

PREVENTION OF  
OFFENCES  
AGAINST THE  
CHILD BILL, 2009

## Prevention of Offences against the Child Bill, 2009

### Preamble

WHEREAS the Constitution of India places a primary responsibility on the State to ensure that all needs of Children are met and their human rights are fully protected;

AND WHEREAS, the Government of India acceded on 11<sup>th</sup> December 1992 to the *Convention on the Rights of the Child*, adopted by the General Assembly of the United Nations, which has prescribed a set of standards to be adhered to by all State parties in securing the best interests of the Child;

AND WHEREAS, the Government of India has enacted the Juvenile Justice (Care and Protection) of Children) Act, 2000 to consolidate and amend the law relating to juveniles in conflict with law and children in need of care and protection;

AND WHEREAS, offences against any child is regarded as a heinous crime, which shakes the conscience of the members of society and is repugnant to good morals and well being of the society;

AND WHEREAS, it is expedient to consolidate all the offences against children in a separate Code bearing in mind international and regional standards, directives provided by the Supreme Court of India, other good practices relating to children and learning from the experiences of other countries.

AND WHEREAS, while we recognize a child as an individual possessing rights, it is imperative to laws and procedures that operate in the **Best Interest of the Child** and that protect every child from violations of their rights thereby helping them become responsible citizens;

Be it enacted by the Parliament in the (\_\_\_\_\_) year of the Republic of India as follows:-

### Statement of Objects and Reasons

The Bill seeks to achieve the following ends:

1. to consolidate and define the different offences against the child and to provide a legal remedies for violation of the same;
2. to make the applicability of the laws uniform to both boys and girls;
3. to bring the existing laws and procedures in conformity with international, regional and national standards;
4. to set forth good practices, relevant norms and principles for administrating justice to a child;
5. to provide stringent penalties to any person who violates the provisions of this Bill, thus, creating a deterrence;
6. to ensure that criminal justice machinery functions, keeping the best interest of the child, as the focal point at all stages;
7. to ensure the speedy disposal of cases, with a view to avoiding delays, which can result in intimidation, retaliation and secondary victimization of the child.

## CHAPTER I PRELIMINARY

### SECTION 1. Short title, extent and commencement

- (1) This Bill shall be called '*Prevention of Offences Against the Child Bill, 2009*';
- (2) It extends to the whole of India, including 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.

### SECTION 2. Definition and Interpretation Clause

(1) In this Bill, unless the context otherwise requires, the words used shall have the meaning given below:

- (a) "*Child*" Unless a separate age has been provided in this Bill, a child shall mean any person who has not completed the eighteenth year of age.
- (b) "*Children's Court*" shall mean a court as constituted under Section 25 of The Commissions for Protection of Child Rights Act, 2005.
- (c) "*Children's Institution*": shall include the *children's home* (as defined under Section 2 (e) of the Juvenile Justice (Care and Protection of Children) Act, 2000; *fit institution* (as defined under Section 2 (h) of the Juvenile Justice (Care and Protection of Children) Act, 2000; *observation home* (as defined under Section 2 (o) of the Juvenile Justice (Care and Protection of Children) Act, 2000; *special home* (as defined under Section 2 (v) of the Juvenile Justice (Care and Protection of Children) Act, 2000; *shelter's home* as constituted under Section 2 (u) of the Juvenile Justice (Care and Protection of Children) Act, 2000 or any other institution or orphanage keeping a child in need of care and protection.
- (d) "*Child Neglect*" shall mean the willful omission on the part of the parents, guardians or care giver and duty bearers of a child to provide for the developmental needs of a child, in all spheres, which shall include health, education, mental well being, emotional development, nutrition, shelter, and safe living conditions, in the context of resources reasonably available to such caretaker and causes or is likely to cause harm or present danger to the child's life, health, development, dignity or esteem;
- (e) "*Duty bearer*" shall mean any person entrusted with the implementation of this Bill, the Juvenile Justice (Care and Protection of Children) Act, 2000, the Immoral Traffic (Prevention) Act, 1956 or any other relevant act dealing with a child;
- (f) "*Guardian*" in relation to a child, means his natural guardian or any other person having the actual charge or control over the child and recognized by the competent authority as a guardian in course of proceedings before that authority;
- (g) "*Narcotic drug*" and "*psychotropic substance*" shall have the meanings respectively assigned to them in the Narcotic Drugs and Psychotropic Substances Act, 1985;
- (h) "*Person*" shall mean a person, of any age. Provided that, if the person committing the offence is below 18 years of age, then the procedures as provided under the Juvenile Justice (Care and Protection of Children) Act, 2000 shall apply;
- (i) "*Prescribed*" means prescribed by rules under this Bill;
- (j) "*Offence*" shall denote an act or omission made punishable by this Bill or any other law for the time being in force;
- (k) "*Special Juvenile Police Unit*" means a unit of the police force of a State designated for handling of children as provided under Section 63 of the Juvenile Justice (Care and Protection of Children) Act, 2000.

- (l) “*Child in need of care and protection*” means as defined in Section 2(d) of Juvenile Justice(Care and Protection of Children) Act 2000.
- (m) “*Begging*” means as defined in Section 2(b) of Juvenile Justice(Care and Protection of Children) Act 2000.
- (n) “*Abetment*” means as defined in Section 107 of Indian Penal Code.
- (o) “*Assault*” means as defined in Section 351 of Indian Penal Code.

(2) All words and expressions used but not defined, unless the context requires otherwise, and defined in The Juvenile Justice (Care and Protection of Children) Act, 2000, The Code of Criminal Procedure, 1973 or the Indian Penal Code, 1870 shall have the meanings respectively assigned to them in those Acts or Codes.

(3) All other words and expressions shall have the meaning ascribed to them in ordinary English language.

### **SECTION 3. Jurisdiction and Applicability Clause**

- (1) Every person shall be liable to punishment under this Bill and not otherwise for every act or omission contrary to the provisions thereof, of which he/she may be guilty within India;
- (2) Any person liable, by any Indian law, to be tried for an offence committed outside India shall be dealt with according to the provisions of this Bill for any act committed outside India in the same manner as if such act had been committed in India.

## **CHAPTER II GUIDING PRINCIPLES**

### **SECTION 4. Guiding Principles**

Every stakeholder imposed with a duty of implementation of this Bill shall follow such procedures and practices as may be prescribed; provided that the procedures and practices so prescribed shall be *Child-friendly* and shall be deemed to include the following:

- (1) *Principle of Best Interest of a child*: The best interest and well being of the Child shall be the paramount consideration at every stage. This principle seeks to ensure the physical, emotional, intellectual, social and moral development of the child so as to make the child a useful and good citizen by ameliorating the impediments to the healthy development of the child.
- (2) *Principle of ‘Protection’ of a Child*: The State, duty bearers and every person shall take every possible measure to protect and support a child from all forms of physical or mental violence, injury, abuse, neglect, maltreatment or exploitation including sexual assault and exposure of children to psychological stress through reality shows and competitions, through effective procedures and programmes, as well as for identification, reporting, referral, investigation and treatment for judicial involvement.
- (3) *Principle of Equality and non discrimination - “Leave no Child behind”*: Equality of access and opportunity for all provisions under this Bill is guaranteed to every Child and there shall be no discrimination on the basis of age, sex, place of birth, disability, race, ethnicity, socio-economic status, caste, cultural practices, work, activity and behaviour of the Child or that of the parents or Guardians of the child or any other consideration.
- (4) *Principle of Individuality and Participation*: The Child shall be respected and treated as an individual capable of forming and expressing ideas and opinions. According to the age of child, the opinion of the Child shall be sought and considered, in any matter concerning the Child.

