

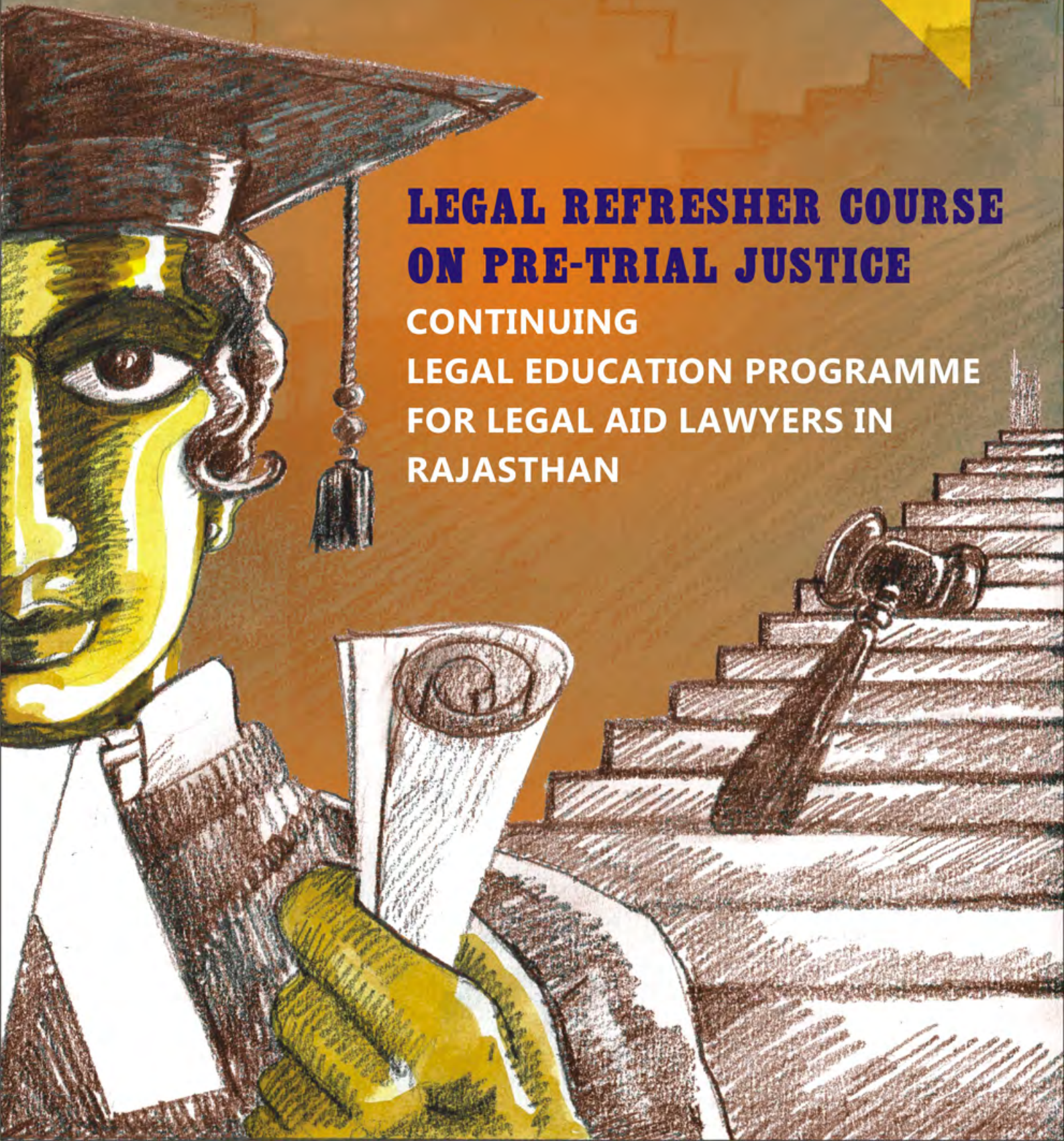
Women & Children In Custody

DRAFT **READER**

4

**LEGAL REFRESHER COURSE
ON PRE-TRIAL JUSTICE**

CONTINUING
LEGAL EDUCATION PROGRAMME
FOR LEGAL AID LAWYERS IN
RAJASTHAN



सुनवाई पूर्व न्याय प्रक्रिया
के संबंध में
विधिक पुनःप्रशिक्षण
कार्यक्रम

MESSAGE & ENDORSEMENT

संदेश एवं पुष्टि

MESSAGE FROM HON'BLE JUSTICE AJAY RASTOGI
CHAIRPERSON, STATE LEGAL SERVICE AUTHORITY,
RAJASTHAN

Indeed, it is an ecstasy to acknowledge invitation to join you all as Chief Guest to the Inaugural Session of 'Legal Refresher Course on Pre-trial Justice' being initiated as Commonwealth Human Rights Initiative in collaboration with District Legal Service Authority (DLSA) Jodhpur & State Legal Service Authority, Rajasthan, to which I express my gratitude. Despite ardent wish to attend the Inaugural Session and to address the session: "Vision & Mission of SLSA Rajasthan for early & effective Access to Legal Aid in Police Station, Jails, Courts", I feel myself unable to be there due to my pre-occupations.

It is a matter of great pleasure that such a Training workshop is being organised for the legal aid advocates appointed under the model scheme for Remand & Bail Lawyers as well as Panel Lawyers appointed under NALSA's Retainer Lawyers Scheme.

I am confident, the Team of (DLSA) Jodhpur and SLSA Rajasthan would deliberate in the direction to contribute constructively in maintaining perception, with which the Training workshop through a continuing legal education programme is being organized, beyond expectations; and have been pleading for the cause of justice in various ways and pleasantly.

Organizing a Legal Refresher Course on the subject is an event, when each member of both the Teams with acumen will be able to think over to do justice to the participants by rendering services for better administration of justice. Kindly accept my heartiest felicitations for organisations of the Refresher Course and best wishes for its success and for betterment of the Nation.



(AJAY RASTOGI)

राजस्थान राज्य विधिक सेवा प्राधिकरण के अध्यक्ष न्यायाधीश श्री अजय रस्तोगी का संदेश

कॉमनवेल्थ ह्यूमन राइट्स इनिशिएटिव, जिला विधिक सेवा प्राधिकरण(डीएलएसए-जोधपुर) तथा राज्य विधिक सेवा प्राधिकरण(राजस्थान) के संयुक्त तत्वावधान में आयोजित 'लीगल रिफ्रेशर कोर्स ऑन प्री-ट्रायल जस्टिस' के उद्घाटन-सत्र में आप सबके बीच मुख्य अतिथि के तौर पर शामिल होने का निमंत्रण निश्चित ही अभिभूत करने वाला है और मैं इसके लिए कृतज्ञता ज्ञापित करता हूँ। उद्घाटन-सत्र में शिरकत करने और "विजन एंड मिशन फॉर एसएलएसए राजस्थान फॉर अर्ली एंड इफेक्टिव एक्सेस टू लीगल ऐड इन पुलिस स्टेशन्स, जेल्स, कोर्ट्स" नामक सत्र को संबोधित करने की हार्दिक इच्छा के बावजूद पहले से चली आ रही व्यस्तताओं के निर्वाह के कारण मैं ऐसा करने में अपने को असमर्थ महसूस कर रहा हूँ।

बड़ी खुशी की बात है कि रिमांड एंड बेल लॉयर्स नामक मॉडल योजना तथा एनएलएसए की रिटेनर लॉयर्स योजना के तहत विधिक सहायता करने को नियुक्त अधिवक्ताओं के लिए प्रशिक्षण की ऐसी कार्यशाला का आयोजन किया जा रहा है।

मुझे विश्वास है कि जिस भावना से विधिक शिक्षा कार्यक्रम की निरंतरता में प्रशिक्षण की यह कार्यशाला आयोजित की जा रही है, उस भावना के अनुरूप जिला विधिक सेवा प्राधिकरण, जोधपुर तथा राज्य विधिक सेवा प्राधिकरण, राजस्थान की टीम अपना रचनात्मक योगदान देने की दिशा में अपेक्षा से कहीं ज्यादा आगे बढ़कर प्रयास करेगी।

विषय पर लीगल रिफ्रेशर कोर्स का आयोजन एक विशिष्ट घटना है जिसमें दोनों टीमों के प्रवीण सदस्यगण न्याय के सुयोग्य प्रस्तारण के लिए कार्यशाला के भागीदारों के हक में अनुचिन्तन को समर्थ होंगे। कृपया, रिफ्रेशर कोर्स के आयोजन के लिए मेरी हार्दिक बधाई तथा इसकी सफलता और राष्ट्र की बेहतरी के लिए मेरी शुभकामनाएं स्वीकार करें!



(अजय रस्तोगी)

**MESSAGE FROM MAJA DARUWALA
DIRECTOR, COMMONWEALTH HUMAN RIGHTS INITIATIVE**

Dear Advocates,

This long term training is a platform for learning and demonstrating on any legal issue that can ensure fair trial practices and reduce unnecessary pre-trial detention. As lawyers we are always keen to polish our cognitive/legal knowledge and argumentation skills and yet the scope for this is not always easily available. We are troubled by illegalities and malpractices we see in the court room but wonder how to address them and where to begin. As defense lawyers, we have a commitment to our clients to deliver the best services and provide the best solutions within the norms of fair trial. Yet we lack the biggest ammunition for this, which is the timely access to the most recent judgments, old and new debates within law and legal reform. We wish we had the technical expertise on specialised areas of defense such as remand, bail, evidence and cross-examination, to represent our clients more effectively, but the right mentorship is missing.

As advocates, we are different from a range of other professionals. Our task is not merely the delivery of a product or just any service, but to deliver relief and to provide protection to our clients against all forms of rights violation to serve the purposes of justice. But we forget sometimes that as advocates in the legal profession, we have a primary duty towards ensuring legal service and legal aid to the large number of pre-trial detainees who might suffer longer periods of detention than necessary merely because they are poor and cannot afford good lawyers or we were late in our interventions.

We forget to peer into the jails or make regular visits to see if there is someone there who needs our counsel. The high walls of the prison with the outside world's indifference towards inmates makes prison a breeding ground for delays and illegalities that even the prison itself would want to be rid of. It is possible that someone was unnecessarily remanded to custody or not produced physically in court merely because we were not appointed, not present, we did not argue, or did not argue well enough.

This course is designed to remind us of the duties that we should feel proud to perform as advocates because only we can perform it. Bringing the legal profession closer to jail reform through timely and effective use of remand and bail laws and the use of social protection laws for vulnerable prison populations will lie at the heart of this course on fair trial.

As officers of the court we are also expected to know and defend the 'rule of law', both procedurally and substantively. Yet the nature of law seems to escape our grasp in the practices that we come upon in the functioning of the criminal justice system as a whole. Our idealism, convictions and goodwill are constantly tested by the routine of court life, the poverty of debate, competitiveness and a mass of illegalities. In the course of being competitive with our peers we forget how we can encourage, nurture and be a resource to each other and to the many young lawyers who join the courtroom battle every day.

To address all this it is indispensable that we have opportunities and learning spaces to enrich our minds and be equipped towards the duties we have to perform, both individually and collectively. This training programme for legal aid lawyers is being initiated in just this spirit. It ensures your interaction with some of the best legal minds and criminal justice actors in Rajasthan and the country who will update and expand your legal knowledge. You will be guided and mentored by some of these inspiring individuals who have great commitment to 'rule of law' and deep knowledge of the legal strategies needed to protect one's client in the fullest sense.

On the whole, the course will draw attention to the powers and rejuvenated spirit that the legal profession, particularly legal aid lawyers, can channelize back into the criminal justice system through a revitalized knowledge of the law, vulnerabilities and prejudices and role of reasoning and argumentation; and improved skills of application of the law and effective representation for the indigent. The range of things this course can do, from legal education to changing malpractices in pre-trial detention and during trial, will be moulded by the energy and enthusiasm, interest and commitment all of you will bring to it.



MAJA DARUWALA

सीएचआरआई के निदेशक माया दारुवाला का संदेश

प्रिय अधिवक्तागण,

लंबी अवधि का यह प्रशिक्षण एक मंच की तरह है- ऐसा मंच जहां आप उन कानूनों मुद्दों को सीख-जान सकते हैं जिससे अदालती सुनवाई की निष्पक्षता सुनिश्चित होती है और अदालती सुनवाई-पूर्व की अनावश्यक बंदीकरण की घटनाओं में कमी आती है। एक वकील के तौर पर हमें हमेशा ही कानून के अपने ज्ञान और तर्क-कौशल को मांजने-चमकाने की जरूरत होती है लेकिन ऐसा कर पाने के अवसर अक्सर उपलब्ध नहीं होते। अदालत के भीतर जारी अनियमितताओं और कदाचार से हम परेशान रहते हैं और हताशा-भाव से सोचते हैं कि इन बातों का क्या समाधान निकाला जाय और इसकी शुरुआत कहां से की जाय। बचाव-पक्ष के वकील के रूप में हम निष्पक्ष न्याय के मानकों के भीतर रहते हुए अपने मुक्कील को बेहतरीन सेवा और सर्वश्रेष्ठ समाधान प्रदान करने को प्रतिबद्ध हैं। लेकिन ऐसा कर दिखाने के लिए जो सबसे ज्यादा हथियार जरूरी हैं, जैसे- नवीनतम अदालती फैसलों के बारे में सामयिक जानकारी या फिर कानून और विधिक सुधार संबंधी नयी-पुरानी बहस की जानकारी, उनका हमारे पास अभाव होता है। हमारी यह भी इच्छा होती है कि रिमांड, बेल, एवीडेंस तथा क्रास-एग्जामिनेशन सरीखे बचाव से जुड़े विशिष्ट पहलुओं पर हमें तकनीकी महारत हासिल हो ताकि हम अपने मुक्कील की पैरवी ज्यादा कारगर ढंग से कर पायें लेकिन ऐसे मामले में हमें सही मार्गदर्शन नहीं मिल पाता।

बतौर वकील हम अन्य पेशेवर लोगों से तनिक हटकर हैं। हमारा काम किसी वस्तु या किसी सेवा को प्रदान करना भर नहीं बल्कि हमारा काम अपने मुक्कील को राहत दिलाना और इंसाफ के रास्ते पर चलते हुए अधिकार-उल्लंघन के तमाम रूपों से उसे सुरक्षा प्रदान करने का है। लेकिन हम कभी-कभी भूल जाते हैं कि एक अधिवक्ता के तौर पर कानून के पेशे में हमारा प्राथमिक कर्तव्य विचाराधीन कैदियों को विधिक सहायता और कानून की सेवा की अदायगी को सुनिश्चित करना है क्योंकि इस बात की प्रबल आशंका होती है कि गरीबी के कारण ज्यादातर विचाराधीन कैदी अच्छा वकील ना खड़ा पाने की

स्थिति में जरूरत से ज्यादा समय तक कैद भुगतने को बाध्य हों। बहुधा यह भी होता है कि हमीं लोग समय रहते हस्तक्षेप नहीं कर पाते।

हम जेलों के भीतर झांक पाना भूल जाते हैं। क्या जेल के भीतर ऐसा कोई है जिसे हमारे विधिक परामर्श की जरूरत है- यह जानने के लिए जेलों में नियमित आवाजाही जरूरी है लेकिन हम ऐसा नहीं कर पाते। जेल की ऊंची दीवारें जेल के भीतर की दुनिया को अपने दायरे में समेटकर रखती हैं, बाहर की दुनिया जेल के भीतर की दुनिया से निरपेक्ष रहती है और ऐसे में जेल एक ऐसी उपजाऊ जमीन के रूप में तब्दील हो जाती है, जहां अनियमितताओं और विलंब की बेल खूब फलती-फूलती है। अनियमितताओं और विलंब की यह बेल कुछ इस कदर बढ़ती है कि खुद जेल ही इससे छुटकारा पाना चाहता है। इस बात की बहुत आशंका रहती है कि किसी आदमी को गैरजरूरी तौर पर रिमांड के तहत हिरासत में ले लिया जाय या फिर उसे सशरीर अदालत में ना पेश किया जा सके क्योंकि हम जैसा कोई वकील उनकी पैरवी के लिए नियुक्त ना हो, अनुपस्थित रहे, बहस से चूक जाये या फिर बहस करे भी तो तथ्यों को ठीक से पेश ना कर पाये।

इस पाठ्यक्रम का निर्माण हमें उन दायित्वों की याद दिलाने के लिए किया गया है जिनका सिर्फ हमीं निर्वाह कर सकते हैं और एक वकील के रूप में इन दायित्वों का निर्वाह करते हुए हमें गर्व का बोध होना चाहिए। निष्पक्ष सुनवाई से जुड़ा यह पाठ्यक्रम रिमांड और बेल से जुड़े कानूनों के कारगर और समयानुकूल इस्तेमाल और जेल के भीतर कैदी बनकर रहने वाली निरीह आबादी के लिए सामाजिक सुरक्षा के कानूनों के उपयोग के जरिए जेल-सुधार तथा कानून के पेशे को नजदीक लाने की भावना से प्रेरित है।

अदालती अधिकारी के रूप में हमसे अपेक्षा की जाती है कि हम कानून के शासन को प्रक्रिया और अंतर्वस्तु के धरातल पर समझेंगे और उसकी रक्षा करेंगे। लेकिन, जैसे ही हम दंडपरक न्याय-व्यवस्था के कामकाजी धरातल पर उतरते हैं, कानून की प्रकृति पर हमारी पकड़ ढीली जान पड़ने लगती है। रोजमर्रा की अदालती प्रक्रियाओं, बहसों के खोखलेपन, प्रतिस्पर्धा और भारी अनियमितताओं के बीच हमारे आदर्शवाद, प्रतिबद्धता और जन-कल्याण की भावना की जैसे परीक्षा होने लगती है। अपने साथी वकीलों के बीच होड़ में

बने रहने की कोशिशों के बीच यह बात भूल जाती है कि हम एक दूसरे को बढ़ावा दे सकते हैं, परस्पर पूरक साबित हो सकते हैं और एक-दूसरे के लिए तथा अदालती परिसर में रोजमर्रा की कानूनी लड़ाई के लिए दाखिल होने वाले नये वकीलों के लिए संसाधन साबित हो सकते हैं।

इन सारी बातों के समाधान के लिए बहुत जरूरी है कि हमें सीखने-जानने का अवसर और मंच मिले, जहां हम अपने मन-मस्तिष्क को समृद्ध बनायें और व्यक्तिगत तथा सामूहिक रूप से हमें जो जिम्मेदारियां निभानी हैं, उनके लिए अपने को तैयार कर सकें। विधिक सहायता प्रदान करने वाले वकीलों का प्रशिक्षण-कार्यक्रम बस इसी भावना से शुरू किया गया है। इस प्रशिक्षण-कार्यक्रम में भागीदारी करते हुए आपकी भेंट राजस्थान तथा देश के अन्य हिस्सों से आये श्रेष्ठ विधिवेत्ताओं तथा दंडपरक न्याय-व्यवस्था की अहम हस्तियों से होगी जो कानून के आपके ज्ञान को अद्यतन करते हुए उसका विस्तार करेंगे। 'विधि के शासन' के प्रति अत्यंत निष्ठावान तथा मुवक्कील के बचाव के लिए जरूरी कानूनी नुक्तों के गहरे जानकार ऐसे कुछ प्रेरणास्पद व्यक्ति प्रशिक्षण के दौरान आपका मार्ग-दर्शन करेंगे।

साररूप में कहें तो यह पाठ्यक्रम कानून के पेशे, खासकर विधिक सहायता को नियुक्त वकीलों का ध्यान उस ताकत और नव-ऊर्जस्वी कार्य-भावना की तरफ खींचने की कोशिश है जिसको दंडपरक न्याय-व्यवस्था के भीतर कानून की जीवंत जानकारी, कमजोरियों और पूर्वाग्रहों की पहचान, तर्क-कौशल और तर्क-क्षमता के इस्तेमाल, कानून के कारगर उपयोग की युक्तियों तथा गरीब-जन की बेहतर नुमाइंदगी के जरिए जगाया जा सकता है। यह पाठ्यक्रम विधिक शिक्षा से लेकर सुनवाई-पूर्व की नजरबंदी तथा सुनवाई के क्रम में होने वाले कदाचार को रोकने के मामले में जो कुछ कर पाने में मददगार होगा उस पर आपकी उस ऊर्जा, उत्साह, रुचि और प्रतिबद्धता की छाप होगी जिसके साथ आप इस प्रशिक्षण-कार्यक्रम में शिरकत करेंगे।



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OVERVIEW

सारांश

OVERVIEW: UNDERSTANDING THE SOCIAL AND INSTITUTIONAL CONTEXT OF WOMEN OFFENDERS

(The Overview for this Reader on Legal & Other Strategies for Women & Juveniles in Custody is sourced from the Executive Summary of the Final Report of the Planning Commission, Government of India, on Children of Women Prisoners in Jails: A Study in Uttar Pradesh, 2004. The study has been conducted in U.P., covering 297 women prisoners of 21 jails. The Executive Summary has been selected for the social and institutional perspective it captures. It has been slightly modified to suit the purposes of the Reader and its private circulation for legal aid lawyers.)

Development efforts in the recent past have undergone significant changes and unplanned, unsustainable and erratic developmental pursuits have caused social tension, unrest and disorder in the society and attracted attention of policy makers, administrators, social scientists and researches. Development alone cannot bring peace and prosperity unless it has a social justice dimension and people centered approach. Importantly, there have been marked changes in the patterns, trends, and nature of crimes over the period, particularly in the recent past. The post liberalized and globalized era calls for effective measures for criminal justice administration and development administration with focus on people and environment along with sustainable management of development.

Social Context of Female Criminality & Jail Administration:

The imprisonment of mother with dependent young children is a problematic issue. The effects of incarceration can be particularly catastrophic on the children and costly to the state in term of providing for their care, and because of the social problems arising from early separation. Children should not be allowed to stay in jails. Jails are not place to bring up children. The shocking survey on children of women prisoners, conducted by National Institute of Criminology and Forensic Sciences, Delhi, during 1997-2000, documents the conditions of deprivation and criminality in which they are forced to grow up, lack of proper nutrition, inadequate medical care, and little opportunity for education. Indian Council of Legal Aid and Advice also filed public interest litigation in the Supreme Court, asking that state governments formulate proper guidelines for the protection and welfare of children of women prisoners. The jail authorities said that they are doing what they can do within limited resources to give children the best possible facilities. This ranges from medical checkups for pregnant women and health education classes for mothers to vaccines for children. Officials say that prisoners in Karnataka, Maharashtra and Rajasthan have special diets for lactating mothers and babies. In Meghalaya, breastfeeding mothers are kept in a separate enclose. In Tamil Nadu, the special prisons for women in Vellore and Madurai have crèches as do Presidency Central Jail in West Bengal and Nari Bandi Niketan in Lucknow. Jail conditions are deplorable in Bihar and Madhya Pradesh. Unfortunately, prisoners are not a priority for any government because inmates are typically poor, illiterate and powerless,

and because of the prevailing attitude that prisoners deserve what they get. At the beginning of the 1990's, the average number of offenders per lakh population was five times highest than in the 1950's. For the last decades there have been further fundamental societal changes contributing to an increasing crime load. Significantly, the globalization process with its concomitant integration at the economic, technological and cultural level contributes to globalization of crimes as well which appear in the form of terrorism, drug trafficking, money laundering, and organized crimes with international dimensions. The privatization, liberalization and marketization policies have led to the growth of economic crimes. Importantly, in the wake of industrialization, westernization and urbanization, Indian society has been passing through drastic and fundamental changes both in the structured, socio-economic and cultural spheres which not only produced a changed physical environment and a new forms of economic organizations but also affected the social order, solidarity, human conduct and thought. The rate of women criminality has increased over the period. However female criminals constitutes a numerically smaller proportion than that of male offenders. According to the Crime in India Report (1996), the female percentage for arrested persons at all India level was at 4.7. There has been upward trend in female criminality over the period of 1990-2000. About 10 states and 3 Union Territories recorded more than 5 percent female arrested in total arrested persons during 1996.

During June 1997, 7268 female were reported in jails and out of total women prisoners 5658 (77.85 percent) were under trials. In the state of Uttar Pradesh, 902 women prisoners were reported and most of them were under trials. Again, 885 children were reported in jails and most of the children were living in jails of Uttar Pradesh, Madhya Pradesh (12.43 Percent), Andhra Pradesh (9.15 percent), Maharastra (7.90 percent), Bihar (6.92 percent), Delhi (6.78 percent), West Bengal (6.10 percent), and Rajasthan (6.10 percent). Most of the jails are over crowded and additional capacity of prisoners has to create. Though prison infrastructure available in India is huge but the main problem of the prisons is overcrowding due to under trial prisoners. In the state of Uttar Pradesh, there are 82 jails. A few newly created districts (18) do not have jails. There has been 5.5 percent compound annual growth rate of population increase in jails of U.P. During 1991-2001, average number of prisoners grew by 96.49 percent. There has been increasing trend in the ratio of convicted and under trial (1:8 ratio in 2001). The jails lack proper planning for human resources and also lack basic minimum facilities for prisoners, particularly woman and their young children.

CUSTODY OF WOMEN

The problem of single women in jails and sub jails (An inmate perspective)

MR. R.K. SAXENA

Source: ACCESS TO JUSTICE: LEGAL EMPOWERMENT

A statement on access to justice and legal empowerment will drastically fail if we do not take into account the plight of women in conflict with law, particularly those who have been confined to custodial institutions. Those who are convicted, are congregated in remote centralized institutions where their relatives find it difficult to approach and meet them; but those who face trial, are kept in local prisons (district jails or sub-jails) under conditions which demand serious attention.

Lack of lady warders, particularly at sub-jails, is causing untold misery to women inmates who stay alone in desolate barracks within prisons for men. Violation of human rights in prisons is common but women are particularly vulnerable to human rights abuse and discrimination of varying degrees.

The main reason is that they do not have separate prisons and at most places have no women staff either for their secure confinement or for medical and other examinations. Special needs of women inmates who are pregnant or who are accompanied with infants are generally ignored. These violations are invisible and committed with impunity because of non-accountability and lack of transparency in prison administration.

Most jail rules provide for the method of keeping women inmates in prisons and in sub-jails. One such rule reads as follows:

Female prisoners not to remain alone in female ward. – When, however, there is only one female prisoner in the female ward, and there is no female warder or overseer, and the prisoner is likely to be there for more than seven days, the Superintendent shall arrange beforehand for another female prisoner from the nearest jail to be sent to keep her company, or to send the prisoner to an adjacent Jail. In extraordinary circumstances the Superintendent may allow a female friend to visit the prisoner and live with her in the jail. If the female prisoner has no friend who will stay with her, the Superintendent shall entertain a female as an extra warder to keep her company.

This important rule for the upkeep of women inmates is followed more in its violation than adherence. At most of the District Prisons or Sub-jails there is no separate sanctioned post for lady warders. This is so perhaps for two reasons: one, the uncertainty of the presence of women Undertrial prisoners at these institutions, and two, the constant change in the number of women Undertrial prisoners, if there are any. It is because of this uncertainty that the aforementioned rule has been construed in a manner that provides several alternative arrangements for the upkeep of a single woman inmate at a jail or sub-jail.

- But provisions of alternative arrangements in this rule (which was framed more than half a century back) have become hackneyed and impractical for various reasons –
- Calling a woman inmate from the nearest jail may cause hardship to that other woman because it may deprive her of the proximity to her relations and family members. If she is transferred to another jail, without her willing consent, just to give company to a woman prisoner, it would be a violation of her right to live with minimum restraints.
- Sending a single woman to the nearest jail or sub-jail (where other women inmates might be lodged) causes procedural difficulties of production of the inmate before the concerned court on the date of hearing. She will have to be shifted from one prison to the other for appearing before the judicial magistrate on each such date, causing problems of transfer, availability of woman guards and the risk of violation of her personal security.
- Searching for a woman friend who can give company to a single woman prisoner, or could willingly opt to stay with her in the horrifying prison conditions, is a tough job – almost impossible for the scanty prison staff to execute. This alternative is also wrought with the possibility of a complaint of illegal confinement because prison rules unconditionally prohibit the locking up of any person in the prison without a valid warrant of custody from a competent authority.
- To ‘entertain a female as an extra warder’ is not possible now because prison superintendents have been divested of their powers to recruit persons on temporary, casual or daily-wage basis.

Since the population of undertrial prisoners is always changing it is difficult to predict or anticipate when and at which prison the number of women Undertrial prisoners would be reduced or raised to a ‘single woman’. The Prison Department is not in a position to say at how many jails and on how many occasions there was a single woman Undertrial prisoner in a year. An intervention by Visitors of prisons can perhaps raise some hope in such cases. They can exercise their influence in providing the services of lady home-guards for such temporary phases at jails and sub-jails where there are no lady warders.

Rules for segregation of women prisoners from their men counterparts make it essential to keep them not only out of reach of male prisoners but also out of their sight. Therefore, the construction of women enclosures within jails for men is such that the gates of their enclosure, and the wards within the enclosure shall not be in the same line of sight so that no passer-by could violate their privacy. If, on one hand, this ensures total segregation, it also, in essence, results in complete isolation (an illegal solitary confinement) of a woman inmate, if she is alone and there is no lady warder to keep watch on her. This precisely is the situation in almost all sub-jails and most of the district jails in the country.

The problem of keeping women undertrial prisoners in jails where there is no woman guard and no proper enclosure to keep them safe must cause concern and draw sufficient attention of state authorities. Why can the state not think of some proper arrangements for keeping them in jail, if there is law to curtail their liberty? Does the state have right to restrain their

freedom if it has no funds to provide for lady warders to keep watch over them and to construct appropriate prisons to keep them in? Should the state not confer with the Judiciary and devise ways to release such women on bail (or on personal recognizance if they have roots in the community) until there are proper arrangements for their confinement in prisons? Should the state government not appoint a committee of women officers from the prison, the judiciary, the police and some women social organizations, to make a one time review of all women undertrial prisoners in jails where there are no women guards, and to suggest some concrete ways to improve their lot.

There should be some provision for appointment of temporary lady warders or lady home guards when women are admitted to sub-jails. A panel of lady home-guards should always be available at Jails and sub-jails having no sanctioned strength of lady warders, so that the services of one or two of them could be procured when a single women prisoner is lodged in the prison.

Understanding Women Offenders & Criminality:

The study conducted by B.N. Chattoraj, at National Institute of Criminology and Forensic Sciences, Delhi revealed the pathetic and shocking conditions of women prisoners and particularly young children of women prisoners. The study also reported that young children of women prisoners are deprived of basic minimum facilities of education, health, nutrition, care, recreation and accommodation. Justice Iyer committee also looked into the living conditions of children of women prisoners. The Committee observed that children of women prisoners were callously placed in prisons in general except in a few central jails for women where the childcare was satisfactory. However, there is paucity of literature and empirical data on the problem of children of women prisoners living in jails.

A good number of studies have been undertaken on female criminality. Ahuja (1969), Kawale (1982), Rani (1983), Nagla (1982), Bhanot and Mishra (1980) etc. have analysed social back ground of female offenders. However, B.N. Chattoraj (2000) is the only person who has conducted a detailed study on young children of women prisoners. A few committees such as Mullah Committee and Iyer Committee also observed the living status of women prisoners and their dependent young children living with them in jails.

Profile of Women Prisoners:

The women offenders are mainly from middle age group (57.5 percent women in age group of 26-45 years). They generally belong to Schedules Castes (37.73 percent) of Hindu religion (85.86 percent). Women offenders are from agricultural based families (52.85 percent). While 36.36 percent woman reported that their economy is predominantly based on labour. Most of the women are from rural background (65.32 percent) and are married (74.75

percent). Prior to jail, 64.98 percent women were housewives. Interestingly, 55.56 percent women offenders are illiterate while one fourth women are literate. Even the educational level of their husband was reported to be poor (34.68 percent illiterate and 23.57 percent literates). Their economy is predominantly agricultural one and therefore they belong to low income group of families. The family behaviour towards them also reveals that they are in constantly under mental stress leading towards tense life. Most of the women offenders were arrested for the case of dowry deaths (46.42 percent). Again, out of totals offenders of dowry deaths reported, 39.73 percent women offenders were belonging to Scheduled Caste.

Children of Women Prisoners:

In 1997, 885 young children were found living with their mothers in jails. Out of total such children most of the children belonging to U.P., M.P., A.P., Maharastra, Bihar and Delhi. More than three fourths mothers of children were under trials of the total children living in jails with their mothers, 58.3 percent were males and 41.8 percent were females. Out of total children, 30 percent children were from general castes while rest were belonging to backward castes. Again most of the children were belonging to middle aged mothers and low socio-economic profile of society. The children were facing problems related to food, nutrition, health, care, education and recreation. All India Committee on Jail Reforms (1980-83) popularly known as Justice Mullah Committee has observed the pathetic conditions of young children living in jails with their mothers.

Policy Recommendations:

- Before sending a women who is at her advance stage of pregnancy or lactating or is being accompanied with her young child to a jail, concerned authorities should ensure that whether jail has basic minimum facilities of health, recreation, accommodation and nutrition to care child and mother. In case, such facilities are not available in the jail, concrete efforts to avail such facilities should be made by jail authorities.
- The children must be separated from such a state of living, which is harmful for development of children.
- The women prisoners should be accommodated in a separate barrack and incase separate barrack is not existing in the jail, the primary consideration should be that the barrack is not overcrowded and children of women prisoners get sufficient space for accommodation and their movement.
 - The young children along with their mothers should be provided separate food, and nutrition. The food of kids may be supplemented by reasonable quantity of milk, fruits, sweets, baby food and other nutrition components as recommended by hospital doctors. During the illness of
 - child, suitable food as prescribed by doctors should be made available to them.
- Children of women prisoners may be provided adequate clothes, bed sheets and other

necessary materials for maintenance. Women prisoners should also be provided adequate quantity of clothes, bed sheets, bedding, sanitary napkins, soap, detergents, oil etc. for maintenance.

