

GOVERNMENT

SIKKIM



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The following Act of the Sikkim Legislative Assembly having received the assent of the Governor on 7th day of April, 1982, is hereby published for general information.

THE SIKKIM CHILDREN ACT, 1982.

ACT NO. 4 OF 1982.

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ACT No. 4 of 1982.

AN

ACT

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

Be it enacted in the Thirty-third Year of the Republic of India as follows:—

CHAPTER I
PRELIMINARY.

*Short title,
extent and
commencement.*

1. (1) This Act may be called the Sikkim Children Act, 1982.
(2) It extends to the whole of the State of Sikkim.
(3) It shall come into force on such date as the Government may, by notification, appoint; and different dates may be appointed for different provisions of this Act or for different areas of the State.

Definitions.

2. In this Act, unless the context otherwise requires, —
(a) “authorised person” means a person authorised by the Government under sub-section (1) of section 16;

(b) “begging” means —

- (i) soliciting or receiving alms in a public place or entering on any private premises for the purpose of soliciting or receiving alms, whether under the pretence of singing, dancing, fortune telling, performing tricks or selling articles or otherwise; or
(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; or
(iii) allowing oneself to be used as an exhibit for the purpose of soliciting or receiving alms;

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

(d) “child” means a person who has not attained the age of eighteen years and when used with reference to a child sent to a children’s home or special school applies to that child during the whole period of the stay, notwithstanding that during the period of such stay, the child may have attained the above age limit;

(e) “children’s court” means a court constituted under section 4;

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

(g) “competent authority” means a children’s court and includes in respect of any area for which no children’s court has been constituted any magistrate empowered under sub-section (2) of section 6 to exercise the powers conferred on a children’s court by or under this Act;

(h) “dangerous drug” shall have the meaning assigned to it in the Dangerous Drugs Act, 1930;

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

(j) "fit person" or "fit institution" means any person or institution (not being a police station or jail) found fit by the competent authority to receive and take care of a child entrusted to his or its care and protection on the terms and conditions specified by the competent authority;

(k) "Government" means the State Government of Sikkim;

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

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

(i) is found begging ; or

(ii) is found without any home or settled place of abode or any ostensible means of subsistence or is found destitute, whether he is an orphan or not ; or

(iii) has a parent or guardian who is unfit or unable to exercise or does not exercise proper care and control over the child ; or

(iv) lives in a brothel or with a prostitute or frequently goes to any place used for the purpose of prostitution, or is found to associate with any prostitute or any other person who leads an immoral, drunken or depraved life ;

(n) "observation home" means any institution or place established or recognised by the Government under section 10 as an observation home ;

(o) "offence" means an offence punishable under any law for the time being in force ;

(p) "place of safety" means any place or institution (not being a police station or jail), the person in charge of which is willing temporarily to receive and take care of a child and which in the opinion of the competent authority may be a place of safety for the child ;

(q) "prescribed" means prescribed by rules made under this Act ;

(r) "probation officer" means an officer appointed as a probation officer under this Act or under the Probation of Offenders Act, 1958 ;

(s) "special school" means an institution established or certified by the Government under section 9 ;

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

(u) all words and expressions used but not defined in this Act and defined in the Code of Criminal Procedure, 1898, shall have the meanings assigned to them in that Code.

5 of 1898.

20 of 1958.

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

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

CHAPTER II
COMPETENT AUTHORITIES AND INSTITUTIONS
FOR CHILDREN

*Children's
courts.*

4. (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1898, the Government may, by notification, constitute for any area specified in the notification, one or more children's courts for exercising the powers and discharging the duties conferred or imposed on such court under this Act. 5 of 1898.

(2) A children's court shall consist of such number of magistrates forming a Bench as the Government think fit to appoint, of whom one shall be designated as the senior magistrate and not less than one shall be a woman; and every such Bench shall have the powers conferred by the Code of Criminal Procedure, 1898, on a magistrate of the first class. 5 of 1898.

*Procedure, etc.,
in relation to
children's
courts.*

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

(2) A children's court may act notwithstanding the absence of any magistrate and no orders made by the children's court shall be invalid by reason only of the absence of any magistrate, during any stage of the proceeding.

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

*Powers of
children's
court.*

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

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

(a) the district magistrate; or

(b) any magistrate of the first class.

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

*Procedure to be
followed by a
magistrate not
empowered
under the Act.*

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

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

*Children's
homes.*

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

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

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

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

Special schools.

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

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

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

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

Observation homes.

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

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

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

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

Aftercare organisations.

11. (1) The Government, may, by rules made under this Act, provide for the establishment or recognition of aftercare organisations and may vest them with such powers as may be necessary for effectively carrying out their functions under this Act.