- (5) *Principle of Privacy and Confidentiality:* The Child's rights to privacy and confidentiality shall be protected by all means and through all stages of the proceedings.
- (6) *Principle of Non-Stigmatizing language, Decisions and Actions:* Non-stigmatizing language must be strictly adhered to, and the use of adverse or accusatory words shall be prohibited in the processes pertaining to the Child under this Bill.
- (7) *Principle of Avoidance of Harm:* At all stages from initial contact with the Child until final disposal of the case, extreme care shall be taken to avoid any harm to the well being and safety of the Child. All duty bearers must consider these cases to be a priority and utilise the maximum of the available resources to ensure that the Child is provided justice promptly and is eventually rehabilitated back into society.
- (8) *Principle of non criminalization of a Child:* At all stages of the proceedings, the child shall not be criminalized, as the child is the victim upon whom the offence has been committed.

### **CHAPTER III SEXUAL OFFENCES AGAINST A CHILD**

#### **SECTION 5. Sexual Assault of a Child**

A person is said to commit "Sexual Assault of a Child" when that person, with or without the consent of the child:

- (1) Penetrates the vagina, (which shall include the *labia majora*), the anus or urethra of any child with:
  - a. any part of the body of that person or of any other person; or
  - b. an object manipulated by another person.
- (2) manipulates any part of the body of a child so as to cause penetration of the vagina (which shall include the *labia majora*), the anus or the urethra of the person by any part of the child's body;
- (3) commits the act of fellatio, on or by a child;
- (4) commits the act of cunnilingus, on or by a child;
- (5) commits the act of analingus, on or by a child.

*Explanation:* Penetration to even the *slightest* extent is sufficient to constitute penetration for the purpose of this section. It is not necessary that the hymen is ruptured or semen is emitted to constitute sexual assault.

*Exception:* Nothing that has been mentioned in the aforesaid Section shall be an offence, where such penetration is carried for proper hygienic and medical reasons.

#### **SECTION 6. Punishment for Sexual Assault of a Child**

Whoever commits the Sexual Assault of a Child shall be liable to rigorous imprisonment for a term which shall not be less than 10 years but can extend to life and shall also be liable to a fine upto Rupees Five lakhs only.

*Provided that,* the Court may, for adequate and special reasons, to be recorded in writing and only in the rarest of rare circumstances, impose a sentence of penalty less than 10 years. In all cases, where the penalty shall be less than 10 years, no such sentence shall be executed, unless it is confirmed by the High Court.

#### **SECTION 7. Aggravated forms of Sexual Assault of a Child**

- (1) Whoever commits sexual assault of a child or a person less than twelve years of age, and further:

- (a) kills the child;
- (b) physically incapacitates the child or causes the child to become insane or mentally unfit to perform regular tasks;
- (c) commits the sexual assault with more than one person ('gang sexual assault');
- (d) makes the child pregnant as a consequence of the sexual assault;
- (e) inflicts the child with HIV/AIDS or any other life threatening disease or infection;

or

whoever commits sexual assault of a child or a person less than twelve years of age is a

- (a) person in relation of the child by blood or adoption, legitimately or illegitimately or as per the personal laws, is within the prohibited degrees of consanguinity or affinity (*incest*);
- (b) public servant as defined under Section 21 of the Indian Penal Code, 1860;
- (c) police officer, while on duty, taking advantage of one's official position;
- (d) medical officer, while on duty, taking advantage of one's official position;
- (e) staff or the member of the management of any of the Children's Institution, while on duty, taking advantage of one's official position;
- (f) member of the school management or teacher or principal or any other staff of the educational institution while on duty, taking advantage of one's official position;

shall be liable to rigorous imprisonment for a term which shall not be less than 14 years but can extend to death and shall also be liable to fine upto Rupees Ten lakhs only.

*Provided that*, (1) the Court may, for adequate and special reasons, to be recorded in writing and only in the rarest of rare circumstances, impose a sentence of penalty less than 14 years. In all cases, where the penalty shall be less than 14 years, such sentence shall be confirmed by the High Court.

(2) If the sexual assault takes place in any children's institution (whether run by the State or by NGOs), in addition to the penalty referred above, the State or the NGO, as the case maybe, will be liable to pay an amount to be decided by the State or National Commission for Protection of Child Rights, to be provided to the child on the completion of his/her eighteenth year.

### **SECTION 8. Unlawful Sexual Contact**

Whoever, with an intention to achieve sexual gratification, commits any of the following with a child:

- (1) fondling the genitalia or other parts of the child;
- (2) making the child fondle the genitalia or other parts of the body of any person;
- (3) kissing the child on the lips;
- (4) any other act, which involves a physical contact but no penetration.

shall be liable to simple imprisonment for a term which shall not be less than 3 years but can extend to 14 years and shall also be liable to fine upto Rupees Ten Lakhs only.

*Explanation:* The question involving '*intention to achieve sexual gratification*' is a question of fact.

### **SECTION 9. Non Contact based sexual offences with a Child**

Whoever, with an intention to achieve sexual gratification, commits any of the following with a child:

- (a) exposes the genitalia to the child (*Voyeurism*) or making the child do so (*exhibitionism*);
- (b) masturbating in the presence of the child or making the child do so;
- (c) shows pornography to the child, in any form or media;
- (d) exposes the child to sexual contact between any two persons;

- (e) use sexually explicit and inappropriate language, according to the age of the child;
- (f) undertakes any other acts intended to outrage the modesty of a child.

shall be liable for simple imprisonment which shall extend to two years and shall also be liable to fine upto Rupees Seven thousand only.

*Explanation:* The question involving ‘*intention to achieve sexual gratification*’ and ‘*acts intended to outrage the modesty of a child*’ is a question of fact.

### **SECTION 10. Acts undertaken with intent to sexually assault a child or to undertake any form of unlawful sexual contact**

Whoever undertakes any act(s) with the intention that such person could at any point of time in the future, sexually assault a child or undertake any form of unlawful sexual contact will be liable to imprisonment which can extend to seven years and shall also be liable to fine upto Rupees One lakh only.

*Provided that:* In case the person is successful in sexually assaulting the child or undertaking any form unlawful sexual contact, such person shall also be liable to the punishment provided in the relevant Sections.