- In case of serious illness of the mother of young child, jail authorities immediately make alternative arrangement for care of child.
- Basic facilities like creche, Aganwadi centre, primary education centre, recreation etc. should be ensured in each jail. If not possible, at least proper arrangement for such facilities may be ensured through involvement of local reputed NGO's and government officials.
- Women prisoners should be provided adequate learning materials such as books, exercise books copies, pencils, slates, etc. so that they may be educationally empowered. Moreover, women prisoners should be imparted professional education, training and entrepreneurial skills for their proper rehabilitation. This type of arrangement may be ensured through strengthening, encouraging and supporting local NGO's.
 - Women prisoners may be exempted imprisonment. Moreover, women prisoners above the age of 65 years
 - should be curtailed imprisonment and released them to live peacefully in the society.
- Women prisoners engaged in work programme should be provided their due wages and honorarium so that their motivation for rehabilitation programmes may be sustained.
- Diversified recreational programmes should be made available to the children of different age groups. Play grounds, materials for indoor games and sports may be ensured by jail authorities. Again, jail authorities should arrange for site seeing in the organized festivals, fairs, and recreational events such as folk dances, songs theatre etc. Jail authorities may also organize programmes of recreation and spiritual theme.
- In order to encourage the work culture among women prisoners, it is necessary that every jail where children are living with their mothers should have a creche with proper staff.
- Prison administration has to be made more sensitive and responsive to the problems of the children of women prisoners. The jails should be provided sufficient resources to ensure that care, nourishment, protection, welfare and development of young children living with their mothers in jails.
 - The jail staff should be provided training and orientation for coping up new changes and proper care and welfare
 - of women prisoners along with their young children living with them in jails.
- Some fund should specifically be earmarked for the welfare of the children of women prisoners in the beginning of the year and utilized for the purpose, even if young children are not living in jail and funds are not utilized for that financial year such funds may be deposited as a emergency fund that may be utilized for the welfare of children of women prisoners at the need of hour.

The Juvenile Justice Act also needs to be amended and young children of women prisoners may be included in the Act so that these neglected children can derive benefits of the Act for their care, protection, development and rehabilitation.

Current Statistics on Women Prisoners

Source: Prison Statistics, NCRB 2012

- A total of 344 women convicts with their 382 children and 1,226 women undertrials with their 1,397 children were lodged in various prisons in the country at the end of 2012.
- The **proportion** of undertrial female inmates to total inmates was observed as 4.6%.
- Women jails exclusively for women prisoners exist only in 13 States/UTs
- A total of 414 convicts including 13 females lodged in different jails of the country were serving capital punishment at the end of the year 2012.
- A total of 69,133 convicts including 2,787 women accounting for 54.1% of total convicts in the country were undergoing sentences for life imprisonment at the end of the year 2012.
- A total of 55 deaths of female inmates were reported during 2012, wherein 8 deaths were suicidal in nature reported during the year 2012.
- Female inmates are between the age group of:
 - 30 - 50 years:** 8058 (49.5%),
 - 18-30 years:** 5243 (32.3%),
 - 50 years and above:** 2959 (18.2%),
 - 16-18 years:** 13 (0.1%).

PART - I
WOMEN & CHILDREN IN
CUSTODY

भाग I:
हिरासत में महिलाएँ व बच्चे

Section I:
STATUTORY PROVISIONS

भाग I:
वैधानिक प्रावधान

WOMEN IN CUSTODY

CONSTITUTION OF INDIA

Article 15 - Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth:

(3) Nothing in this article shall prevent the State from making any special provision for women and children.

Article 51A - Fundamental Duties

(e) to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women;

Article 243D - Reservation of seats in the Panchyats

(2) Not less than one-third of the total number of seats reserved under clause (1) shall be reserved for women belonging to the Scheduled Castes or, as the case may be, the Scheduled Tribes.

(3) Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Panchayat shall be reserved for women and such seats may be allotted by rotation to different constituencies in a Panchayat.

(4) The offices of the Chairpersons in the Panchayats at the village or any other level shall be reserved for the Scheduled Castes, the Scheduled Tribes and women in such manner as the Legislature of a State may, by law, provide:

Provided that the number of offices of Chairpersons reserved for the Scheduled Castes and the Scheduled Tribes in the Panchayats at each level in any State shall bear, as nearly as may

be, the same proportion to the total number of such offices in the Panchayats at each level as the population of the Scheduled Castes in the State or of the Scheduled Tribes in the State bears to the total population of the State:

Provided further that not less than one-third of the total number of offices of Chairpersons in the Panchayats at each level shall be reserved for women:

Provided also that the number of offices reserved under this clause shall be allotted by rotation to different Panchayats at each level

(5) The reservation of seats under clauses (1) and (2) and the reservation of offices of Chairpersons (other than the reservation for women) under clause (4) shall cease to have effect on the expiration of the period specified in article 334.

Article 243 T: Reservation of seats in the municipalities

(2) Not less than one-third of the total number of seats reserved under clause (1) shall be reserved for women belonging to the Scheduled Castes or, as the case may be, the Scheduled Tribes.

(3) Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Municipality shall be reserved for women and such seats may be allotted by rotation to different constituencies in a Municipality.

(4) The offices of Chairpersons in the Municipalities shall be reserved for the Scheduled Castes, the Scheduled Tribes and women in such manner as the Legislature of a State may, by law, provide.

(5) The reservation of seats under clauses (1) and (2) and the reservation of offices of Chairpersons (other than the reservation for women) under clause (4) shall cease to have effect on the expiration of the period specified in article 334.

Article 21A - Right to Education

The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine.]

Article 24 - Prohibition of employment of children in factories, etc

No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment.

Article 39- Certain principles of policy to be followed by the State

The State shall, in particular, direct its policy towards securing –

(a) That the citizens, men and women equally, have the right to an adequate means of livelihood;

(d) That there is equal pay for equal work for both men and women;

(e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;

(f) That children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

Article 42 - Provision for just and humane conditions of work and maternity relief

The State shall make provision for securing just and humane conditions of work and for maternity relief.

Article 45 - Provision for free and compulsory education for children

The State shall endeavor to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years.

Article 47 - Duty of the State to raise the level of nutrition and the standard of living and to improve public health

The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavor to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.

Article 51A- It shall be the duty of every citizen of India

(e) to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women;

(k) Who is a parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years.

Article 350A - Facilities for instruction in mother-tongue at primary stage

It shall be the endeavor of every State and of every local authority within the State to provide adequate facilities for instruction in the mother-tongue at the primary stage of education to children belonging to linguistic minority groups; and the President may issue such directions to any State as he considers necessary or proper for securing the provision of such facilities.

THE CODE OF CRIMINAL PROCEDURE, 1973

Section - 47: Search of place entered by person sought to be arrested:

(2) If ingress to such place cannot be obtained under sub-section (1), it shall be lawful in any case for a person acting under a warrant and in any case in which a warrant may issue, but cannot be obtained without affording the person to be arrested an opportunity of escape, for a police officer to enter such place and search therein, and in order to effect an entrance into such place, to break open any outer or inner door or window of any house or place, whether that of the person to be arrested or of any other person, if after notification of his authority and purposes, and demand of admittance duly made, he cannot otherwise obtain admittance:

Provided that, if any such place is an apartment in the actual occupancy of a female (not being the person to be arrested) who, according to custom, does not appear in public, such person or police officer shall, before entering such apartment, give notice to such female that she is at liberty to withdraw and shall afford her every reasonable facility for withdrawing, and may then break open the apartment and enter it.

Section 51 - Search of arrested persons:

(2) Whenever it is necessary to cause a female to be searched, the search shall be made by another female with strict regard to decency.

Section 53 - Examination of accused by medical practitioner at the request of police officer:

(2) Whenever the person of a female is to be examined under this section, the examination shall be made only by, or under the supervision of, a female registered medical practitioner.

Section 98 – Power to compel restoration of abducted females

Upon complaint made on oath of the abduction or unlawful detention of a woman, or a female child under the age of eighteen years, for any unlawful purpose, a District Magistrate, Sub-divisional Magistrate or Magistrate of the first class may make an order for the immediate restoration of such woman to her liberty, or of such female child to her husband, parent, guardian or other person having the lawful charge of such child, and may compel compliance with such order, using such force as may be necessary.

Section 100 – Persons in charge of closed place to allow search:

(3) Where any person in or about such place is reasonably suspected of concealing about his person any article for which search should be made, such person may be searched and if such person is a woman, the search shall be made by another woman with strict regard to decency.

Section 160 - Police Officer's power to require attendance of witnesses

(1) Any police officer making an investigation under this Chapter may, by order in writing, require the attendance before himself of any person being within the limits of his own or any adjoining station who, from the information given or otherwise, appears to be acquainted with the facts and circumstances of the case; and such person shall attend as so required:

Provided that no male person under the age of fifteen years or above the age of sixty five years or woman or a mentally or physically disabled person shall be required to attend at any place other than the place in which such male person or woman resides.

Section 164 A - Medical examination of the victim of rape

(1) Where, during the stage when an offence of committing rape or attempt to commit rape is under investigation, it is proposed to get the person of the woman with whom rape is alleged

or attempted to have been committed or attempted, examined by a medical expert, such examination shall be conducted by a registered medical practitioner employed in a hospital run by the Government or a local authority and in the absence of a such a practitioner, by any other registered medical practitioner, with the consent of such woman or of a person competent to give such consent on her behalf and such woman shall be sent to such registered medical practitioner within twenty-four hours from the time of receiving the information relating to the commission of such offence.

(2) The registered medical practitioner, to whom such woman is sent shall, without delay, examine her and prepare a report of his examination giving the following particulars, namely:-

(I) the name and address of the woman and of the person by whom she was brought;

(II) the age of the woman;

(III) the description of material taken from the person of the woman for DNA profiling;

(IV) marks of injury, if any, on the person of the woman;

(V) general mental condition of the woman; and

(VI) other material particulars in reasonable detail.

(3) The report shall state precisely the reasons for each conclusion arrived at.

(4) The report shall specifically record that the consent of the woman or of the person competent to give such consent on her behalf to such examination had been obtained.

(5) The exact time of commencement and completion of the examination shall also be noted in the report.

(6) The registered medical practitioner shall, without delay forward the report to the investigation officer who shall forward it to the Magistrate referred to in section 173 as part of the documents referred to in clause (a) of sub-section (5) of that section.

(7) Nothing in this section shall be construed as rendering lawful any examination without the consent of the woman or of any person competent to give such consent on her behalf.

Explanation. - For the purposes of this section, "examination" and "registered medical practitioner" shall have the same meanings as in section 53'

Section 167 - Procedure when investigation cannot be completed in twenty four hours

(2) Provided further that in case of a woman under eighteen years of age, the detention shall be authorized to be in the custody of a remand home or recognized social institution.

Section 174 - Police to inquire and report on suicide, etc

(3) When –

(i) The case involves suicide by a woman within seven years of her marriage; or

(ii) The case relates to the death of a woman within seven years of her marriage in any circumstances raising a reasonable suspicion that some other person committed an offence in relation to such woman; or

(iii) The case relates to the death of a woman within seven years of her marriage and any relative of the woman has made a request in this behalf; or

(iv) There is any doubt regarding the cause of death; or

(v) The police officer for any other reason considers it expedient so to do, he shall, subject to such rules as the State Government may prescribe in this behalf, forward the body, with a view to its being examined, to the nearest Civil Surgeon, or other qualified medical man appointed in this behalf by the State Government, if the state of the weather and the distance admit of its being so forwarded without risk of such putrefaction on the road as would render such examination useless.

Section 198 - Prosecution for offences against marriage

(1) No Court shall take cognizance of an offence punishable under Chapter XX of the Indian Penal Code (45 of 1860) except upon a complaint made by some person aggrieved by the offence:

Provided that –

(a) where such person is under the age of eighteen years, or is an idiot or a lunatic, or is from sickness or infirmity unable to make a complaint, or is a woman who, according to the local customs and manners, ought not to be compelled to appear in public, some other person may, with the leave of the Court, make a complaint on his or her behalf;

Section 360 - Order to release on probation of good conduct or after admonition

1) When any person not under twenty-one years of age is convicted of an offence punishable with fine only or with imprisonment for a term of seven years or less, or when any person under twenty-one years of age or any woman is convicted of an offence not punishable with death or imprisonment for life, and no previous conviction is proved against the offender, if it appears to the Court before which he is convicted, regard being had to the age, character or antecedents of the offender, and to the circumstances in which the offence was committed, that it is expedient that the offender should be released on probation of good conduct, the Court may, instead of sentencing him at once to any punishment, direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period (not exceeding three years) as the Court may direct and in the meantime to keep the peace and be of good behavior:

Section 416 - Postponement of capital sentence on pregnant woman

If a woman sentenced to death is found to be pregnant, the High Court shall commute the sentence to imprisonment for life.

Section 437 - When bail may be taken in case of non-bailable offence

(1) When any person accused of, or suspected of, the commission of any non-bailable offence is arrested or detained without warrant by an officer in charge of a police station or appears or is brought before a Court other than the High Court or Court of Session, he may be released on bail, but –

(i) Such person shall not be so released if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life;

(ii) Such person shall not be so released if such offence is a cognizable offence and he had been previously convicted of an offence punishable with death, imprisonment for life or imprisonment for seven years or more, or he had been previously convicted on two or more occasions of a non-bailable and cognizable offence punishable with imprisonment for three years or more but not less than seven years:

Provided that the Court may direct that a person referred to in clause (i) or clause (ii) be released on bail if such person is under the age of sixteen years or is a woman or is sick or infirm

Section 27 - Jurisdiction in the case of juveniles

Any offence not punishable with death or imprisonment for life, committed by any person who at the date when he appears or is brought before the Court is under the age of sixteen years, may be tried by the Court of a Chief Judicial Magistrate, or by any Court specially empowered under the Children Act, 1960 (60 of 1960), or any other law for the time being in force providing for the treatment, training and rehabilitation of youthful offenders.

CHAPTER IX - ORDER FOR MAINTENANCE OF WIVES, CHILDREN AND PARENTS

Section 125 - Order for maintenance of wives, children and parents,

(1) If any person having sufficient means neglects or refuses to maintain –

(a) His wife, unable to maintain herself, or

(b) His legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or

(c) His legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or

(d) His father or mother, unable to maintain himself or herself,

A Magistrate of the first class may, upon proof of such neglect or refusal, orders such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate, as such magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct:

Provided that the Magistrate may order the father of a minor female child referred to in

clause (b) to make such allowance, until she attains her majority, if the Magistrate is satisfied that the husband of such minor female child, if married, is not possessed of sufficient means.

Provided further that the magistrate may, during the pendency of the proceeding regarding monthly allowance for the maintenance under this sub-section, order such person to make a monthly allowance for the interim maintenance of his wife or such child, father or mother, and the expenses of such proceedings which the magistrate considers reasonable, and to pay the same to such person as the magistrate from time to time direct:

Provided also that an application of the monthly allowance for the interim maintenance and expenses for proceeding under the second proviso shall, as far as possible, be disposed of within sixty days from the date of the service of the notice of application to such person

Explanation – For the purposes of this Chapter –

(a) "Minor" means a person who, under the provisions of the Indian Majority Act, 1875

(9 of 1875) is deemed not to have attained his majority;

(b) "Wife" includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried

(2) Any such allowance for the maintenance or interim maintenance and expenses for proceeding shall be payable from the date of the order, or, if so ordered, from the date of the application for maintenance or interim maintenance and expenses of proceeding, as the case may be.

(3) If any person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person, for the whole, or any part of each month's allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be, remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made:

Provided that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Court to levy such amount within a period of one year from the date on which it became due:

Provided further that if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her, and may make an order under this section notwithstanding such offer, if he is satisfied that there is just ground for so doing

Explanation—If a husband has contracted marriage with another woman or keeps a mistress, it shall be considered to be just ground for his wife's refusal to live with him

(4) No wife shall be entitled to receive an allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be, from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent

(5) On proof that any wife in whose favor an order has been made under this section is living in adultery, or that without sufficient reason she refuses to live with her husband, or that they are living separately by mutual consent, the Magistrate shall cancel the order

Section 126 - Procedure

(1) Proceedings under section 125 may be taken against any person in any district –

(a) Where he is, or

(b) Where he or his wife resides, or

(c) Where he last resided with his wife, or as the case may be, with the mother of the illegitimate child

(2) All evidence to such proceedings shall be taken in the presence of the person against whom an order for payment of maintenance is proposed to be made, or, when his personal attendance is dispensed with in the presence of his pleader, and shall be recorded in the manner prescribed for summons-cases:

Provided that if the Magistrate is satisfied that the person against whom an order for payment of maintenance is proposed to be made is willfully avoiding service, or willfully neglecting to attend the Court, the Magistrate may proceed to hear and determine the case ex parte and any order so made may be set aside for good cause shown on an application made within three months from the date thereof subject to such terms including terms as to payment of costs to the opposite party as the Magistrate may think just and proper

(3) The Court in dealing with applications under section 125 shall have power to make such order as to costs as may be just

Section 127 - Alteration in allowance

(1) On proof of a change in the circumstances of any person, receiving, under section 125 a monthly allowance for the maintenance or interim maintenance, or ordered under the same section to pay a monthly allowance for the maintenance, or interim maintenance, to his wife, child, father or mother, as the case may be, the Magistrate may make such alteration, as he thinks fit, in the allowance for the maintenance or the interim maintenance, as the case may be."; (ii) in sub-section (3), in clause (c), for the word "maintenance", the words "maintenance or interim maintenance, as the case may be.

(2) Where it appears to the Magistrate that, in consequence of any decision of a competent civil Court, any order made under section 125 should be cancelled or varied, he shall cancel the order or, as the case may be, vary the same accordingly.

(3) Where any order has been made under section 125 in favour of a woman who has been divorced by, or has obtained a divorce from, her husband, the Magistrate shall, if he is satisfied that –

(a) The woman has, after the date of such divorce, remarried, cancel such order as from the date of her remarriage;

(b) The woman has been divorced by her husband and that she has received, whether before or after the date of the said order, the whole of the sum which, under any customary or personal law applicable to the parties, was payable on such divorce, cancel such order –

(i) In the case where such sum was paid before such order, from the date on which such order was made,

(ii) In any other case, from the date of expiry of the period, if any, for which maintenance has been actually paid by the husband to the woman;

(c) The woman has obtained a divorce from her husband and that she had voluntarily surrendered her rights to maintenance or interim maintenance after her divorce, cancel the order from the date thereof

(4) At the time of making any decree for the recovery of any maintenance or dowry by any person, to whom a monthly allowance for the maintenance and interim maintenance or any of them has been ordered to be paid under section 125, the civil Court shall take into account the sum which has been paid to, or recovered by, such person as monthly allowance for the maintenance and interim maintenance or any of them, as the case may be, in pursuance of the said order

Section 361 - Special reasons to be recorded in certain cases

(b) A youthful offender under the Children Act, 1960 (60 of 1960), or any other law for the time being in force for the treatment, training or rehabilitation of youthful offenders, but has not done so, it shall record in its judgment the special reasons for not having done so.

THE PROBATION OF OFFENDERS ACT, 1958

Section 6 - Restrictions on imprisonment of offenders under twenty-one years of age

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

(2) For the purpose of satisfying itself whether it would not be desirable to deal under section 3 or section 4 with an offender referred to in sub-section (1) the court shall call for a report from the probation officer and consider the report, if any, and any other information available to it relating to the character and physical and mental condition of the offender.

LEGAL SERVICES AUTHORITY ACT, 1987

Section 4 - Functions of the Central Authority

(m) Make special efforts to enlist the support of voluntary social welfare institutions working at the grass-root level, particularly among the Scheduled Castes and the Scheduled Tribes, women and rural and urban labor;

Section 12 - Criteria for giving legal services

Every person who has to file or defend a case shall be entitled to legal services under this Act if that person is--

(c) A woman or a child

(g) in custody, including custody in a protective home within the meaning of clause (g) of section 2 of the Immoral Traffic (Prevention) Act, 1956, or in a Juvenile home within the meaning of clause (j) of section 2 of the Juvenile Justice Act, 1986, or in a psychiatric hospital or psychiatric nursing home within the meaning of clause (g) of section 2 of the Mental Health Act, 1987;

THE SCHEDULED CASTES AND THE SCHEDULED TRIBES (PREVENTION OF ATROCITIES) ACT, 1989

Section 3 - Punishment for offences of Tribe, - atrocities

(xi) Assaults or uses force to any woman belonging to a Scheduled Caste or a Scheduled Tribe with intent to dishonor or outrage her modesty;

(xii) being in a position to dominate the will of a woman belonging to a Scheduled Caste or a Scheduled Tribe and uses that position to exploit her sexually to which she would not have otherwise agreed;

THE IMMORAL TRAFFIC (PREVENTION) ACT, 1956

Section 10-A - Detention in a corrective institution

(1) Where, –

(a) A female offender is found guilty of an offence under Section 7, and

(b) the character, state of health and mental condition of the offender and the other circumstances of the case are such that it is expedient that she should be subject to detention for such term and such instruction and discipline as are conducive to her correction, it shall be lawful for the court to pass, in lieu of a sentence of imprisonment, an order for detention in a corrective institution for such term, not being less than two years and not being more than seven years, as the court thinks fit:

Provided that before passing such an order, –

(i) the court shall give an opportunity to the offender to be heard and shall also consider any representation which the offender may make to the court as to the suitability of the case for treatment in such an institution, as also the report of the Probation Officer appointed under the Probation of Offender Act, 1958; and

(ii) The court shall record that it is satisfied that the character, state of health and mental condition of the offender and the other circumstances of the case are such that the offender is likely to benefit by such instruction and discipline as aforesaid.

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

(3) Subject to such rules as may be made in this behalf, the State Government or authority authorized in this behalf may, at any time after the expiration of six months from the date of an order for detention in a corrective institution, if it is satisfied that there is a reasonable

probability that the offender will lead a useful and industrious life, discharge her from such an institution, without condition or with such conditions as may be considered fit, and grant her a written license in such form as may be prescribed.

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

INDIAN EVIDENCE ACT, 1872

Section 113A - Presumption as to abetment of suicide by a married woman

When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.

Explanation - For the purposes of this section, "cruelty" shall have the same meaning as in section 498 A of the Indian Penal Code (45 of 1860).

Section - 113B - Presumption as to dowry death

When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.

Explanation - For the purposes of this section, "dowry death" shall have the same meaning as in section 304B of the Indian Penal Code (45 of 1860)

Section 114 A - Presumption as to absence of consent in certain prosecutions for rape

In a prosecution for rape under clause (a) or clause (b) or clause (c) or clause (d) or clause (e) or clause (g) of sub-section (2) or section 376 of the Indian Penal Code, (45 of 1860) where sexual intercourse by the accused is proved and the question is whether it was without the consent of the woman alleged to have been raped and she states in her evidence before the Court that she did not consent, the Court shall presume that she did not consent.

INDIAN PENAL CODE, 1860

Section 82 - Act of a child under seven years of age

Nothing is an offence which is done by a child under seven years of age.

Section 83 - Act of a child above seven and under twelve of immature understanding

Nothing is an offence which is done by a child above seven years of age and under twelve, who has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct on that occasion.

Section 376A - Sexual intercourse by public servant with a woman in his custody

Whoever, being a public servant, takes advantage of his official position and induces or seduces a woman, who is in his custody as such public servant or in the custody of a public servant subordinate to him, to have sexual intercourse with him, such sexual intercourse not amounting to the offence of sexual assault, shall be punished with imprisonment of either description for a term which shall not be less than five years and which may extend to ten years and shall also be liable to fine.

Explanation: "Sexual intercourse" in this section and sections 376B and 376C shall mean any of the acts mentioned in clauses (a) to (e) of section 375. Explanation to section 375 shall also be applicable."

Section 376B - Sexual intercourse by superintendent of jail, remand home, etc

Whoever, being the superintendent or manager of a jail, remand home or other place of custody established by or under any law for the time being in force or of a women's or children's institution takes advantage of his her official position and induces or seduces any inmate of such jail, remand home, place or institution to have sexual intercourse with him/her, such sexual intercourse not amounting to the offence of sexual assault, shall be punished with imprisonment of either description for a term which shall not be less than five years and which may extend to ten years shall also be liable to fine.

Explanation 1 - "Superintendent" in relation to a jail, remand home or other place of custody or a women's or children's institution includes a person holding any other office in such jail, remand home, place or institution by virtue of which he/she can exercise any authority or control over its inmates.

Explanation 2 - The expression "Women's or children's institution" shall have the same meaning as in Explanation 2 to sub-section (2) of section 376.

Laws Related to Women:

WOMEN-SPECIFIC LEGISLATIONS

1. The Immoral Traffic (Prevention) Act, 1956
2. The Dowry Prohibition Act, 1961 (28 of 1961) (Amended in 1986)
3. The Indecent Representation of Women (Prohibition) Act, 1986
4. The Commission of Sati (Prevention) Act, 1987 (3 of 1988)
5. Protection of Women from Domestic Violence Act, 2005
6. The Sexual Harassment of Women at Workplace (PREVENTION, PROHIBITION and REDRESSAL) Act, 2013

WOMEN-RELATED LEGISLATIONS

1. The Indian Penal Code,1860
2. The Indian Evidence Act, 1872
3. The Indian Christian Marriage Act, 1872 (15 of 1872)
4. The Married Women's Property Act, 1874 (3 of 1874)
5. The Guardians and Wards Act,1890
6. The Workmen's Compensation Act, 1923
7. The Trade Unions Act 1926
8. The Child Marriage Restraint Act, 1929 (19 of 1929)
9. The Payments of Wages Act, 1936
10. The Payments of Wages (Procedure) Act, 1937
11. The Muslim Personal Law (Shariat) Application Act, 1937
12. Employers Liabilities Act 1938
13. The Minimum Wages Act, 1948
14. The Employees' State Insurance Act,1948
15. The Factories Act, 1948
16. The Minimum Wages Act, 1950
17. The Plantation Labour Act, 1951 (amended by Acts Nos. 42 of 1953, 34 of 1960, 53 of 1961, 58 of 1981 and 61 of 1986)
18. The Cinematograph Act, 1952
19. The Mines Act 1952
20. The Special Marriage Act, 1954
21. The Protection of Civil Rights Act 1955
22. The Hindu Marriage Act, 1955 (28 of 1955)
23. The Hindu Adoptions & Maintenance Act, 1956
24. The Hindu Minority & Guardianship Act, 1956
25. The Hindu Succession Act, 1956
26. The Maternity Benefit Act, 1961 (53 of 1961)
27. The Beedi & Cigar Workers (Conditions of Employment) Act, 1966
28. The Foreign Marriage Act, 1969 (33 of 1969)
29. The Indian Divorce Act, 1969 (4 of 1969)

30. The Contract Labour (Regulation & Abolition) Act, 1970
31. The Medical Termination of Pregnancy Act, 1971 (34 of 1971)
32. Code of Criminal Procedure, 1973
33. The Equal Remuneration Act, 1976
34. The Bonded Labour System (Abolition) Act, 1979
35. The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979
36. The Family Courts Act, 1984
37. The Muslim women Protection of Rights on Dowry Act 1986
38. Mental Health Act, 1987
39. National Commission for Women Act, 1990 (20 of 1990)
40. The Protection of Human Rights Act, 1993 [As amended by the Protection of Human Rights (Amendment) Act, 2006–No. 43 of 2006]
41. Juvenile Justice Act, 2000
42. The Child Labour (Prohibition & Regulation) Act
43. The Pre-Natal Diagnostic Techniques (Regulation and Prevention of misuse) Act 1994

भारत का संविधान

15. धर्म, मूलवंश, जाति, लिंग या जन्मस्थान के आधार पर विभेद का प्रतिषेध

(3) इस अनुच्छेद की कोई बात राज्य को स्त्रीयों और बालकों के लिए कोई विशेष अपबन्ध करने से निवारित नहीं करेगी।

21क. शिक्षा का अधिकार- राज्य 6 से 14 वर्ष के सभी बच्चों को निःशुल्क और अनिवार्य शिक्षा प्रदान करेगा जैसा कि राज्य उचित रीति से विधि द्वारा अवधारित करे।

24. कारखानों आदि में बालकों के नियोजन का प्रतिषेध-चौदह वर्ष से कम आयु के किसी बालक को किसी कारखाने या खान में काम करने के लिए नियोजित नहीं किया जाएगा या किसी अन्य परिसंकटमय नियोजन में लगाया जाएगा।

39. राज्य द्वारा अनुसरणीय कुछ नीति तत्व

(क) पुरुष और स्त्री सभी नागरिकों को समान रूप से जीविका के पर्याप्त साधन प्राप्त करने का अधिकार हो;

(घ) पुरुषों और स्त्रीयों को समान कार्य के लिए समान वेतन हो;

(ङ) पुरुष और स्त्री कर्मकारों के स्वास्थ्य और शक्ति का तथा बालकों की सुकुमार अवस्था का दुरुप्रयोग न हो और आर्थिक आवश्यकता से विवश होकर नागरिकों को ऐसे रोजगारों में न जाना पड़े जो उनकी आयु या शक्ति के अनुकूल न हों;

(च) बालकों को स्वतन्त्र और गरिमामय वातावरण में स्वस्थ विकास के अवसर और सुविधाएँ दी जाएँ और बालकों और अल्पवय व्यक्तियों की शोषण से तथा नैतिक और आर्थिक परित्याग से रक्षा की जाए।

42. काम की न्यायसंगत और मानवोचित दशाओं का तथा प्रसूति सहायता का उपबन्ध-राज्य काम की न्यायसंगत और मानवोचित दशाओं को वृनिश्चित करने के लिए और प्रसूति सहायता के लिए उपबन्ध करेगा।

45. छः वर्ष से कम आयु के बालकों के प्रारम्भिक गचपन की देखभाल और शिक्षा का उपबन्ध-राज्य सभी बालकों को छः वर्ष की आयु पूरी करने तक प्रारम्भिक बचपन की देखभाल और शिक्षा देने के लिए उपबन्ध करने का प्रयास करेगा।

47. पोषाहार स्तर और जीवन स्तर को ऊंचा करने तथा लोक स्वास्थ्य का सुधार करने का राज्य का कर्तव्य-राज्य, अपने लोगों के पोषहार स्तर और जीवन स्तर को ऊंचा करने और लोक स्वास्थ्य के सुधार को अपने प्राथमिक कर्तव्य में मानेगा और राज्य विशिष्टतया, मादक पेयों और स्वास्थ्य लिए हानिकर औषधियों प्रयोजनों से भिन्न, उपभोग का प्रतिषेध करने का प्रयास करेगा।

51क. मूल कर्तव्य

(ड) भारत के सभी लोगों में समरसता और समान भ्रातृत्व की भावना का निर्माण करे जो धर्म, भाषा और प्रदेश या वर्ग पद आधारित सभी भेदभाव से परे हो, ऐसी प्रथाओं का त्याग करे जो स्त्रीयों के सम्मान के विरुद्ध हैं।

(ट) माता-पिता या संरक्षक, जैसी भी स्थिति हो, अपने उस बच्चों की, जिसकी आयु छः से चौदह वर्ष के बीच है, शिक्षा देने का अवसर प्रदान करेगा।

दण्ड प्रक्रिया संहिता, 1973

47. उस स्थान की तलाशी जिसमें ऐसा व्यक्ति प्रविष्ट हुआ है जिसकी गिरफ्तारी की जानी है

(2) यदि ऐसे स्थान में प्रवेश उपधारा (1) के अधीन नहीं हो सकता तो किसी भी मामले में उस व्यक्ति के लिये, जो वारंट के अधीन कार्य कर रहा है, और किसी ऐसे मामले में, जिसमें वारंट निकला जा सकता है किन्तु गिरफ्तार किये जाने वाले व्यक्ति को भाग जाने का अवसर दिये बिना प्राप्त नहीं किया जा सकता, पुलिस अधिकारी के लिये यह विधिपूर्ण होगा के वह ऐसे स्थान में प्रवेश करे और वहां तलाशी ले और ऐसे स्थान में प्रवेश कर पाने के लिये किसी गृह या स्थान के चाहे वो उस व्यक्ति का हो जिसे गिरफ्तार किया जाना है, या किसी अन्य व्यक्ति का हो, किसी बाहरी या भीतरी द्वार या खिड़की को तोड़कर

खोल ले यदि अपने प्राधिकार और प्रयोजन की सूचना देने के तथा प्रवेश करने की सम्यक रूप से मांग करने के पश्चात वो अन्यथा प्रवेश प्राप्त नहीं कर सकता है।

परंतु यदि ऐसा कोई स्थान ऐसा कमरा है जो (गिरफ्तार किये जाने वाले व्यक्ति से भिन्न) ऐसी स्त्री के वास्तविक अधिभोग में है जो रूठि के अनुसार लोगों के सामने नहीं आती है तो ऐसा व्यक्ति या पुलिस अधिकारी उस कमरे में प्रवेश करने के पूर्व उस स्त्री को सूचना देगा की वह वहा से हट जाने के लिये स्वतंत्र है और हट जाने के लिये उसे प्रत्यक् उचित सुविधा देगा और तब कमरे को तोड़कर खोल सकता है और उसमें प्रवेश कर सकता है ।

