shall be at least two members and the parties or its defence present during the course of hearing for passing an amendment in relation to any of its order.

(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.

56. Power of competent authority to discharge and transfer juvenile or child.—The competent authority or the local authority may, notwithstanding anything contained in this Act, at any time, order a child in need of care and protection or a juvenile in conflict with law to be discharged or transferred from one children's home or special home to another, as the case may be, keeping in view the best interest of the child or the juvenile, and his natural place of stay, either absolutely or on such conditions as it may think fit to impose :

Provided that the total period of stay of the juvenile or the child in a children's home or a special home or a fit institution or under a fit person shall not be increased by such transfer.

57. Transfer between children's homes, under the Act, and juvenile homes, of like nature in different parts of India.—The State Government or the local authority may direct any child or the juvenile to be transferred from any children's home or special home outside the State to any other children's home, special home or institution of a like nature with the prior intimation to the local Committee or the Board, as the case may be, and such order shall be deemed to be operative for the competent authority of the area to which the child or the juvenile is sent.

58. Transfer of juvenile or child of unsound mind or suffering from leprosy or addicted to drugs.—Where it appears to the competent authority that any juvenile or the child kept in a special home or a children's home or shelter home or in an institution in pursuance of this Act, is suffering from leprosy or is of unsound mind or is addicted to any narcotic drug or psychotropic substance, the competent authority may order his removal to a leper asylum or mental hospital or treatment centre for drug addicts or to a place of safety for being kept there for such period not

exceeding the period for which he is required to be kept under the order of the competent authority or for such further period as may be certified by the medical officer necessary for the proper treatment of the juvenile or the child.

59. Release and absence of juvenile or child on placement.—(1)

When a juvenile or the child is kept in a children's home or special home and on a report of a probation officer or social worker or of Government or a voluntary organisation, as the case may be, the competent authority may consider, the release of such juvenile or the child permitting him to live with his parent or guardian or under the supervision of any authorised person named in the order, willing to receive and take charge of the juvenile or the child to educate and train him for some useful trade or calling or to look after him for rehabilitation.

(2) The competent authority may also permit leave of absence to any juvenile or the child, to allow him, on special occasions like examination, marriage of relatives, death of kith and kin or the accident or serious illness of parent or any emergency of like nature, to go on leave under supervision, for maximum seven days, excluding the time taken in journey.

(3) Where a permission has been revoked or forfeited and the juvenile or the child refuses or fails to return to the home concerned to which he was directed so to return, the Board may, if necessary, cause him to be taken charge of and to be taken back to the concerned home.

(4) The time during which a juvenile or the child is absent from a concerned home in pursuance of such permission granted under this section shall be deemed to be part of the time for which he is liable to be kept in the special home :

Provided that when a juvenile has failed to return to the special home on the permission 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 the institution.

60. Contribution by parents.—(1) The competent authority which makes an order for sending a juvenile or the child to a children's home or to a special home or placing the juvenile under the care of a fit person or fit institution may make an order requiring the parent or other person liable to maintain the juvenile or the child to contribute to his maintenance, if able to do so, in the prescribed manner according to income.

(2) The competent authority may direct, if necessary, the payment to be made to poor parent or guardian by the Superintendent or the Project Manager of the home to pay such expenses for the journey of the inmate or parent or guardian or both, from the home to his ordinary place of residence at the time of sending the juvenile as may be prescribed.

61. Fund.—(1) The State Government or local authority may create a Fund under such name as it thinks fit for the welfare and rehabilitation of the juvenile or the child dealt with under this Act.

(2) There shall be credited to the Fund such voluntary donation, contributions or subscriptions as may be made by any individual or organisation.

(3) The Fund created under sub-section (1) shall be administered by

the State Advisory Board in such manner and for such purposes as may be prescribed.

62. Central, State, district and city Advisory Boards.—(1) The Central Government or a State Government may constitute a Central or a State Advisory Board, as the case may be, to advise that Government on matter relating to the establishment and maintenance of the homes, mobilisation of resources, provision of facilities for education, training and rehabilitation of child in need of care and protection and juvenile in conflict with law and co-ordination among the various official and non-official agencies concerned.

(2) The Central or State Advisory Board shall consist of such persons as the Central Government or the State Government, as the case may be, may think fit and shall include eminent social workers, representatives of voluntary organisations in the field of child welfare, corporate sector, academicians, medical professionals and the concerned Department of the State Government.

(3) The district or city level inspection committee constituted under Section 35 of this Act shall also function as the district or city Advisory Board.