## **CHAPTER IV OFFENCES RELATING TO TRAFFICKING AND COMMERCIAL SEXUAL EXPLOITATION**

### **SECTION 11. Offences relating to Trafficking**

1. For the purposes of this Bill, the offence of Trafficking shall be mean, “the recruitment, transportation, transfer, harbouring, or receipt of persons, by means of threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having the control over another person, for the purposes of exploitation”.
2. Trafficking for the purpose of this Bill shall include
  - (a) Selling a child for the purposes of Commercial Sexual Exploitation as defined under Section 12;
  - (b) Buying a child for purposes of Commercial Sexual Exploitation as defined under Section 13;
  - (c) Procuring, inducing or taking a child for the sake of Commercial Sexual Exploitation as defined under Section 14; and
  - (d) Dedicating a child as defined under Section 15.
3. All other offences relating to the use of a child for the purposes of Commercial Sexual Exploitation shall be as applicable under the Immoral Traffic (Prevention) Act, 1956 and the provisions under that Act shall be construed accordingly.

### **SECTION 12. Selling a child for the purposes of Commercial Sexual Exploitation**

Whoever sells, lets to hire, or otherwise disposes of any child, with the intent that such person shall at any age be employed or used for the purposes of prostitution or knowing it likely that child will at any age be employed or used for any such purpose, shall be punished with rigorous imprisonment for a term which may extend to ten years and shall also be liable to fine upto Rupees Five lakhs only.

*Provided that*, if the person selling the child is the child is the parent, guardian, any other person entrusted with responsibility of the child or any person in a fiduciary capacity to the child, the imprisonment referred above shall not be less than seven years.

*Explanation:* (1) When a child is sold, let for hire, or otherwise disposed of to a prostitute or to any person who keeps or manages a brothel, the person so disposing of such child shall, until the contrary is proved be presumed to have disposed of such child with the intent that the child shall be used for the purpose of prostitution.

(2) For the purpose of this Section, the term ‘*brothel*’ shall have the same meaning ascribed to it under the Immoral Traffic (Prevention) Act, 1956.

### **SECTION 13. Buying a child for purposes of Commercial Sexual Exploitation**

Whoever buys, hires or otherwise obtains possession of any child, with the intent that such child shall at any age be employed or used for the purpose of prostitution or knowing it to be likely that such person will at any age be employed or used for any such purpose, shall be punished with rigorous imprisonment for a term which may extend to ten years and shall also be liable to fine upto Rupees Five lakhs only.

*Explanation:* (1) Any prostitute or any person keeping or managing a brothel, who buys or hires or otherwise obtains possession of a child shall, until the contrary is proven, be presumed to have obtained possession of such child with the intent that the child shall be used for the purpose of prostitution.

(2) For the purpose of this Section, the term ‘*brothel*’ shall have the same meaning ascribed to it under the Immoral Traffic (Prevention) Act, 1956.

### **SECTION 14. Procuring, inducing or taking a child for the sake of Commercial Sexual Exploitation**

Whoever:

- (1) procures or attempts to procure a child, whether with or without their consent, for the purposes of prostitution;
- (2) induces a child to go from any place, with the intention that the child may for the purpose of prostitution become the inmate of, or frequent, a brothel;
- (3) takes or attempts to take a child or causes the child to be taken, from one place to another, with a view to his/her carrying on, or being brought up to carry on prostitution;
- (4) causes or induces a child to carry on prostitution.

Shall be liable to rigorous imprisonment for a term which shall not be less than ten years but may extend to life and shall also be liable to fine upto Rupees Ten lakhs only.

*Explanation:* For the purposes of this Section, a child shall include a child within India, including the State of Jammu and Kashmir and a child from any other country.

### **SECTION 15. Dedicating a child**

Whoever, dedicates any child, by whatever name it is called, to the service of any deity, idol, object of worship, temple or any other religious institution or place, with the knowledge that such child is likely to be sexually assaulted or subject to unlawful sexual contact at any age, shall be liable to rigorous imprisonment that may extend for fourteen years and shall also be liable to fine upto Rupees Ten Lakh only.



## **CHAPTER V**

### **OFFENCES RELATING TO ECONOMIC EXPLOITATION OF A CHILD AND CHILD LABOUR**

#### **SECTION 16. Prohibition of the use of child for any form of employment, processes or labour**

No child below the age of 14 years shall be employed to work in any factory or mine or engaged in any other hazardous occupations or processes as contained in the Part A and B of Schedule of Child Labour(Prohibition & Regulation) Act, 1986 as amended from time to time.

*Explanation:* The provisions contained in Chapter V and Chapter VI of this Bill shall apply, notwithstanding anything contained in Section 23 to Section 26 of the Juvenile Justice (Care and Protection of Children) Act, 2000.

#### **SECTION 17. Employment of child as domestic help**

No child below the age of 14 years shall be employed to work as domestic servants or workers, in dhabhas, road side eateries, restaurants, hotels, motels, tea shops resorts, Spas or other creational centers, as indicated in Part A of Schedule of Child Labour(Prohibition & Regulation) Act, 1986 as amended from time to time.

#### **SECTION 18. Employment of a child for begging**

Whoever, employs a child for the purpose or causes a child to beg shall be punished with imprisonment for a term which may extend for three years and shall also be liable to fine upto Rupees Ten thousand only.

*Provided that,* if with the intent to make a child beg, the person amputates or maims the child, the punishment shall be rigorous imprisonment which shall not be less than 7 years but can extend to 10 years and shall also be liable to fine.

*Explanation:* For the purposes of this Section, the term ‘*Begging*’ shall have the meaning ascribed to it under Section 2 (b) of the Juvenile Justice (Care and Protection of Children) Act, 2000.

#### **SECTION 19. Exploitation of a child employee**

Whoever ostensibly procures a child for the purpose of any hazardous employment, keeps the child in bondage or withholds the earnings or uses such earnings for his/her own purpose shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine upto Rupees Ten thousand only.

*Provided that,* if, as a result of such employment, the child is subjected to any unreasonable risk to life or limb, the punishment shall not be less than three years of imprisonment but can also extend to seven years.

## **CHAPTER VI**

### **OFFENCES RELATING TO THE CHILD’S BODY**

#### **SECTION 20. Cruelty to a child**

Whoever, having the actual charge of or control over a child, assaults, abandons, exposes or willfully neglects the child or causes or procures the child to be assaulted, abandoned, exposed or neglected in a manner likely to cause such child physical or mental suffering shall be punishable with imprisonment

of either description for a term with rigorous and non-rigorous which may extend to three year or fine upto Rupees Ten thousand only or both.

*Provided that*, if that as a result of the aforesaid mentioned cruelty, the child:

- (1) is physically incapacitated;
- (2) becomes insane or mentally unfit to perform regular tasks;
- (3) has risk to life or limb;

the punishment shall be rigorous imprisonment which shall not be less than 3 years but can extend to 10 years and shall also be liable to fine upto Rupees Five lakhs only.

*Provided that: (1)* where the person on whom the attempt to culpable homicide not amounting to murder has been made, under Section 308 of Indian Penal Code, is a child the punishment shall be imprisonment of either description for a period not less than three years or with fine not less than Rupees ten thousand only or both and if hurt is caused to any child by such act, shall be punished with imprisonment of either description for a term which may extend to seven years or with fine upto Rupees one lakh only or with both.

(2) Whoever the father and mother of the child under the age of 18 years or any person having the care of such child, who expose or leave such child in any place with the intention of wholly abandoning such child, shall be punished with imprisonment of either description for a term which may extend to seven years, or fine upto Rupees One lakh only, or both.