51. गिरफ्तार किए गए व्यक्तियों की तलाशी-(1) जब कभी पुलिस अधिकारी द्वारा ऐसे वारण्ट के अधीन जो जमानत लिए जाने का उपबन्ध नहीं दे सकना है, कोई व्यक्ति किया जाता है तथा जब कभी कोई व्यक्ति वाश्रण्ट के बिना या प्राइवेट व्यक्ति द्वारा वारण्ट के अधीन गिरफ्तार किया जाता है और वैध रूप से उसकी जमानत नहीं जा सकती है या वह जमानत देने में असमर्थ है।

तब गिरफ्तारी करने वाला अधिकारी, या जब गिरफ्तारी प्राइवेट व्यक्ति द्वारा की जानी है तब वह पुलिस अधिकारी, वि वह व्यक्ति गिरफ्तार किए गए व्यक्ति की तलाशी ले सकता है ओर पहनने के आवश्यक वस्त्रों को छोड़कर, उसके पास पाई गई सब वस्तुओं को सुरक्षित अभिरक्षा में रचा सकता है और जहाँ गिरफ्तार किए गए व्यक्ति से कोई वस्तु अभिगृहीत की जानी है वहाँ ऐसे व्यक्ति को एक रसीद दी जाएगी जिसमें अधिकारी द्वारा कब्जे में की गई वस्तुएँ दर्शित होंगी।

(2) जब कभी किसी स्त्री की तलाशी करना आवश्यक हो तब ऐसी तलाशी शिष्टता का पूरा रखने हुए अन्य स्त्री द्वारा की जाएगी।

53. पुलिस अधिकारी की प्रार्थना परी चिकित्सा-व्यवसायी द्वारा अभियुक्त की परीक्षा

(2) जब कभी इस धारा के अधीन किसी स्त्री की शारीरिक परीक्षा की जानी है तो ऐसी परीक्षा केवल किसी महिला द्वारा जो रजिस्ट्रीकृत चिकित्सा-व्यवसायी है या उसके पर्यवेक्षण में की जाएगी।

98. अपहृत स्त्रियों को वापस करने के लिए विवश करने की शक्ति-किसी स्त्री या अठारह वर्ष से कम आयु की किसी बालिका के किसी विधिविरुद्ध प्रयोजन के लिए अपहृत किए जाने या विधिविरुद्ध निरुद्ध रखे जाने का शपथ पर परिवाद किए जाने की दशा में जिला मजिस्ट्रेट, उपखण्ड मजिस्ट्रेट या प्रथम वर्ग मजिस्ट्रेट यह आदेश कर सकता है कि उस स्त्री को तुरन्त स्वतंत्र किया गया या वह गालिका उसके पति, माता-पिता, संरक्षक या अन्य व्यक्ति को जो उस गालिका का विधिपूर्ण भारसाधक है तुरन्त वापस कर दी जाए और ऐसे आदेश का अनुपालन ऐसे बल के प्रयोग द्वारा जैसे आवश्यक हो करा सकता है।

100. बंद स्थान के भारसाधक व्यक्ति तलाशी लेने देंगे- (3) जहाँ किसी ऐसे व्यक्ति के बारे में जो ऐसे स्थान में या उसके आसपास है, उचित रूप से यह संदेह किया जाना है कि वह अपने शरीर पर कोई ऐसी वस्तु छिपाए हुए है जिसके जिए तलाशी ली जानी चाहिए तो उस व्यक्ति की तलाशी ली जा सकती है और यदि वह व्यक्ति स्त्री है तो तलाशी शिष्टता का पूर्ण ध्यान रखने हुए अन्य स्त्री द्वारा ली जाएगी।

160. साक्षियों की हाजिरी की अपेक्षा करने की पुलिस अधिकारी की शक्ति

(1) कोई पुलिस अधिकारी, जो इस अध्याय के अधीन अन्वेषण कर रहा है, अपने थाने की या किसी पास के थाने की सीमाओं के अन्दर विद्यमान किसी ऐसे व्यक्ति से, जिसकी दी गई इत्तिला से या अन्यथा उस मामले के तथ्यों और परिस्थितियों से परिचित होना प्रतीत होता है, अपने समक्ष हाजिर होने की अपेक्षा लिखित आदेश द्वारा कर सकता है और वह व्यक्ति अपेक्षानुसार हाजिर होगा:

परन्तु किसी पुरुष से (जो पन्द्रह वर्ष से कम आयु का या पैंसठ वर्ष से अधिक आयु का है या किसी स्त्री से या किसी मानसिक या शारीरिक रूप से निःशक्त व्यक्ति से), ऐसे स्थान से जिसमें ऐसा पुरुष या स्त्री निवास करती है, भिन्न किसी स्थान पर हाजिर होने की अपेक्षा नहीं की जाएगी।

164क. बलात्संग के पीड़ित व्यक्ति की चिकित्सीय परीक्षा -जहाँ, ऐसे प्रक्रम के दौरान जब बलात्संग या बलात्संग करने का प्रयत्न करने के अपराध का अन्वेषण किया जा रहा है उस स्त्री के शरीर की, जिसके साथ बलात्संग किया जाना या करने करना अभिकथित है, किसी चिकित्सा विशेषज्ञ से परीक्षा कराना प्रस्थापित है वहाँ ऐसी परीक्षा, सरकार या

किसी स्थानीय प्राधिकारी द्वारा चलाए जा रहे किसी अस्पताल में नियोजित रजिस्ट्रीकृत चिकित्सा व्यवसायी द्वारा, ऐसी स्त्री की सहमति से या उसकी ओर से ऐसी सहमति देने के लिए सक्षम व्यक्ति की सहमति से की जाएगी और ऐसी स्त्री को ऐसा अपराध किए जाने से संबंधित इत्तिला प्राप्त होने के समय से चौबीस घंटे के भीतर ऐसे रजिस्ट्रीकृत चिकित्सा व्यवसायी के पास भेजा जाएगा।

(2) वह रजिस्ट्रीकृत चिकित्सा व्यवसायी, जिसके पास ऐसी पास ऐसी स्त्री भेजी जाती है, बिना किसी विलंब के, उसके शरीर की परीक्षा करेगा और एक परीक्षा रिपोर्ट तैयार करेगा जिसमें निम्नलिखित व्यौरे दिए जाएंगे, अर्थात्:-

- I. स्त्री का, और उस व्यक्ति का, जो उसे लाया है, नाम और पता;
- II. स्त्री की आयु;
- III. डी. एन. ए. प्रोफाइल करने के लिए स्त्री के शरीर से ली गई सामग्री का वर्णन;
- IV. स्त्री के शरीर पर क्षति के यदि कोई हैं, चिन्ह;
- V. स्त्री की साधारण मानसिक दशा; और
- VI. उचित व्यौरे सहित अन्य तात्विक विशिष्टियाँ।

(3) रिपोर्ट में संक्षेप में वे कारण अभिलिखित किए जाएंगे जिनसे प्रत्येक निष्कर्ष निकाला गया है।

(4) रिपोर्ट में विनिर्दिष्ट रूप से यह अभिलिखित किया जाएगा कि ऐसी परीक्षा के लिए स्त्री की सहमति या उसकी ओर से ऐसी सहमति देने के लिए सक्षम व्यक्ति की सहमति, अभिप्राप्त कर ली गई है।

(5) रिपोर्ट में परीक्षा प्रारम्भ और समाप्त करने का सही मसय भी अंकित किया जाएगा।

(6) रजिस्ट्रीकृत चिकित्सा व्यवसायी, बिना विलम्ब के, रिपोर्ट अन्वेषण अधिकारी को भेजेगा जो उसे धारा 173 में निर्दिष्ट मजिस्ट्रेट को, उस धारा की उपधारा (5) के खंड (क) में निर्दिष्ट दस्तावेजों के भागरूप में भेजेगा।

(7) इस धारा की किसी बात का यह अर्थ नहीं लगाया जाएगा कि वह स्त्री की सहमति के बिना या उसकी ओर से ऐसी सहमति देने के लिए सक्षम किसी व्यक्ति की सहमति के बिना किसी परीक्षा को विधिमान्य बनाती है।

स्पष्टीकरण-- इस धारा के प्रयोजनों के लिए "परीक्षा" और "रजिस्ट्रीकृत चिकित्सा व्यवसायी" के वही अर्थ हैं जो उनके धारा 53 में हैं।

167. जब चौबीस घण्टे के अन्दर अन्वेषण पूरा न किया जा सके नब प्रक्रिया-

4[परंतु यह और की 18 वर्ष से कम आयु की स्त्री के मामले में प्रतिप्रेषण ग्रह या मान्यता प्राप्त सामाजिक संस्था की अभिरक्षा में निरोध को प्राधिकृत किया जायेगा।

174. आत्महत्या,आदि पर पुलिस का जांच करना और रिपोर्ट देना

1[जब.....

- i. मामले में किसी स्त्री द्वारा उसके विवाह की तारीख से सात वर्ष के भीतर आत्महत्या अंतर्वर्तित है, या
- ii. मामला किसी स्त्री की उसके विवाह के सात वर्ष के भीतर ऐसी परिस्थितियों में मृत्यु से सम्बंधित है जो यह युक्तियुक्त संदेह उत्पन्न करती है की किसी अन्य व्यक्ति ने ऐसे स्त्री के सम्बंध में कोई अपराध किया है, या
- iii. मामला किसी स्त्री की उसके विवाह के सात वर्ष के भीतर मृत्यु से सम्बंधित है और उस स्त्री के किसी नातेदार ने उस निमित्त निवेदन किया है; या
- iv. मृत्यु के कारण की बाबद कोई संदेह है; या
- v. किसी अन्य कारण से पुलिस अधिकारी ऐसा करना समीचीन समझता है

तब] ऐसे नियमों के अधीन रहते हुए, जो राज्य सरकार द्वारा इस निमित्त विहित किये जाये, वह अधिकारी यदि मौसम ऐसा है और दूरी इतनी है की रास्ते में शरीर के ऐसे सड़ने की जोखिम के बिना, जिसमें उसकी परीक्षा व्यर्थ

हो जाये, उसे भिजवाया जा सकता है तौ शरीर को ऐसे सड़ने की जोखिम के बिना, जिसमे उसकी परीक्षा व्यर्थ हो जाये, उसे भिजवाया जा सकता है तो शरीर को उसकी परीक्षा की दृष्टि से, निकटतम सिविल सर्जन के पास या राज्य सरकार द्वारा इस निमित्त नियुक्त अन्य अर्हित चिकित्सक के पास भेजेगा।

360. सदाचरण की परिवीक्षा पर या भर्त्सना के पश्चात् छोड़ देने का आदेश--

(1) जब कोई व्यक्ति जो इक्कीस वर्ष से कम आयु का नहीं है केवल जुमाने से या सात वर्ष या उससे कम अवधि के कारावास से दण्डनीय अपराध के लिए दोषसिद्ध किया जा है अथवा जब कोई व्यक्ति जो इक्कीस वर्ष से कम आयु का है या कोई स्त्री ऐसे अपराध के लिए जो मृत्यु या आजीवन कारावास से दण्डनीय नहीं हैं, दोषसिद्ध कि जाती है और अपराधी के विरुद्ध कोई दोषसिद्धि साबित नहीं की गई है तब यदि उस न्यायालय को जिनके समक्ष उसे दोषसिद्ध किया गया है अपराधी की आयु शील या पूर्ववृत्त को और उन परिस्थितियों को जिनमें अपराध किया गया ध्यान में रखते हुए यह प्रतीत होता है कि अपराधी को सदाचरण की परिवीक्षा पर छोड़ देना समीचीन है तो न्यायालय उसे तुरन्त कोई दण्डादेश देने के बजाय निदेश दे सकता है कि उसे प्रतिभुओं सहित या रहित उसके द्वारा यह बंधपत्र लिख देने पर छोड़ दिए जाए कि वह (तीन वर्ष से अनधिक) इतनी अवधि के दौरान, जितनी न्यायालय निर्दिष्ट करे बुलाए जाने पर हाजिर होगा और दण्डादेश पाएगा और इस बीरच परिशांति कायम रखेगा और सदाचारी बना रहेगा।

परन्तु जहाँ कोई प्रथम अपराधी किसी द्वितीय वर्ग मजिस्ट्रेट द्वारा जो उच्च न्यायालय द्वारा विशेषतया सशक्त नहीं किया गया है। दोषसिद्ध किया जाता है और मजिस्ट्रेट की यह राय है कि इस धारा द्वारा प्रदत्त शक्तियों का प्रयोग किया जाना चाहिए वहाँ वह उस भाव की अपनी राय अर्भिलिखित करेगा और प्रथम वर्ग मजिस्ट्रेट को वह कार्यवाही निवेदित करेगा और उस अभियुक्त को उस मजिस्ट्रेट के पास भेजेगा अथवा उसकी उस मजिस्ट्रेट के समक्ष हाजिरी के लिए जमानत लेगा और वह मजिस्ट्रेट उस मामले का निपटारा उपधारा (2) द्वारा उपबंधित रीति से करेगा।

416. गर्भवती स्त्री को मृत्यु दण्ड का मुलतवी किया जाना-- यदि वह स्त्री जिसे मृत्यु दण्डादेश दिया गया है गर्भवती पाई जाती है तो न्यायालय [***] दण्डादेश का आजीवन कारावास के रूप में लघुकरण कर सकेगा।

437. अजमानतीय अपराध की दशा में कब जमानत ली जा सकेगी-

(1) जब कोई व्यक्ति जिस पर अजमानतीय अपराध का अभियोग है या जिस पर संदेह है कि उसने अजमानतीय अपराध किया है, पुलिस थाने के भारसाधक अधिकारी द्वारा वारण्ट के बिना गिरफ्तार या निरुद्ध किया जाता है या उच्च न्यायालय अथवा सेशन न्यायालय से भिन्न न्यायालय के समक्ष हाजिर होता है या जाया जाता है तब वह जमानत पर छोड़ा सकता है किन्तु--

(i) यदि यह विश्वास करने के लिए उचित आधार प्रतीत होते हैं और ऐसा व्यक्ति मृत्यु या आजीवन कारावास से दण्डनीय अपराध का दोषी है तो वह इस प्रकार नहीं छोड़ा जाएगा;

(ii) यदि ऐसा अपराध कोई संज्ञेय अपराध है और ऐसा व्यक्ति मृत्यु आजीवन कारावास या सात वर्ष या उससे अधिक के कारावास से दण्डनीय किसी अपराध के लिए पहले दोषसिद्ध किया गया है। या वह [तीन वर्ष या उससे अधिक के किन्तु सात वर्ष से अनधिक की अवधि के कारावास से दण्डनीय किसी संज्ञेय अपराध] के लिए दो या अधिक अक्सरों पर पहले दोषसिद्ध किया गया है तो वह इस प्रकार नहीं छोड़ जाएगा।

परन्तु न्यायालय यह निदेश दे सकेगा कि खण्ड (i) या खण्ड (ii) में निर्दिष्ट व्यक्ति जमानत पर छोड़ दिया जाए यदि ऐसा व्यक्ति सोलह वर्ष से कम आयु का है या कोई स्त्री या कोई रोगी या शिथिलांग व्यक्ति है

भारतीय दण्ड संहिता, 1860

376क. पीड़िता की मृत्यु या लगातार विकृतशील दशा कारित करने के लिए दंड-- जो कोई, धारा 376 की उपधारा (1) या उपधारा (2) के अधीन दण्डनीय कोई अपराध करता है और ऐसे अपराध के दौरान ऐसी कोई क्षति पहुंचाता है जिससे स्त्री की मृत्यु कारित हो जाती है या जिसके कारण उस स्त्री की दशा लगातार विकृतशील हो जाती है, वह ऐसी अवधि के कठोर कारावास से, जिसकी अवधि बीस वर्ष से कम की नहीं होगी

किन्तु जो आजीवन कारावास तक ही हो सकेगी, जिससे उस व्यक्ति के शेष प्राकृत जीवनकाल के लिए कारावास अभिप्रेत होगा, या मृत्युदंड से दंडित किया जाएगा। 376ख. पति द्वारा अपनी पत्नी के साथ पृथक्करण के दौरान मैथुन -- जो कोई, अपनी पत्नी के साथ, जो पृथक्करण की डिफ्री के अधीन या अन्यथा, पृथक् रह रही है, उसकी सम्मति के बिना मैथुन करेगा, वह दोनों में से किसी भाति के कारावास से जिसकी अवधि दो वर्ष से कम की नहीं होगी किन्तु जो सात वर्ष तक ही हो सकेगी, दंडित किया जाएगा और जुर्माने से भी दंडनीय होगा।

भारतीय साक्ष्य अधिनियम, 1872

113क. किसी विवाहित स्त्री द्वारा आत्महत्या के दुष्प्रेरण के बारे में उपधारणा-जब प्रश्न यह है कि किसी स्त्री द्वारा आत्महत्या का करना उसके पति या उसके पति या उसके पति के किसी नानेदार द्वारा दुष्प्रेरित किया गया है और यह दर्शित किया गया है कि उसने अपने विवाह की तारीख से सात वर्ष की अवधि के भीतर आत्महत्या की थी और यह कि उसके पति या उसके पति के ऐसे नातेदार ने उसके प्रति क्रूरता की थी तो न्यायालय मामले की सभी अन्य परिस्थितियां को ध्यान में रखने हुए यह उपधारणा कर सकेगा कि ऐसी आत्महत्या उसके पति के ऐसे नातेदार द्वारा दुष्प्रेरित की गई थी।

113-ख. दहेज मृत्यु के बारे में उपधारणा- जब प्रश्न यह है कि किसी व्यक्ति ने किसी स्त्री की दहेज मृत्यु की है और यह दर्शित किया जाता है कि मृत्यु के कुछ पूर्व ऐसे व्यक्ति ने दहेज की किसी मांग के लिए या उसके संबंध में उस स्त्री के साथ क्रूरता की थी या उसको तंग किया था तो न्यायालय यह उपधारणा करेगा कि ऐसे व्यक्ति ने दहेज कारित की थी।

स्पष्टीकरण-इस धारा के प्रयोजनों के लिए “दहेज मृत्यु” का वही अर्थ है जो भारतीय दण्ड संहिता (1860 का 45) की धारा 304-ख में है।

114क. बलात्संग के लिए कतिपय अभियोजन में सम्मति के न होने के बारे में उपधारणा-भारतीय दण्ड संहिता (1860 का 45) की धारा 376 की उपधारा (2) के खण्ड (क), (ख), (ग), (घ), (ङ), (च), (छ), (ज), (झ), (ञ), (ट), (ठ), (ड), (ढ) के अधीन बलात्संग के किसी अभियोजन में जहां अभियुक्त द्वारा मैथुन

किया जाना साबित हो जाता है और प्रश्न यह है कि क्या वह उस स्त्री की जिसके गारे में यह अभिकथन किया गया है कि उसने सम्मति नहीं दी थी वहां न्यायालय यह उपधारणा करेगा कि उसने सम्मति नहीं दी थी।

स्पष्टीकरण-इस धारा में “मैथुन” से भारतीय दण्ड संहिता (1860 का 45) की धारा 375 के खण्ड (क) से खण्ड (घ) में वर्णित कोई कार्य अभिप्रेत होगा।

Section II:
TABLE OF JUDGEMENTS

भाग II:
न्यायिक फैसलों की तालिका

WOMEN IN CUSTODY

CUSTODIAL TORTURE			
1.	<p>Bachiben Naranbha vs. State of Gujarat</p> <ul style="list-style-type: none"> ❖ (2007)3GLR191 ❖ <i>High Court of Gujarat</i> 	<p>Can the Court in the absence of any suitable punishment award suitable compensation to the petitioner for violation of her fundamental rights with respect to custodial torture?</p>	<p>The Court observed that the petitioner's daughter was kidnapped and brutally beaten up by police officers in the middle of the night ten years ago which led her to eventually commit suicide. Since then the aged, poor and hapless petitioner has knocked on every door to get justice. However, due to the ingenuity of the respondents, the course of investigation and prosecution has been massively thwarted. Considering the loss, shock, suffering and delay, the court directed the State Government to pay the petitioner a compensation of Rs. 1,50,000/-.</p>
2.	<p>Rekha M. Kholkar vs. State of Goa and Ors.</p> <ul style="list-style-type: none"> ❖ 1995(4)BomCR263 ❖ <i>High Court of Bombay</i> 	<p>Public Interest Litigation was filed by the petitioner who was taken to police station on the charge of theft and was molested and beaten up by both male and female police.</p>	<p>The Court held that all Superintendents of Government Hospitals should issue such copies of medical reports to the detenus, undertrials and prisoners in prison in cases of police violence. It further held that the provisions of section 160(1) of the Criminal Procedure Code should be strictly followed in cases of interrogation of criminals.</p>
3.	<p>Lok Adhikar Sangh vs. State of Gujarat</p> <ul style="list-style-type: none"> ❖ (1998)1GLR613 ❖ <i>High Court of Gujarat</i> 		<p>Obiter Dicta: The Court held that even where criminal cases or departmental enquiries are pending against the police officials who are alleged to have committed violation of a person's rights under Article 21 of the Constitution by</p>

			resorting to unjustified or mala fide actions and imprisonment and/or handcuffing of a person, the Court can hold an inquiry into such allegations for the limited purpose of deciding the matter in the domain of public law and the Court can direct the Government to pay compensation to the victim in a proceeding under Article 226 of the Constitution.
4.	<p>Christian Community Welfare of India vs. Government of Maharashtra</p> <p>❖ 1995CriLJ4223</p> <p>❖ <i>High Court of Bombay</i></p>	<p>Writ Petition was filed by the petitioner who along with her husband, brother and two minor children was detained illegally at night. The petitioner was humiliated and molested by the police officers and her husband was brutally beaten up by the police officers which subsequently led to his death.</p>	<p>The Court directed that:</p> <p>(i) The State Government should issue instructions immediately in unequivocal and unambiguous terms to all concerned that no female person shall be detained or arrested without the presence of lady constable and in no case, after sunset and before sun-rise;</p> <p>(ii) The State Government should make proper provision for female detainee in separate lock-ups throughout the State of Maharashtra;</p>
5.	<p>State of Maharashtra vs. Chandraprakash Kewalchand Jain</p>	<p>Whether the testimony of the prosecutrix is inadmissible in evidence as she was raped by a police officer and may</p>	<p>The Court held that it must be alive to and conscious of the fact that it is dealing with the evidence of a person who is interested in the outcome of the</p>

	<ul style="list-style-type: none"> ❖ AIR1990SC658 ❖ <i>Supreme Court of India</i> 	said to harbor a grudge against the office to falsely implicate him?	charge leveled by her. Courts must also realize that ordinarily a woman, more so a young girl, will not stake her reputation by leveling a false charge concerning her chastity. If a police officer misuses his authority and power while dealing with a young helpless girl aged about 19 or 20 years, her conduct and behavior must be judged in the backdrop of the situation in which she was placed. The court also held that when a person in uniform commits such a serious crime of rape on a young girl in her late teens, the punishment must in such cases be exemplary.
6.	<p>P. Pugalenthi vs. State of Tamil Nadu</p> <ul style="list-style-type: none"> ❖ 2010CriLJ135 ❖ <i>High Court of Madras</i> 		Obiter Dicta: Under Section 23 of the Prisons Act, the prisoners who have been appointed as officers of prisons shall be deemed to be public servants within the meaning of the Indian Penal Code. Therefore, for the deeds and misdeeds committed by such convict officers, the State is vicariously liable, especially when the victim of such high-handedness is a woman whose dignity and modest were outraged in a barbaric manner.

BENEFIT OF BAIL

7.	<p>Shakuntala Devi vs. State of Uttar Pradesh</p> <ul style="list-style-type: none"> ❖ 1986CriLJ365 ❖ <i>High Court of Allahabad</i> 	Whether the word 'may' used in Section 437 (1) of the Code of Criminal Procedure, 1973 is mandatory or directory in nature?	The Court observed that sometimes the Legislature uses the word 'may' out of deference to the high status of the authority on whom the power is conferred. Especially when it has been used in connection with the right of liberty of the citizen which has been guaranteed as a fundamental right (Article 21). However it
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			really means 'shall'. Therefore, the applicant who was a woman aged about 72 years was released on bail on compassionate grounds under Section 437 (1). It should be noted that the case for eventually overruled by the Supreme Court in the case of <i>P.K. Manglik vs. Smt. Sadhna Rani</i> .
8.	<p>P.K. Manglik vs. Smt. Sadhna Rani & Ors.</p> <p>❖ <i>1989 1 AWC403All</i></p> <p>❖ <i>High Court of Allahabad</i></p>	Whether the word 'may' in Proviso (1) of the Section 43 of Code of Criminal Procedure is directory or mandatory?	After considering the historical construction of Section 437 of the CrPC, the Court concluded that the objective of the subject section has always been to allow judicial discretion to the Magistrate to reject bail in non-bailable offences for the simple reason that it may be necessary in the interest of justice to contain some persons in jail. It further observed that in the entire Code, the Legislature has consciously made a decision in choosing the verbs 'may' and 'shall' in the various provisions. Lastly, it noted that a proviso cannot override the section itself. Therefore, the Court held that proviso to Section 437 (1) does not have to be read as mandatory, thereby overruling <i>Shakuntala Devi's</i> case.
9.	Meenu Dewan vs. State	Whether a woman shall be	The Court held that

	<ul style="list-style-type: none"> ❖ 2010CriLJ2911 ❖ High Court of Delhi 	<p>granted bail under the proviso to Section 437 (4) because she has spent a long period of time in incarceration?</p>	<p>there is no absolute rule that because a long period of imprisonment has expired bail must be necessarily granted. A balance should be struck between the interests of the society and right to individual liberty. The criteria for granting bail to a woman under the proviso to Section 437 (4) was the nature and gravity of the circumstances in which the offence has been committed, position and status of the accused with reference to the victim and the witnesses and likelihood of the accused fleeing from justice and tampering with witnesses etc.</p>
10.	<p>Sushila Devi vs. State</p> <ul style="list-style-type: none"> ❖ 78(1999)DLT388 ❖ High Court of Delhi 	<p>Whether the benefit given to woman under Section 437 (1) be extended to anticipatory bail under Section 438 of CrPC?</p>	<p>Considering that the petitioner is a widow and she was implicated under Section 161 of the Code as a party, she was entitled to anticipatory bail.</p>
11.	<p>Simantini Samantaray vs. State of Orissa</p> <ul style="list-style-type: none"> ❖ 1(1998)DMC660 ❖ High Court of Orissa 	<p>Whether the benefit given to woman under Section 437 (1) be extended to anticipatory bail under Section 438 of CrPC?</p>	<p>The Court held that because the petitioner was not the primary accused and there were only ancillary charges against her she could be given the benefit of bail. Moreover, she is a young, unmarried girl of 20 years whose chances of fleeing from justice are minimal. Hence, she was released on bail under Section 437 (1)</p>

12.	<p>Sharad Kumar vs. CBI</p> <ul style="list-style-type: none"> ❖ 184(2011)DLT193 ❖ High Court of Delhi 	Whether the proviso to Section 437 be interpreted liberally?	The Court held that when there is no other factor coming against the accused to deny the grant of bail, she shall be entitled to invocation of additional ground of being a woman under the proviso to Section 437. She is treated as a separate class in itself under the provision and should most definitely be given special treatment.
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RELEASE ON PROBATION

13.	<p>Surjeet Kaur Vs. Probation Officer & Anr.</p> <ul style="list-style-type: none"> ❖ 2012 IXAD (Delhi) 283; 2013(2) JCC1072; CRL.REV.P. 491/2012 ❖ Delhi High Court 	Can an accused be granted probation after conviction? Can a young, hail and hearty accused be entitled to the benefit of probation?	The benefit of Section 360 Cr.P.C. is to be given only after accused has been found guilty of having committed a crime. Section 360 Cr.P.C. requires that due regard has to be given to the age, character, antecedents of the offender as well as the circumstances in which the offence was committed. However, the convict does not necessarily have to be sick or old or infirm to avail the benefit.
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PROTECTIVE CUSTODY

14.	<p>Hussainara Khatoon vs. State of Bihar</p> <ul style="list-style-type: none"> ❖ (1980)1SCC91 ❖ Supreme Court of India 	Guidelines regarding those women who have been detained without being accused of any offence.	The Court held that detaining women and children to keep them in 'protective custody' because their presence is required for giving evidence or they are victims of certain offences is illegal and violative of Article 21 of the Constitution of India. They shall be immediately sent to
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			shelter/welfare/rescue homes.
PREVENTIVE DETENTION			
15.	Kamaladevi Chattopadhyaya vs. State of Punjab ❖ <i>AIR1984SC1895</i> ❖ <i>Supreme Court of India</i>	Can women and children be kept in preventive detention along with hardened criminals when there is a mild reference to some proceedings against them under Section 107, CrPC?	The Court held there are many people who unfortunately get caught by circumstances in the action taken by police when they are rounded up in the army action in temple premises who, in reality, are just devotees and pilgrims visiting the temple. When no justification is found to detain them in prison, especially women and children they should be set at liberty.
CUSTODIAL TREATMENT			
16.	The Legal Aid Committee, High Court of A.P. vs. The Director General and Inspector General of Prisons and ors. ❖ <i>2003(1)ALT221</i> ❖ <i>High Court of Andhra Pradesh</i>	Guidelines regarding provision of separate bathrooms for women.	Necessary steps shall be taken to provide exclusive lavatories and toilets to women prisoners, so that there won't be any need for them to leave their barracks in order to answer the calls of nature.
17.	R.D. Upadhyay vs. State of A.P. & Ors. ❖ <i>AIR2006SC1946</i> ❖ <i>Supreme Court of India</i>	Guidelines regarding women and children in prison.	❖ To ensure basic facilities for child delivery and pre as well as post natal care for both mother and child. ❖ Immediate medical examination of a woman found to be pregnant and the report to be sent to the Inspector General of Prisons. ❖ Women prisoners with children not to be kept in sub jails unless proper facilities

			<p>can be ensured.</p> <ul style="list-style-type: none"> ❖ Temporary release/parole for pregnant women to have her delivery outside the prison. ❖ State Legal Aid Services Authority to periodically inspect jails to monitor directions regarding mother and children. ❖ Expeditious disposal of cases dealing with children and women in prison.
18.	<p>Sheela Barse vs. State of Maharashtra</p> <ul style="list-style-type: none"> ❖ <i>AIR1983SC378</i> ❖ <i>Supreme Court of India</i> 	Guidelines regarding treatment of women prisoners in custody.	<ul style="list-style-type: none"> ❖ Four or five separate locks up in reasonably good localities for women suspects, guarded by female constables. ❖ Interrogation of women suspects to be carried out in the presence of female constables only. ❖ Legal Aid to be provided to distressed and poor people, especially women.
19.	<p>Tapas Kumar Bhanja Vs. State of West Bengal and Anr</p> <ul style="list-style-type: none"> ❖ <i>(2006)2CALLT108(HC)</i> ❖ <i>Calcutta High Court</i> 	What is the responsibility of the State Government to ensure safety, security, and safeguarding rights of women undertrials lodged in "Liluah Home" a home for under-trial	In accordance with the directions of the report submitted by the Inspection Committee formulated by the order of the court, the

		<p>women prisoners?</p>	<p>following actions were taken:</p> <ol style="list-style-type: none"> 1. The maintenance of the record such as inspection registers, visitors books and the records of the inmates. 2. Deaf and dumb inmates not in conflict with law are sent to Raiganj Deaf & Dumb Home which is also a Special Category Home under JJ. Act 2000. 3. Two specialized NGOs namely Socio Legal Aid and Sanlaap are entrusted to pursue the cases pending in various Courts and action is taken as per their advice. 4. REACH, an NGO, expert in dealing with deaf and dumb has been engaged for providing support in vocational training as well as in daily communication and expression through their counselors, and that these counselors attend the Home on all working days. 5. The Superintendent of Police, Howrah has been requested to provide security to the inmates while going to the hospital and during their stay at the hospital and even when they go out of the home for legitimate purpose. 6. A Committee to
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			<p>check the quality and quantity of the food staff has been formulated and thus the situation of food standards has improved.</p> <p>7. Appointment of adequate medical officers and an ambulance. Regular reviews are taken in respect of the mentally retarded or ill inmates by the councilors of the Directorate and an N.G.O.</p> <p>In addition to this, the Court gave further directions:</p> <ol style="list-style-type: none">1. That the State shall keep a constant vigil for maintaining the health of the inmates.2. It shall also keep a constant vigil on the condition of the women inmates particularly it shall ensure that the women inmates are not molested by the male staff and are safe. There shall be a very strict control over the male staff of the Home.3. In addition to this the Court expects Human Rights
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			Commission to send teams from time to time for seeing as to whether the inmates are safe and are kept in humanitarian condition.
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FOREIGN NATIONAL PRISONER

20.	<p>World Human Rights Protections vs. Union of India</p> <ul style="list-style-type: none"> ❖ <i>AIR2004J&K6</i> ❖ <i>High Court of Jammu & Kashmir</i> 	<p>Can a woman having a foreign nationality who conceived a child in the prison consequent to rape committed on her by the jail warden be allowed to stay in India after the completion of her sentence?</p>	<p>As her detention any further becomes illegal, she is bound to be set at liberty. On the matter of compensation, the Court held that as she was violated by a public servant who was supposed to take care of her which ultimately led to her pregnancy, the State Government is directed to pay the child a sum of Rs. 3 lakhs for her welfare and provide her and the mother with a Government accommodation if the mother wishes to exercise this option. She was also given the option of continuing her work of stitching in the jail premises if she feels secure pursuing that.</p>
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हिरासत में महिलाएं