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

Board of Visitors.

12. (2) For securing effective supervision of children's home, special schools, observation homes and aftercare organisations established or certified or recognised under the provisions of sections 8, 9, 10, and 11, the Government shall constitute a Board of Visitors consisting such number of members as the Government may deem necessary.

(2) The Board of Visitors constituted under sub-section (1) shall have the right to visit any children's home, observation home, special school or aftercare organisation and to record their comments on any matter it may think fit.

(3) Copies of comments of the Board of Visitors referred to in sub-section (2) shall as soon as may be after they are recorded, be forwarded by the managers of the children's home, observation home, special school and aftercare organisation to the Sikkim State Children Welfare Advisory Board.

*Sikkim State
Children Welfare
Advisory
Board.*

13. (1) The Government shall appoint a board to be called the Sikkim State Children Welfare Advisory Board.

(2) Such Board shall consist of such number of members as the Government may consider necessary and shall advise the Government generally in regard to the administration of this Act and more particularly in regard to the control and management of the children's homes, observation homes, special schools and aftercare organisations established, certified or recognised under sections 8,9,10 and 11 after considering the comments of the Board of Visitors.

*Inspection of
children's
homes, special
schools, etc.*

14. (1) The Government may appoint a Chief Child Welfare Inspector and as many Inspectors and Assistant Inspectors as it thinks fit to assist the Chief Child Welfare Inspector:

Provided that one of such Inspectors and Assistant Inspectors shall be a woman.

(2) Every children's home, observation home, special school and aftercare organisation shall be inspected at least once in every three months by the Chief Child Welfare Inspector or by an Inspector or Assistant Inspector:

Provided that when children's home or school or other organisation referred to in sub-section (2) is exclusively used for the reception of girls only, such inspection shall be conducted either by the Chief Child Welfare Inspector or by a woman Inspector or Assistant Inspector.

*Medical examination of
inmates of
schools.*

15. Every inmate of children's home, observation home, special school or after care organisation established, certified or recognised under sections 8,9,10 and 11 may, as soon as practicable after his admission to such home, school or organisation and at such intervals thereafter as may be specified by the Government by a notification, and also whenever so required by the managers of such homes or schools, be examined by a Medical Officer authorised in this behalf by the Government and a report of such medical examination shall forthwith be sent by the Medical Officer to the manager of the homes or schools and to the Chief Child Welfare Inspector:

Provided that in the case of homes or schools used and for the reception of girls only, such medical officer, shall, whenever practicable, be a woman.

CHAPTER III NEGLECTED CHILDREN

*Production of
neglected children
before
children's
court.*

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

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

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

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

Special Procedure to be followed when neglected child has parent.

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

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

Inquiry by children's court regarding neglected children.

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

Provided that before holding such inquiry the children's court shall direct the probation officer to furnish it with a report regarding the antecedents and family history of the child and other material circumstances likely to be of assistance to the court in holding the inquiry.

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

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

Provided further that the children's court may, if it is satisfied that having regard to the circumstances of the case it is expedient so to do, for reasons to be recorded, reduce the period of stay by such period not exceeding two years as it thinks fit.

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

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

Power to commit neglected child to suitable custody.

19. (1) If the children's court so thinks fit, it may, instead of making an order sub-section (2) of section 18 for sending the child to a children's home, make an order placing the child under the care of a parent, guardian or other fit person, on such parent, guardian or fit person executing a bond with or without surety to be responsible for the good behaviour and well being of the child and for the observance of such conditions as the children's court may think fit to impose.

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

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

20. Where a parent or guardian of a child complains to the children's court that he is not able to exercise proper care and control over the child and the children's court is satisfied on inquiry that proceedings under this Act should be initiated regarding the child, it may send the child to an observation home and make such further inquiry as it may deem fit, and the provisions of section 18 and section 19 shall, as far as may be, apply to such proceedings. *Uncontrollable children,*

CHAPTER IV DELINQUENT CHILDREN

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

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

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

Information to parent or guardian or probation officer.

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

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

Inquiry by children's court regarding delinquent children.

23. Where a child having been charged with an offence appears or is produced before a children's court, the children's court shall hold the inquiry in accordance with the provisions of section 39 and may, subject to the provisions of this Act, make such order in relation to the child as it deems fit.