(3) The provisions of Juvenile Justice(Care and Protection of Children) Act will apply if the victim and the offender are children.

## **SECTION 21. Corporal Punishment on a Child**

(1) Whoever intentionally inflicts physical penalty on a child, for disciplinary purposes, and commits the offence of “Hurt” or “Grievous Hurt” as a result of such penalty, shall be punished for the offence of Corporal Punishment on a child.

*Explanation:* (1) For the purposes of this Section, the terms ‘Hurt’ and ‘Grievous Hurt’ shall have the meanings ascribed to them under the Indian Penal Code, 1860 and the provisions shall apply *mutates mutandis* to a child.

- (2) For the purposes of this Section, the offence of ‘Hurt’ shall include any form of persistent beating, battering, pinching, twisting or any other such act, inflicted upon a child by any person, by any means, upon the body of the child.
  - (3) Nothing in the Sections referred above shall be an offence, if the Hurt rendered on a child is commensurate to the act undertaken by the child and is not unreasonable and does not harm the dignity and physical integrity of the child’s body.
  - (4) For the purposes of this Section, the corporal punishment to the child shall include violence, cruelty, inhuman and degrading treatment by any person including his/her family, school, relatives, neighbours, friends, members of educational institutions or the members of care institutions, prisons and homes set up under Juvenile Justice Act .
- (2) Whoever commits any offence under Sections 323, 324, 325, 326, 341 and 342 of Indian Penal Code, 1860 on a child while the child is in his custody or care whether in a fiduciary capacity or otherwise, shall be guilty of the offence of the corporal punishment.

## **SECTION 22. Punishment for Corporal Punishment on a Child**

- (1) Whoever commits the offence of Corporal Punishment causing “Hurt” on a Child shall be liable, on the first offence, for imprisonment which can extend to one year or fine upto Rupees five thousand only or both and shall also be liable for every subsequent offence for

imprisonment which can extend to three year and fine which may extend to Rs.25,000/- or with both.

*Provided that*, if the subsequent conviction, takes place in any Children's Institution including school, by any staff of such Institution, the person inflicting such punishment can also be dismissed from such service.

- (2) Whoever commits the offence of Corporal Punishment causing "Grievous Hurt" on a Child shall be liable, for rigorous imprisonment which can extend to three years and shall also be liable to fine upto Rupees Ten thousand only or both and for subsequent offence shall be liable for rigorous imprisonment which can extend to seven years and fine upto Rupees One lakh only or with both.

*Provided that*, if the subsequent conviction, takes place in any Children's Institution, by any staff of such Institution, the person inflicting such punishment shall also be liable to dismissal from such service.

### **SECTION 23. Ragging of a child in an institution**

Whoever, displays any disorderly conduct or does any act which causes or is likely to cause physical or psychological harm or raise apprehension or fear or shame or embarrassment to a student in any institution and includes -

- (1) teasing, abusing, threatening or playing practical jokes on, or causing hurt to such student; or  
(2) asking a student to do any act or perform something which such student will not in the ordinary course, willingly, do.

shall be guilty of ragging of a child in an institution.

### **SECTION 24. Punishment for Ragging of a child in an institution**

Whoever, directly or indirectly commits, participates in, abets or propagates ragging within or outside an institution, shall, on conviction, be punished with imprisonment for a term which may extend to two years and shall also be liable to a fine upto Rupees Seven thousand only.

*Provided that*, (1) the person who commits any of the aforesaid acts shall also be liable to suspension for a period that is not less than a year.

(2) If any of the aforesaid acts has endangered the life of the child, physically incapacitates the child, caused severe mental or emotional damage, the person responsible for the same shall also be liable to dismissal from such institution and such student shall not be admitted in any other institution for a period of five years from the date of order of such dismissal.

### **SECTION 25. Acts intended to discriminate and intimidate a child**

(1) Whoever discriminates any child on the basis of his/her gender, caste, religion, race, language or status of the child or his family members regarding any vulnerable disease like HIV/AIDS intending to humiliate, demean, overbear, persecute, lower dignity or any other such intention shall be liable for imprisonment which can extend to three years and shall also be liable to fine upto Rupees Ten thousand only.

*Explanation:* For the purpose of this Section discrimination includes refusal for admission in school or eviction from school and refusal for attending or treatment for medical purpose.

(2) Whoever, through any words either spoken or intended to be read, or by signs or by visible representation or by any act undertakes to intimidate a child, which shall include intention to humiliate, demean, overbear, persecute, lower dignity or any other such intention shall be liable for imprisonment which can extend to three years and shall also be liable to fine upto Rupees Ten thousand.

*Provided that*, if the offence is committed by peer(s) and is reasonable and does not affect the child's physical or mental well being, the peer (s) committing such acts can be admonished and made to undertake community service. In addition, the peer committing such offence shall also be sent for mandatory counseling, by a trained and qualified counselor.

#### **SECTION 26. Giving a Child intoxicating liquor, narcotic drug or psychotropic substance**

(1) Whoever gives, or causes to be given, to any child any intoxicating liquor, narcotic drug or psychotropic substance, shall be liable for rigorous imprisonment for a term which may extend to seven years and shall also be liable to a fine of Rs. One lakh only.

(2) Nothing shall be an offence, if the aforesaid mentioned acts are undertaken by a duly qualified medical practitioner for treatment of sickness.

#### **SECTION 27. Using a child for vending, peddling, carrying, supplying or smuggling any intoxicating liquor, narcotic drug or psychotropic substance**

Whoever uses a child, for vending, peddling, carrying supplying or smuggling any intoxicating liquor, narcotic drug or psychotropic substance, shall be liable for rigorous imprisonment for term which may extend to seven years and shall also be liable to a fine upto Rs. One lakh only.

#### **SECTION 28. Offences relating to the sale of the child's organs**

Whoever removes any organ of a child, with the intention of selling such organ or with the knowledge that such organ is likely to be sold, with or without the consent of the child, their guardians or any person entrusted with the responsibility of the child, shall be punished with imprisonment which shall not be less than seven years but can extend to life and shall also be liable to fine upto Rs. One lakh only.

*Explanation:* (1) Nothing in the aforesaid section shall be an offence, if the organ is removed by a duly qualified medical practitioner and for reasons relating to the child's health or life.

(2) Nothing in this Section shall be in derogation to the penalty provided under Section 19 of The Transplantation of Human Organs Act, 1994.

#### **SECTION 29: Organized crime against the Child**

Whoever found part of organized crime against the child for the crimes mentioned under Section 18, 26, 27 and 28 shall be punished with rigorous imprisonment which can extend upto ten years and shall also be liable for fine upto Rupees five lakhs only or both.

The punishment shall be rigorous imprisonment which shall not be less than seven years but can extend upto fourteen years and shall also be liable to fine upto Rupees ten lakhs only or both when the crime result in the death of the child.

#### **SECTION 30: Offences relating to harmful traditional or cultural practices**

Whoever undertakes any harmful traditional or cultural practice, with the knowledge that it is likely to endangers the life or limb of the child or likely to cause physical or mental harm, at any age, shall be liable to rigorous imprisonment which may extend to fourteen years and shall also be liable to fine upto Rupees Ten Lakhs only.