क्र. सं.	केस का नाम, अदालत का नाम, साइटेशन	मुद्दा	निर्णय
जमानता का लाभ			
1.	<p>शकुन्तला देवी बनाम उत्तर प्रदेश राज्य</p> <ul style="list-style-type: none"> ❖ 1986 क्र.ल.र्ज. 365 ❖ अलाहाबाद उच्च न्यायालय 	<p>क्या दण्ड प्रक्रिया संहिता, 1973 की धारा 437(1) में उपयुक्त शब्द 'सकता है/सकते हैं' आदेशक है या निर्देशक?</p>	<p>अदालत न देखा कि कभी-कभी विधायिका जहां शक्ति निहित होती है वहां इसकी अधीनता के उच्च स्तर के कारण 'सकता है/सकते हैं' शब्द का उपयोग करता है। विशेषकर जब इसका उपयोग नागरिकों के स्वतंत्रता के संबंध में किया गया हो जिसकी(अनुच्छेद 22)मौलिक अधिकार के रूप में गारंटी दी गई है। हांलाकि, वास्तविक रूप में इसका अर्थ 'होगा' है। इसलिए, आवेदनकर्ता जो एक 72 वर्षीय थी, सहानुभूति के आधार पर धारा 437(1) के अंतर्गत जमानत पर रिहा कर दिया गया था।</p>
2.	<p>मीनू दीवान बनाम राज्य</p> <ul style="list-style-type: none"> ❖ 2010 क्र.ल.र्ज.2911 ❖ दिल्ली उच्च न्यायालय 	<p>क्या किसी महिला की, धारा 437(4) के प्रतिबंध के अंतर्गत इस कारण से जमानत मंजूर की जा सकती है क्योंकि वह क़ैद में एक लंबी अवधि व्यतीत कर चुकी है?</p>	<p>अदालत ने निर्णय दिया कि ऐसा कोई निश्चित नियम नहीं है कि चुकि क़ैद में एक लंबी अवधि व्यतीत हो चुकी है इसलिए अनिवार्य रूप से जमानत मंजूर किया ही जाना चाहिए। व्यक्तिगत स्वतंत्रता के अधिकार और समाज के हित के बीच एक संतुलन स्थापित किया जाना चाहिए। किसी महिला को धारा 437(4) के प्रतिबंध के अंतर्गत जमानत देने की</p>

			कसौटी अपराध की प्रकृति परिस्थिति की गंभीरता, पीड़ित और गवाहों के संदर्भ में आरोपी की अवस्था और स्तर तथा आरोपी के न्याय से भागने और गवाहों आदि से छेड़छाड़ आदि पर निर्भर होती है।
3.	सुशीला देवी बनाम राज्य ❖ 78(1999) डी.एल.टी. 388 ❖ दिल्ली उच्च न्यायालय	क्या धारा 437(1) के अंतर्गत मलाओं को जमानत में दिये जाने वाले लाभ को द.प्र.सं. की धारा 438 के अंतर्गत पूर्वाभासी जमानत तक बढ़ा देना चाहिए?	यह मानते हुए कि आरोपी एक विधवा थी जिसे द.प्र.सं. की धारा 161 के अंतर्गत फंसाकर पार्टी बनाया गया था, पाया गया कि उसे पूर्वाभासी जमानत पाने का अधिकार है।
4.	सीमान्तनी सामंतरे बनाम उड़ीसा राज्य ❖ 1(1998)डी.एम.सी.660 ❖ उड़ीसा उच्च न्यायालय	क्या धारा 437(1) के अंतर्गत मलाओं को जमानत में दिये जाने वाले लाभ को द.प्र.सं. की धारा 438 के अंतर्गत पूर्वाभासी जमानत तक बढ़ा देना चाहिए?	अदालत ने निर्णय दिया कि क्योंकि प्रार्थी मुख्य आरोपी नहीं थी और उसके विरुद्ध केवल सहायक आरोप थे, उसे जमानत का लाभ दिया जा सकता था। इसके अलावा, वह एक 20 वर्षीय अविवाहित युवती है और न्याय से भागने की उसके सम्भावना न्यूनतम है। इसलिए, उसे धारा 437 (1) के अंतर्गत जमानत पर रिहा कर दिया गया।
5.	शरद कुमार बनाम सी.बी.आई. ❖ 184(2011)डी.एल.टी. 193 ❖ दिल्ली उच्च न्यायालय	❖ क्या धारा 437 के प्रतिबंध का अर्थ उदारता से लगाया जाना चाहिए?	अदालत ने निर्णय दिया कि जब आरोपी के विरुद्ध जमानत को अस्वीकार करने के लिए कोई अन्य कारक नहीं है, उसे धारा 437 के प्रतिबंध के अंतर्गत महिला के रूप में प्रार्थना करने का अतिरिक्त आधार प्राप्त होगा। इस प्रावधान के अंतर्गत उसके साथ एक अलग

			वर्ग के रूप में व्यवहार किया जाता है और उसके साथ निश्चित रूप से अलग आचरण होना चाहिए।
हिरासत में प्रताड़ना			
6.	<p>बाचीबेन नरंभा बनाम गुजरात राज्य</p> <ul style="list-style-type: none"> ❖ (2007)3 जी.एल.आर. 1918 ❖ गुजरात उच्च न्यायालय 	<p>क्या अदालत, उचित दण्ड के अभाव में हिरासत में हुई प्रताड़ना के मामले में पीड़ित को उसके मौलिक अधिकारों के हनन के कारण उचित मुआवजा प्रदान करने का निर्णय दे सकती है?</p>	<p>अदालत ने अवलोकन किया कि याचिकाकर्ता की बेटी को 10 वर्ष पूर्व रात्री के समय अगुवा करके उसकी पिटाई की गई थी, जिसके कारण अंततः उस लड़की ने आत्महत्या कर लिया। तब से वृद्ध, गरीब और दयनीय प्रार्थी ने न्याय पाने के लिए सभी दरवाजों को खटखटाया है। फिर भी, प्रतिवादियों की चालाकी के कारण, जांच और अभियोजन की कार्यवाही पूरी तरह व्यर्थ हो चुकी है। याचिकाकर्ता की क्षति, पीड़ा, आघात और विलंब को ध्यान में रखते हुए अदालत ने राज्य सरकार को, उन्हें 1,50,000 रु का मुआवजा देने का निर्देश दिया।</p>
7.	<p>रेखा एम.खोलकर बनाम गोवा राज्य एवं अन्य</p> <ul style="list-style-type: none"> ❖ 1995(4)बॉम्बे सी.आर.263 ❖ बॉम्बे उच्च न्यायालय 	<p>प्रार्थी द्वारा जनहित याचिका दायर किया गया, जिसे चोरी के आरोप में थाने ले जाया गया और उसके साथ पुरुष और महिला दोनों पुलिसकर्मियों द्वारा पिटाई और छेड़-छाड़ की गई।</p>	<p>अदालत ने निर्णय दिया कि सभी सरकारी अस्पतालों के संचालकों द्वारा नज़रबंद, विचाराधीन बंदियों और जेलों में क़ैद बंदियों से संबंधित पुलिस हिंसा के केसों में मेडिकल रिपोर्ट जारी करना चाहिए। इसने आगे यह भी निर्णय दिया कि अपराधियों से पूछ-ताछ करते समय द. प्र.सं. की धारा (160) 1 के प्रावधानों का कड़ाई</p>

			से पालन किया जाना चाहिए।
8.	<p>लोक अधिकार संघ बनाम गुजरात राज्य</p> <ul style="list-style-type: none"> ❖ (1998)1 जी.एल.आर. 613 ❖ गुजरात उच्च न्यायालय 		<p>अदालत ने निर्णय दिया कि जहां पुलिस अधिकारियों के विरुद्ध आपराधिक केस विभागीय जांच विचाराधीन हो, जिस पर, अन्यायपूर्ण या नाजायज़ हरकतों और कैद और /या किसी व्यक्ति को हथकड़ी लगाकर अनुच्छेद 21 के अंतर्गत किसी व्यक्ति के अधिकारों का उल्लंघन करने का आरोप लगा हो, अदालत ऐसे आरोपों में इस सीमित उद्देश्य के साथ इंक्वायरी कर सकती है कि वह सार्वजनिक कानून के अधिकार क्षेत्र में आता है या नहीं अदालत, सरकार को अनुच्छेद 226 के अंतर्गत कार्यवाही में पीड़ित को मुआवज़ा देने का निदेश दे सकती है।</p>
9.	<p>क्रिश्चन कम्यूनिटी वेल्फेयर ऑफ इंडिया बनाम महाराष्ट्र सरकार</p> <ul style="list-style-type: none"> ❖ 1995 क्रि.ल.र्ज.14223 ❖ मुंबई उच्च न्यायालय 	<p>प्रार्थी द्वारा रिट याचिका दायर की गई जिसको उसके पति, भाई और दो नाबालिग बच्चों को रात में गैर कानूनी ढंग से हवालात में रोक कर रखा गया। प्रार्थी को पुलिस अधिकारी द्वारा अपमानित किया गया और उसके साथ छेड़खानी की गई और उसके पति की पुलिस अधिकारी द्वारा बुरी तरह पिटाई की गई जिसके कारण बाद में उसकी मृत्यु हो गई।</p>	<p>अदालत ने निर्देश दिया कि—</p> <p>i- राज्य सरकार को सभी संबंधितों को तुरंत सुस्पष्ट उपदेश जारी कर देना चाहिए कि किसी भी महिला को महिला कांस्टेबल के बगैर गिरफ्तार नहीं किया जा सकता या रोक कर नहीं रखा जा सकता है और किसी भी हालत में, सुर्यास्त के पहले और सुर्योदय के पूर्व नहीं,</p> <p>ii- राज्य सरकार को पूरे महाराष्ट्र के हवालातों में महिला बंदियों के लिए अलग</p>

			लॉक-अप के लिए उचित प्रबंध करने चाहिए।
10.	<p>महाराष्ट्र राज्य बनाम चंद्रप्रकाश केवलचंद जैन</p> <ul style="list-style-type: none"> ❖ ए.आई.आर.1990 एस.सी. 658 ❖ भारत का सर्वोच्च न्यायालय 	<p>क्या अभियात्री की गवाही अदालत में अमान्य है क्योंकि उसके साथ एक पुलिस अधिकारी द्वारा बलात्कार किया गया था और वह अधिकारी के प्रति शत्रुता के कारण उसे झूठ बोलकर फंसा सकती है?</p>	<p>अदालत ने निर्णय दिया कि यह इस सच्चाई के लिए जीवित और जागरूक रहना चाहिए कि वह एक ऐसे व्यक्ति के साक्ष्यों को देख रही है जो उसके द्वारा लगाए गये आरोपों के परिणाम में रुचि रखती है। अदालतों को यह भी अवश्य रूप से महसूस करना चाहिए कि आम तौर पर, कोई महिला और खासकर एक युवती अपनी पवित्रता से संबन्धित किसी पर झूठे आरोप लगाकर अपनी इज्जत दाव पर नहीं लगाएगी। अगर कोई पुलिस अधिकारी एक 19-20 वर्षीय असहाय युवती से व्यवहार करते समय अपने प्रधिकार और ताकत का दुरुपयोग करता है, उसके आचरण और बर्ताव को उस स्थिति के परिप्रेक्ष्य में तौलना चाहिए जिसमें वह थी। अदालत ने यह भी निर्णय दिया कि जब वर्दी में रहकर कोई व्यक्ति एक टीन अवस्था की आयु वाली युवती के साथ बलात्कार जैसा गंभीर अपराध करता है, ऐसे केसों में दण्ड अनुकरणीय होना चाहिए।</p>
11.	<p>पी. पुगलैथी बनाम तमिलनाडु राज्य</p>		<p>जिन बंदियों को कारागार अधिनियम की धारा 23 के तहत जेलों के</p>

	<ul style="list-style-type: none"> ❖ 2010CriLJ135 ❖ मद्रास हाईकोर्ट 		अधिकारियों के रूप में नियुक्त किया गया है उन्हें भारतीय दंड संहिता के अर्थ के भीतर सरकारी कर्मचारियों के रूप में होना समझा जाएगा। अतः, ऐसे बंदी-अधिकारियों के कृत्यों और कुकृत्यों के लिए राज्य स्थानापन्न रूप से उत्तरदायी है, विशेष तौर पर तब जब ऐसी मनमानी का शिकार एक महिला बनी हो जिसकी गरिमा और शील को बर्बर तरीके से संक्षुब्ध किया गया है।
कारागार में महिलाओं के साथ व्यवहार			
12.	कानूनी सहायता समिति, आंध्र प्रदेश उच्च न्यायालय बनाम कारा महानिदेशक एवं महानिरीक्षक तथा अन्य <ul style="list-style-type: none"> ❖ 2003(1)ALT221 ❖ आंध्र प्रदेश उच्च न्यायालय 	महिलाओं के लिए अलग से बाथरूम की व्यवस्था करने से सम्बंधित दिशानिर्देश	महिला कैदियों के लिए विशेष मूत्रालयों और शौचालयों की व्यवस्था करने हेतु आवश्यक कदम उठाये जायेंगे ताकि लघुशंका और दीर्घशंका के लिए उन्हें अपने बैरकों से बाहर जाने की जरूरत नहीं पड़े।
13.	आर. डी. उपाध्याय बनाम आंध्रप्रदेश राज्य व अन्य <ul style="list-style-type: none"> ❖ AIR2006SC1946 ❖ उच्चतम न्यायालय, भारत 	कारागार में महिलाओं और बच्चों के संबंध में दिशानिर्देश	❖ प्रसव हेतु तथा मां और बच्चे दोनों के लिए प्रसवपूर्व तथा प्रसवोत्तर देखभाल करने के लिए बुनियादी सुविधाओं

			<p>को सुनिश्चित करना</p> <ul style="list-style-type: none"> ❖ महिला के गर्भवती होने की जानकारी मिलते ही तुरंत उसकी मेडिकल परीक्षा कराना और कारा महानिरीक्षक को रिपोर्ट भेजना ❖ बच्चे वाली महिला कैदियों को उपकारागारों में तब तक नहीं भेजना जब तक संबंधित उपकारागार में समुचित सुविधाओं की पुष्टि न करली जाए ❖ कारागार के बाहर प्रसव हेतु गर्भवती महिलाओं के लिए अस्थायी रिहाई / पैरोल ❖ मां और बच्चों से सम्बंधित निर्देशों के अनुपालन पर नजर रखने के लिए राज्य कानूनी सहायता सेवा प्राधिकरण द्वारा समय - समय कारागारों का निरीक्षण करना ❖ जेल में बच्चों और
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			महिलाओं के वाद का शीघ्र निपटान
14.	<p>शीला बरसे बनाम महाराष्ट्र राज्य</p> <ul style="list-style-type: none"> ❖ AIR1983SC378 ❖ उच्चतम न्यायालय, भारत 	हिरासत में महिला कैदियों के साथ व्यवहार संबंध में दिशा निर्देश	<ul style="list-style-type: none"> ❖ सामान्यतः अच्छे इलाकों में संदेहाधीन महिलाओं के लिए महिला कांस्टेबलों द्वारा पहरा दिए जाने वाले चार या पाँच लॉक-अप ❖ संदेहाधीन महिलाओं की पूछताछ केवल महिला कांस्टेबलों की मौजूदगी में की जाए ❖ व्यथित और गरीब लोगों को, विशेष रूप से महिलाओं को कानूनी सहायता उपलब्ध कराई जाए कराया जाना
15.	<p>सुरजीत कौर बनाम परिवीक्षा अधिकारी एवं अन्य</p> <ul style="list-style-type: none"> ❖ 2012 IXAD (Delhi) 283; 2013(2) JCC1072; CRL.REV.P. 491/2012 ❖ दिल्ली उच्च न्यायालय 	क्या दण्डित किये जाने के बाद अभियुक्त को परिवीक्षा दी जा सकती है? क्या एक युवा, स्वस्थ अभियुक्त परिवीक्षा का लाभ दिए जाने का हकदार है?	सीआर. पी. सी. की धारा 360 का लाभ तभी दिया जाना चाहिए जब अभियुक्त को एक अपराध करने का दोषी पाया जाता है। सीआर. पी. सी. की धारा 360 की अपेक्षा है कि अपराधी की उम्र, चरित्र, पूर्वचरित के साथ-साथ उसके द्वारा अपराध करने की परिस्थितियों पर यथोचित विचार

			करना चाहिए। तथापि, इस लाभ को हासिल करने के लिए सजायाफता व्यक्ति का रुग्ण, वृद्ध या अशक्त होना जरूरी नहीं है।
16.	<p>तापस कुमार भंजा बनाम पश्चिम बंगाल राज्य एवं अन्य</p> <ul style="list-style-type: none"> ❖ (2006)2CALLT108(H C) ❖ कलकत्ता उच्च न्यायालय 	<p>"लिलुआ होम" (विचाराधीन महिला कैदियों के लिए रक्षागृह) में रखी गई विचाराधीन महिला कैदियों की रक्षा, सुरक्षा और सुरक्षोपायों के अधिकार को सुनिश्चित करने के लिए राज्य सरकार का उत्तरदायित्व क्या है?</p>	<p>न्यायालय द्वारा गठित निरीक्षण समिति द्वारा प्रस्तुत रिपोर्ट के निर्देशों के अनुसार, निम्नलिखित कार्रवाई की गई:</p> <ol style="list-style-type: none"> 1. निरीक्षण रजिस्टर, आगंतुक पुस्तिका और कैदियों के रिकॉर्ड जैसे अभिलेख मेंटेन किये गए। 2. कानून के उल्लंघन में असंलिप्त बधिर और मूक कैदियों को रायगंज के बधिर और मूक सुरक्षागृह, जो JJ. Act 2000 के तहत विशेष श्रेणी का सुरक्षागृह है, में भेजा जा रहा है। 3. इस क्षेत्र में विशेष रूप के कार्यरत सोशियो लीगल एड और संलाप नामक दो गैर-सरकारी संगठनों को विभिन्न न्यायालयों में लंबित वादों का पता लगाने

		<p>और अनुसरण करने का जिम्मा सौंपा गया है और उनकी सलाह के अनुसार कारवाइ की जाती है।</p> <p>4. बधिर और मूक व्यक्तियों के सम्बन्ध में विशेषज्ञता प्राप्त 'रीच' नामक एक गैर-सरकारी संगठन को नियुक्त किया गया है जो अपने अध्यापकों के माध्यम से इन्हें व्यावसायिक प्रशिक्षण देने के साथ दैनिक भावसंचार तथा भावाभिव्यक्ति का प्रशिक्षण भी देते हैं और ये अध्यापक सभी कार्य-दिवसों पर सुरक्षागृह में आते हैं।</p> <p>5. हावड़ा के पुलिस अधीक्षक से गृहवासियों को सुरक्षा प्रदान करने का अनुरोध किया गया है जैसे अस्पताल जाते समय, अस्पताल में ठहरने के दौरान और उचित उद्देश्य से सुरक्षागृह से बाहर जाने के समय।</p> <p>6. खाद्य सामग्री की</p>
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		<p>मात्रा और गुणवत्ता की जांच हेतु एक समिति का गठन किया गया है और इस प्रकार आहार के स्तर में सुधार किया गया है</p> <p>7. पर्याप्त संख्या में चिकित्सा अधिकारियों की नियुक्ति की गई है और एक एम्बुलेंस की व्यवस्था की गई है। मंदबुद्धि और रोगियों के बारे में निदेशालय और एक गैर-सरकारी संगठन के परामर्शकों के द्वारा नियमित रूप से समीक्षा ली जाती है।</p> <p>इसके अतिरिक्त, न्यायालय ने निम्नलिखित निर्देश दिए:</p> <ol style="list-style-type: none">1. गृहवासियों को स्वस्थ रखने पर राज्य निरंतर चौकस रहेगा।2. राज्य द्वारा महिला गृहवासियों की स्थिति पर निरंतर चौकसी रखी जायेगी। विशेष रूप से राज्य को सुनिश्चित करना होगा कि पुरुष कर्मियों द्वारा महिला गृहवासियों से
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		<p>कामुक छेड़खानी नहीं की जाती और वे सुरक्षित हैं। सुरक्षागृह के पुरुष कर्मचारियों पर कठोर नियंत्रण रखा जाएगा।</p> <p>3. इसके अलावा, मानव अधिकार आयोग से न्यायालय की यह अपेक्षा है कि समय-समय पर यह देखने के लिए टीम भेजे कि सुरक्षागृहवासी सुरक्षित हैं और उन्हें मानवोचित स्थितियों में रखा जा रहा है।</p>
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निवारक निरोध			
17	<p>कमलादेवी चट्टोपाध्याय बनाम पंजाब राज्य</p> <ul style="list-style-type: none"> ❖ AIR1984SC1895 ❖ उच्चतम न्यायालय, भारत 	<p>क्या महिलाओं और बच्चों को, जब उनके खिलाफ धारा 107 के तहत मामूली मामले हों तो, दुर्दांत अपराधियों के साथ निवारक हिरासत में रखा जा सकता है?</p>	<p>न्यायालय ने अभिनिर्धारित किया कि ऐसे अनेक व्यक्ति हैं जो दुर्भाग्यवश निहित परिस्थितियों के कारण पुलिस की कारवाई में पकड़े जाते हैं। जब पूजा स्थल से सेना द्वारा की गई कारवाई में उठा लिए गए व्यक्ति वास्तव में पूजा स्थल पर जाने वाले भक्त गण या तीर्थयात्री हों, तब इन्हें, विशेष रूप से महिलाओं और बच्चों को, कारागार में निरोध में रखने का कोई औचित्य नहीं होने पर, छोड़ देना चाहिए।</p>
विदेशी नागरिक कैदी			
18.	<p>विश्व मानव अधिकार संरक्षण बनाम भारत संघ</p> <ul style="list-style-type: none"> ❖ AIR2004J&K6 ❖ जम्मू और कश्मीर उच्च न्यायालय 	<p>कारागार में जेल वार्डन द्वारा बलात्कार के बाद गर्भधारण करनेवाली विदेशी नागरिक महिला को पूरी सजा काट लेने के बाद क्या भारत में रहने की अनुमति दी जा सकती है?</p>	<p>चूंकि उसे आगे निरुद्ध करना अवैध हो जाता है, उसे स्वतंत्र किया जाना निश्चित है। मुआवजे की बात पर न्यायालय ने अभिनिर्णीत किया कि चूंकि उसका शीलभंग एक लोक सेवक द्वारा किया गया जिसके द्वारा उसकी सुरक्षा की जानी थी और जिसके</p>

			फलस्वरूप वह गर्भवती हुई, यदि माँ यह विकल्प स्वीकार करना चाहती है तो राज्य सरकार को बच्चे के कल्याण के लिए उसे रुपये 3 लाख का मुआवजा देने और बच्चे तथा उसके रहने के लिए सरकारी मकान देने का निर्देश दिया जाता है। उसे यह विकल्प भी दिया गया कि, वह कारागार में सिलाई का अपना काम जारी रख सकती है यदि यह कर के वह सुरक्षित महसूस करती है।
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रक्षात्मक हिरासत

19.	हुसैनारा खातून बनाम बिहार राज्य ❖ (1980)1SCC91 ❖ उच्चतम न्यायालय, भारत	किसी अपराध में आरोपी नहीं होने के बावजूद भी निरुद्ध महिलाओं के सम्बन्ध में दिशानिर्देश	न्यायालय ने अभिनिर्धारित किया कि महिलाओं और बच्चों को 'सुरक्षात्मक हिरासत' में इस उद्देश्य से रखना कि गवाही देने के लिए उनकी उपस्थिति जरूरी है या कि वे किसी अपराध का शिकार बनी हैं, संविधान के अनुच्छेद 21 उल्लंघन है। उन्हें तुरंत आश्रय/कल्याण/सुरक्षा गृहों में भेजा जाय।
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Section III:

**WHAT DO THE LAW COMMISSION
AND THE NATIONAL HUMAN
RIGHTS COMMISSION SAY**

भाग III:

**क्या कहता है विधि आयोग एवं
राष्ट्रीय मानव अधिकार आयोग**

78th LAW COMMISSION REPORT

CONGESTION OF UNDER-TRIAL PRISONERS IN JAILS

➤ **Report by Dr. Reckless:**

“In the fifties, Government of India invited technical assistance from the United Nations, and Dr. W. G. Reckless spent some time in India in 1951-52 to suggest way and means of prison reforms. He recommended, inter alia, the getting out of juvenile delinquents from adult jails, courts and police lock-ups; the development of whole-time probation and after care-services; the establishment of revising boards for the selection of prisoners for pre-mature release; the establishment of new jails to perform specialized functions; revision of the jail manuals; training programmes for the warders and superior staff of prisons; introduction of legal substitutes for short sentences; expedition in police and court action to reduce the number of under trial prisoners and the period of their remand to jail; establishment of an Advisory Bureau for Correctional Administration at the center; development of a professional conference among the superior staff members concerned with the care and treatment of juvenile and adult offenders; and establishment of integrated departments or correctional administration, including jails, Borstal, probation and after care. ¹

➤ **Working Groups on Prisons:**

In 1972-1973, the Working Group on Prisons gave a comprehensive Report on the subject of prison administration. The Working Group made the following comments in its Report:

“The prison administration in the country is generally in a depressing state. Most prison buildings are old and ill-equipped and many prisons are heavily overcrowded. Convicts and undertrials are lodged in the same institutions throughout; the adults, adolescents, juveniles, women and lunatics are also generally confined in common institutions and there is serious lack of separate institutions for the various categories of prisoners”. ²

¹Page 7, Para 1.20

² Page 7, Para 1.22

84TH LAW COMMISSION REPORT

RAPE AND OTHER ALLIED OFFENCES

➤ **Male Relative to keep vigilance**

“During our oral discussion with various women’s organizations, it has been suggested that when women are detained in police custody or in judicial lock up, a male relative of the woman should be allowed to remain at a place close to the lock up, so that he may be able to keep vigilance over what is happening in the lock up to the female inmate.

While we do not consider it practicable to make it a mandatory statutory requirement, we do recommend that it should be included in the executive instructions on the subject. The reason why we do not, at the moment, feel inclined to suggest a statutory provision is that we are not sure if such arrangements can be made at every police station. The shape and size of a police station and its precincts would vary from area to area; so would the facilities that could be provided for the purpose.”³

➤ **Clarity on the term ‘residence’ under Section 160(1)**

“Though it is clearly the policy of the law to ensure that the interrogation of the persons in question (women and young boys) should be done at their residence, the object if not, at present, fully reflected in the words employed for the purpose in section 160(1), proviso. The expression “place” is a wide one. Its definition in the Code is also an inclusive one, and in any case does not indicate very clearly that in the context of section 160(1), proviso, “place” means a place *where the person resides*.

It is a mistake to think that section 160(1), proviso enjoins the police officer to interrogate a woman at the place where the woman *resides*. This is not so. “Place” means the locality in which the woman resides and over which police officer has jurisdiction.

³ Para 3.10, Page 15, Chapter 3, Arrest and Investigation

In order to reflect the legislative policy more fully and fortify the protection sought to be enacted in the proviso, the phraseology in our opinion requires a slight alteration.”⁴

➤ **Recommendation to amend Section 160(1)**

“Accordingly, we recommend that section 160(1), proviso of the Code of criminal procedure, should be revised as under:

To be substituted for Section 160(1), proviso, Code of Criminal Procedure.

“Provided that no male person under the age of 15 years or woman shall be required to attend at any place *other than his or her dwelling place.*”⁵

➤ **Inquiry on the accused Police Officer**

“We may note that during the debates on a motion in the Lok Sabha on the subject of rape of women, it was suggested that where a police officer is the accused, the investigation into the offence alleged to have been committed by the police officer should be by some other agency, as otherwise it would be well-nigh impossible to convict the accused.

It is not clear what is meant by ‘some other agency’. Perhaps the idea is that where a police officer is involved in rape, then the investigation should be by a police officer of the district or area other than the district or area where the culprit officer was posted at the time of the crime. We commend the suggestion for the consideration of government.”⁶

⁴ Para 3.17, Page 17, Chapter 3, Arrest and Investigation

⁵ Para 3.18, Page 17, Chapter 3, Arrest and Investigation

⁶ Para 3.28, Page 19, Chapter 3, Arrest and Investigation

135TH LAW COMMISSION REPORT

[WOMEN IN CUSTODY]

➤ **Loopholes in Section 54: Medical Examination of the Accused**

“There is, however, another type of medical examination contemplated by the Code, where the accused himself or herself desires such examination, in order to prove his or her innocence (section 54). It is in this context that the Code needs a small improvement. Where a female accused desires such an examination in order to prove her innocence, she can avail herself of the facility provided in the relevant provision of the Code. But, at present, the code is silent as to how far a woman can insist that such examination must be done by a female registered medical practitioner and with strict regard to decency. It could not have been the view of the legislature that such a provision is not needed. But presumably, the matter seems to have escaped notice at the time when the provision was drafted.”⁷

➤ **Examination of a female**

“Our recommendation is that the Code should be amended, by providing that whenever the person of a female is to be examined under Section 54, the examination shall be made only by or under the supervision of a female registered medical practitioner, and with strict regard to decency.

It is true that when the accused herself requests such examination, she will also make it a condition that the examination shall be by a woman only. Nevertheless the law should, in our view, itself provide for this safeguard.”⁸

➤ **Penalty for violation of Section 160(1)**

“The question of providing a penalty for violation of the proviso to section 160(1) of the Code of Criminal Procedure, 1973 was examined by the Law Commission of India, in its Report on Rape and Allied Offences. The Commission noted, that merely summoning a person in violation of this statutory mandate would

⁷ Para 2.5, Page 7, Chapter 2, Code Of Criminal Procedure: Provisions Concerned With Women In Custody – Deficiencies Identified And Recommendation Formulaated

⁸ Para 2.6, Page 8, Chapter 2, Code Of Criminal Procedure: Provisions Concerned With Women In Custody – Deficiencies Identified And Recommendation Formulated

presumably be punishable as wrongful restraint under section 341, Indian Penal Code, which provides a maximum penalty of imprisonment up to one month or fine up to five hundred rupees. This, in the opinion of the Commission, was not adequate. Probably, a charge under section 166 of the Indian Penal Code (public servant disobeying direction of law with intent to cause injury to any person) could be made. But, in the opinion of the Commission, it would be better to have an express provision to cover such a violation, and the provision could be appropriately placed in the Chapter of the Indian Penal Code on “Offences by or against public servants”.⁹

➤ **Section 416**

“We think that the time has come to make commutation of the sentence mandatory in such cases and we recommend that section 416 should be so amended. For this purpose, for existing section 416 Cr.P.C., the following section should be substituted:-

“416. Death sentence on pregnant woman.- If a woman sentenced to death is found to be pregnant, the High Court shall commute the sentence to one of imprisonment for life.”

Our intention is that the commuted sentence should be subject to further remission in appropriate cases.”¹⁰

➤ **Problem with Section 433A**

“It appears to us that there will be many cases in which the categorical application of this section to women prisoners must cause grave hardship - for example, where the woman’s husband dies suddenly while she is in jail, or where a young daughter of the woman is now nearing puberty. A study of the law reports will show that in many cases, the courts have considered it proper to recommend to

⁹ Para 2.12, Page 13, Chapter 2, Code Of Criminal Procedure: Provisions Concerned With Women In Custody – Deficiencies Identified And Recommendation Formulated

¹⁰ Para 2.13, Page 15, Chapter 2, Code Of Criminal Procedure: Provisions Concerned With Women In Custody – Deficiencies Identified And Recommendation Formulated

Government that a sentence of life imprisonment passed for murder should be replaced by lesser sentence.”¹¹

➤ **Release of Women imprisoned for life**

“The point to be considered is whether women should not be exempted from the bar imposed by section 433A. We think that such a step is required in the interests of justice and can be safely taken without any great risk to security. Removal of the bar would not mean that women sentenced to imprisonment for life will automatically be released at the expiry of 14 years or any other period. It would only mean that the power of the appropriate Government to grant remission, on the merits, under section 432 or section 433 of the Code of Criminal Procedure would become exercisable. The appropriate Government would then be free to go into the circumstances of each case. We find that section 433A has been held not to apply to persons convicted under the Borstal Schools Act. In our view, the same approach should be adopted in regard to women, particularly because, for women, prolonged imprisonment may not only affect their mental health, but may also prejudice the welfare of the other members of the family.”¹²

➤ **Section 433A**

“Our recommendation, therefore, would be that from the scope of section 433A of the Code of Criminal Procedure, 1973, there should be excluded the case where the person on whom a sentence of imprisonment for life is imposed, or in respect of whom a sentence of death has been commuted into a sentence of imprisonment for life, is a woman.”¹³

➤ **Bail**

“Our recommendation is that the first proviso to section 437(1) of the Code should be revised as under:

“Provided that where the person referred to in clause (i) or clause (ii) is under the age of sixteen years or is a woman or is sick or infirm, the court

¹¹ Para 2.17, Page 18, Chapter 2, Code Of Criminal Procedure: Provisions Concerned With Women In Custody – Deficiencies Identified And Recommendation Formulated

¹² Para 2.18, Page 19

¹³ Para 2.19, Page 20

shall direct that such person be released on bail, unless the court, for reasons to be recorded, considers it proper not to release such person bail.”¹⁴

➤ **Pregnant Women**

“..our proposal is that at the time of passing a sentence of imprisonment for life or imprisonment for a specified term, the court should have power, if the woman sentenced is pregnant, to direct suspension of execution of sentence, having regard to certain considerations. The suspension would be operative till the pregnancy comes to an end and such period thereafter as the court may specify. During such period the woman sentenced will be required under a bond to keep peace and be of good behaviour and (if the court so directs) to observe such other conditions as may be specified. We are also making provisions as to details of the procedure to be adopted, for asking or compelling the woman to surrender. The period of suspension of sentence will not result in the reduction of the sentence of imprisonment as imposed by the Court.”¹⁵

➤ **Power of High Court**

“..our first recommendation in this regard is that the High Court on the administrative side should be vested with a power to direct the sessions judge to satisfy themselves that female prisoners are protected and properly looked after in accordance with the various provisions that we are going to recommend. Further the High court should have power to take such measures as may be desirable in order to move the state Government to take necessary action (for ensuring compliance with those provisions).”¹⁶

➤ **Transit of Female Prisoner**

“Our recommendations on the subject matter (transit of female prisoner) are as under:

¹⁴ Para 2.14, Page 24

¹⁵ Para 2.22, Page 25

¹⁶ Para 2.26, Page 26

- (1) A female prisoner shall not be handcuffed and shall not be required to wear any fetters or cross-bars during such transit.
- (2) A female prisoner shall be escorted by the Matron or Female Warden, if required to leave the female enclosure and such matron or female warden shall remain with the prisoner till her return to the enclosure or release from the jail.
- (3) A female relative of the female prisoner shall be allowed to accompany the female prisoner during transit of the nature mentioned above.”¹⁷

➤ **Jail Visits**

“At places other than the Headquarters of the Court of Session, they will, at least once in every two months, make a surprise visit to jails for inspection, with a view to:

- (i) Providing the arrested females an opportunity to communicate their grievances;
- (ii) Ascertaining the conditions in the jails and verifying whether the requisite facilities are being provided and the provisions of the law (relating to female prisoner) being observed;
- (iii) Bringing to the notice of the Sessions Judge lapses, if any, on the part of officers in charge of jails in regard to female prisoners.