63. Special juvenile police unit.—(1) In order to enable the police officers who frequently or exclusively deal with juveniles or are primarily engaged in the prevention of juvenile crime or handling of the juvenile or children under this Act to perform their functions more effectively, they shall be specially instructed and trained.

(2) In every police station at least one officer with aptitude and appropriate training and orientation may be designated as the 'juvenile or the child welfare officer' who will handle the juvenile or the child in co-ordination with the police.

(3) Special juvenile police unit, of which all police officers designated as above, to handle juveniles or children will be members, may be created in every district and city to co-ordinate and to upgrade the police treatment of the juveniles and the children.

64. Juvenile in conflict with law undergoing sentence at commencement of this Act.—In any area in which this Act is brought into force, the State Government or the local authority may direct that a juvenile in conflict with law 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 home or be kept in fit institution in such manner as the State Government or the local authority thinks fit for the remainder of period of the sentence; and the provisions of this Act shall apply to the juvenile as if he had been ordered by the Board to be sent to such special home or institution or, as the case may be, ordered to be kept under protective care under sub-section (2) of Section 16 of this Act.

65. Procedure in respect of bonds.—Provisions of Chapter XXXIII of the Code of Criminal Procedure, 1973 (2 of 1974) shall, as far as may be, apply to bonds taken under this Act.

66. Delegation of powers.—The State Government may, by the general order, direct that any power exercisable by it under this Act shall, in

such circumstances and under such conditions, if any, as may be prescribed in the order, be exercisable also by an officer subordinate to that Government or the local authority.

67. Protection of action taken in good faith.—No suit or legal proceedings shall lie against the State Government or voluntary organisation running the home or any officer and the staff appointed in pursuance of this Act in respect of anything which is in good faith done or intended to be done in pursuance of this Act or of any rules or order made thereunder.

68. Power to make rules.—(1) The State Government may, by notification in the Official *Gazette*, make rules to carry out the purposes of this Act.

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

- (i) the term of office of the members of the Board and the manner in which such member may resign under sub-section (4) of Section 4;
- (ii) the time of the meetings of the Board and the rules of procedure in regard to the transaction of business at its meeting under sub-section (1) of Section 5;
- (iii) the management of observation homes including the standards and various types of services to be provided by them and the circumstances in which and the manner in which, the certification of the observation home may be granted or withdrawn and such other matters as are referred to in Section 8;
- (iv) the management of special homes including the standards and various types of services to be provided by them and the circumstances in which and the manner in which, the certification of the special home may be granted or withdrawn and such other matters as are referred to in Section 9;
- (v) persons by whom any juvenile in conflict with law may be produced before the Board and the manner of sending such juvenile to an observation home under sub-section (2) of Section 10;
- (vi) matters relating to removal of disqualification attaching to conviction of a juvenile under Section 19;
- (vii) the qualifications of the Chairperson and members, and the tenure for which they may be appointed under sub-section (3) of Section 29;
- (viii) the time of the meetings of the Committee and the rules of procedure in regard to the transaction of business at its meeting under sub-section (1) of Section 30;
- (ix) the manner of making the report to the police and to the Committee and the manner of sending and entrusting the child to children's home pending the inquiry under sub-section (2) of Section 32;

- (x) the management of children's homes including the standards and nature of services to be provided by them, and the manner in which certification of a children's home or recognition to a voluntary organisation may be granted or withdrawn under sub-section (2) of Section 34;
- (xi) appointment of inspection committees for children's homes, their tenure and purposes for which inspection committees may be appointed and such other matters as are referred to in Section 35;
- (xii) facilities to be provided by the shelter homes under sub-section (3) of Section 37;
- (xiii) for carrying out the scheme of foster care programme of children under sub-section (3) of Section 42;
- (xiv) for carrying out various schemes of sponsorship of children under sub-section (2) of Section 43;
- (xv) matters relating to after-care organisation under Section 44;
- (xvi) for ensuring effective linkages between various agencies for facilitating rehabilitation and social integration of the child under Section 45;
- (xvii) the purposes and the manner in which the Fund shall be administered under sub-section (3) of Section 61;
- (xviii) any other matter which is required to be, or may be, prescribed.

(3) Every rule made by a State Government under this Act shall be laid, as soon as may be after it is made, before the Legislature of that State.

69. Repeal and savings.—(1) The Juvenile Justice Act, 1986 (53 of 1986) is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the said Act shall be deemed to have been done or taken under the corresponding provisions of this Act.

70. Power to remove difficulties.—(1) if any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, not inconsistent with the provisions of this Act, remove the difficulty :

Provided that no such order shall be made after the expiry of the period of two years from the commencement of this Act.

(2) However, order made under the section shall be laid, as soon as may be after it is made, before each House of Parliament.

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