## **CHAPTER VII THE USE OF A CHILD IN ARMED CONFLICTS**

### **SECTION 31. General Obligation of the State**

The State shall ensure that members of the armed forces who have not attained the age of 18 years shall not take direct part in the hostilities or are not compulsorily recruited in the armed forces.

### **SECTION 32. Use of a Child in an armed group distinct from the State**

Any armed groups that are distinct from the armed forces of a State, who recruit or use in the hostilities any child shall be liable for rigorous imprisonment which can extend to seven years and shall also be liable to fine upto Rupees One Lakh only.

## **CHAPTER VIII OFFENCES RESTRICTING THE FREEDOM OF A CHILD'S MOVEMENT**

### **SECTION 33. Of offences relating to kidnapping and abduction**

For the purposes of this Bill, the provisions of the Indian Penal Code, under Section 359 to Section 369 shall apply *mutates mutandis* to a child.

*Provided that*, in those Sections, a 'child' or a 'minor' shall be reckoned to mean any person under the age of 18 years and all the provisions shall be construed accordingly.

### **SECTION 34. Of offences relating to Wrongful Restraint and Wrongful Confinement**

For the purposes of this Bill, the provisions of the Indian Penal Code, under Section 339 to 348 shall apply *mutates mutandis* to a child.

## **CHAPTER IX OFFENCES RELATING TO PORNOGRAPHY**

### **SECTION 35. Using a child or children for Pornographic Purposes**

Whoever uses a child or children, by any form of media, including Print and Electronic media including programmes and advertisements, telecast by Television channels or internet, irrespective of whether it is intended for personal use or for distribution, engaged in any of the following acts, for the purposes of sexual gratification:

- (1) representation of the sexual organs of a child or children;
- (2) usage of children engaged in real or stimulated sexual acts (with or without penetration);
- (3) the representation of a child in any indecent manner

shall be guilty of the offence of using a child for pornographic purposes.

*Explanation:* (1) For the purposes of this Section, the term 'Indecent representation of a Child' shall have the same meaning under Section 2 (b) of the Indecent Representation of Women (Prohibition) Act, which shall apply *mutates mutandis* to a child or children.

(2) For the purposes of this Section, the term 'use a child or children' shall include the preparation, production, offering, transmitting, publishing, facilitation and distribution of the

pornographic material, involving a child or children through any medium like print, electronic, computer or any other technology.

### **SECTION 36. Punishment for using a child or children for pornographic purposes**

Whoever uses a child or children for pornographic purposes shall be liable for rigorous imprisonment that shall extend to fourteen years and shall also be liable to fine. The programmes, including news programme telecast by all television channels should avoid telecasting of any kind of pornographic material involving a child or children including masked or blurred content.” “pornography” includes depiction of erotic behaviors or content with no artistic value, which describes or shows sexual acts as in pictures, in writing or naked people in a sensational manner and intended to cause sexual excitement and to arouse a quick intense emotional reaction what is considered unpleasant or offensive by many people.

*Provided that*, if the person using the child or children for pornographic purposes, commits the offence of Sexual Assault or Unlawful Sexual Contact, and directly participates in them, such person shall also be liable for those offences and in other cases shall be liable as an abettor.

### **SECTION 37. Possession of any pornographic material involving a child or children**

Any person found in the possession of any pornographic material involving a child or children having knowledge of possessing such material shall be liable for imprisonment that may extend to seven years or fine upto Rupees One Lakh only or both.

### **SECTION: 38: Exposure of Child to Pornography**

Whoever shows or exhibit pornographic material through act or through print, electronic or any other medium to any child shall be liable for imprisonment that may extend upto five years or fine upto Rupees Fifty thousand only or both.

## **CHAPTER X PROVISIONS THAT WILL APPLY TO ALL OFFENCES**

### **SECTION 39. Punishment for committing and attempting to commit offences**

1. All offences committed against the children under this Bill are non-compoundable.
2. All offences attracting a punishment of over three years imprisonment are non-bailable.
3. Whoever attempts to commit an offence punishable by this Bill with imprisonment for life or imprisonment or to cause such an offence to be committed, and in such attempt does any act towards the commission of the offence, shall, where no express provision is made in this Bill for the punishment of such attempt, be punished with imprisonment of any description provided for the offence, for a term which may extend to one half of the imprisonment for life or, as the case may be, one half of the longest term of imprisonment provided for that offence, or with such fine as is provided for the offence, or with both.
4. In case an offence is committed by a child against a child it will be dealt with under the provisions of Juvenile Justice(Care and Protection of Children) Act, 2000.

### **SECTION 40. Abettor**

- (1) A person abets an offence, who abets the commission of an offence, or the commission of an act which would be an offence, if committed by a person capable by law of committing an offence with the same intention or knowledge as that of the abettor.
- (2) Whoever abets any offence, and the offence is committed by a child in consequence of the abetment, the abettor be punished with punishment provided for the Offence.

*Explanation 1.* For the purpose of this Section, ‘abetment’ shall have the same meaning as ascribed to it under Section 107 of the Indian Penal Code, 1860 and the provisions shall apply *mutates mutandis* to a child.

*Explanation 2.* The abetment of the illegal omission of an act may amount to an offence although the abettor may not himself be bound to do that act.

*Explanation 3.* To constitute the offence of abetment it is not necessary that the act abetted should be committed, or that the effect requisite to constitute the offence should be caused.

**SECTION 41. Punishment for abetting an offence** Whoever abets any offence would be liable to the punishment as provided under Section 109 to Section 120 of the Indian Penal Code, 1860.

#### **SECTION 42. False Complaints or false information**

- (1) Any person, making a false complaint or providing false information against a child, about the commission of any offence under this Bill, knowing it to be false, shall be liable to at least half the maximum punishment provided under this Bill or any other law for the time being in force.
- (2) Any child or their families or guardians, who make a false complaint or provides false information against any person in this Bill, with the intention to humiliate, blackmail, extort or threaten any person, shall be liable to at least half the maximum punishment provided under this Bill for the alleged offence or any other law for the time being in force and the child shall be sent to the Juvenile Justice Board for suitable action. *Provided that*, no punishment shall be imposed on a child, if it can be proven that the complaint or information was without their informed decision.
- (3) In calculating fractions in term of punishment, imprisonment for life shall be reckoned as equivalent to imprisonment for 10 years.
- (4) Whenever, in consequence of the giving or fabricating of false evidence, as contained in Section 193 of IPC, any child who has been subject to judicial proceedings other than those mandated by the Juvenile Justice Act or any other law prohibiting a child from being subjected to such judicial proceeding, the person giving or fabricating such evidence shall be punished with imprisonment of either description for a period which shall not be less than three years or fine extending upto Rs. Ten thousand only or both.
- (5) Whoever, knowing or having reason to believe that an offence has been committed against a child, intentionally omits to give information respecting that offence which he is legally bound to give, shall be punished with imprisonment of either description for a term which may extend to three years or fine upto Rupees Ten thousand only or with both.

**SECTION 43. Offences committed on disabled children** Whoever commits any of the offences referred in this Bill, on any child who is disabled and this disability is certified by a medical practitioner, the person committing such offence shall be liable to twice the penalty that would otherwise be imposed. Offences committed against disabled children are cognizable.