At the Headquarters of the Court of Session, the Sessions Judge shall carry out similar inspections of the jails.”¹⁸

➤ **Jail Visitors**

“In this regard our recommendations are as under:-

- (1) The Central Government or the State Government (as the case may be) should, for every District or Jail, appoint not less than three visitors for the purpose. Of these at least one shall be a medical officer and two shall be social workers, of whom at least one shall be a woman, wherever practicable.

¹⁷ Para 2.28, Page 29

¹⁸ Para 2.30, Page 29

- (2) Not less than two visitors (out of whom at least one shall be a lady social worker) should once in every six months, make a joint inspection of every part of the jail in the district in respect of which they have been appointed. Their function will be to ascertain the conditions prevailing therein and to check if the requisite facilities are being provided and the provisions of the law are being complied with and the directions given by the competent court are being carried out, regarding woman prisoners.
- (3) The visitors shall send the inspection report to the Sessions Judge for further action.”¹⁹

➤ **Probation of Offenders Act, 1958**

“..the power to release an offender on admonition (section 3) and the power to release on probation (section 4) are both wide enough to cover male as well as female offender. But, in these provisions there is no emphasis as such, on the need to pay special attention to the desirability of probation where the problems that have arisen in the past in regard to females in custody, it would be worthwhile to introduce some such emphasis. One method of achieving this emphasis would be to require the court to take account of the fact that the offender is a woman in cases to which the Probation Act applies. Having regard to the fact that the object of the Probation Act is to encourage reformation in substitution for mere deterrence and to create facilities for out-of-hail treatment rather than incarceration inside the jail, it would be appropriate if that objective is carried out more emphatically in regard to women.”²⁰

➤ **Mental Health Act, 1987**

“Among the visitors to be appointed by the Government under Section 37, Mental Health Act, two are to be social workers. In our view, at least one social worker should be a woman, wherever that is practicable, so that suspected malpractices against female in-patients can be looked into and, wherever necessary, suitable preventive measures can also be suggested. We recommend that section 37(1),

¹⁹ Para 2.31, Page 31

²⁰ Para 5.7, Page 48, Chapter 5, The Probation of Offenders Act, 1958

Mental Health Act, 1987, should be amended by adding, after the words “two social workers”, the words “of whom at least one shall be a woman, wherever applicable”.²¹

²¹ Para 6.6, Page 55, Chapter 6, Mental Health Act, 1987

152nd LAW COMMISSION REPORT

[CUSTODIAL CRIMES]

The 152nd Report of the Law Commission summarizes the recommendations provided by the 135TH Law Commission Report as follows:

“The Law Commission of India, in its 135th Report on Women in Custody (1989) recommended detailed provisions to avoid harassment to women in custody and to protect them to the extent possible. The recommendations related to arrest and interrogation are:

1. In the event of a woman being required to be arrested, the police officer concerned shall not actually touch the person of the woman and may presume her submission to custody. This recommendation is being made in order that the dignity of the concerned woman is maintained.
2. Ordinarily, no woman shall be arrested after sunset and before sunrise. In exceptional cases calling for arrest during these hours,-
 - (i) Prior permission of the immediate superior officer shall be obtained, or (ii) if the case is of extreme urgency, then, after arrest, a report with reason shall be made to the immediate superior officer and to the Magistrate.
3. Wherever a woman is medically examined, the examination shall be conducted only under the supervision of a female medical practitioner, with strict regard to decency.
4. The concerned woman shall be informed about her right to be medically examined, “in order to bring on record any facts which may show that an offence against her has been committed after her arrest.”
5. A copy of the report of the medical examination shall be furnished to the woman.
6. A woman shall not, under section 160 of the Criminal Procedure Code, be required to attend for interrogation at any place other than her dwelling house, and section 160 of the Code should be amended for the purpose.
7. When the statement of a woman is recorded during investigation, a relative or friend of the woman or an authorized representative of an organization interested in the welfare of woman shall be allowed to remain present.”²²

Arrest of Women: Recommendation

“Of the various recommendations made in the 135th Report of the Law Commission of India (Women in Custody) referred to above, recommendations No. 1 and 2 are of direct relevance to arrest and we recommend that the same should be incorporated into the Codes of Criminal Procedure, 1973 at an appropriate place.”²³

²² Page 27, Para 5.13

²³ Page 29, Para 5.17

“As regards matters dealt with in the Law Commission of India’s 135th Reports (Women in Custody), we have already made a recommendation in this chapter on points directly relevant to the theme of arrest in the context of the present Report. But the remaining recommendations made in that Report also need to be implemented. But many other recommendations made in that Report also need to be implemented. We note that in the Bill recently introduced to amend the Code (9th May, 1994), one or two of the points dealt with in the 135th Report have been implemented. But many other recommendations of that Report have been left out even though they relate to provisions of the Code of Criminal Procedure, 1973. We have not been able to locate in the Notes on Clauses to the Bill any reasons for this non-implementation. We are of the view that the remaining recommendations should also be implemented as that would safeguard the interest of women.”²⁴

Medical Examination:

As regards the medical examination of the victim in cases of rape and cognate offences, medical examination is necessary, as it provide valuable evidence regarding proof of the allegation. Medical examination of the accused and the victim in cases of rape and cognate offences has been exhaustively considered by the Law Commission in its 84th Report on ‘Rape and Allied Offences – Some Questions of Substantive Law, Procedure and Evidence’. After a detailed discussion the Commission was of the opinion that the existing provisions in Section 53 and 54 of the Criminal Procedure Code were not adequate to afford evidence of commission of offence. The Commission recommended amendment of Section 53 as well as insertion of section 164A of the Code of Criminal Procedure. We agree with those recommendations and reiterate that the same should be carried out.²⁵

RECOMMENDATIONS:

“The Law Commission reiterates its earlier recommendation made in the 135th Report on ‘Women in Custody’. We recommended that a new section 166A be inserted in the Indian Penal Code, 1860 for punishing the violation of section 160 of the Code of Criminal Procedure, 1973.”²⁶

“The Commissions reiterates need for insertion of section 167A in the Indian Penal Code, 1860 as recommended in its 84th Report of ‘Rape and Allied Offences, and some questions of substantive law, procedure and evidence.’ ²⁷”

²⁴ Page 32, Para 5.22

²⁵ Page 36, Para 7.3

²⁶ Page 54, Para 14.2

²⁷ Page 54, Para 14.3

Guidelines on supply of reading material to prisoners

E.I. Malekar

Asstt. Registrar (Law)

March 1, 2000

To

Chief Secretaries/ Administrators
of all States /UTs.

Subject: Complaint from Shri Y.P. Chibbar.

Sir,

The case above mentioned was placed before the Commission on 28.2.2000 whereupon it has directed as under.

“The guidelines are approved. They be sent to Chief Secretary of all States/Union Territories for being circulated to all concerned persons in their respective jurisdictions for compliance on the question of supply/availability of reading material to the prisoners. Compliance report be sent within eight weeks.”

I am, therefore, to forward herewith a copy of the Commission's guidelines and to request you to submit the compliance report in the matter by 24.4.2000, positively for placing it before the Commission.

Encl: As stated (in two pages)

Your faithfully,
Sd/-

Asstt. Registrar (Law)

Extract of the Guidelines:

- (i) Further, diversified programmes should be organized by the prison authorities for different groups of inmates, special attention being paid to the development of suitable recreational and educational materials for women prisoners or for those who may be young or illiterate. The educational and cultural background of the inmates should also be kept in mind while developing such programmes.

The Commission recommends that the above -stated guidelines be used by the competent authorities, in all States and Union Territories, to modify the existing rules and practices prevailing in prisons wherever they might be at variance with these guidelines.

**Section IV:
Select Extracts from National Advisories
of Ministry of Human Affairs (MHA)**

**भाग IV:
गह मंत्रालय द्वारा जारी परामर्श
के उद्धरण**

**EXTRACTS FROM SELECTED PRISON ADVISORIES
ISSUED BY THE MINISTRY OF HOME AFFAIRS**

**No.V-17013/9/2006-PR GOVERNMENT OF INDIA/BHARAT SARKAR
MINISTRY OF HOME AFFAIRS/GRINH MANTRALAYA**

Dated the 15th May, 2006

To

The Principal Secretary/Secretary Home (in-charge of Prisons,
All States and Union Territories.

Subject : Facilities to the children of women prisoners - Guidelines issued by the
Supreme Court - regarding.

Sir/Madam,

I am directed to draw kind attention to the judgment of the Supreme Court dated 13th April, 2006 in the case of R.D. Upadhyaya vs State of Andhra Pradesh & Ors (Civil Writ Petition No. 559 of 1994) wherein the Hon'ble Supreme Court has issued guidelines for providing various facilities to the children of women prisoners. A copy of the said judgment of the Supreme Court along with the guidelines issues is enclosed for ready reference. The Supreme Court has given four months time for filing a compliance report stating steps taken in the matter, whereafter the matter shall be listed for directions.

You are requested to take urgent suitable action for implementing the orders of the Supreme Court in your State/UTs. A copy of action taken report filed in the Supreme Court may be immediately made available to this Ministry for information.

Encl: As above.

Yours faithfully,
Sd/

(Rita Acharya)

Deputy Secretary to the Govt. of India

Tel No. 2309 2933

ANNEXURE
IN THE SUPREME COURT OF INDIA CIVIL ORIGINAL JURISDICTION

WRIT PETITION (C) NO. 559 OF 1994

R.D. Upadhyay

.....PETITIONER

VERSUS

State of A.P. & Ors.

.....RESPONDENT

[With WP (C) No.133/02, SLP (C) Nos.14303-14305/98, CA No.2468/98, SLP (C) No._____/98 (CC-5347/98) CrI.A.No.69/2000 and WP (C) No.84/98]

JUDGEMENT

Y.K. Sabharwal, CJI

Concerned by the plight of the undertrial prisoners languishing in various jails in the country, various directions were issued by this Court from time to time. Presently, we are considering mainly the issue of directions for the development of children who are in jail with their mothers, who are in jail either as undertrial prisoners or convicts. Children, for none of their fault, but per force, have to stay in jail with their mothers. In some cases, it may be because of the tender age of the child, while in other cases, it may be because there is no one at home to look after them or to take care of them in absence of the mother. The jail environment are certainly not congenial for development of the children.

For the care, welfare and development of the children, special and specific provisions have been made both in Part III and IV of the Constitution of India, besides other provisions in these parts which are also significant. The best interest of the child has been regarded as a primary consideration in our Constitution. Article 15 prohibits discrimination on grounds of religion, race, caste, sex or place of birth. Article 15(3) provides that this shall not prevent the State from making any special provision for women and children. Article 21A inserted by 86th Constitutional Amendment provides for free and compulsory education to all children of the age of six to fourteen years. Article 24 prohibits employment of children below the age of fourteen years in any factory or mine or engagement in other hazardous employment. The other provisions of Part III that may be noted are Articles 14, 21 and 23. Article 14 provides that the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. Article 21 provides that no person shall be deprived of his life or personal liberty except according to procedure established by law. Article 23 prohibits trafficking in human beings and forced labour. We may also note some provisions of Part IV of the Constitution. Article 39(e) directs the State to ensure that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength. Article 39(f) directs the State to ensure that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment. Article 42 provides that the State shall make provision for securing just and

humane conditions of work and maternity relief. Article 45 stipulates that the State shall endeavour to provide early childhood care and education for all children until they complete the age of six years. Article 46 provides that the State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation. Article 47 provides that the State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.

Apart from the aforesaid constitutional provisions, there are wide range of existing laws on the issues concerning children, such as, the Guardians and Wards Act, 1890, Child Marriage Restraint Act, 1929, the Factories Act, 1948, Hindu Adoptions and Maintenance Act, 1956, Probation of Offenders Act, 1958, Orphanages and Other Charitable Homes (Supervision and Control) Act, 1960, the Child Labour (Prohibition and Regulation) Act, 1986, Juvenile Justice (Care and Protection of Children) Act, 2000, the Infant Milk Substitutes, Feeding Bottles and Infant Foods, (Regulation of Production, Supply and Distribution) Act, 1992, Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994, Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, Immoral Traffic (Prevention) Act, 1986.

The Juvenile Justice Act, 2000 replaced the Juvenile Justice Act, 1986 to comply with the provisions of the Convention on the rights of the child which has been acceded to by India in 1992.

In addition to above, the national policy for children was adopted on 22nd August, 1974. This policy, inter alia, lays down that State shall provide adequate services for children both before and after birth, and during the growing stages for their full physical, mental and social development. The measures suggested include amongst others a comprehensive health programme, supplementary nutrition for mothers and children, promotion of physical education and recreational activities, special consideration for children of weaker sections and prevention of exploitation of children.

India acceded to the UN Convention on the rights of the child in December 1992 to reiterate its commitment to the cause of the children. The objective of the Convention is to give every child the right to survival and development in a healthy and congenial environment.

The UN General Assembly Special Session on children held in New York in May 2002 was attended by an Indian delegation led by Minister of Human Resource Development and consisted of Parliamentarians, NGOs and officials. It was a follow up to the world summit held in 1990. The summit adopted the declaration on the survival, protection and development of children and endorsed a plan of action for its implementation.

The Government of India is implementing various schemes and programmes for the benefit of the children. Further, a National Charter for children 2003 has been adopted to

reiterate the commitment of the Government to the cause of the children in order to see that no child remains hungry, illiterate or sick. By the said Charter, the Government has affirmed that the best interests of children must be protected through combined action of the State, civil society and families and their obligation in fulfilling children's basic needs. National Charter has been announced with a view to securing for every child inherent right to enjoy happy childhood, to address the root causes that negate the health, growth and development of children and to awake the conscience of the community in the wider societal context to protect children from all forms of abuse, by strengthening the society and the nation. The National Charter provides for survival, life and liberty of all children, promoting high standards of health and nutrition, assailing basic needs and security, play and leisure, early childhood care for survival, growth and development, protection from economic exploitation and all forms of abuse, protection of children in distress for the welfare and providing opportunity for all round development of their personality including expression of creativity etc.

The National Institute of Criminology and Forensic Sciences conducted a research study of children of women prisoners in Indian jails. The salient features of the study brought to the notice of all Governments in February 2002, are:

- (i) The general impression gathered was the most of these children were living in really difficult conditions and suffering from diverse deprivations relating to food, healthcare, accommodation, education, recreation, etc.
- (ii) No appropriate programmes were found to be in place in any jail, for their proper bio-psycho-social development. Their looking after was mostly left to their mothers. No trained staff was found in any jail to take care of these children.
- (iii) It was observed that in many jails, women inmates with children were not given any special or extra meals. In some cases, occasionally, some extra food, mostly in the form of a glass of milk, was available to children. In some jails, separate food was being provided only to grown up children, over the age of five years. But the quality of food would be same as supplied to adult prisoners.
- (iv) No special consideration was reported to be given to child bearing women inmates, in matters of food or other facilities. The same food and the same facilities were given to all women inmates, irrespective of the fact whether their children were also living with them or not.
- (v) No separate or specialised medical facilities for children were available in jails.
- (vi) Barring a few, most mother prisoners considered that their stay in jails would have a negative impact on the physical as well as mental development of their children.
- (vii) Crowded environment, lack of appropriate food, shelter and above all, deprivation of affection of other members of the family, particularly the father was generally perceived by the mothers as big stumbling blocks for the proper development of their children in the formative years of life.
- (viii) Mother prisoners identified six areas where urgent improvement was necessary for proper upkeep of their children. They related to food, medical facilities, accommodation, education, recreation and separation of their children from habitual offenders.
- (ix) No prison office was deployed on the exclusive duty of looking after these children or

their mothers. They had to perform this duty alongside many other duties including administrative work, discipline maintenance, security-related jobs etc. None of them was reported to have undergone any special training in looking after the children in jails.

Some of the important suggestions emanating from the study are:

- (i) In many States, small children were living in sub-jails which were not at all equipped to keep children. Women prisoners with children should not be kept in such sub-jails, unless proper facilities can be ensured which would make for a conducive environment there, for proper bio-psycho-social growth of children.
- (ii) Before sending a woman in stage of pregnancy, to a jail, the concerned authorities must ensure that particular jail has got the basic minimum facilities for child delivery as well as for providing pre-natal and post-natal care for both to the mother and the child.
- (iii) The stay of children in crowded barracks amidst women convicts, undertrials, offenders relating to all types of crime including violent crimes, is certainly harmful for such children in their personality development. Children are, therefore, required to be separated from such an environment on priority basis, in all such jails.
- (iv) A permanent arrangement needs to be evolved in all jails, to provide separate food with ingredients to take care of the nutritional needs of children to them on regular basis.
- (v) Children of women prisoner should be provided with clothes, bed sheets, etc. in multiple sets. Separate utensils of suitable size and material should also be provided to each mother-prisoner for giving food to her child.
- (vi) Medical care for every child living in a jail has to be fully ensured. Also, in the event of a women prisoner falling ill herself, alternative arrangements for looking after the child should be made by the jail staff.
- (vii) Adequate arrangements should be available in all jails to impart education, both formal and informal, to every child of the women inmates. Diversified recreational programmes/facilities should also be made available to the children of different age groups.
- (viii) A child living in a jail along with her incarcerated mother is not desirable at all. In fact, this should be as only the last resort when all other possibilities of keeping the child under safe custody elsewhere have been tried and have failed. In any case, it should be a continuous endeavour of all the sectors of the criminal justice system that the least number of children are following their mothers to live in jails. The State Governments and Union Territories were requested to consider the aforesaid suggestions for implementation. By filing IA Nos.1 and 7, the attention of this Court has been drawn to the plight of little children on account of the arrest of their mothers for certain criminal offences. I.A. No. 1 was filed by Women's Action Research and Legal Action for Women (WARLAW), through its program coordinator, Ms. Babita Verma stating that more than 70% of the women prisoners are married and have children. At the time of arrest of the women prisoners having children, indiscriminate arrest is not confined only to women/mother prisoners but such arrest is

automatically extended to these children who are of tender age and there is no one to look after the child and take care of the child without their mother. Such children are perforce subjected to a kind of arrest for no offence committed by them. Further, the atmosphere in jail is not congenial for a healthy upbringing of such children. There are two non-Governmental organizations (NGO's), namely Mahila Pratiraksha Mandal and Navjyothi who are counsellors. Adjoining the jail premises at Delhi there is Nari Niketan which is a women's reform home. Some of the children who are detained in jail are sent to Kirti Nagar Children's home for their studies.

The arrangement pertaining to the education and looking after of these children is not adequate. To the best of the information of the applicant, there is no specific provision or regulation in Jail Manual for facilitating the mother prisoners to meet the children. It is for the family protection of these women prisoners including their minor children that the trial period of undertrials shall be minimised and a period of two years shall be fixed. It was suggested that arrest of women suspects be made only by lady police. Such arrests should be sparingly made as it adversely affects innocent children who are taken into custody with their mother. To avoid arrest of innocent children the care and custody of such children may be handed over to voluntary organizations which can assist in the growth of children in a congenial and healthy atmosphere. Periodic meeting rights should be available to the women/mother prisoners in order to mother the healthy upkeep of the children. A letter dated 8th March, 2000 written by a 6 years old girl child, studying in upper KG in a school at Bangalore, to Chief Justice of India enclosing an article 'Dogged by Death in Jail' in a women's magazine dated 20th January, 2000 narrating plight of children in jail with their mothers, was registered as IA No.7. The article, inter alia, notes that the fate of the women undertrials is more pitiable because some of them live with their tiny tots whether born at home or inside the jail and that a visitor to jail is sure to see a series of moving scenes. The order dated 20th March, 2001 notes that the learned Solicitor General shares the concern of the Court regarding the plight of the children in jail and the submission that with a view to frame some guidelines and issue instructions, it would be necessary to first ascertain the number of female prisoners in each of the jails, in each of the States/union Territories, the offences for which they have been arrested; the duration of their detention and whether children with any of those female prisoners are also lodged in jail. The Court directed the States and Union Territories to disclose on affidavit the following :

The number of female prisoners (undertrial) together with the nature of offence for which they have been detained;
Period of their detention;
Children, if any, who are with the mothers lodged in the jail;
Number of convicted female prisoners and whether any children are also lodged with such convicts in the jails;
Whether any facilities are available in the jail concerned for taking care of such children and, if so, the type of facilities."

Various State Governments and Union Territories submitted reports which provided detailed answers to the aforestated questions. The following is a brief conspectus of the reports filed:

In the Andaman & Nicobar Islands, children are allowed to live with their mothers up to the age of 5 years. A special diet is prescribed for children by the Medical Officer including

proper vitamins and minerals. As far as the future of the children is concerned, in consultation with the District Magistrate, the children are handed over to the relatives or to some trustworthy person as selected by the District Magistrate himself.

In Andhra Pradesh, milk is provided to the children every day with a protein diet for elder kids. Special medical facilities are available as prescribed by the Medical Officer. Vaccines like Polio etc are provided at regular intervals. Education is also provided.

In Assam, children are allowed to live with their mothers up to the age of 6 years. Literary training is provided to small children who are lodged with their prisoner mothers. Lady teachers are also present. Instructions have been issued to provide sufficient study material to the children, as also adequate playing material. As for their future, in consultation with the District Magistrate, the children are handed over to the relatives or to some trustworthy person as selected by the District Magistrate himself.

In Bihar, children are allowed to live with their mothers up to the age of 2 years and up to 5 years in special cases where there is no other caretaker for child. Provision is made for special ration above and beyond the normal labouring ration for nursing mother and for supplementary cow's milk for children under the age of one year not receiving sufficient milk from the mother. Provision is also made for ration for children from 12-18 months, and from 18-24 months or as specified by the Medical Officer. Health and clothing facilities are provided by the Government. Toys and other forms of entertainment are also available in some jails.

In Chandigarh, a special diet is provided for. Medical facilities are also present.

In Chhattisgarh, children are allowed to live with their mothers up to the age of 6 years. Normal food and additional milk is provided. Polio drops are provided on pulse polio day. Medical treatment is done by full time and part time doctors present in the jail. Children are sent outside for expert medical treatment and advice if required. NGO's have provided for clothes. Inside the jail, a child education centre is being run so that they develop interest in education and may learn to read and write. TV and fans for the female prisoners and their kids have been provided by some social service organizations, as also sports and recreation material, swings and cycles. Children are taken to public parks and for public functions to get acquainted with the outside world. After the age of six, these children are sent to the local 'children's home', where their primary education starts. Female children are sent to the Rajkumari Children's Home at Jabalpur where there is adequate arrangement of education

In Delhi, children are allowed to live with their mothers up to the age of 6 years. A special diet inclusive of 750 gm milk and one egg each is provided to children in jail. Proper diets and vaccine for popular diseases are adequately provided for the children. Clothing is also provided for. Children above 4 years are taught to read and write. They are prepared for admission to outside schools. Sponsorships for the funding of the children education is provided for by the CASP (Community Aid Sponsorship Programme). Two NGO's by the name of Mahila Pratikraksha mandal and Navjyoti Delhi Police Foundation run crchches. Picnics are arranged by NGO's to take them to the Zoo and parks and museums to make them familiar with the outside world. Admission of the children above 5 years of age to Government cottage homes and to residential schools is facilitated through NGO's.

In Goa, the report states that dietary facilities for children are provided by the Government. The Medical Officer of the primary Health Centre, Candolim visits prisoners and children twice a week. If required, they are sent for better treatment to Government Hospitals.

In Gujarat, a special diet and special medical facilities as prescribed by the Medical Officer are available for children. Cradle facilities are provided for infants.

In Haryana, a standard diet of rice, flour, milk and dal is provided with a special diet provided on the advice of Medical Officer. Health issues are looked after as per the advice of Medical Officer. Regular literacy classes are taken by two lady teachers on deputation from the State Education Dept. at Borstal Jail, Hissar. Books and toys are provided.

In Himachal Pradesh, children are allowed to live with their mothers up to the age of 4 years or in special cases up to 6 years by the approval of the Superintendent. Children under the age of 1 year are provided with milk, sugar and salt. Provision is also made for ration for children from 12-18 months and from 18-24 months. Extras may be ordered by the Medical Officer. Female prisoners and their children are in a separate ward, with its own toilets. This ensures that there is no mixing between the children and the male prisoners.

In Jammu & Kashmir, a special diet is available, as prescribed by the Medical Officer. Supplements are also provided to breast feeding mothers. In Jharkhand, children are allowed to live with their mothers up to the age of 5 years. Provisions are made for special ration above and beyond the normal labouring ration for nursing mother and for supplementary cow's milk for children under the age of 1 year not receiving sufficient milk from the mother. Provision is also made for ration for children from 12-18 months and from 18-24 months. Health and clothing are taken care of by the Jail superintendent. Toys and items of entertainment have been provided in some jails.

In Karnataka, children are allowed to live with their mothers up to the age of 6 years. Education is looked after for by various NGO's. When the children are to leave the jail, they are handed over to the relatives or to some trustworthy person, Agency or school.

In Kerala, a special diet and medical facilities are made available as prescribed by the Medical Officer. Special clothing can also be so prescribed.

In Lakshadweep, it was reported that there is no undertrial prisoner lodged in jail along with her child and, therefore, need for making arrangements for children along with mothers is not felt necessary.

In Madhya Pradesh, children are allowed to live with their mothers up to the age of 4 years or in special cases up to 6 years by the approval of the Superintendent. There is provision for special ration above and beyond the normal labouring ration for nursing mother and for supplementary cow's milk for children under the age of 1 year not receiving sufficient milk from the mother. Provision is also made for ration for children from 12-18 months and from 18-24 months. For children who are leaving the jail, in consultation with the District Magistrate the children are handed over to the relatives or to some trustworthy person as selected by the District Magistrate himself.

In Maharashtra, children are allowed to live with their mothers up to the age of 4 years. They are to be weaned away from their mothers between the ages of 3 to 4 years. A special diet is prescribed under the Maharashtra Prison Rules. Changes can be recommended by the Medical Officer. Specific amounts of jail-made carbolic soap and coconut oil are to be provided for by the authorities. Garments are to be provided as per the Maharashtra Prisons Rules. Two coloured cotton frocks, undergarments and chaddies per child have been prescribed per year. A nursery school is conducted by 'Sathi', an NGO in the female jail on a regular basis. Primary education is provided for by 'Prayas', a voluntary organization in Mumbai Central Prisons. A small nursery with cradles and other reasonable equipments is provided in each women's ward. Toys are also provided for by the authorities. On leaving the jail, children are handed over to the nearest relative, in whose absence to the officer-in-charge of the nearest Government remand home, or institution set up for the care of the destitute children under the Bombay Children Act, 1948.

In Manipur, provision is made for special ration above and beyond the normal labouring ration for nursing mother and for supplementary cow's milk for children under the age of one year not receiving sufficient milk from the mother. Provision is also made for ration for children from 12-18 months and from 18-24 months. The Superintendent is entrusted with the responsibility of providing clothing for children who are allowed to reside with their mothers.

In Meghalaya, children are allowed to live with their mothers up to the age of 6 years. All aspects of the children's welfare are taken care of according to the Rules under the State Jail Manual.

In Mizoram, children are allowed to live with their mothers up to the age of 6 years. A special diet is prescribed under the Rules of the Jail Manual. However, no proper facilities for education or recreation exist.

In Nagaland, the provisions of the Assam Jail Manual have been adopted vis-a-vis facilities for women and for children living with their mothers.

In Orissa, children are allowed to live with their mothers up to the age of 4 years or in special cases up to 6 years by the approval of the Superintendent. A special diet is available, as prescribed by the Medical Officer. Children are provided with suitable clothing. On leaving the jail, in consultation with the District Magistrate, the children are handed over to the relatives or to some trustworthy person, as selected by the District Magistrate himself.

In Pondicherry, a special diet is available as prescribed by the Medical Officer. Play things, toys etc. are provided to the children at Government cost or through NGOs.

In Punjab, children under the age of one year are provided with milk and sugar. Provision is also made for ration for children from 12-18 months and from 18-24 months. Extra diet is available on the advice of the Medical Officer. There is a play way nursery and one aaya or attendant who looks after the children from time to time.

In Rajasthan, a special diet is available under the rules of the Jail Manual. Special

medical facilities are also provided for as prescribed in the manual. Clothing and toys are provided for by NGOs.

In Tamil Nadu, children are allowed to live with their mothers up to the age of 6 years. A special diet and special clothing are available as prescribed by the Medical Officer. Children under 3 years of age are treated in the crèche and those upto the age of 6 years are treated in the nursery. Oil, soap and hot water are available for children. On leaving the jail, in consultation with the District Magistrate, the children are handed over to the relatives or to some trustworthy person, as selected by the District Magistrate himself.

In Tripura, the diet of children is as per the instructions of the Medical Officer. Medical care and nursing facilities are available. Mothers accompanied by children are kept separately.

In Uttar Pradesh, children are allowed to live with their mothers up to the age of 6 years. A special diet is available under the Rules of the Jail Manual. On leaving prison, in consultation with the District Magistrate, the children are handed over to the relatives or to some trustworthy person, as selected by the District Magistrate himself.

In Uttaranchal, food is provided as under the Rules of the Jail manual. Education provided for by the Government, which also makes arrangement for extra-curricular activities such as sports.

In West Bengal, normal facilities are available and in addition to that Inner Wheel club also runs a Homeopathic clinic for children. A non-formal school is run by an NGO for rendering elementary education to the children.

From the various affidavits submitted, it seems that there were 6496 undertrial women with 1053 children and 1873 convicted women with 206 children.

On 23rd January, 2002, it was noted that three matters were required to be dealt with by the Court: (1) Creation of sufficient number of subordinate courts as well as providing adequate infrastructure and filling up of the existing vacancies; (2) necessary direction with regard to dealing with the children of women undertrial prisoners/women convicts inside jail; and (3) arrangement required to be made for mentally unsound people who are either undertrial prisoners or have been convicted. It was then directed that the question of dealing with the children of women undertrial prisoners and women convicts be taken up first. That is how we have taken up this issue for consideration, perused various reports, heard Mr. Ranjit Kumar, Senior Counsel, who assisted this Court as Amicus Curiae, Mr. Sanjay Parikh and other learned counsel appearing for Union of India and State Governments. We place on record our appreciation for the able assistance rendered by learned Amicus and other learned counsel.

It may be noted that on 29th August, 2002, a field action project prepared by the Tata Institute of Social Science on situation of children of prisoners was placed before this Court. Responses thereto have been filed by the Union of India as well as the State Governments.

The report puts forward five grounds that form the basis for the suggestion to provide

facilities for minors accompanying their mothers in the prison:

- a) The prison environment is not conducive to the normal growth and development of children;
- b) Many children are born in prison and have never experienced a normal family life, sometimes till the age permitted to stay inside (four to five years);
- c) Socialization patterns get severely affected due to their stay in prison. Their only image of male authority figures is that of police and prison officials. They are unaware of the concept of a home, as we know it. Boys may sometimes be found talking in the female gender, having grown up only among women confined in the female ward. Unusual sights, like animals on the road (seen on the way to Court with the mother) are frightening.
- d) Children get transferred with their mothers from one prison to another, frequently (due to overcrowding), thus unsettling them; and
- e) Such children sometimes display violent and aggressive, or alternatively, withdrawn behavior in prison.