*Orders that be
passed regard-
ing delin-
quent children.*

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

- (a) allow the child to go home after advice or admonition;
- (b) direct the child to be released on probation of good conduct or 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, that court may require, for the good behaviour and well-being of the child for any period not exceeding three years;
- (c) make an order directing the child to be sent to a special school for the period until he ceases to be a child :

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

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

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

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

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

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

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

*Orders that
may not be
passed against
delinquent
children.*

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

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

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

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

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

26. Notwithstanding anything to the contrary contained in the Code of Criminal Procedure, 1898, no proceeding shall be instituted and no order shall be passed against a child under Chapter VIII of the said Code. 5 of 1898.

No joint trial of child and person not a child.

27. (1) Notwithstanding anything contained in section 239 of the Code of Criminal Procedure, 1898 or in any other law for the time being in force, no child shall be charged with or tried for any offence together with a person who is not a child. 5 of 1898.

(2) If a child is accused of an offence for which, under section 239 of the Code of Criminal Procedure, 1898 or any other law for the time being in force, such child and any person who is not a child would, but for the prohibition contained in sub-section (1), have been charged and tried together, the court taking cognizance of that offence shall direct separate trials of the child and the other person. 5 of 1898.

Power of police officers to administer warning.

28. Any Police Officer not below the rank of a sub-Inspector, if he is of opinion that any offence reported or suspected to have been committed by a child is not of a serious nature or that it is not a repetition of a previous offence already committed by the child, may, notwithstanding anything contained in any other provision of this Act or in any other law for the time being in force and subject to such restrictions and limitations as may be prescribed, let such child off after administering suitable warning to such child:

Provided that every case in which a child is so let off shall forthwith be reported by such police officer to the children's court stating the reasons for not investigating the case or not proceeding with the investigation of the case, as the case may be.

Removal of disqualification attaching to conviction.

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

Special provision in respect of pending cases.

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

CHAPTER V
PROCEDURE OF COMPETENT AUTHORITIES GENERALLY AND
APPEALS AND REVISION FROM ORDERS OF SUCH AUTHORITIES.

- Sitting etc., of children's courts.* 31. (1) A children's court shall hold its sittings at such place, on such day and in such manner, as may be prescribed.
- (2) A Magistrate empowered to exercise the powers of a children's court under sub-section (2) of section 6 shall, while holding any inquiry regarding a child under this Act, as far as practicable, sit in a building or room different from that in which the ordinary sittings of civil and criminal courts are held, or on different days or at times different from those at which the ordinary sittings of such court are held.
- Persons who may be present before competent authority.* 32. (1) Save as provided in this Act, no person shall be present at any sitting of a competent authority, except—
- (a) any officer of the competent authority; or
- (b) the parties to the inquiry before the competent authority, the parent or guardian of the child and other persons directly concerned in the inquiry including police officers; or
- (c) such other persons as the competent authority may permit to be present.
- (2) Notwithstanding anything contained in sub-section (1), if, at any stage during an inquiry, a competent authority considers it to be expedient in the interest of the child or on grounds of decency or morality that any person including the police officers, legal practitioners, the parent, guardian or the child himself should withdraw, the competent authority may give such direction and if any person refuses to comply with such direction, the competent authority may have him removed and may, for this purpose, cause to be used such force as may be necessary.
- Attendance of parent or guardian of child.* 33. Any competent authority before which a child is brought under any of the provisions of this Act may, whenever it so thinks fit, require any parent or guardian having the actual charge of, or control over, the child to be present at any proceeding in respect of the child.
- Dispensing with attendance of child.* 34. If, at any stage during the course of an inquiry, a competent authority is satisfied that the attendance of the child is not essential for the purpose of the inquiry, the competent authority may dispense with his attendance and proceed with the inquiry in the absence of the child.
- Committal to approved place of child suffering from dangerous disease and its future disposal.* 35. (1) When a child who has been brought before a competent authority under this Act is found to be suffering from a disease requiring prolonged medical treatment or physical or mental complaint that will respond to treatment, the competent authority may send the child to any place recognised to be an approved place in accordance with the rules made under this Act for such period as it may think necessary for the required treatment.
- (2) Where a child is found to be suffering from leprosy or is of unsound mind he shall be dealt with under the provisions of the Lepers Act, 1898 or the Indian Lunacy Act, 1912, as the case may be.

3 of 1898
4 of 1912.

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

*Presumption
and determina-
tion of age*

36. (1) Where it appears to a competent authority that a person brought before it under any of the provisions of this Act (otherwise than for the purpose of giving evidence) is a child, the competent authority shall make due inquiry as to the age of that person and for that purpose shall take such evidence as may be necessary and shall record a finding whether the person is a child or not, stating his age as nearly as may be.
- (2) No order of a competent authority shall be deemed to have become invalid merely by any subsequent proof that the person in respect of whom the order has been made is not a child, and the age recorded by the competent authority to be the age of the person so brought before it shall, for the purposes of this Act, be deemed to be the true age of that person.