*Explanation:* For the purpose of this Bill, the term ‘disability’ shall have the same meaning ascribed to it, under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.

#### **SECTION 44. Acts done by several persons in furtherance of common intention**

When a criminal act is done on a child, by several persons in furtherance of the common intention of all, each of the persons is liable for that act in the same manner as if it were done by him alone.

### **SECTION 45: Punishment to disclose the identity of the Child Victim**

Whoever, discloses the identity of the child, directly or in any manner shall be liable on first conviction, for imprisonment which may extend to three months and shall also be liable to fine upto Rupees five thousand only and for every subsequent conviction, for imprisonment which may extend to three years and also be liable to fine upto Rupees Ten thousand only.

*Provided that*, if any of the aforesaid acts is committed by any form of media, then the fine shall be the total revenue of that media, throughout the territory of India, for a complete day.

*Explanation:* (1) For the purposes of this Section, the identity of the child shall include the identity of the child, his/her family, school, relatives, neighbours, friends, residential address or any other form by which the identity of the child can be traced.

- (1) For reasons to be recorded in writing the authority holding the inquiry may permit disclosure of the identity of the child, if in its opinion such disclosure is in interest of the child.

### **SECTION 46. Benefits to a child**

- (1) Nothing in this Bill shall be construed in any manner to deprive a child of any benefit that the child has procured under this Bill or under any other Act.
- (2) Further, the child shall not be deprived of any benefit, including monetary benefit, which was procured during, before or after the commission of any offence under this Bill.
- (3) The amount of all fines received under the provisions of this Bill shall be utilized for the benefit of the child victims under this Bill.

## **CHAPTER XI PROCEDURES RELATING TO CHILDREN**

### **SECTION 47. Prohibition on Assaulting a Child**

For the purposes of this Chapter, the following provision shall apply:

- (1) No duty bearer, entrusted with the implementation of this Bill, including but not restricted to the Special Juvenile Police Unit, the Child Welfare Committee, the Protection Officer, shall assault a Child, intimidate a child or threaten to assault or intimidate the child.
- (2) Any duty bearer guilty of assaulting a child shall be liable to imprisonment which can extend to five years or fine upto Rupees Fifty thousand only or both. For any subsequent conviction, such duty bearer can also be terminated from service.
- (3) Any duty bearer who threatens to assault or threatens to intimidate a child shall be liable to imprisonment which can extend to Two year or fine upto Rupees Seven thousand only or both. For any subsequent conviction, such duty bearer can also be terminated from service.
- (4) For the purposes of this Section, the term 'assault' shall have the meaning ascribed to it under Section 351 of the Indian Penal Code, 1861.

### **SECTION 48. Who can report offences against a child**

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, any person, including the Child, who is aware of the commission of a cognizable or a non cognizable offence under this Bill, can report the same to:

- (a) the Special Juvenile Police Unit, constituted under Section 63 of the Juvenile Justice (Care and Protection of Children) Act, 2000 as amended from time to time;



(b) the Protection Officer, constituted under the Juvenile Justice(Care and Protection of Children) Act, 2000 who will report the same to the Special Juvenile Police Unit.

(2) Every such information given to the Special Juvenile Police Unit shall be recorded in writing and be read over to the informant; and every such information, whether given in writing or recorded in writing shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by the Police Unit;

*Provided that*, if the information is being provided by the Child, any information to such child must be in simple language, ensuring that the Child understands what is being discussed. A translator or an interpreter should be provided, if the Child does not understand the local language.

(3) The Special Juvenile Police Unit or Protection Officer shall at the earliest, but not beyond 24 hours, also report the case to the Children's Court as provided under Section 25 of Commissions for Protection of Child Rights Act 2005 or to the Courts of Session where the Children's Court is not designated, and inform the state of the child and whether prima facie, the child, is in need of care and protection as defined under Section 2(d) of Juvenile Justice(Care and Protection of Children) Act 2000, is in a position to be produced before the Child Welfare Committee.

*Provided that*, until such time that a Special Juvenile Police Unit is not established in a district, the local police station shall assume the role of the Special Juvenile Police Unit.

(4) The Child other than the child in need of care and protection, as defined under Section 46 of Juvenile Justice(Care and Protection of Children) Act 2000 shall be returned to his/her family or guardian or to an NGO or children's institution set up under Juvenile Justice(Care and Protection of Children) Act 2000 as decided by the Court pending the decision of the Court.

#### **SECTION 49. Medical care and attention to a child**

(1) On the receipt of information of the commission of a cognizable or non cognizable offence under this Bill, the Special Juvenile Police Unit or the Protection Officer shall promptly, but not beyond 24 hours, refer a child to 'Child Trauma and Counseling Centre' for medical care and attention.

(2) The Child Trauma and Counseling Centre shall be established in every District Hospital and shall comprise of an Emergency Response Team, which shall conduct the medical examination of the Child, with a view to looking into the safety and well being of the Child.

(3) The Emergency Response Team shall comprise of *at least* the following members nominated from the existing staff of hospital or District Child Protection Society, who will be trained on issues and practices relating to violence against a child:

- (a) A trained and qualified counselor;
- (b) A Gynecologist or a pediatrician and a forensic medical officer;
- (c) A nurse;
- (d) A lab technician.

*Provided that*, to this basic team, doctors from other Departments can be added to the Emergency Response Team, along with General Surgeons, or Orthopaedic doctors as may be required medically for the purpose of the well being of the Child or for evidence building. The assistance of Social Workers may be sought, as required on a case by case basis.

- (4) As soon as the Child is produced before the Child Trauma and Counseling Centre, the Child and any person (s) accompanying the child shall immediately be counseled to reduce the trauma and make the child aware of the medical treatment, as may be age appropriate.

*Provided that,* in case the Child is in need of immediate medical attention, the Counseling should be provided at the earliest possible opportunity.

#### **SECTION 50. Functions of the Emergency Response Team**

The members of the Emergency Response Team shall perform the following functions:

- (1) Be the first team to be called, when any case or possible case relating to any offence under this Bill is reported, to provide immediate medical care and attention to a Child.
- (2) To provide sustained counseling to the child, their families, and if required the community or schools as well. The Emergency Response Team can liaison with NGOs for providing counseling;
- (3) To promptly carry out an examination of the Child in order to diagnose the case, and to refer the case to the relevant Medical Departments within the Hospital;
- (4) To document and collect evidence relating to any medical observation about the child;
- (5) To help assess any possible risks for the Child;
- (6) To develop a plan of action, including quality medical and counseling services to be provided, and monitor the delivery of those services, to ensure that the needs of the Child and the family are met. The Emergency Response Team can liaison with NGOs in this regard; and

#### **SECTION 51. Production of the Child in need of care and protection before the Child Welfare Committee**

- (1) The Special Juvenile Police Unit or the Protection Officer shall produce the child within 24 hours of the decision of the Children's Court before any member of the Child Welfare Committee, excluding the time required for travel as per the provisions of Section 32 of the Juvenile Justice (Care and Protection of Children) Act, 2000;
- (2) If, a child due to medical reasons cannot be produced before the Child Welfare Committee, a representative from the Child Welfare Committee shall visit the child at the Child Trauma Counseling Centre, within 24 hours of the receipt of such information.
- (3) On meeting the Child, the Child Welfare Committee will carry out an inquiry under Section 33 of the Juvenile Justice (Care and Protection of Children) Act, 2000.
- (4) No child or woman shall be required to attend any place other than the place in which such child or woman resides with reference to Section 160(2) of Criminal Procedure Code.
- (5) Section 266(b) (ii) of Criminal Procedure Code should also include an institution under the Juvenile Justice Act.