Specific suggestions have been put forward vis-à-vis children once they reach the confines of the prison. The minimum is the existence of a Balwadi for such children, and a crèche for those under the age of two. The Balwadi should be manned by a trained Balwadi teacher and should have the facilities of a visiting psychiatrist and pediatrician. A full-time nurse could also be made available. Immunization should take place on a regular basis. If the child is sick and needs to be taken outside the prison, the mother should be allowed to accompany the child. The Balwadi would provide free space, toys and games for children. It can also organize programmes on mother and child care, hygiene and family life for mothers. It has also been suggested that these facilities should be located outside, but attached to the prison. This would combat the negative psychological impact of the prison environment and expose the children to 'normal' figures not found in the women's barracks. It is also suggested that specialized clothing including winter-wear and bedding including plastic sheets should be provided to children. Concerns have also been raised regarding the issuance of a birth certificate that mentions the prison as the place of birth of a child born in prison. It is suggested that child's residence should be mentioned as the place of birth and not the prison.

Emphasis has been placed on the diet of such children. It recommends that a special diet be prescribed, as per the norms suggested by a nutrition or child development expert body such as the National Institute of Public Cooperation and Child Development. The diet should be standardized according to the age of the child and not prescribed as uniform irrespective of the age of the child. The special needs of the child should be kept in mind, for instance, milk needs to be kept fresh which will not be the case if it is handed out only once in the morning. Toned milk may be required or boiled water may need to be provided. For satisfying these needs and providing a satisfactory diet may even require the creation of a separate kitchen unit for children.

Several suggestions have been made vis-à-vis the judiciary, legal aid authorities, the Department of Women and Child Development/Welfare and the Juvenile Justice Administration (under the Juvenile Justice Act) and the Probation Department in relation to the welfare measures that can be taken for children of undertrial and incarcerated prisoners,

both living within and outside the jail premises.

The Union of India, in its affidavit, has pointed out that it has taken several measures for the benefit of children in general, including children of women prisoners in this larger group. These measures include 'Sarva Shiksha Yojna', Reproductive and Child Health Programme, and Integrated Child Development Projects and passing of the Juvenile Justice (Care and Protection of Children) Act, 2000 for the welfare of children in general.

Union of India also pointed out that the Swadhar scheme has been launched by the Department of Woman and Child Development with the objective of providing for the primary needs of shelter, food, clothing, care, emotional support and counselling to the women convicts and their children, when these women are released from jail and do not have any family support, among other groups of disadvantaged women.

Reference has already been made to the report of the National Institute of Criminology and Forensic Sciences which was forwarded to various States and Union Territories in 2002.

Union of India also brought to the notice of the Court that a Jail Manual Bill ("The Prison Management Bill, 1998") had been prepared which, inter alia, deals with the plight of women prisoners, under Chapters XIV and XVI. This Bill was prepared with the laudable aim of bringing uniformity to jail management across the country. It is important to note that Chapter II of the Bill delineates various rights and duties of prisoners. The rights include the right to live with human dignity; adequate diet, health and medical care, clean hygienic living conditions and proper clothing; the right to communication which includes contact with family members and other persons; and the right to access to a court of law and fair and speedy justice. Clearly, the rights of children of women prisoners living in jail are broader than this categorization, since the children are not prisoners as such but are merely victims of unfortunate circumstances. It is also important to note that Section 33 of the Bill mandates the provision of a Fair Price Shop in all prisons accommodating more than 200 prisoners. This shop should also offer essential items for children of prisoners. In addition, Section 60 (1)(d) provides for temporary or special leave being granted to a prisoner who shows sufficient cause to the State Government or the concerned authority. This can be utilized to grant parole to pregnant women. It may also be noted that Chapter IV of the Bill relates to release and after care and Chapter XVI deals with special categories of prisoners. Both these chapters have a special significance when considering the rights of Children of Women prisoners.

The Union of India noted that the "National Expert Committee on Women Prisoners", headed by Justice V.R. Krishnaiyer, framed a draft Model Prison Manual. Chapter XXIII of this manual makes special provision for children of women prisoners. This manual was circulated to the States and Union Territories for incorporation into the existing jail manuals. It is significant to note that this committee has made important suggestions regarding the rights of women prisoners who are pregnant, as also regarding child birth in prison. It has also made suggestions regarding the age up to which children of women prisoners can reside in prison, their welfare through a crèche and nursery, provision of adequate clothes suiting the climatic conditions, regular medical examination, education and recreation, nutrition for children and pregnant and nursing mothers.

Various provisions of the Constitution and statutes have been noticed earlier which cast an obligation on the State to look after the welfare of children and provide for social, educational and cultural development of the child with its dignity intact and protected from any kind of exploitation. Children are to be given opportunities and facilities to develop in a healthy manner and in a condition of freedom and dignity. We have also noted U.N. conventions to which India is a signatory on the Rights of the Child.

This Court has, in several cases, accepted International Conventions as enforceable when these Conventions elucidate and effectuate the fundamental rights under the Constitution. They have also been read as part of domestic law, as long as there is no inconsistency between the Convention and domestic law (See *Vishaka v. State of Rajasthan* [(1997) 6 SCC 241]). In *Sheela Barse v. Secretary, Children's Aid Society* [(1987) 3 SCC 50] which dealt with the working of an Observation Home that was maintained and managed by the Children's Aid Society, Bombay, it was said:

"5. Children are the citizens of the future era. On the proper bringing up of children and giving them the proper training to turn out to be good citizens depends the future of the country. In recent years, this position has been well realized. In 1959, the Declaration of all the rights of the child was adopted by the General Assembly of the United Nations and in Article 24 of the International Covenant on Civil and Political Rights, 1966. The importance of the child has been appropriately recognized. India as a party to these International Charters having ratified the Declaration, it is an obligation of the Government of India as also the State machinery to implement the same in the proper way. The Children's Act, 1948 has made elaborate provisions to cover this and if these provisions are properly translated into action and the authorities created under the Act become cognizant of their role, duties and obligation in the performance of the statutory mechanism created under the Act and they are properly motivated to meet the situations that arise in handling the problems, the situation would certainly be very much eased."

True, several legislative and policy measures, as aforementioned, have been taken over the years in furtherance of the rights of the child. We may again refer to the Juvenile Justice Act which provides for the care and rehabilitation of neglected and delinquent children, under specially constituted Juvenile welfare boards/courts. It provides for institutionalization of such children, if necessary. Juvenile children's homes have been set up both by the State as well as by NGO's to house such children. In some states, Social Welfare and Women and Child Development/Welfare Departments have specific schemes for welfare and financial assistance to released prisoners, dependants of prisoners and families of released prisoners. Some States have appointed Prison Welfare Officers to look after the problems of prisoners and their families. In some other States, Probation Officers are performing this task, apart from their role under the P.O. Act, 1958.

However, on the basis of various affidavits submitted by various State Governments and Union Territories, as well as the Union of India, it becomes apparent that children of women prisoners who are living in jail require additional protection. In many respects, they suffer the consequences of neglect. While some States have taken certain positive measures to look after the interests of these children, but a lot more is required to be done in the States and Union Territories for looking after the interest of the children. It is in this light that it

becomes necessary to issue directions so as to ensure that the minimum standards are met by all States and Union Territories vis-à-vis the children of women prisoners living in prison.

In light of various reports referred to above, affidavits of various State Governments, Union Territories, Union of India and submissions made, we issue the following guidelines:

1 A child shall not be treated as an undertrial/convict while in jail with his/her mother. Such a child is entitled to food, shelter, medical care, clothing, education and recreational facilities as a matter of right.

2 Pregnancy:

Before sending a woman who is pregnant to a jail, the concerned authorities must ensure that jail in question has the basic minimum facilities for child delivery as well as for providing pre-natal and post-natal care for both, the mother and the child.

When a woman prisoner is found or suspected to be pregnant at the time of her admission or at any time thereafter, the lady Medical Officer shall report the fact to the superintendent. As soon as possible, arrangement shall be made to get such prisoner medically examined at the female wing of the District Government Hospital for ascertaining the state of her health, pregnancy, duration of pregnancy, probable date of delivery and so on. After ascertaining the necessary particulars, a report shall be sent to the Inspector General of Prisons, stating the date of admission, term of sentence, date of release, duration of pregnancy, possible date of delivery and so on.

Gynaecological examination of female prisoners shall be performed in the District Government Hospital. Proper prenatal and post-natal care shall be provided to the prisoner as per medical advice.

3 Child birth in prison:

As far as possible and provided she has a suitable option, arrangements for temporary release/parole (or suspended sentence in case of minor and casual offender) should be made to enable an expectant prisoner to have her delivery outside the prison. Only exceptional cases constituting high security risk or cases of equivalent grave descriptions can be denied this facility.

Births in prison, when they occur, shall be registered in the local birth registration office. But the fact that the child has been born in the prison shall not be recorded in the certificate of birth that is issued. Only the address of the locality shall be mentioned.

As far as circumstances permit, all facilities for the naming rites of children born in prison shall be extended.

4. Female prisoners and their children:

a. Female prisoners shall be allowed to keep their children with them in jail till they attain the age of six years.

b. No female prisoner shall be allowed to keep a child who has completed the age of six years. Upon reaching the age of six years, the child shall be handed over to a suitable surrogate as per the wishes of the female prisoner or shall be sent to a suitable institution run by the Social Welfare Department. As far as possible, the child shall not be transferred to an institution outside the town or city where the prison is located in order to minimize undue hardships on both mother and child due to physical distance.

c. Such children shall be kept in protective custody until their mother is released or the child attains such age as to earn his/her own livelihood.

d. Children kept under the protective custody in a home of the Department of Social

- Welfare shall be allowed to meet the mother at least once a week. The Director, Social Welfare Department, shall ensure that such children are brought to the prison for this purpose on the date fixed by the Superintendent of Prisons.
- e. When a female prisoner dies and leaves behind a child, the Superintendent shall inform the District Magistrate concerned and he shall arrange for the proper care of the child. Should the concerned relative(s) be unwilling to support the child, the District Magistrate shall either place the child in an approved institution/home run by the State Social Welfare Department or hand the child over to a responsible person for care and maintenance.
5. Food, clothing, medical care and shelter:
- a. Children in jail shall be provided with adequate clothing suiting the local climatic requirement for which the State/U.T. Government shall lay down the scales.
 - b. State/U.T. Governments shall lay down dietary scales for children keeping in view the calorific requirements of growing children as per medical norms.
 - c. A permanent arrangement needs to be evolved in all jails, to provide separate food with ingredients to take care of the nutritional needs of children who reside in them on a regular basis.
 - d. Separate utensils of suitable size and material should also be provided to each mother prisoner for using to feed her child.
 - e. Clean drinking water must be provided to the children. This water must be periodically checked.
 - f. Children shall be regularly examined by the Lady Medical Officer to monitor their physical growth and shall also receive timely vaccination. Vaccination charts regarding each child shall be kept in the records. Extra clothing, diet and so on may also be provided on the recommendation of the Medical Officer.
 - g. In the event of a woman prisoner falling ill, alternative arrangements for looking after any children falling under her care must be made by the jail staff.
 - h. Sleeping facilities that are provided to the mother and the child should be adequate, clean and hygienic.
 - i. Children of prisoners shall have the right of visitation.
 - j. The Prison Superintendent shall be empowered in special cases and where circumstances warrant admitting children of women prisoners to prison without court orders provided such children are below 6 years of age.
6. Education and recreation for children of female prisoners:
- a. The child of female prisoners living in the jails shall be given proper education and recreational opportunities and while their mothers are at work in jail, the children shall be kept in crèches under the charge of a matron/female warder. This facility will also be extended to children of warders and other female prison staff.
 - b. There shall be a crèche and a nursery attached to the prison for women where the children of women prisoners will be looked after. Children below three years of age shall be allowed in the crèche and those between three and six years shall be looked after in the nursery. The prison authorities shall preferably run the said crèche and nursery outside the prison premises.

1 In many states, small children are living in sub-jails that are not at all equipped to keep small children. Women prisoners with children should not be kept in such sub-jails, unless proper facilities can be ensured which would make for a conducive environment

there, for proper biological, psychological and social growth.

2 The stay of children in crowded barracks amidst women convicts, undertrials, offenders relating to all types of crimes including violent crimes is certainly harmful for the development of their personality. Therefore, children deserve to be separated from such environments on a priority basis.

3 Diet: Dietary scale for institutionalized infants/children prepared by Dr. A.M. Dwarkadas Motiwala, MD (Pediatrics) and Fellowship in Neonatology (USA) has been submitted by Mr. Sanjay Parikh. The document submitted recommends exclusive breastfeeding on the demand of the baby day and night. If for some reason, the mother cannot feed the baby, undiluted fresh milk can be given to the baby. It is emphasized that "dilution is not recommended; especially for low socio-economic groups who are also illiterate, ignorant, their children are already malnourished and are prone to gastroenteritis and other infections due to poor living conditions and unhygienic food habits. Also, where the drinking water is not safe/reliable since source of drinking water is a question mark. Over-dilution will provide more water than milk to the child and hence will lead to malnutrition and infections. This in turn will lead to growth retardation and developmental delay both physically and mentally." It is noted that since an average Indian mother produces approximately 600 \026 800 ml. milk per day (depending on her own nutritional state), the child should be provided at least 600 ml. of undiluted fresh milk over 24 hours if the breast milk is not available. The report also refers to the "Dietary Guidelines for Indians \026 A Manual," published in 1998 by the National Institute of Nutrition, Council of Medical Research, Hyderabad, for a balanced diet for infants and children ranging from 6 months to 6 years of age. It recommends the following portions for children from the ages of 6-12 months, 1-3 years and 4-6 years, respectively: Cereals and Millets \026 45, 60120 and 150-210 grams respectively; Pulses \026 15, 30 and 45 grams respectively; Milk \026 500 ml (unless breast fed, in which case 200 ml); Roots and Tubers \026 50, 50 and 100 grams respectively; Green Leafy Vegetables \026 25, 50 and 50 grams respectively; Other Vegetables \026 25, 50 and 50 grams respectively; Fruits \026 100 grams; Sugar \026 25, 25 and 30 grams respectively; and Fats/Oils (Visible) \026 10, 20 and 25 grams respectively. One portion of pulse may be exchanged with one portion (50 grams) of egg/meat/ chicken/fish. It is essential that the above food groups to be provided in the portions mentioned in order to ensure that both macronutrients and micronutrients are available to the child in adequate quantities.

1 Jail Manual and/or other relevant Rules, Regulations, instructions etc. shall be suitably amended within three months so as to comply with the above directions. If in some jails, better facilities are being provided, same shall continue.

2 Schemes and laws relating to welfare and development of such children shall be implemented in letter and spirit. State Legislatures may consider passing of necessary legislations, wherever necessary, having regard to what is noticed in this judgment.

3 The State Legal Services Authorities shall take necessary measures to periodically inspect jails to monitor that the directions regarding children and mother are complied with in letter and spirit.

4 The Courts dealing with cases of women prisoners whose children are in prison with their mothers are directed to give priority to such cases and decide their cases expeditiously.

1 Copy of the judgment shall be sent to Union of India, all State Governments/Union Territories, High Courts.

2 Compliance report stating steps taken by Union of India, State Governments, Union territories and State Legal Services Authorities shall be filed in four months whereafter matter shall be listed for directions.

In view of above, Writ Petition (Civil) No.133 of 2002 is disposed of.

No.17014/3/2009-PR
Government of India/Bharat Sarkar Ministry of Home Affairs/Grih Mantralaya

North Block, New Delhi dated the 17th of July 2009.

To

The Principal Secretary (Prison) / Secretary (Home) (In-charge of Prisons) - All State Governments / UTs
DGs/ IGs incharge of prisons- All State Governments / UTs.

Subject: Prison Administration- regarding

Sir,

As you are aware 'Prisons' is a State subject under Entry-4 (Prison Reformatories, Borstal Institutions and other institutions of like nature) in the State List (List-II) of the Seventh Schedule to the Constitution of India. Therefore, the management and administration of Prisons falls in the domain of the State Governments. The Prisons are governed by, inter alia, The Prisons Act, 1894 and the Prison Manuals/ Rules/ Regulations framed by the respective State Governments from time to time.

1 The Indian prison system has been under the close scrutiny of judiciary / District Magistrates who have been given a responsibility to closely monitor the administration and management of prisons under their jurisdiction and to inspect the same periodically. The Central Government has, from time to time, been interacting with the State Governments through advisories, conferences and meetings etc on various aspects of prison administration including appropriate security measures in prisons.

2 As you are aware, various Committees, Commissions and Working Groups had been constituted in the past by the Government of India to study and make suggestions for improving the prison conditions and administration, inter alia, with a view to making them more conducive to the reformation and rehabilitation of prisoners. Some of the important committees are as under:

- All India Jail Manual Committee (1957),
- Working Group on Prisons (1972),
- All India Prison Reforms Committee (1980-83) known as Mulla Committee,
- All India Group on Prison Administration, Security and Discipline known as R.K. Kapoor Committee (1986) and
- National Expert Committee on Women Prisoners known as Justice Krishna Iyer Committee (1987) etc.

These committees made a number of recommendations to improve the conditions of prisons, prisoners and prison personnel. Some of the important recommendations are annexed as

Annexure-I. Since most of the recommendations of these committees pertained to the State Governments/UT Administrations, these were forwarded to the State Governments by the Ministry of Home Affairs for taking appropriate action. In 2001, the Ministry of Home Affairs through BPR&D also circulated a detailed questionnaire relating to actionable recommendations of these committees.

Model Prison Manual

4. Keeping in view the directions given by the Hon'ble Supreme Court in the case of Ramamurthy vs State of Karnataka (1996) and also taking into account the recommendations of various committees regarding the need for bringing uniformity in laws relating to prisons, Government of India constituted All India Model Prison Manual Committee headed by Director General of BPR&D to prepare a Model Prison Manual for the Superintendence and Management of Prisons in India. The "**Model Prison Manual**" so prepared was circulated to all the State Governments/ UT Administrations in December 2003 for adoption for effective and efficient superintendence and management of prisons. This manual is an exhaustive document and has been prepared after wide consultations with the State Governments. It is, however, learnt that only a few States have so far adopted the model prison manual in its true spirit. The Parliamentary sub-committee on modernization of prisons has recently visited many states and has shown their disappointment on the poor adoption of the Model Prison Manual by the State Governments. They have asked the Government of India to take initiative for ensuring that the State Governments adopt the Model Prison Manual. You are accordingly once again advised to go through the Model Prison Manual and consider its adoption as per the requirements and suitability to the State.

Court Judgments

1 From time to time various High Courts and Supreme Court have given wide ranging judgments on conditions of prisoners, prisons and the rights of prisoners. Some of these path-breaking judgments/ rulings are important for the rank and file of prison officials/ State Governments. A compilation of such judgments was brought out by the BPR&D in 2000 in which an attempt was made to identify and document some latest rulings/ judgments of the Supreme Court/ High Courts relating to the area of prison administration. The same was thereafter revised and updated in 2007. This compilation is also available at the BPR&D website (www.bprd.gov.in). The same was also circulated to all the State Governments /UT Administrations to make this document more user friendly, important operational points of these rulings/ judgments were culled out and compiled. Some of the important judgments are annexed as Annexure-II.

2 In order to comply with and give effect to the important directions of the Hon'ble Supreme Court/High Courts, the Government of India has

- i) Introduced section 436A in Cr.PC to liberalize the bail conditions;
- ii) Introduced section 265A in Cr.PC for plea bargaining;
- iii) Initiated the Scheme for Prison Modernization in 2002 in order to reduce overcrowding, improve hygiene conditions as also provide better facilities to prisoners and prison personnel.

1 Government of India has prepared a Draft Policy Paper on Prisons with the approval of the Home Minister in order to broadly address the agreed upon objectives in incarceration and the measures to be implemented by the various State/UT Governments. The policy

objectives as well as the measures required to be taken by the State /UT Governments are annexed as Annexure-III.

2 The Sub Committee of the Department Related Parliamentary Standing Committee of the Ministry of Home Affairs presented to the Rajya Sabha on 26.02.2009 in their report of Modernization of Prison Scheme has also made certain observations, on which action needs to be taken. The report has already been circulated to all States for their comments and necessary action. Some of the important observations are annexed as Annexure-IV.

3 The National Human Rights Commission has also been issuing suitable instructions from time to time to all the States/ UTs against the violation of human rights in prisons and take suitable steps in this regard.

4 For the strengthening of security arrangements in jails, the Government of India has also been advising the State Governments vide advisories dated 21.9.1998 and 17.8.2006 for taking adequate and effective measures for tightening security and to ensure that prisoners are not in possession of prohibited items like mobile phones, weapons etc. The State Governments are requested to take appropriate measures in the light of the aforesaid advisories.

5 Recently in the case of Jaswant Singh v/s State (Criminal Appeal No. 257/2004), the Hon'ble Delhi High Court vide its order dated 30.9.2008 has directed to issue instructions for devising a foolproof system to avoid any lapse while transferring convicts/ accused persons from one jail to another. In the instant case, the prisoner had been released pre-maturely by the jail officials on being transferred from one jail to another.

6 As for the human resources who are actually going to man these prisons , it is recommended that the State shall consider:

Establishing well equipped training infrastructure in the state, with adequate skilled and well qualified instructional staff, to cater to the normal needs of basic and in-service training for the prison staff in different discipline.

Availing slots for in-service training being offered in ICA, Chandigarh, NICFS, New Delhi, RICA, Vellore and other institutes sponsored by BPR&D/MHA.

Deputing prison officials for training in specialized institutes in India and abroad in consultation with BPR&D and MHA.

Creating adequate posts for prison staff as per norms in different categories commensurate with operational needs of safe custody, reformation, rehabilitation, health care, legal assistance etc.

Filling up all the vacancies, presently running up to 17.58% (2006) within time bound frame and ensure proper cadre management through timely trainings, promotions recruitments etc.

Acknowledging the role of good work done by prison officers/ officials individually or in a team by way of a suitable reward schemes.

Rewarding those prison staff during whose tenure the prison shows remarkable improvement in term of elimination of or significant reduction, in the incidence of unnatural deaths, indiscipline by prisoners; number of prisoners pursuing educational and vocational programmes, implementation of Section 436-A and 265-A to 265-L CrPC, 1973 etc.

Nominating deserving prison officers for the award of Correctional Service Medals on the occasion of Independence/Republic Day and presenting the recipients such medals in ceremonial functions like State Day, Independence Day/Republic Day etc.

- 1 All the State Governments/ UT administrations are requested to take effective measures in the light of the recommendations made by the various committees/ court judgments, the Model Prison Manual and advisories issued by the Government of India from time to time for the effective and smooth functioning of the prisons.
- 2 The receipt of this letter may please be acknowledged.

Yours faithfully,
Sd/-
(Nirmaljeet Singh Kalsi)
Joint Secretary (CS)
Telefax:011-23092630

EXTRACTS FROM ANNEXURES

All India Committee on Jail Reforms [Mulla Committee - 1980-1983]

The Committee under the Chairmanship of Justice Anand Narain Mulla submitted its Report in 1983 in which it had made 658 recommendations, majority (90%) of which pertained to the State Governments. The Committee examined all aspects of prison administration and made wide-ranging recommendations, touching upon legislative, operational, security aspects besides matters like classification of prisoners, living conditions in prisons, medical and psychiatric services, treatment programmes, vocational training for prison inmates, problems relating to undertrials/ unconvicted prisoners, problems of women prisoners etc.

National Expert Committee on Women Prisoners

The National Expert Committee on Women Prisoners headed by Justice Krishna Iyer was constituted in 1986. The Committee appraised the situation of women in jails and made various recommendations. Some of the important recommendations include:

- a) Women prisoners should be informed of their rights under the law.
- b) Only the women constables should conduct searches on women prisoners.
- c) Medical check ups of women prisoners or undertrials, should be done by women doctors as soon as they are admitted to a prison.
- d) Women prisoners should be allowed to contact their families and communicate with their lawyers, women social workers, and voluntary organisations.
- e) Women prisoners should be allowed to keep their children with them.
- f) Voluntary organisations of women should be encouraged to be associated with women prisoners.
- g) Separate jails should be provided for women. prisoners
- h) Special prosecution officers should be available to present the case of women prisoners.

MEASURES TO BE IMPLEMENTED BY THE STATE GOVERNMENTS/UT ADMINISTRATIONS FOR ACHIEVING THE OBJECTIVES LAID OUT

6. Women Prisoners

6.1 Separate prisons for women offenders wherever feasible. At other places the women prisoners shall be kept in a strictly secluded female enclosures/ wards.

6.2 There shall be special accommodation for all necessary pre-natal and post natal care and treatment. Expectant Women or Women with Infants should have a system of parole to deliver the baby outside the prison and thereafter to bring up their infant in normal society upto certain age.

6.3 All women prisoners, and their children living with them in prison, should be provided the basic facilities to keeping in view the guidelines framed by the Supreme Court in case of R.D. Upadhaya vs State of Andhra Pradesh & others.

6.4 Educational and crèche facilities should be provided to the children living with their mothers in prison

6.5 There should be better visiting area for women inmates to meet their children. No meeting behind bars for women and their Children.

Important Observations made by the Sub Committee of the Department Related Parliamentary Standing Committee of the Ministry of Home Affairs

6 The States should have atleast one prison exclusively for women depending upon the average number of women prisoners in the respective State.

7 The States should create infrastructural facilities like crèches for the accompanying children of women prisoners, hygienic living conditions and provision of separate kitchen for women prisoners.

No.17011/2/2010-PR Government of India/Bharat Sarkar Ministry of Home Affairs/Grih Mantralaya

North Block, New Delhi
Dated the 8th November 2010.

To

The Principal Secretary (Prison) / Secretary (Home) (In-charge of Prisons) - All State Governments / UTs
DGs/ IGs incharge of prisons- All State Governments / UTs.

Subject: Best Prison Practice- regarding

Sir,

As you are aware, an all India conference of Correctional Administrators was held in New Delhi on 8th-9th September 2010. One of the agenda of the conference for discussion was the Best Prison Practices being adopted all over India. During the conference, an attempt has been made to identify the best practices in different prisons of the country. It is very essential to share this knowledge in order to bring about improvements in the system. Various State Governments/ UT Administrations have, accordingly, disseminated their knowledge towards the best prison practices being followed in their respective States/ UTs.

It was found that best practices in prisons exist in a number of areas broadly relate to security, use of technology, staff development, prison management, women prisoners, correctional programmes, and community participation and reintegration of offenders. These are given under the following heads:

(a) **Prison Security** covering technology use. **CCTV Surveillance** System in Delhi Prisons which has a control room set up in the Prison Headquarter. 258 C.C.T.Vs cameras

installed in Tihar and Rohini Jail complex. The controlling officers of the Central Surveillance Unit are working in three shifts of eight hours duration. West Bengal, Chhattisgarh, Karnataka, Tamil Nadu, Andhra Pradesh and Bihar also have CCTVs systems.

(b) Hand-held metal detectors, X-Ray Baggage Scanners, Multi zonal door frame metal detectors, laminated photo identity card for Prisoners in Thane, Maharashtra, breathing analyzers, mobile jammers system, public address system and staff training on prison security were other good practices.

Three tier security, quick reaction teams and Model Test Identification Parade Room at Tihar, and Tamil Nadu which has an Intelligence-cum-Vigilance wing.

(c) **High security wards** and prison architecture were found in Tamil Nadu to be a good practice. The Puzhal Prison complex with the high security block has been specially designed as being self-sufficient unit with a three gate system.

(d) **Use of Technology in Prisons - Biometric identification system** to store photographs and biometric finger prints of all inmates was found in Tihar Jail, and is a good practice that has been picked up by Jharkhand as well.

(e) **Video-Conferencing** system for production of undertrials in courts was originally started in Andhra Pradesh in 2001. It is now in use in Maharashtra, Tamil Nadu, Karnataka, Gujarat, West Bengal, Jharkhand, New Delhi and some more States and is a best practice as it prevents untoward incidents like escape and reduces expenditure on police escorts and vehicles. It also ensures the production of undertrials. Conducting of trials through video linkage is also being seriously thought and possibilities explored. The court has allowed it in a few cases.

(f) **Prison information system or prison management system**, a software to record and keep all prisoner information and prison movement activities in Goa, Tihar, Delhi and Tamil Nadu.

(g) **Visitor Management system** in Tihar, Delhi Prisons. This software has been developed to register the visits of friends and relatives in advance. This good practice has been picked up by Jharkhand as well.

(h) **Information Dissemination and Websites. Newsletters / magazines** publications by New Delhi, Andhra Pradesh, West Bengal, Tamil Nadu, Karnataka, Madhya Pradesh. In other places like Amritsar and Chandigarh, this is not a regular feature. Websites of Prison Departments of 18 States were found. Tamil Nadu has a very detailed Website that covers information under R.T.I. Act. So does the Puducherry prison. Tihar prisons cover a complete list of appellate authorities under the RTI Act.

(i) **Citizen's charter** has been put on the websites of Karnataka, Madhya Pradesh, Tihar and Andhra Pradesh.

(j) **Staff Development and welfare** - Tamil Nadu has nominated the maximum number of officers for the **President's Correctional Service Medals** for Distinguished Services, Meritorious Services, and Gallantry. Apart from this, the State has also instituted State Level Awards for commendable performance. These include the Chief Minister's Prison Service Medal for gallantry and a medal for outstanding devotion to duty. Karnataka has introduced a comprehensive **medical insurance scheme** for the staff and their family. Prison **Staff Welfare Fund** exists in Tihar and Karnataka. Andhra Pradesh conducts an annual retreat, a meeting with the prison officers to review an introspect for better administration.

(k) **Managerial Practices, Participative Management** in Tihar. Prisoners' Panchayat though found to be existing in almost all States has different levels of

effectiveness. Mahapanchayat is organized once a year in Tihar.

(l) **The Prisoners Contact with the outside world** - Tele-booking at Tihar, booking through e-mails was started at Central Jail, Amritsar but discontinued after sometime. ISO Certified Visiting system of Tihar prison. Model Interview halls at Tihar.

(m) **Telephone facilities** at Bangalore Central Prison. Prisoners public call booths have been set up in the prison complex with prisoners being provided with BSNL calling calls purchased from their own money. To streamline visits an alphabet mulaquat system at Haryana has been started.

(n) **Grievance Redressal System.** Complaint boxes exist in all prisons but their usage depends on the faith prisoners have with their grievances being properly redressed. Tamil Nadu has a Chief Minister Grievance day meeting wherein petitions are received and specific periods have been mentioned for senior officers to conduct grievance day for disposing of grievances at the earliest.

(o) **Liberalised Parole** - The Government of Madhya Pradesh has started a system of liberalised parole wherein the duration of parole has been increased from 21 days to 60 days, to be split into four quarters equally. This was done to facilitate prisoners in attending to agricultural needs to earn for their dependants. *The surety, once furnished by the prisoner, was made acceptable to the Jail Department for all future paroles till withdrawn by the maker.* All convicts, having spent 6 months in prison, were declared eligible for parole. Refusals or delays, beyond 90 days of parole by the District Magistrate have been made appealable before the DG Prisons. A provision of a second appeal to the State Government has also been made.

(p) **Modernization of Kitchen.** Model Jail, Chandigarh and Tihar, New Delhi. Variety of food in Tamil Nadu, Karnataka West Bengal. Food outsourcing at Karnataka. Healthy Food at Prison canteens in Gujarat, Patna and Bangalore.

(q) **Best practices exist in the areas of Making the best use of Prisons** - Some Unique work programmes including **Prison Shops outside** the prison (at Gujarat, Chhattisgarh, Lucknow). Other Innovative work Programmes include petrol pump at Central Jail, Raipur and Dal Bhati restaurant in Central Jail, Raipur. In other Activities - Education. Religious, Meditational and Spiritual Programmes and Recreational Activities / Sports Activities, Community Involvement. Creative Arts / Cultural Therapy was found as a best practice in West Bengal. Prison industry - the highest average production per prisoner was found in Maharashtra. Highest earning per inmate was reported from Gujarat.

(r) **Solar Energy in Prisons:** Prisoners of Central Jail, Bhopal have fabricated hot water solar plant with a capacity of 2500 liters per day. A Solar Geyser of 200 LPD capacity has also been fabricated. The hot water is being used for cooking. It saves Rs 36,000/-per month as fuel cost in Bhopal Jail. Approximate cost of 2500 liter plant is Rs. 2,00,000/- and that of 200 LPD Solar Geyser is Rs 20,000/-. The technology adopted by the Central Jail Bhopal can be replicated by various State Governments.

MAJOR CORRECTIONAL INITIATIVES IN INDIAN PRISONS

A number of correctional activities have also been started in different prisons in the country in association with NGOs and other State agencies. Some of the notable correctional programmes being run in Indian prisons are enumerated as under:-

Educational Programmes

More than three-fourth of the prison population in Indian Prisons is below high class while the remaining prison population has comparatively better educational qualifications. The less literate prisoners are not only given basic education but they are also encouraged to upgrade their vocational qualifications. Formal education programmes are offered to the prisoners with the help of National Open School, Indira Gandhi National Open University, State Open Universities, Distance Education Boards and technical courses in collaboration with the Technical Training Institute of various states.

The Government is giving training to educated prisoners to enable them to teach less educated and illiterate prisoners. Special attention is given to illiterate inmate so that he may be able to read and write his name within a week time. Advance educational avenues are available to prisoner so that if they want to pursue higher studies they may do so through open universities/ technical institution. Special attention is given for the prisoner appearing for various competitive examinations. Examination fee and course fee are borne by the Prison administration in case of poor prisoners.