*Circumstances
to be taken
into conside-
ration in
making orders
under the Act.*

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

- (a) the age of the child;
- (b) the circumstances in which the child is living;
- (c) the reports made by the probation officer;
- (d) the religious persuasion of the child;
- (e) such other circumstances as may, in the opinion of the competent authority, require to be taken into consideration in the interests of the child:

Provided that in the case of a delinquent child, the above circumstances shall be taken into consideration after the competent authority has recorded a finding against the child that he has committed the offence:

Provided further that if no report of the probation officer is received within ten weeks of his being directed under section 18 or of his being informed under section 22 it shall be open to the competent authority to proceed without the report of the probation officer.

*Sending a child 38,
outside
jurisdiction.*

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

*Reports to be
treated as
confidential.*

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

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

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

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

Provided that for reasons to be recorded in writing the authority holding the inquiry may permit such disclosure if in its opinion such disclosure is in the interest of the child.

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

Appeals.

41. (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 preferring the appeal in time.

- (2) No appeal shall lie from—
(a) any order of acquittal made by the children's court in respect of a child alleged to have committed an offence; or
(b) any order made by the children's court in respect of a finding that a person is not a neglected child.
(3) No second appeal shall lie from any order of the court of session passed in appeal under this section.

Revision.

42. 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.

Procedure in inquiries, appeals and revision proceedings.

43. (1) Save as otherwise expressly provided by this Act, a competent authority while holding any inquiry under any of the provisions of this Act, shall follow such procedure as may be prescribed and subject thereto, shall follow, as far as may be, the procedure laid down in the Code of Criminal Procedure, 1898 for trials in summons cases.

5 of 1898.

- (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, 1898.

Power to amend orders.

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

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

CHAPTER VI SPECIAL OFFENCES IN RESPECT OF CHILDREN

*Punishment for
cruelty to
child.*

45. (1) whenever, having the actual charge of, or control over a child, assaults, abandons, exposes or wilfully neglects the child or causes or procures him to be assaulted, abandoned, exposed or neglected in a manner likely to cause such child unnecessary mental and physical suffering, shall be punishable with imprisonment for a term which may extend to six months, or with fine, or with both.
- (2) No Court shall take cognizance of an offence punishable under sub-section (1) unless the complaint is filed with the previous sanction of the Government or an officer authorised by it in this behalf.

*Employment of
children for
begging.*

46. (1) Whoever employs or uses any child for the purposes of begging or causes any child to beg shall be punishable with imprisonment for a term which may extend to one year, or with fine, or with both.
- (2) Whoever, having the actual charge of, or control over, a child, abets the commission of the offence punishable under sub-section (1) shall be punishable with imprisonment for a term which may extend to one year, or with fine, or with both.
- (3) The offence punishable under this section shall be cognizable.

*Penalty for
giving intoxicating
liquor
or dangerous
drug to a child.*

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

*Exploitation of
child employees.*

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

*Power of the
Government to
discharge and
transfer children.*

49. (1) The Government may, notwithstanding anything contained in this Act, at any time, order a neglected or delinquent child to be discharged from the children's home or special school either absolutely or on such conditions as the Government may think fit to impose.
- (2) The Government may, notwithstanding anything contained in this Act, order—
- (a) a neglected child to be transferred from one children's home to another;
 - (b) a delinquent child to be transferred from one special school to another or from a special school to a borstal school or from a special school to a children's home;
 - (c) a child who has been released on licence which has been revoked or forfeited, to be sent to the special school or children's home from which he was released or to any other special school or children's home or borstal school;

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

Transfers between children's homes, etc., under the Act and children's homes, etc., of like nature in different parts of India.

50.

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

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

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

Transfer of children suffering from leprosy or tuberculosis or of unsound mind.

51.

- (1) Where it appears to the Government that any child kept in a children's home or special school in pursuance of this Act is suffering from leprosy or tuberculosis or is of unsound mind, the Government may order his removal to a leper asylum or T.B. Sanatorium or mental hospital or other place of safe custody for being kept there for the remainder of the term for which he has to be kept in custody under the orders of the competent authority or for such further period as may be certified by a medical officer to be necessary for the proper treatment of the child.

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

Placing out on licence.

52.