#### **SECTION 52. Procedure to be adopted after the inquiry for Children in need of care and protection.**

- (1) On the basis of the Inquiry report, the Child Welfare Committee can determine whether the Child needs to be institutionalized or non institutional methods of rehabilitation and social reintegration can be adopted.
- (2) In all cases, non institutional methods shall be preferred, along with rehabilitation services including sustained counseling and Institutionalization shall only be adopted as the last resort, when it is in the best interest of the child or will prevent the child from being re victimized.

*Explanation:* For the purposes of this Section, non institutional methods of rehabilitation and social reintegration shall include all the methods referred to under Chapter IV of the Juvenile

Justice (Care and Protection of Children) Act, 2000 and shall include Adoption, Foster Care, Sponsorships and After Care Organization.

*Provided that*, a child shall not be separated from one's family or guardians, unless it is necessary for the child's best interest.

- (3) The Follow up of the case, irrespective of whether institutional or non institutional methods have been followed, shall be undertaken by the District Child Protection Society.

### **SECTION 53. Jurisdiction**

- (1) The Children's Court or the Court of Sessions, if Children' Court is not designated shall try all offence under this Bill.
- (2) All judicial proceedings under this Bill should be completed within four months.

### **SECTION 54: Court Hearings and Proceedings**

While conducting the court hearing, the following shall be adopted:

- (1) All Judicial proceedings must be conducted in an "In camera" trial.
- (2) The identity of the Victim Child must be protected at all times during the judicial proceedings.
- (3) The presiding Judge shall be a female in cases of a single bench or in cases of a larger bench, at least one of the presiding Judges shall be a female.
- (4) Such cases shall be taken up as a priority and hearings shall be held on a day to day basis, as far as possible.
- (5) The Presiding Judges shall ensure that no more than three adjournments shall be allowed in the entire proceedings to avoid unnecessary delay. Adjournments shall be allowed only in the most unavoidable situations.

*Explanation:* For the purposes of this Section, the identity of the child shall include the identity of the child, his/her family, school, relatives, neighbours, friends, residential address or any other form by which the identity of the child can be traced.

*Provided that* nothing in Section 267(3) of Criminal Procedure Code shall give the power to any Court to require the attendance of any child. *Provided further* that where the Criminal Court is of the Opinion that the child needs to be examined it shall proceed to issue a commission in accordance with the provisions of Section 284 of Criminal Procedure Code.

### **SECTION- 55. Procedure for Media**

- (1) No person from print, electronic or any form of media shall report, present or comment on the child, alive or dead, against whom the crime has been committed or who is accused of committing a crime without having complete and authentic information which result in lowering his/her character or infringe his/her privacy.
- (2) The Publisher of newspaper, journal or magazine or TV Channel or Media Production House is equally responsible for the acts and omissions of their journalist or reporter or representative who has committed such offence.
- (3) The Publisher of newspaper, journal or magazine or TV Channel or Media Production House shall not sensitize any report which present a bad picture of the child involved in a case.
- (4) Whoever commits such an offence shall be punished with imprisonment of either description for a period which shall not be less than one year or fine extending upto Rupees One lakh only or both.

Explanation: For this section ‘complete and authentic information’ means Investigation Report of Police or CBI or any other appropriate authority made after completion of investigations or the Judgment delivered by a court or such authority after completion of hearing.

*Provided that:* (1) The News programmes telecast by television channels should adequately mask/ blur the face of the victim in case of child. The identity of the child including that of his/her family should not be made public. The news/TV channels should not sensationalize the news items related to victimization of children in order to increase the news value.

(2) 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 child nor shall any picture of any such child be published.

### **SECTION 56. Procedural safeguards for the child**

(1) With a view to making the proceedings child friendly, the following procedural safeguards shall be adopted:

- (a) The presiding Judges may allow someone else to testify on the Child’s behalf, particularly when the Child is of tender age and the Judge opines that the Child is not capable of giving evidence.
- (b) The presiding Judges may have the Child testify through closed-circuit television, videotaped deposition or other means of electronic media wherever possible, in lieu of court testimony.
- (c) Wherever the above is not possible, the presiding Judges shall have the Child speak in their chambers and ensure that all the examination is in private.
- (d) A screen shall be placed between the Child and the accused, to avoid constant contact with the accused.
- (e) The Court shall strive to create a child - friendly atmosphere. This could be possible by having a support person, who could be a family member, friend, relative or NGO member, in whom the Child can confide. This person may be allowed to be in the courtroom with the Child. In addition, any objects like toys or other props can be used done to make the atmosphere more child - friendly.
- (f) The presiding Judges can permit frequent breaks or provide the Child with water, whenever required.
- (g) The presiding Judges shall ensure that the Child is not called, again and again, to testify in Court.
- (h) The presiding Judges shall not permit aggressive questioning or character assassination of the Victim Child and shall ensure that the dignity of both the Child as well as the Institution are maintained at all times.

(2) Where the child against whom the offence is committed the Court shall pass an order imposing a fine which, apart from the expenses or compensation mentioned in clauses a) to d) of Section 357(1) of Criminal Procedure Code adequately compensates the child for any physical or mental trauma, incurred by the child and shall include in the compensation all costs of rehabilitation from such physical or mental trauma.

*Provided that* where the order of compensation is made under clause b) of Section 357(1) of Criminal Procedure Code the compensation so made shall adequately cover the cost of upbringing, education and the costs of all damages and losses suffered by the child in consequence of the offence.

### **SECTION 57: Procedure for Evidence**

(1) When a witness is cross-examined as per Section 146 of India Evidence Act 1872 he may, in addition to the question here in before referred to, be asked any questions which tend-

- (a) To test his veracity,
- (b) To discover who is and what is his position in life, or
- (c) To shake his credit, by inuring his character, although the answer to such questions, might tend directly or indirectly to criminate him or might expose or tend directly or indirectly to expose him to a penalty or forfeitures.

*Provided that* (1) in a prosecution for rape or attempt to commit rape it shall not be permissible to put questions in the cross examination of the prosecutrix as to her general immoral character.

(2) in a prosecution for child sex abuse or rape, the question put in cross examination on behalf of the accused, in so far as they relate directly to the incident shall be given in writing to the presiding officer of the court who may put them to the victim or witness in a language which is clear and is not embarrassing.

(3) The victim of child sex abuse or rape while giving testimony in court should be allowed sufficient brakes as and when required.

### **SECTION 58. Legal aid for a child or their families**

(1) For any offence under this Bill, if the Child and/ or their families or guardians are unable to afford the services of a lawyer, the State shall provide such child or their families with free legal aid.

(2) Every High Court shall collect a list of lawyers, who can provide such legal aid to a child or their families. This information shall be available at every Children's Court or Court of Sessions.