The IGNOU Study Centres are running inside some of the jails which is providing higher education to the inmates as well as to the prison staff in different academic as well as professional Courses.

A convocation for prisoners was held at the Palayamkottai jail in Tamilnadu wherein 17 prisoners got post graduate degrees.

In one of the jails, i.e. Central Prison, Tiruchy, Tamilnadu, **a programme for cent percent literacy under the Sarva Shiksha Abhiyan (SSA)** was started in January, 2009 for the inmates.

During the year 2007, a total of 29107 prisoners were imparted elementary education and 60029 prisoners benefited by the adult education programmes in prisons. It is encouraging to note that 2564 prisoners had under gone higher education and 2778 prisoners completed Computer courses during their period of incarceration in prisons.

Stress Relieving Programmes

The prisoners are regularly sensitized on health issues like HIV and Drugs. A number of programmes of spiritual/moral education are also run in most prisons with the active help of the community and NGOs.

Classes of Yoga and Meditation courses for the Prisoners with the help of NGO's, Charitable Trust, Religious leaders and Institutions.

Moral lectures / Religious discourses conducted by spiritual leaders of various organizations.

Art of Living Courses, Pranic Healing courses, Vipasana, are being organized in Indian prisons to reduce stress in prisoners.

Cultural Programmes:

The prisoners also actively take part in cultural and sports programmes in the prisons.

- All important festivals irrespective of caste, creed and religion like Dussehra, X-mas, Id-ul-Fiter, Ratha Yatra, Raksha Bandhan etc. are being celebrated by the prison inmates in the jails.
- National days like Independence Day, Republic Day and Gandhi Jayanti are being celebrated by the inmates of all jails. □Sports meets, Quizzes, Essay & Song competitions and other cultural programmes are being organized among the inmates.

- T.V. sets have been provided to the prisoners for their awareness on daily news events, entertainment, knowledge enhancement and momentary engagement.
- Drama, Sangeet Samaroha, Melody Programme, Dance, Palls song and Bhajan Samaroh etc. are also being organized among the inmates of different jails.

Skill Building Programmes

The incarceration of sentenced person in prison not only lead to his stigmatization but also causes his social disorientation owing to his having remained practically cut-off from social intercourse with the rest of the society. Loss of job, if employed, and loss of means of livelihood are also one of the prime ill consequences of the incarceration. Hence, the most important single factor which can facilitate his reintegration with the society and prevent his relapse into the crime after release is the economic rehabilitation.

Training of prisoners in various vocational skills in the Prison has received a lot of importance in almost all the States/UTs. These training programmes provide opportunities for the prisons inmates to engage themselves in fruitful pursuits during the term of their sentence in prisons. Training for prison inmates not only affords value for one's work but also makes the prisoners learn skills which would enable them to follow a vocation after their release from the prison. The training facilities available in Indian prisons depend on the local conditions. Availability of raw material, local market needs, demands and marketing of finished products mainly decide the vocational training facilities available in any prison premises.

Vocational training programmes are being run in conventional trade like,

- carpentry
- blacksmithy
- tailoring
- plumbing
- bakery
- foot wear making
- leather goods
- latest avocation like Data Entry Operations
- typing
- desktop printing
- electrician,
- beauty parlour
- soft toy making
- wheel chair refurbishing
- yoga teaching
- telephone repair & maintenance etc.

All these vocational training programmes enhances employability potential of the prisoners after their release and help in their rehabilitation.

The training of prison inmates in vocational trades has led to the production of articles which have good market value, resulting in gainful productivity of the prison inmates. The gainful work done by the prison inmates not only provides a corrective approach to the psyche of the offender but also goes a long way in developing in them a responsive and respectful attitude towards the society. The prisoners not only develop self confidence and self esteem out of the valuable labour put in by them but these activities also lead them

towards earning a honorable livelihood after release from the prison. Vocational training is, therefore imparted, in such trades as shall fetch employment to the prisoners easily after their release from the prisons. Industrial Training Institutes (ITI) have been opened at Central Prisons, Jaipur and Ajmer by Department of Technical Education. One year and two year Diploma courses in Fitter v& house wiring, Carpentry, Cutting & sewing, Fitter and Diesel mechanic are being run for inmates.

Some of the items being produced in the prisoners run industry/workshops are given below:

- (i) Agricultural produce in prison farms,
- (ii) Furniture in carpentry workshops,
- (iii) Furniture and handicrafts making in woodwork workshops,
- (iv) Readymade garments producing in tailoring sections,
- (v) Furniture and handicrafts making in black smithy workshops,
- (vi) Clothes, rugs, towels etc in weaving sections,
- (vii) Soap, phenyl and detergents,
- (viii) Handloom products,
- (ix) Confectionary items in bakeries,
- (x) Shoes and leather goods in leather workshops.
- (xi) Stationery and paper products etc.

Agriculture, Horticulture and Medicine Plant cultivation

Cultivation is done in the jails at Keonjhar, Bolangiri and Bhanjanagar. The inmates are learning new type of skills and ability in trades like Agricultural farming, vegetables and Horticulture. These have been taken up in many jails across the country, some of them being Bhawanipatna, Choudwar, Bhubaneswar, Puri, Koraput, Bolangiri, Keonjhar and Biju Patnaik Open Air Ashram, Jamujhari etc.

Medicinal plant cultivation is taken up in a 40 acre land at Biju Patnaik Open Air Ashram, Jamujhari. Besides, Jatropha has been planted for production of Biodiesel Plant. Tissues culture programme has been taken up extensively in many jails and banana has been made a profitable source. Ready-to-eat food packets are also prepared by women prisoners in Bhubaneswar Special Jail in collaboration with W.& C.D. Deptt. and ICDS Organization.

Female Prisoners And Welfare Of Their Children

Female prisoners are allowed to keep their children with them in the jail upto six years of age. The children lodged in prisons are provided with clothes, diet, bed, medical care and education by the Prison Department and the help of NGOs is also taken. The children are also taken to the picnic outside at regular intervals.

In many jails, there is a separate Crèche and a Nursery run in association with the NGO. There are adequate recreational and educational facilities for the children including a toy garden. Every possible step is taken for all-round development of children. The Prison department in association with NGOs ensures the complete education of the child no matter whether the mother is in jail or released. There are trained workers and nursery education is provided to them in the crèche. When the child attained the 6 years of age, the child is admitted in a boarding school with assistance from NGOs after the consent of the mother.

In some of the prisons, marriage ceremonies are arranged and solemnized by the jail staff in association with the NGOs. In some cases, the prisoner have shown desire to marry with the victim. Such marriages have been encouraged and solemnized in prisons.

NGO'S In Reformation And Rehabilitation

Community participation in the Jail correctional programmes is a trend setter for the Jails worldwide. In jails community participation is achieved through NGO's whereby many of the reformation and rehabilitation activities are conducted in jail in addition to own efforts of prison administration. NGO's have been providing various kind of services like providing community aids and sponsorship for the children of prisoners for their education, providing educational aids in prison and outside, facilitating in getting admitted in hostel for the children who are above six years of age.

The Prison Department in association with NGOs, ensures the complete education of the children of inmates, no matter whether the mother is in jail or released. The further education is given to the child only when the mother agrees for the same

Women Prisons/ special initiatives

Exclusive women prisons have been set up in certain states for security and earlier rehabilitation of women. In the State of Tamilnadu, these prisons are exclusively administered also be women.

Different marriage ceremonies were arranged and solemnized by the jail staff in association with the NGOs. In tribal -dominated societies like Orissa, females under the statutory age of 16, co-habit with young men of their choice, which technically falls under the mischief of section 376 IPC.

Open Jails

Open jails/ open camps or wall-less prisons are a result of scientific premeditation and these can be considered as useful "missing link "of correctional process. The primary motive is to fill the gap between incarceration and responsibilities of a free society. In Rajasthan, prisoners are allowed to stay with their family in these open camps. There are 29 open jails in India of which 13 are in Rajasthan.

The only Open Air Jail in Orissa is now renamed as "Biju Pattanaik Open Air Ashram". Various activities relating to agriculture, horticulture and cottage industries are going on this Open Air Ashram. Apart from this aromatic & medicinal plants are also cultivated here.

All the State Governments/ UT administrations are advised to adopt the best prison practices being followed by various State Governments which will not only improve the management of prison system in a better way but also will go a long way in reformation of prison inmates.

The receipt of this letter may please be acknowledged.

Yours faithfully
Sd/-
(Neeraj Kansal)
Director (CS)
Telefax: 23092933

New Delhi, the 18th February, 2011

To

**The Principal Secretary (Prison/ Home in charge of prison)
All States/ UTs**

**Subject: Advisory for appointment and working of Non-Official Visitors for
Prisons.**

Sir/ Madam,

As you are aware that a transparent, open and accessible prison system is likely to be accountable and successful in maintaining human rights standards. Prison visiting system is a system to bring more transparency and accountability. It has two types of visitors namely Official Visitors (OVs) and Non-official Visitors (NOVs). The prison visiting system relating to Non-official Visitors needs to be streamlined. Since prison administration is under increasing public scrutiny and the role of civil society is important, it is essential that only enlightened & concerned citizens be appointed as Non-official Visitors.

1 Non-Official Visitors may be appointed for all prisons without delay. The system of appointment should be transparent and democratic with prescribed criteria. The members who are selected as NOVs should have knowledge and/ or expertise in areas such as prison reforms, legal rights, counseling, social work, criminology, adult education, vocational training courses for adult populations, diet and nutrition, child care, music, yoga etc. Minimum number of NOVs to each category of prisons must be clearly mandated. NOV system must become operational on a regular and stable basis. Women visitors may also be appointed as Non-official Visitors to look into the issues of women prisoners. The State Human Rights Commission suggestions on appointment of Non-Official Visitors should be taken into consideration by the State Government.

2 The terms of reference for the panel of NOVs should include monitoring of prison conditions, implementation of prison reforms, legal, mental and rehabilitative assistance, prisoners' grievance and staff problems.

3 The number of visits made and the quality of service rendered must be the criteria for re-appointment or termination of the services of NOVs. The NOVs

appointed to each jail may also be paid reasonable honorarium to cover their incidental expenses on transport, stationery, etc.

1 To coordinate between the Official Visitors and Non-official Visitors, there is provision in the Jail Manuals for establishment of a Board of Visitors to be constituted by the Deputy Commissioner / District Magistrates for each jail. The meeting of the Board of Visitors should be held once in a quarter. The Deputy Commissioners/ District Magistrates should be impressed on the need for paying special attention in constituting the Board of Visitors and to ensure that the meeting of the Board is held regularly. At the first meeting, roster of visits should be prepared for the next 12 months which permits a monthly visit to each jail by a visitor either official or non official. In addition every NOV may also visit the prison once in a month at a time outside the prescribed roster.

2 The non-official visitors appointed by the Government have to discharge their duties within the parameters of the functions of the Board of Visitors, which are (a) to visit the

prisons regularly, (b) to help the administration in correctional matters, and

(c) to attend to the requests and complaints of the prisoners pertaining to their care and welfare. After completion of the visit, the visitor should enter his remarks in the Visitor's Book, as required by Rules and advise the Superintendent to take such remedial measures as are required with utmost expedition.

1 Guidelines for Interviewers and Non-Official Visitors as have been prepared by the Bureau of Police Research and Development/ MHA, should be supplied to the Superintendent of each Jail. He/she should give a copy of these guidelines and also a copy of the Chapter in the Prison Manual covering visitors' duties to the Non-Official Visitors at the time of their appointment.

2 On the appointment of Non-Official Visitors, they must be sensitized and trained about their duties, role and responsibilities. Sensitization and training programmes must be organized for Non-Official Visitors by the prison headquarters in association with the Training Institutes like ICA, Chandigarh, TISS Mumbai, APCA Vellore, RICA West Bengal and RICAs in other States. A workshop of NOV's from across the State should be organized once a year by the State prison training institute for sharing their experiences/ learning and documentation of good practices models.

3 The DG /IG (Prisons) should obtain for six-monthly reports from the prison superintendents about the regularity of visits and the nature of work done by NOV's. The Board of Visitors should submit quarterly reports to the State Government under intimation to the State Human Rights Commission. Prison authorities must provide action taken reports to the Board of Visitors and the concerned State Human Rights Commission. This mechanism will ensure accountability of not only the visitors but

also the prison administration and help in bringing improvements in the prison administration.

The receipt of the same may kindly be acknowledged.

Yours faithfully

Sd/-

(K.K. Pathak)

Joint Secretary to the Government of India

Tel: 23092630 Fax: 23092675

PART - II
JUVENILE IN CONFLICT
WITH LAW

भाग II:
विधि से संघर्ष-रत बालक

**Section I:
STATUTORY PROVISIONS**

**भाग I:
वधानिक प्रावधान**

Code of Criminal Procedure, 1973

Section 27 - Jurisdiction in the case of juveniles

Any offence not punishable with death or imprisonment for life, committed by any person who at the date when he appears or is brought before the Court is under the age of sixteen years, may be tried by the Court of a Chief Judicial Magistrate, or by any Court specially empowered under the Children Act, 1960 (60 of 1960), or any other law for the time being in force providing for the treatment, training and rehabilitation of youthful offenders.

Section 361 - Special reasons to be recorded in certain cases

(b) A youthful offender under the Children Act, 1960 (60 of 1960), or any other law for the time being in force for the treatment, training or rehabilitation of youthful offenders, but has not done so, it shall record in its judgment the special reasons for not having done so.

Indian Penal Code, 1860

Section 82 - Act of a child under seven years of age

Nothing is an offence which is done by a child under seven years of age.

Section 83 - Act of a child above seven and under twelve of immature understanding

Nothing is an offence which is done by a child above seven years of age and under twelve, who has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct on that occasion.

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

POLICE

I. RELEVANT STATUTORY PROVISIONS

A. Juvenile Justice (Care and Protection of Children) Act, 2000

Section	Content
2(w)	'Special Juvenile Police Unit' (SJPU) defined.
10	Steps to be taken on apprehension of juvenile by police.
13	Information of arrest/apprehension of juvenile by police to parent, guardian and Probation Officer.
22	Provision in respect of escaped juvenile.
63	Constitution of 'Special Juvenile Police Unit' to deal with juvenile.

B. Juvenile Justice (Care and Protection of Children) Rules, 2007

Rule	Content
11	Pre and post-production action of Police.
13 (2)(d)	Petty offences can be disposed off by the police.
75	Police Officers to be in plain clothes except at the time of arrest
76	Prohibition on the use of handcuffs and fetters.
84	Constitution and functions of 'Special Juvenile Police unit

II. ORGANISATION

1. An officer of the rank of not less than Inspector General of Police (IGP) to act as Nodal Officer to coordinate and upgrade role of Police in issues pertaining to Juvenile. [Rule 84 (10)]
2. In every district and city there should be a 'Special Juvenile Police Unit' (SJPU) to handle juvenile to be constituted within 4 months of the notification of the Rules i.e. by 26.2.2008. [Section 63(3) r/w Rule 84(1)]
3. Superintendent of Police of district to head SJPU and oversee its functioning. [Rule 84 (9)]
4. SJPU shall consist of Juvenile or Child Welfare Officer (JCWO) of the rank of Police Inspector and two paid social workers one of whom shall be a woman. [Rule 84 (1)]
5. In every police station at least one officer, specially instructed and trained, to be designated as the JCWO to deal with juvenile. [Section 63(2)(3) r/w Rule 84 (3)]
6. List of designated JCWO and members of SJPU with contact details to be prominently displayed in every police station. [Rule 11 (4)]
7. SJPU to seek assistance from NGOs, Panchayat & Gramshabhas and Residents Welfare Associations. [Rule 84 (7) (8)]
8. Central and State Government to monitor establishment and functioning of SJPU. [Rule 64(1)]

III. DUTIES & FUNCTIONS

A. APPREHENSION/ARREST

1. In case of petty offences (punishable with fine upto Rs.1000/- only), the police may dispose off the case at the police station itself. [Rule 13(2) (d)]
2. In case of non serious offences (punishable with imprisonment upto 7 years) juvenile can be apprehended only if it is "necessary in the interest of the juvenile". [Rule 11(7)(9)]
3. In case of serious offence (punishable with imprisonment for more than 7 years) juvenile can be apprehended. [Rule 11 (7)]

B. DUTIES UPON APPREHENSION

1. Upon apprehension of a juvenile, the police shall not:

- (i) Hand-cuff, chain or otherwise fetter the juvenile; [Rule 76]
- (ii) Send the juvenile to police lock up or jail; [Section 10(1) proviso r/w Rule 11 (3)]

Courts have even awarded monetary compensation where juvenile has been kept in jail or police lock up.

2. Upon apprehension of Juvenile the police shall:

- (i) Inform the designated JCWO of the nearest police station to take charge of the juvenile and matter; [Section 10 (1) r/w Rule 11(1)(a)]
- (ii) Inform the parents/guardian about apprehension of the juvenile, address of the Board and date and time of production; [Section 13 (a) r/w Rule 11 (1)(b)]
- (iii) Explain to the parents/guardian about the possible need of personal bond/surety; [Section 50 (2) Cr.P.C.]
- (iv) Give copy of police report to the parents/guardian free of cost; [Section 50 (1) r/w section 50A (1) & 207 Cr.P.C]
- (v) Ask the parents/guardian to bring documents regarding age of juvenile;
- (vi) Inform the Probation Officer; [Section 13 (b) r/w Rule 11 (1)(c)]
- (vii) Record social background of the juvenile and circumstances of apprehension in the case diary and forward to the Board; [Rule 11 (6)]
- (viii) Be responsible for the safety, food and basic amenities during the period of apprehension; [Rule 11 (13)]
- (ix) Produce before the Board within 24 hours of apprehension; [Section 10 r/w Rule 11 (2)] and in case the Board is not sitting, the juvenile shall be produced before a single member of the Board, who is empowered to pass all orders except final disposal; [Sec. 5(2) r/w Rule 11 (10)]
- (x) Where juvenile is not released on bail, he shall be sent to Observation Home; [Section 12(2)]

3. In case of apprehension apparently in the interest of juvenile, the police shall make a report to the Board for transferring the child to the Child Welfare Committee. [Rule 11 (8) r/w Rule 13 (1)(b)]

4. In case of non-serious offence, no FIR or charge-sheet is required. Police may record the information regarding the alleged incident in General Diary. A social background report, circumstances of apprehension and offence shall be submitted to the Board before the first hearing. [Rule 11 (11)]

C. OTHER IMPORTANT ASPECTS

1. The police shall complete the investigation at the earliest having regard to the requirement of the Act to complete the inquiry by the Board within 4 months. [proviso to section 14 (1)]

2. The police shall attend the Board proceedings in plain clothes and shall not wear police uniform except at the time of arrest. [Rule 75]

3. Every juvenile is entitled to be released on bail, except:

(i) Release is likely to bring him into association with any known criminal, or

(ii) Expose him to moral, physical or psychological danger, or

(iii) Release would defeat the ends of justice. [Section 12 (1)]

4. In case of escape, police may trace the juvenile and send him back. No proceeding for such escape can be initiated against the juvenile. [Section 22, Rule 18(2)(a)]

5. SJPU to act as watch-dog against cruelty, abuse and exploitation of juvenile. [Rule 84(5)]

6. Police to accompany the juvenile for restoring him back to the family. [Rule 65(4)]

7. Police Officer if found guilty of torturing a child, is liable to be removed from service besides being prosecuted under section 23 of the Act. [Rule 84 (11)]

PROBATION OFFICER

I. RELEVANT STATUTORY PROVISIONS

A. Juvenile Justice (Care and Protection of Children) Act, 2000

Section	Content
2(s)	'Probation Officer' defined.
12(1)	Board while releasing juvenile on bail may place him under the supervision of a Probation Officer.
13 (b)	Upon receipt of information of apprehension of juvenile, Probation Officer to gather antecedents and family background of the juvenile.
15 (2)	Prepare and submit Social Investigation Report on juvenile to the Board in Form - IV.
15(3)	Board may place a juvenile under supervision of a Probation Officer while passing final order.
51	Report of Probation Officer shall be confidential; however, substance of the report may be communicated to the juvenile/parent.
59(1)	Probation Officer may submit report to the Board for permitting a juvenile (in Special Home) to live with his parent/ guardian/ authorised person.

B. Juvenile Justice (Care and Protection of Children) Rules, 2007

Rule	Content
11(1)(c)	Upon receipt of information of apprehension of juvenile, Probation Officer to gather antecedents and family background of the juvenile.
15(2)	Prepare and submit Social Investigation Report on juvenile to the Board for its consideration before passing final order in Form -IV.

15(3)	Probation Officer to prepare individual care plan for the juvenile.
15(8)	Board may place the juvenile under supervision of a Probation Officer while passing final order.
17(2)	The Probation Officer shall place each case before the Management Committee for ensuring proper release and social mainstreaming of the juvenile post-release.
50(2)	Every newly admitted shall be allotted a case worker juvenile who may be a Probation Officer.
55(3)	The Management Committee of each Institution to consist of a Probation officer as a member.
65(8)	Probation Officer to prepare restoration and follow up plan for juvenile and submit to the Board.
68(3)	The whole-time staff of Observation/ Special Home may, consist of Probation Officer.
79(1)	Before sending a juvenile outside its jurisdiction, the Board may direct a probation officer to make enquiries as to the fitness and willingness of the relative or other person to receive the juvenile.
85	Probation Officers may be appointed from the voluntary organization and social workers found fit for the purpose.
87	Duties, functions and responsibilities of Probation Officer.

II. DUTIES & FUNCTION

A. Obtain Information upon apprehension of Juvenile by Police

Upon receipt of information of apprehension of juvenile, Probation Officer shall obtain details regarding antecedents and family background of the juvenile and other material circumstances likely to be of assistance to the Board for making the inquiry. [Section 13 (b) and Rule 11 (1) (c)]

B. Social Investigation Report

1. Probation Officer shall prepare a Social Investigation Report (SIR) in Form IV of the Rules and submit to the Board.

2. SIR shall be prepared through:

- Personal interview of the juvenile;
- Information from the family;
- Information from social agencies and other sources.

3. SIR shall contain:

- Family history of the juvenile, i.e., education, occupation, earning etc. of parents/guardian and sibling;
- Antecedents of the juvenile, like habits and interest, companion and their influence, school and/or work record, report of neighbour etc.;
- Mental and physical condition of juvenile;
- Opinion of experts consulted etc.
- Analysis of the case including reasons for delinquency;
- Recommendation and planning for dealing with juvenile [Section 15(2) r/w Rule 15(2), 87 (1)(a) and Form - IV]

C. Supervision of Juvenile

1. A juvenile may be placed under the supervision of a Probation Officer by the Board; at three different stages, namely

- a. Bail [Section 12 (1)]
- b. Final Order [Section 15 (3) r/w Rule 15(8)]
- c. Post release [Rules 65(9) & (10)]

2. Where such supervision order is passed, the Probation Officer shall supervise the juvenile for such period not exceeding three years and subject to such conditions that may be specified by the Board.

3. Supervision includes:

- (a) Assisting the juvenile to develop contacts with family and also providing assistance to family members; [Rule 87(1)(f)]

(b) Establishing linkages with voluntary workers and organizations to facilitate rehabilitation and social reintegration of juveniles and to ensure the necessary follow-up; [Rule 87(1)(i)]

(c) Follow-up of juveniles after their release and extending help and guidance to them; [Rule 87(1)(j)]

(d) Visiting regularly the residence of the juvenile under their supervision and also places of employment or school attended by such juvenile and submitting fortnightly reports as prescribed in Form XXI; [Rule 87(1)(k)]

(e) Maintaining case file and such registers as may be specified from time to time. [Rule 87(1)(m)]

4. If the Juvenile has not been of good behaviour, the Probation Officer shall report to the Board for appropriate orders. [Proviso to Section 15 (3)]

D. Assistance to Institutionalised Juvenile

As soon as Probation Officer is allotted a juvenile on his admission to an institution, he shall assist the juvenile in the following ways:

- Communicate with family/guardian of juvenile and also provide assistance to family members; [Rule 87 (1) (f)]
- Attend Board proceedings and submit reports, as and when required; [Rule 87 (1) (b)]
- Clarify problems of Juvenile and deal with their difficulties in institutional life. [Rule 87 (1) (c)]
- Participate in the orientation, monitoring, education, vocational and rehabilitation programmes of the juvenile. [Rule 87 (1) (d)]
- Establish co-operation and understanding between the juvenile and the Officer- in-charge. [Rule 87 (1) (e)]
- Accompany juveniles, where-ever possible, from the office of the Board to Observation/Special Home. [Rule 87 (1) (l)]

E. Case Worker

A newly admitted juvenile to an Institution may be allotted a Probation Officer as a Case Worker. [Rule 50 (2)]

[Note: please see duties of case worker under the 'NGO' part]

F. Information of Unnatural Death

Probation Officer shall immediately inform the Officer-in-Charge and the Medical Officer about unnatural death of a juvenile. [Rule 59 (3)]

G. Prohibitions

Probation Officer shall not:

- (i) employ a juvenile under his supervision for his own purposes;
- (ii) take any private service;
- (iii) exploit/abuse in any manner physically, sexually, or emotionally. [Rule 89]

JUVENILE JUSTICE BOARD

I. RELEVANT STATUTORY PROVISIONS

A. Juvenile Justice (Care and Protection of Children) Act, 2000

Section	Content
2 (c)	'Board' defined as Juvenile Justice Board (JJB).
4	Constitution of Board in every District.
5	Procedure regarding hearing by Board.
6	Powers of Board
7	Procedure to be followed by a Magistrate not empowered under the Act.
7A	Procedure to be followed when claim of juvenility is raised before any court.
10	Production of juvenile before Board within 24 hours.

12	Bail of Juvenile.
14	Inquiry by Board to be completed in 4 months.
15	Final order that may be passed by the Board.
16	Order that may not be passed against juvenile
17	Proceeding under Chapter VIII Cr. P.C. (Security for peace and good behaviour) shall not be instituted against juvenile.
18	No joint proceeding of juvenile with adult.
20	Pending cases to be decided as per Act, even if the ceases to juvenile be so on or before commencement of the Act.
46	Board may require any parent or guardian to be present in the proceeding.
47	Board may dispense with attendance of juvenile.
48	Transfer of Juvenile suffering from serious disease like leprosy, hepatitis-B, tuberculosis etc. to approved places for treatment etc.
49	Presumption and determination of the Age.
50	Sending a juvenile out side jurisdiction.
52	Appeal to Court of Sessions
53	Revision by High Court.
54	Procedure for trial of summons case laid down in Cr.P.C. to apply in inquiries, appeals and revisions.
55	Power to amend orders as to the institution or fit person where juvenile is to be kept and to correct clerical mistakes.
56	Discharge or transfer a juvenile from one Special Home to another. of
58	Transfer of juvenile of unsound mind or suffering from leprosy or addicted to drugs to appropriate place for treatment.
59	Release and absence of juvenile from Institution.
60	Contribution by and payment to parents.

64	Procedure in respect of juvenile undergoing sentence at commencement of the Act
65	Provisions of Chapter XXXIII Cr.P.C. regarding bonds to apply.

B. Juvenile Justice (Care and Protection of Children) Rules, 2007

Rules	Content
4	Constitution of Board in every District.
5	Composition of Board
6	Tenure of Board
7	Qualifications of members of Board
8	Sitting and conveyance allowance for Members.
9	Sittings of the Board
10	Functions of the Board.
11(2)	Production of juvenile before Board within 24 hours.
11(10)	Production before single member, if Board is not sitting.
11(14)	Board to ratify order of individual member.
12	Procedure for determination of age.
13	Post production process by the Board.
14	Legal Aid to be ensured by Board.
15	Completion of Inquiry in four months and passing of final order.
18	Cognizance of offences under sections 21 to 26 of the Act.
54 (2)	Case files of the Board to be computerised.
55(10)	Review of Children's Suggestion Book.
61	Ensure proper treatment of juvenile in custody suffering from

	dangerous disease or mental health problem.
62	Release and absence of juvenile from Institution.
65	Restoration and Follow-up plan.
77	Procedure to be followed by Magistrate not empowered under the Act
78	Transfer of juvenile resident of a place outside jurisdiction.
79	Procedure for sending a juvenile a foreigner outside jurisdiction. including
83	Infrastructure and staff of Board.
97	Procedure to deal with pending cases.
98	Procedure to determine juvenility in disposed of cases.
99	Disposal of records and documents.
Form I	Supervision Order
Form II	Detention Order
Form III	Order for Social Investigation Report
Form V	Undertaking/ bond by parent in whose care juvenile is placed.
Form VI	Personal bond of juvenile for release
Form XXI	Individual Care plan
Form XXII	Escort order

II. CONSTITUTION

2006 amendment to the Act mandates constitution of a Juvenile Justice Board in every District latest by 22.8.2007. [Section 4]

A. Composition

- Board to comprise of three members
 - o Principal Magistrate,

- o Social worker, and
- o Woman social worker. (Section 4(2) r/w Rule 5)

B. Sitting

1. Premises

- Proceedings to be held in the premises of an Observation Home or in its proximity.
- Not to be held within any court premises.
- The premises shall be child-friendly and shall not look like a court room.
- Board shall not sit on a raised platform.
- There shall be no witness box [Rule 9 (1) & (2)]

2. Meetings

- Board shall meet on all working days of a week, unless the case pendency is less in a particular district and concerned authority issues an order in this regard.
- A minimum of three-fourth attendance of the Chairperson and Members of the Board is necessary in a year.
- Every member of the Board shall attend a minimum of five hours per sitting. [Rule 9 (3) (4) & (5)]

III. POWERS AND FUNCTIONS

A. Exclusive Jurisdiction

Board has exclusive jurisdiction to deal with Juvenile in conflict with law notwithstanding any other law for the time being in force. [Section 6]

B. Functions of the Board

- (a) To adjudicate and decide cases of juvenile in conflict with law; [Section 6 r/w Rule 10(a)]
- (b) Take cognizance of crimes committed under section 23 to 28 of the Act; [Section 27 r/w Rule 10 (b) and 18]
- (c) Monitor Institutions for juveniles in conflict with law; [Rule 10 (c)]

(d) Deal with non-compliance on the part of concerned government functionaries or functionaries of voluntary organizations; [Rule 10 (d)]

(e) Direct District authority and Police to provide necessary infrastructure or facilities so that minimum standards of justice and treatment are maintained in the spirit of the Act; [Rule 10 (e)]

(f) Maintain liaison with the Child Welfare Committee in respect of children needing care and protection; [Rule 10(f)]

(g) Liaison with Boards in other districts to facilitate speedy inquiry and disposal of cases through due process of law;

(h) Send quarterly information about juveniles in conflict with law produced before them to the District and State Child Protection Unit, State Government and Chief Judicial Magistrate or Chief Metropolitan Magistrate; [Rule 10 (i)]

(i) Grant permission to visit the premises of an Institution. [Rule 73 (1)]

C. Powers under Cr. P.C.

Every Board has the powers conferred by the Cr.P.C. [Rule 5(2)]

D. Production before Single Member

In case Board is not sitting, the juvenile shall be produced before any single member of the Board, who is empowered to pass all appropriate orders except final disposal. [Section 5(2) r/w Rule 11 (10)]. Any such order shall be ratified by the Board in the next meeting [Rule 11 (14)]. However, 2 members including Principal Magistrate can pass final order. [Section 5(3)]

E. Decision by majority

In the event of any difference of opinion among the members of the Board in the interim or final disposition, the opinion of the majority shall prevail. Where there is no such majority, the opinion of the Principal Magistrate shall prevail.[Section 5(4)]

IV. INQUIRY

A. Order on First Production of Juvenile

On production of juvenile, the Board shall pass the following order in the first summary inquiry on the same day, namely:-

- (i) Dispose of the case, if the evidence of his conflict with law appears to be unfounded or where the juvenile is involved in trivial law breaking; or [Rule 13(1)(a)]
- (ii) Transfer the juvenile to the CWC, if the police report states that the juvenile is in need of care and protection; or [Rule 13(1)(b)]
- (iii) Consider release of juvenile on bail; or [Section 12]
- (iv) Release the juvenile in the supervision or custody of fit persons/ institutions or Probation Officers, through an order in Form-I; or [Rule 13 (1) (c)]
- (v) Detain the juvenile in an Observation Home or fit institution pending inquiry, only in cases of juvenile's involvement in serious offences as per order in Form-II; [Rule 13 (1)(d)]

B. Age Determination

1. Determination by Board

- (a) When a person is brought before a Board under any of the provisions of the Act who appears to be juvenile, the Board shall make due inquiry as to the age of that person [Section 49].
- (b) The Board shall determine the age of juvenile within a period of 30 days. [Rule 12 (1)]

2. Determination by Magistrate/Court

- (a) When a person brought before a Magistrate is a juvenile in his opinion, the magistrate shall transfer the juvenile and the record to the Board. The Board shall then hold the inquiry as if the juvenile was originally brought before it. [Section 7 r/w Rule 77]
- (b) When a claim of juvenility is raised / arises before any court at any stage even after final disposal of the case, such claim shall be decided by the Court after taking evidence in accordance with the provisions of the Act and Rule. [Section 7 A]

3. Relevant Date

Relevant date for determination of juvenility is the date of offence, provided person had not completed 18 years of age as on or before the date of commencement of the Act ,i.e.,1-4-2001.4 [section 2 (i)]

The Act was amended in 2006, inter alia, amending sections 2(l), 7A, 20 and 64 cumulative effect of which is that even if the juvenile has ceased to be so on 01.04.2001, still he will be considered as juvenile if he was below 18 years of age on the date of commission of offence.5

4. Procedure to be adopted

a. Prima facie Opinion

- On production of a person, the Board is to decide the Juvenility or otherwise, prima facie, on the basis of physical appearance or documents, if available, and send him to the Observation Home or jail. [Rule 12 (2)]
- The Board can consider bail application of the person, if it is of the prima facie opinion that the person produced is apparently a juvenile. [Section 12(1)]

b. Conclusive Enquiry

- The age determination inquiry shall be conducted by the Board by seeking evidence by obtaining

i. Documentary evidence

- o matriculation or equivalent certificates;
- o date of birth certificate from the school;
- o birth certificate given by corporation or municipal authority or panchayat;

ii. Medical Opinion

o in the absence of aforesaid documents, the medical opinion can be sought from a Medical Board. The Board may, for reasons to be recorded, give benefit to the juvenile by considering his/her age on lower side within the margin of one year. [Rule12 (3)]

o Determination by the Board as above by an order is conclusive proof of the age as regards such juvenile. [Rule12 (3)(4)]

C. Bail

1. When any person apparently a juvenile is brought before a Board, such person shall be released on bail or placed under the supervision of a Probation Officer/ fit institution/ fit person.