- (1) When a child is kept in a children's home or special school, the Government may, if it thinks fit, release the child from the children's home or special school and grant him a written licence for such period and on such conditions as may be specified in the licence permitting him to live with, or under the supervision of any responsible person named in the licence, willing to receive and take charge of him with a view to educate him and train him for some useful trade or calling.
- (2) Any licence so granted under sub-section (1) shall be in force for the period specified in the licence or until revoked or forfeited by the breach of any of the conditions on which it was granted.
- (3) The Government may, at any time, by order in writing revoke any such licence and order the child to return to the children's home or special school from which he was released or to any other children's home or special school and shall do so at the desire of the person with whom or under whose supervision the child has been permitted to live in accordance with a licence granted under sub-section (1).

- (4) When a licence has been revoked or forfeited and the child refuses or fails to return to the children's home or special school to which he was directed so to return, the Government may, if necessary, cause him to be taken charge of and to be taken back to the children's home.
- (5) The time during which a child is absent from a children's home or special school in pursuance of a licence granted under this section shall be deemed to be part of the time for which he is liable to be kept in custody in the children's home or special school :

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

Provision in respect of escaped children.

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

Child not to be handcuffed or fettered.

54. No child either neglected or delinquent shall be handcuffed or fettered.

Contribution by parents.

55. (1) The competent authority which makes an order for sending a neglected child or a delinquent child to a children's home or special school or placing the child under the care of a fit person may make an order requiring the parent or other person liable to maintain the child to contribute to his maintenance, if able to do so, in the prescribed manner.
- (2) The competent authority before making any order under sub-section (1) shall inquire into the circumstances of the parent or other person liable to maintain the child and shall record evidence, if any, in the presence of the parent or such other person, as the case may be.
- (3) The person liable to maintain a child, shall for the purposes of sub-section (1), include, in the case of illegitimacy, his putative father:

Provided that where the child is illegitimate and an order for his maintenance has been made under section 488 of the Code of Criminal Procedure, 1898 the competent authority shall not ordinarily make an order for contribution against the putative father, but may order the whole or any part of the sums accruing due under the said order for maintenance to be paid to such person as may be named by the competent authority and such sum shall be paid by him towards the maintenance of the child.

5 of 1898.

- (4) Any order made under this section may be enforced in the same manner as an order under section 488 of the Code of Criminal Procedure, 1898.

5 of 1898.

*Control of
custodian
over child.*

56.

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

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

*Delinquent
child under-
going sen-
tence at the
commencement
of the Act.*

57.

In any area in which this Act is brought into force, the Government may direct that a delinquent child who is undergoing any sentence of imprisonment on the commencement of this Act shall, in lieu of undergoing such sentence, be sent to a special school or be kept in safe custody in such place and manner as the Government thinks fit, for the remainder of the period of the sentence, and the provisions of this Act shall apply to the child as if he had been ordered by a children's court to be sent to such special school or, as the case may be, ordered to be detained under sub-section (1) of section 24.

*Appointment
of officers.*

58.

(1) The Government may appoint as many probation officers, officers for special school, observation homes or aftercare organisations and such other officers as it may deem necessary for carrying out the purposes of this Act.

(2) It shall be the duty of the probation officer—

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

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

*Officers
appointed
under the Act
to be public
servants,*

59.

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

5 of 1860.

*Procedure in
respect of
bonds.*

60.

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

5 of 1898.

*Delegation
of powers.*

61.

The Government may, by general or special order, direct that any power exercisable by them under this Act shall, in such circumstances and under such conditions, if any, as may be specified in the order, be exercisable also by an officer subordinate to the Government.

*Protection of
action taken in
good faith.*

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

*Certain
provision of
Central Act
5 of 1898
not to apply.*

63. Section 29B and section 399 of the Code of Criminal Procedure, 1898, 5 of 1898, shall cease to apply to any area in which this Act has been brought into force.

*Power to make
rules.*

64. (1) The State Government may make rules for giving effect to the provisions 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) facilities for education etc. that may be provided in children's homes under sub-section (3) of section 8;
 - (b) the circumstances and the manner in which certificates of a children's home, special schools, observation homes may be granted or withdrawn;
 - (c) manner in which aftercare organisations may be recognised;
 - (d) measures to be taken by aftercare organisation to enable the child to live an honest and useful life;
 - (e) the manner in which a Police Officer may deal with a delinquent child not released on bail until its production in a children's court;
 - (f) restrictions and limitations under which a Police Officer may let off a delinquent child after a warning;
 - (g) the places at which the children's court may hold its sittings;
 - (h) the procedure that may be followed by the competent authority while holding inquiries under this Act;
 - (i) the manner in which the parents of a child are to contribute towards the maintenance of the child;
 - (j) such other duties that may be performed by the probation officers;
 - (k) any other matter which has to be, or may be, prescribed.

By Order of the Governor,

B. R. PRADHAN,
Secretary to the Government of Sikkim,
Law Department,
F. No. 16/(153)/LD/82.