### **SECTION 59. Presumption and determination of age**

(1) Where it appears to a Competent Authority that the person brought before it, under any of the provisions of this Bill, is a child, the Children's Court or the Court of Sessions, on satisfying itself, can determine the age of that person and shall record its reasons in writing.

(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 that person so brought before it, shall for the purposes of this Bill, be deemed to be the true age of that person.

(3) In all cases, the benefit of the lower age must go to the person.

(4) In borderline cases regarding the age of a person, if there is a possibility that the person could qualify as a 'child' that person should be deemed to a child, for the purposes of this Bill.

*Explanation:* For the purposes of this Section, 'Competent Authority' shall mean Children's Court, Court of Sessions or the Child Welfare Committee.

(5) Where at any stage of the proceedings the arrested person is found to be a child, the court shall make an order of compensation under Section 357 of Criminal Procedure Code as if a final judgement were being passed under Section 353 of Criminal Procedure Code.

### **SECTION 60: Criminal responsibility.**

(1) Nothing is an offence which is done by a child who has not attained the age of 12 years.

- (2) A child is presumed to be innocent of any malafide or criminal intent up to the age of twelve years in all cases and upto fifteen years in the cases wherein he is unable to understand the consequences of his action on account of immaturity of understanding on that occasion.

**SECTION 61: Compensation**

Whenever any child has been sent to police custody or judicial custody the order of compensation shall also be made against any police officer found have deliberately recorded the age wrongly.

**SECTION 62. Power to make Rules.**

The Central Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Bill.

**SECTION 63 Application of the Code of Criminal Procedure, 1973**

Save as otherwise provided under this Bill, the provisions of the Code of Criminal Procedure, 1973, shall apply to proceedings before the Children’s Court or the Court of Sessions.

**CHAPTER XII  
OBLIGATION TO REPORT CASES**

**SECTION 64. Obligation on media and the personnel of studios or photographic facilities to report cases**

Any media personnel or studio or press or photographic facilities, through print or electronic medium, by whatever name it is called, and irrespective of the number of persons employed, on the coming across of any sexually related, pornographic or obscene representation of a child or children, through the use of any medium, shall provide such information to the police under Section 154 of the Code of Criminal Procedure, 1973.

**SECTION 65. Obligation on stakeholders providing accommodation facilities to report cases**

Any personnel of any tourist house, lodge, hotel, or any other place used to accommodate persons, irrespective of the name used, the duration of stay, or the charges levied, who comes in contact with any person, seeking their services or facilitates, who has committed, or is likely to commit any of the offences referred to in this Bill, shall provide such information to the police under Section 154 of the Code of Criminal Procedure, 1973.

**SECTION 66. Obligation on stakeholders providing transportation facilities to report cases**

Any personnel of any airport, railway, harbour, port, bus service, vehicle service, irrespective of the name used, whether movable or immovable, who comes in knowledge of any person seeking their services or facilitates, who has committed, or is likely to commit any of the offences referred to in this Bill, shall provide such information to the police under Section 154 of the Code of Criminal Procedure, 1973.

**SECTION 67. Punishment for Failure to report cases**

Any person as under Sections 63-65 of this Bill having knowledge of a person or persons who has committed or is likely to commit any offence referred to in this Bill if fails to report such information shall be liable on the first conviction for imprisonment that can extend to two year or fine upto Rupees Seven thousand only or both. For every subsequent conviction, the punishment shall be twice that mentioned above.

*Provided that*, in any case, if the Child is not available, the fine amount will be credited to the Fund to be constituted under Section 61 of the Juvenile Justice (Care and Protection) of Children Act, 2000. All

such amount shall be used by the State towards giving full effect to the provisions contained under Chapter XIII of this Bill.

## **CHAPTER XIII PROTECTIVE AND PREVENTIVE MEASURES**

### **SECTION 68. Obligation of the State to end traditional and cultural practices in certain circumstances**

The State shall take measures to end all traditional and cultural practices that violate the full enjoyment of the rights of every child or foster discrimination against a child or create an unhealthy atmosphere for the growth and development of the child.

### **SECTION 69. Assistance of media and NGOs and other public spirited persons/organizations**

For the implementation of any part of this Bill the cooperation and full assistance of media and NGOs and other public spirited persons or organizations shall be sought.

### **SECTION 70. State to create awareness on the provisions of this Bill**

- (1) The State shall within one year of the enactment of this Bill undertake training for all the duty bearers and government officials, to make them familiar with the provisions of this Bill and the implementation mechanism.
- (2) After this initial training, the State shall undertake trainings, at regular intervals, with the duty bearers and government officials.

*Explanation:* The provisions of this Section shall include but not be limited to medical and para-medical professionals, judicial officers, police machinery and the media personnel.

### **SECTION 71. Training and capacity building of duty bearers**

- (1) The State shall ensure that all duty bearers shall be regularly trained and capacity building exercises be undertaken, at least once a year, in collaboration with NGOs and other institutions, towards creating a well trained work force.
- (2) Special sessions dealing with effective communication, counseling and positive body language should also be provided, with specific emphasis on dealing with child.

### **SECTION 72. State to create awareness on issues relating to child rights and change attitudes that hamper a Child's growth or development**

- (1) The State shall take measures to create awareness on issues relating to child rights and child protection and change the attitudes that hamper a child's growth and development and that are prevalent in the communities on such issues.
- (2) Special efforts shall be taken to create the awareness of these rights with the children themselves, making them understand what rights they possess and what can they do if the rights are violated.

### **SECTION 73: Vigilance Committees**

- (1) The State shall facilitate the creation Vigilance Committee at the National, State and District Level, with participation of members from the community, to prevent any offence from being committed in this Bill.
- (2) Such Vigilance Committees will strive to create awareness on issues relating to child rights and child protection at the community level.

- (3) The Committees can also report cases to the Special Juvenile Police Unit, if they feel any cognizable or non cognizable offence is or is likely to take place.

**SECTION 74. Research and Documentation**

- (1) The State shall facilitate the Research and Documentation of issues relating to Child Rights and Child Protection and also facilitate the creation of a database on these issues;
- (2) The State shall provide information to any person, institution or other organization undertaking any research or documentation on issues relating to child rights and child protection.

**SECTION 75. Obligation of Schools and Educational Institutions**

- (1) All schools and educational institutions shall facilitate a 'Personal Safety Education' to empower a child and make them aware of their rights and what can be done, if their rights are violated;
- (2) Every school and educational institution shall at periodical intervals and at Parent Teachers Associations, facilitate discussions with the parents and the teachers on empowering children and undertaking measures to protect their rights.
- (3) The Central Board of Secondary Education and State Board of Education shall include the provisions of UN Convention on the Rights of the Child in the course curriculum for schools and educational institutions and also promote awareness about the provisions of this Bill suitably through the course curriculum for schools and educational institutions.

**SECTION 76: Power to remove difficulties.**

- (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may by order published in official gazette, make such provisions, not inconsistent with the provisions of this Act, as may appear to be necessary for removing the difficulty.
- (2) Every order made under this Section shall be laid as soon as may be after it is made before each House of Parliament.

8<sup>th</sup> May, 2009