2. Bail can be denied only if there appear reasonable grounds for believing that:

- (i) the release is likely to bring him into association with any known criminal, or
- (ii) expose him to moral, physical or psychological danger, or
- (iii) his release would defeat the ends of justice.[Section 12]

D. Procedure

1. "Petty offences" may be disposed off by the Board through summary proceedings or inquiry. [Rule 13 (2) (d)]

2. The Board shall follow the procedure of trial in summons cases, as far as may be, in inquiry pertaining to non-serious offences (punishable with imprisonment upto 7 years). [Section 54(1) r/w Rule 13 (2) (d)]

3. The Board shall follow the procedure of trial in summons cases in inquiry pertaining to serious offences (punishable with imprisonment of more than 7 years for adults). [Section 54(1) r/w Rule 13 (2) (d) (e)]

4. The Board has to satisfy that the juvenile has not been subjected to any ill-treatment by the police or lawyer or probation officer. [Rule 13 (2) (a)]

5. The Board shall make sure that the parents / guardian have been -

(i) Supplied with copy of police report by the concerned police officer or JCWO before or on the day of production of the juvenile in the Board;

(ii) Informed about apprehension of the Juvenile and production before the Board;

(iii) Informed about the possible need of personal bond/surety in the event of bail be granted and the provision relating to bonds in Chapter 33 Cr.PC shall apply.[Section 50 & 65 r/w section 50A Cr.PC]

6. The Board shall ensure that the police has informed the probation officer about the apprehension of the Juvenile for the purpose of obtaining information of the background of the juvenile and other necessary material circumstances. [Section 13 (b) r/w Rule 11 (1)(c)]

7. The Board shall notify the next date of hearing, not later than 15 days of the first summary enquiry and also seek social investigation report from the concerned Probation Officer through an order in Form-III; [Rule 13 (1)]
8. The Board has to conduct the proceedings in a child friendly atmosphere [Rule 13 (2) (b) & 13(4)].
9. Every juvenile shall be given the opportunity to be heard and participate in his inquiry. [Rule 13 (2) (c)]
10. The Board may require any parent or guardian to be present at any proceeding. [Section 46]
11. The Board may dispense with attendance of the juvenile, if it is not essential for the purpose of inquiry. [Section 47]
12. The inquiry shall be conducted in the spirit of non-adversarial proceedings. [Rule 13 (3) r/w Rule 14 (1)]
13. The Board may use the powers of questioning witnesses conferred by section 165 of the Indian Evidence Act, 1872 [Rule 13 (3)]
14. The Board shall proceed with the presumptions that favour the juvenile's right to be restored. [Rules 13 (3)]
15. The Board may take into account the report of the police containing circumstances of apprehension and offence alleged to have been committed. [Rule 13 (5)]
16. The Board shall take into account the Social Investigation Report prepared by Probation Officer or voluntary organization. [Section 15(2) r/w Rule 13 (5) and 15(2)]
17. The Board shall ensure grant of free legal aid and right to counsel. [Rule 14]
18. No juvenile shall be charged with or tried for any offence together with an adult. [Section 18]
19. No proceeding shall be instituted and no order shall be passed against juvenile regarding security for keeping peace and good behaviour under Chapter VIII Cr.P.C. [Section 17]
20. Use of accusatory words, such as, arrest, remand, accused, charge sheet, trial, prosecution, warrant, summons, conviction, inmate, delinquent, neglected, custody or jail is prohibited. [Rule 3 (VIII)]

E. Continuation of Inquiry in respect of Juvenile ceased to be a child

Inquiry shall be continued by the Board even if the juvenile ceases to be a child during the pendency of the inquiry and orders may be passed as if he is a juvenile. [Section 3]

F. Period of Inquiry

1. The inquiry to be completed within a period of 4 months after the first summary inquiry unless extended for reasons in writing. [Proviso to Section 14 (1) r/w Rule 13 (6) and Rule 15 (1)]

2. The period of inquiry may be extended by 2 months in the following exceptional cases:

- cases involving trans-national criminality; or
- large number of accused; or
- inordinate delay in production of witnesses [Rule 13(6)]

3. Delay beyond 4 to 6 months leads to the termination of proceedings in non-serious offences. [Rule 13 (7)]

4. Delay beyond six months in serious offence has to be reported by the Board to the CJM/CMM stating the reason for delay and steps taken. [Rule 13 (8)]

G. Legal Aid

1. Every child who has to file or defend a case is entitled to free legal services under Legal Services Authority Act, 1987. [Section 12(1)(c) of Legal Services Authority Act,1987]

2. The Board shall ensure free legal services to all juvenile through State

Legal Aid Services Authority or recognized voluntary legal services organisations or the University legal services clinics. [(Rule 14(2)(4)]

3. The Board may also deploy the services of the student legal services volunteers and non-governmental organisation volunteers in para-legal tasks such as contacting the parents of juveniles and gathering relevant social and rehabilitative information. [(Rule 14(5))]

H. Juvenile outside jurisdiction

In the case of a juvenile, whose ordinary place of residence lies outside the jurisdiction, the Board may send the juvenile back to his ordinary place of residence if such transfer is in the best interest of the juvenile. However, such order can be passed only after the completion of

evidence and cross examination. On such transfer, the Board exercising jurisdiction over the place to which the juvenile is sent shall have the same powers in relation to the juvenile as if the original order had been passed by itself. [Section 50 r/w Rule 78 & 79]

I. Foreign National Juvenile

Any juvenile, who is a foreign national and who has lost contact with his family shall be entitled for protection and he shall be repatriated, at the earliest, to the country of his origin in co-ordination with the respective Embassy or High Commission. During the pendency of the order of repatriation, the juvenile shall be sent to an Observation Home. The Board shall keep the Ministry of External Affairs informed about repatriation of every juvenile of foreign nationality. [Rule 79 (4) (5) (6)]

V. FINAL ORDER

A. Orders that may be passed

The Board, if satisfied that a juvenile has committed an offence, may pass one of the following orders:

(i) Allow the juvenile to go home after advice or admonition and counselling to parent/guardian and juvenile; [Section 15(1)(a)]

(ii) Direct the juvenile to participate in group counselling and similar activities and necessary direction may also be made to the District or State Child Protection Unit or the State Government for arranging individual counselling and group counselling; [Section 15(1)(b) r/w Rule 15(4)]

(iii) Order the juvenile to perform community service that is not degrading and dehumanizing and necessary direction may also be made to the District or State Child Protection Unit or the

State Government for arranging community service which may include:

(i) Cleaning a park;

(ii) Getting involved with habitat for humanity;

(iii) Serving the elderly in nursing homes;

(iv) Helping out a local fire or police department;

(v) Helping out at a local hospital or nursing home; and

(vi) Serving disabled children. [Section 15(1)(c) r/w Rule 2(e) and 15(4)];

(iv) Order the parent or the juvenile himself to pay fine, if he is over 14 years of age and earns money; however, no juvenile shall be committed to prison in default of payment of fine. [Section 15(1)(d) r/w Section 16(1)];

(v) Direct the juvenile to be released on probation of good conduct and place him under the care of parent, guardian²⁵ or other fit person²⁶, on executing a bond in Form V, for the good behaviour and well-being of the juvenile for a maximum period of three years.

In addition, the Board may also direct;

- Furnishing of surety
- Execution of bond in Form VI by juvenile
- Juvenile shall remain under the supervision of a Probation Officer. [Section 15(1)(e), (3) & (4) r/w Rule 15(5), (6) & (8)];

(vi) Direct the juvenile to be released on probation of good conduct and placed under the care of any fit institution²⁷ for the good behaviour and well-being of the juvenile for any period not exceeding three years, located nearest to the place of residence of the juvenile's parent or guardian. In addition, the juvenile may be placed under supervision of a Probation Officer [Section 15(1)(f), (3) & (4) r/w Rule 15(7) & (8)];

(vii) Make an order directing the juvenile to be sent to a special home for a maximum period of three years located nearest to the place of residence of the juvenile's parent or guardian. [Section 15(1)(g) r/w Rule 15(7)];

B. Individual Care Plan

All final orders shall necessarily include an individual care plan

[Note: please see details under the 'Rehabilitation and Social Re-integration' part]

C. No Death Sentence or Imprisonment

No juvenile shall be sentenced to death or imprisonment for any term which may extend to imprisonment for life or committed to prison for default in payment of fine or furnishing security. [Section 16(1)]

D. Transfer to Place of Safety

Where a juvenile who has attained the age of 16 years has committed an offence and the Board is satisfied that the offence committed is of so serious in nature or that his conduct and behaviour have been such that it would not be in his interest or in the interest of other juvenile in the Special Home, the Board may order the juvenile to be kept in such place of safety and in such manner as it thinks fit and shall report the case for the order of the State Government. [Proviso to Section 16 r/w Rule 15 (11)]

E. Contribution by Parents

The Board while making an order for sending a juvenile to a Special Home or placing the juvenile under the care of a fit person or fit institution may make an order requiring the parent/guardian to contribute to his maintenance, if able to do so, according to the income. [Section 60(1)]

F. Payment of journey expenses to Parents

The Board may direct, if necessary, the payment to be made to poor parent/guardian by the Superintendent or the Project Manager of the Home to pay such expenses for the journey of the inmate or parent/ guardian or both, from the Home to his ordinary place of residence at the time of sending the juvenile. [Section 60(2)]

G. Disposal of Records

The records in respect of a juvenile shall be destroyed after a period of seven years. [Section 19(2) r/w Rule 99]

H. Power to amend orders

1. The Board may amend any order as to the institution to which a juvenile is to be sent or as to the person under whose care or supervision a juvenile is to be placed. [Section 55(1)]
2. Clerical mistakes in orders passed by a Board or errors arising therein from any accidental slip or omission may be corrected either on its own motion or on an application received in this behalf [Section 55(2)]

VI. APPEAL AND REVISION

1. Any person aggrieved by an order made by a Board may prefer an appeal to the Court of Session within thirty days from the date of such order. The Appellate Court may entertain the appeal after the expiry of the period on sufficient cause being shown. [Section 52(1)]
2. No appeal shall lie from any order of acquittal made by the Board in respect of a juvenile. [Section 52(2)]
3. The High Court may, at any time, call for the record of any proceeding for the purpose of satisfying itself as to the legality or propriety of any order of the Board or Court of Session. [Section 53]
4. The powers conferred on the Board under this Act may also be exercised by the High Court and the Court of Session. [Section 6(2)]
5. The procedure to be followed in hearing appeals or revision shall be, as far as practicable, in accordance with the provisions of the Code of Criminal Procedure, 1973 [Section 54(2)]

VII. POST FINAL ORDER

A. Discharge and Transfer

The Board may discharge or transfer a juvenile from one Special Home to another keeping in view the best interest of the juvenile and his natural place of stay. [Section 56]

B. Release

The Board, on a report of a Probation Officer/Government or social worker may release a juvenile permitting him to live with his parent or guardian or of any authorised person to educate and train him for some useful trade or to look after him for rehabilitation [Section 59(1)].

C. Leave

The Board may permit any juvenile to go on leave on special occasions like examination or admission, marriage of relatives, death of kith and kin or the accident or serious illness of parent or any emergency of like nature for a maximum period of 7 days. The period of such

leave shall be counted as a part of the period of stay in the institution [Section 59 (2),(3) &(4) r/w Rule 62]

D. Transfer in case of disease

- When a juvenile brought before a Board, is found to be suffering from a disease requiring prolonged medical treatment or physical or mental complaint or suffering from leprosy, sexually transmitted disease, Hepatitis-B, Tuberculosis etc. or is of unsound mind, he shall be treated/sent to an appropriate place. [Section 48]
- Where any juvenile kept in a special home is suffering from leprosy or is of unsound mind or is addicted to drug, the Board may order his removal to a leper asylum or hospital for treatment for the remainder of the term for which he has to stay. [Section 58 r/w Rule 61]

E. Restoration

The Board shall pass order for restoration of the juvenile after hearing the juvenile and his parents or guardian, as well as on the report of the Probation Officers. In case of girl, the juvenile shall be accompanied by a female escort. When a juvenile expresses his unwillingness to be restored back to the family; the Board shall not coerce him to go back to the family, particularly if the Social Investigation Report establishes that restoration to the family may not be in the best interest of the juvenile. [Rule 65]

[Note: please see details under the chapter 'Rehabilitation and Social Re-integration']

VIII. PENDING CASES

1. All proceedings in respect of a juvenile pending in any court (including appellate court) on the date on which the Act came into force shall be continued in that court.
2. If the court finds that the juvenile has committed an offence, it shall record such finding; but instead of passing any sentence in respect of the juvenile, forward the juvenile to the Board which shall pass orders in respect of that juvenile in accordance with the provisions of this Act.
3. The claim of juvenility can be raised before any Court at any stage, even after the final disposal of the case and is to be determined in accordance with the Act and the Rules. [Section 20 r/w Rule 97]

IX. DISPOSED OFF CASES

1. Claim of juvenility can be raised before any court and at any stage, even after final disposal of the case. Since claim shall be determined in terms of the provisions this Act, even if the juvenile ceases to be so on or before the date of commencement of this Act. [Section 7A (1) proviso r/w Rule 12(6) and Rule 98].

2. If the person is found to be juvenile on the date of offence, he shall be transferred to a special home for remainder of the period of sentence or released, if the period of detention has exceeded three years. [Section 64 r/w Section 15 and Rule 98]

X. PREVENTION OF ABUSE & EXPLOITATION

1. Any person having the actual charge or control over a juvenile or the child, assaults, abandons, exposes or willfully neglects the juvenile shall be punishable with imprisonment upto six months and/or fine. [Section 23]

2. On receipt of a report of abuse/ cruelty/ exploitation, the Board shall direct the local police station or SJPU to register a case and conduct investigations;

- take steps to ensure completion of all inquiry;
- provide legal aid and counselling to the juvenile;
- transfer such juvenile to another institution or place of safety/fit person;
- may seek assistance from voluntary organizations, child rights experts, mental health experts or crisis intervention centres.

XI. COGNIZANCE OF OFFENCES

The Board shall take cognizance of offences punishable under sections 21, 23, 24, 25 and 26 and pass appropriate orders [Rule 18(1) & (3)]

INSTITUTIONS - OBSERVATION HOME & SPECIAL HOME

I. RELEVANT STATUTORY PROVISIONS

A. Juvenile Justice (Care and Protection of Children) Act, 2000

Section	Content
8	Establishment of Observation Home in every district or group of districts
9	Establishment of Special Home in every district or group of districts
59(1)	Release and absence of Juvenile on placement for rehabilitation
60	Contribution by and payment to parents.

B. Juvenile Justice (Care and Protection of Children) Rules, 2007

Rules	Contents
2(i) & (j)	'Institution' and 'Officer-in-charge' defined.
16	Establishment of separate Observation Home and Special Home for boys and girls.
17	Release of juvenile on expiry of period of stay.
18(2)	Procedure in the event of escape of juvenile.
40	Physical infrastructure.
41	Clothing and bedding.
42	Sanitation and Hygiene
43	Daily routine.
44	Nutrition and diet scale.
45	Medical care.
46	Mental health
47	Education

48	Vocational training.
49	Recreation facilities.
50	Procedure in respect of the newly admitted juvenile.
51	Articles prohibited inside institution.
52	Safe custody of articles found on search and inspection.
53	Disposal of articles.
54	Maintenance of case file.
55	Management Committee.
56	Children's Committees.
57	Rewards and earnings.
58	Visits to and communications with juvenile.
59	Death of a juvenile.
60	Prevention of abuse and exploitation of juvenile.
62	Leave of juvenile
63	Inspection
66	Visitor's Book.
67	Maintenance of registers.
68	Personnel and staff.
73	Admission of outsiders.
74	Identity photos.
78	Transfer outside jurisdiction.
79	Procedure for transfer outside jurisdiction
86	Duties and functions of Officer-in-charge.
89	Disqualification of staff.

90	Training of personnel
99	Disposal of records and documents
Form II	Detention Order
Form VII	Discharge order on completion of detention period
Form XX	Case history for juvenile
Form XXII	Escort order

II. ESTABLISHMENT

A. Observation Home

Observation Home is the Home where a juvenile, who is alleged to have come in conflict with law, that is to say, allegedly committed an offence is kept pending inquiry against him by the Board. Observation Homes for temporary reception of juvenile may be established and maintained by the State Government either by itself or under an agreement with voluntary organisation in every district or group of districts separately for boys and girls. [Section 8 r/w Rule 16(1)]

B. Special Home

Special Home is the Home for reception of juvenile, if found guilty on conclusion of inquiry against him by the Board and sent for institutional care. Special Homes for reception and rehabilitation of juvenile may be established and maintained by the State Government either by itself or under an agreement with voluntary organisation in every district or group of districts separately for boys and girls. [Section 9 r/w Rule 16(1)]

III. PHYSICAL INFRASTRUCTURE AND STANDARD OF CARE & FACILITIES

STANDARD OF CARE & FACILITIES

A. Sanitation and Hygiene

Every institution shall have basic facilities including the following:

- Sufficient treated drinking water;

- Sufficient water for bathing, washing clothes, maintenance and cleanliness of the premises;
- Proper drainage system and arrangements for disposal of garbage;
- Protection from mosquitoes by providing mosquito nets; annual pest control;
- Sufficient number of toilets (at least one toilet for seven children);
- Sufficient number of bathrooms in the (at least one bath room for ten children). [Rule 42]

B. Clothing and Bedding

Clothing and bedding shall be as per the climatic conditions, more specifically as laid down in Schedule-I including the following:

- Skirts & blouse or salwar kameez or sari for girls and under garments 5-6 sets per year;
- Shirts & pants or shorts for boys and under garments 4-5 sets per year;
- Woollen garments;
- Mattresses, bed sheets, pillow, quilt, towels etc.;
- Slippers and shoes;
- School bags and stationary. [Rule 41 r/w Schedule I]

C. Meals and Diet

- The Institution shall provide four meals to the Children after preparing the menu with the help of nutritional experts or doctor, ensuring a balanced diet and variety in taste along with adherence of minimum nutritional standards.
- Sick juveniles shall be provided special diet according to the advise of the doctor on their dietary requirement.
- Special meals may be provided on holidays and festivals.
- Every institution under this Act shall strictly adhere to the minimum nutritional standard and diet scale specified in Schedule II. [Rule 44 r/w Schedule II]

D. Medical and Mental Health Care

1. Medical Record

The Institution shall maintain a medical record of each juvenile including height, weight, sickness and treatment and other physical and mental problems. [Rule 45(b)]

2. Monthly Medical Check-Up

- There shall be monthly medical check up of juvenile and the institution shall provide necessary medical facilities including a doctor, medical equipments for minor health problems, fist aid kit, stock of emergency medicines, consumables and immunization coverage. [Rule 45 (c)(d)(g)]
- The staff shall be trained in handling first aid. [Rule 45(e)]
- The Institution shall take preventive measures in the event of out break of contagious or infectious diseases. [Rule 45 (h)]

3. Tie-up with Local Primary Health Centre

Institution shall tie-up with local Primary Health Centre, government hospital, medical colleges, other hospitals, clinical psychologists and psychiatrists and mental health institutes for regular visits by their doctors and students and for holding periodic health camps within the institution. [Rule 45(f)]

4. Drug Abuse Prevention and Rehabilitation Programme

Institution shall refer such children who require specialized drug abuse prevention and rehabilitation programme, to an appropriate centre administered by qualified personnel where these programmes shall be adopted to the age, gender and other specifications of the concerned child.[Rule 45 (p)]

5. Mental Health Record

A mental health record of every juvenile shall be maintained by the concerned institution. [Rule 46(1)]

Services of trained counsellors or psychologists or psychiatrists may be taken to provide for specialized and regular individual therapy for every juvenile. [Rule 46 (6)]

E. Education Facilities

- Every institution shall provide education to all juvenile, inside the institution or outside. [Rule 47 (j)]
- The institution shall make arrangement of educational opportunities with schools, non formal education institutions and from special educators. [Rule 47(2)]
- Extra coaching shall be made available to school going children in the institutions by encouraging volunteer services or tying up with coaching centers. [Rule 47(3)]

F. Vocational Training

- Every institution shall provide gainful vocational training to juvenile.[Rule 48 (a)]
- The institutions shall develop networking with Institute of Technical Instruction, Jan Shikshan Sansthan, Government and Private Organization or Enterprises, Agencies or non-governmental organisations with expertise or placement agencies. [Rule 48(b)]

G. Recreation Facilities

- A provision for guided recreation shall be made available to all juveniles in the institutions including indoor and outdoor games, music, television, picnics, outings, cultural programmes and library. [Rule 49(1)(2)]

H. Daily Routine

- Every institution shall have a daily routine for the juveniles developed in consultation with the Children's Committees, which shall be prominently displayed at various places within the institution. [Rule 43(1)]
- The daily routine shall provide, for a regulated and disciplined life, personal hygiene and cleanliness, physical exercise, yoga, educational classes, vocational training, organized recreation and games, moral education, group activities, prayer and community singing and special programmes for Sundays and holidays. [Rule 43(2)]

V. STEPS TO BE TAKEN FOR NEWLY ADMITTED JUVENILE

The following procedure shall be followed in respect of the newly admitted juveniles:

- (a) receiving and search;
- (b) disinfection and storing of juvenile's personal belongings and other valuables;
- (c) bath and haircut (unless prohibited by religion);
- (d) issue of toiletry items; new set of clothes, bedding and other outfit and equipment;
- (e) medical examination and treatment where necessary and in case of every juvenile suspected to be suffering from contagious or infectious diseases, mental ailments or

addiction;

(f) segregation in specially earmarked dormitories or wards or hospitals in case of a child suffering from contagious disease requiring special care and caution;

(g) attending to immediate and urgent needs of the juveniles like appearing in examinations, interview letter to parents, personal problems and verification by the Officer-in-charge of age of juvenile as per order of the Board.

1. Search

- The officer-in-charge shall see that every Juvenile received in the Institution is searched and the personal belongings of the juvenile including money or any other valuable found with the Juvenile are disinfected and kept in safe custody. [Rule 52(1)]
- Personal belongings shall be recorded in the Personal Belonging Register and must be returned to the juvenile or child when he leaves the institution. [Rule 52 (3) r/w 53(d)]
- Girls shall be searched by a female member of the staff. Both girls and boys shall be searched with due regard to decency and dignity. [Rule 52(2)]
- No person shall bring into the institution articles like fire-arms or other weapons, alcohol, narcotic or psychotropic substances.[Rule 51]

2. Reception & Familiarisation

- Every juvenile shall be initially kept in a reception unit of the observation home for preliminary inquiries, care and classification according to his age group giving due consideration to physical and mental status and degree of the offence committed for further induction into observation home. [Section 8(4)]
- The Juvenile shall be familiarized with the institution and its functioning and the name of the Juvenile shall be entered in the admission register. [Rule 50(3)(4)]

3. Medical Care

Every institution shall:

(a) maintain a medical record of each juvenile on the basis of monthly medical check-up and provide necessary medical facilities;

- (b) ensure that the medical record includes weight and height record, any sickness and treatment, and other physical or mental problem;
- (c) have arrangement for the medical facilities, including a doctor on call available on all working days for regular medical checkups and treatment of juveniles or children;
- (d) have sufficient medical equipments to handle minor health problems including first aid kit with stock of emergency medicines and consumables;
- (e) train all staff in handling first aid;
- (f) tie-up with local Primary Health Centre and other hospitals/ doctors for holding periodic health camps within the institutions;
- (g) make necessary arrangements made for the immunization coverage;
- (h) take preventive measures in the event of out break of contagious or infectious diseases;
- (k) admit a juvenile without insisting on a medical certificate at the time of admission;
- (l) arrange for a medical examination of each juvenile within twenty four hours of admission/transfer;
- (o) provide for regular counselling of every juvenile and ensure specific mental health interventions for those in need of such services;
- (p) refer children who require specialized drug abuse prevention and rehabilitation programme to an appropriate centre. [Rule 45]

4. Identity Photo

- On admission to a home, every juvenile shall be photographed. [Rule 50 (5) r/w 74(1)]
- One photograph shall be kept in the case file of the juvenile, one shall be fixed with the index card, a copy shall be kept in an album serially numbered with the negative in another album, and a copy of the photograph shall be sent to the Board, as well as to the District or State Child Protection Unit. [Rule 74(2)]
- In case of a child missing from an institution or in case of lost children received by an institution, a photograph of the child with relevant details shall be sent to the missing person's bureau and the local police station. [Rule 74(3)]

5. Case File

- A case file of each Juvenile shall be maintained in the institution containing the information specified in Rule 54. [Rule 54]
- A case history of the juvenile admitted to an institution shall be maintained in Form XX, containing information regarding his sociocultural and economic background. [Rule 50 (9)]

6. Individual Care Plan

The officer-in-charge along with the case worker, or social worker shall prepare an individual care plan for every child in an institution within one month of his admittance as per Form XXI. [Rule 50 (12) (a)]

[Note: please see details under the chapter 'Rehabilitation and Social Re-integration']

7. Progress Report

The officer -in-charge shall file a quarterly progress report of every juvenile in the case file and send a copy to the District Child Protection Unit and Board. [Rule 55 (6) (b)]

VI. VISIT, COMMUNICATION & LEAVE

1. Visit

- The officer-in-charge shall allow the parents and relatives of the juvenile to visit once in a month or in special cases, more frequently as per visiting hours. [Rule 58(1)]
- In special cases, however, where parents or guardians have travelled a long distance from another State or district, the officer-in-charge shall allow them to meet their children. [Rule 73(2)]
- No stranger shall be admitted to the premises of the institution, except with the permission of the Officer- in-charge or on an order from the Board. [Rule 73(1)]

2. Letter

- The receipt of letters by juvenile of an institution shall not be restricted. The institution shall ensure that at least one letter is written by the juvenile every month for which the postage shall be provided by the institution. [Rule 58(2)]
- The officer-in-charge may peruse any letter written by or to the juvenile, and may refuse to deliver or issue the letter and forward it to the Committee after recording his reasons in a book maintained, for the purpose. [Rule 58(3)]

3. Telephone

- The officer-in-charge in special circumstances or as per the orders of the Board may allow a juvenile to make telephone calls to his parents/ guardians/ relatives. [Rule 58 (4)]

4. Leave

- The Officer-in-charge may recommend a leave of absence for a Juvenile to the Board stating the purpose for the leave and the period of leave. [Rule 62(3) r/w section 59(2)]
- Where the parent/guardian is unable to escort the juvenile on leave, the Officer-in-charge may arrange escort or traveling expenses for journey of the juvenile to family and back. [Rule 62(6)]
- If the juvenile escapes while on leave and is not found within twenty four hours, the officer-in-charge shall report the matter to the nearest police station and missing person's bureau, but no adverse disciplinary action shall be taken against the juvenile. [Rule 62(8) r/w section 22]

VII. TRANSFER OF JUVENILE

- On receipt of order/information from the Board/State Government/ Child Protection Unit requiring a juvenile to be transferred outside Home, the officer-in-charge shall arrange to escort the child at government expenses. [Rule 78 (3) r/w section 50 & 57]
- The Institution shall arrange for a medical examination of the juvenile by a Medical Officer within twenty four hours before transfer. [Rule 45(m)]
- Where the Board sends a juvenile to his relative/ fit person at his ordinary place of residence, the Officer-in-charge shall, on the directions of the Board, pay the travel expenses of the relative/fit person and the juvenile. [Rule 79 (10) r/w section 50]

VIII. PREVENTION OF ABUSE & EXPLOITATION

A. Punishment for cruelty to juvenile

Any person having actual charge or control over a juvenile assaults, abandons, exposes or willfully neglects the juvenile shall be punishable with imprisonment upto six months and fine. [Section 23]

B. Action against Staff in case of abuse etc.

- Every institute shall ensure prevention of abuse, neglect and maltreatment of juvenile. To ensure prevention, the staff should be made aware of what constitutes abuse, neglect and maltreatment and their early indicator and also how to respond to the same. [Rule 60(1)]
- When there is an incidence of abuse it must be immediately reported by the staff to the Officer-in-charge; who shall place a report before the Board and the Management Committee for necessary action. [Rule 60(2)]

C. Death of a juvenile

- In the event of an unnatural death or suicide of a juvenile in an institution, an inquest and post-mortem examination must be held at the earliest. [Rule 59(1)]
- In all cases of death (whether unnatural or natural or due to illness) the officer-in-charge shall obtain a report of the Medical Officer stating the cause of death and a written intimation about the death shall be given immediately to the following:
 - Police Station,
 - Parents or guardians or relatives of the juvenile,
 - Board,
 - National or State Commission for Protection of Child Rights,
 - District Child Protection Unit or State Child Protection Unit,
 - Magistrate empowered to hold inquests. [Rule 59(2)]
- As soon as the inquest is held, the body shall be handed over to the parents/ guardian/ relatives or in the absence of any claimant the last rituals shall be performed under the supervision of the officer-in-charge in accordance with the religion of the juvenile. [Rule 59(8)]

IX. ACTION AGAINST JUVENILE

A. Juvenile committing offence within Institution

If a juvenile commits an offence within the institution, the officer-in-charge shall inform the police and the family and send a detailed report to the Board. [Rule 50 (11)]

B. Escape of Juvenile from Institution

- If a juvenile escapes from the institution, the officer-in- charge within 24 hours shall -

- send information of the same along with the details and description of the juvenile, identification marks and photograph to the police;
 - send the guards in search of the juvenile to railway station, bus stand and other places where the juvenile is likely to go;
 - inform parents or guardians immediately about such escape;
 - hold an inquiry about such escape and send his report to the Board and the Management Committee. [Rule 18 (2)]
- No proceeding shall be instituted in respect of the juvenile by reason of such escape; but the Officer in Charge may, after informing the Board take necessary steps in respect of the juvenile. [Section 22]

X. RELEASE FROM INSTITUTION AND RESTORATION

A. Maintain Roster

- The officer-in-charge shall maintain a roster of juveniles to be released on the expiry of the period of stay. [Rule 17(1)]
- A well conceived programme of pre-release planning and follow up of cases discharged from special homes shall be organized in all institutions in close collaboration with existing governmental and voluntary welfare organizations. [Rule 50 (10)]
- Each case shall be placed before the Management Committee by the concerned probation officer or child welfare officer or case worker for ensuring proper release and social mainstreaming of the juvenile postrelease. [Rule 17 (2)]
- Necessary action for release shall be initiated well before the time and shall include preparation for post-release follow-up. [Rule 17 (3)]

B. Pre-mature release

- A juvenile kept in Special Home may be released by the Board on the report of Probation Officer or Social Worker or Government permitting him to live with parents/guardian/authorise person willing to take charge of the juvenile to educate, train or look after him. [Section 59(1)]

C. Information to Parent/Guardian

- The parent or guardian shall be informed of the date of release well in advance and be invited to come to the institution to take charge of the juvenile on that date. [Rule 17(4)]
- The officer-in-charge shall pay travel expenses of the parent/ guardian and the juvenile, if necessary. [Rule 17 (5)]

D. Escort

- If the parent/ guardian fails to come the juvenile shall be taken by the escort of the institution. [Rule 17(6)]
- If the juvenile has no parent/ guardian, he may be sent to an aftercare organization, or in the event of his employment, to the person who has undertaken to employ the juvenile. [Rule 17(8)]

E. Provide Cloths, Toiletries & Tools

- The officer-in-charge at the time of release of a juvenile shall, if necessary, provide him with a set of summer or winter clothing and essential toiletries. [Rule 17(7)]
- The officer-in-charge, in deserving cases, may provide the juvenile with small tools to start a work or business. [Rule 17(12)]

F. Rewards and Earnings

- Rewards earned by a juvenile for steady work and good behaviour; shall be handed over to the juvenile/parent at the time of release. [Rule 57]

G. Return of belongings

- The money or belongings of a juvenile received or retained in an institution at the time of admission shall be returned to the juvenile. [Rule 53]

H. Restoration and Follow-up

- The officer-in-charge of the institution from where the juvenile or child is restored shall be given a copy of the quarterly follow-up report by the concerned Child Welfare Officer or Probation Officer or NGO for a period of two years. [Rule 65(a)]

- The officer-in-charge shall file the follow-up report in the case-file of the juvenile and place the report before the Management Committee and send a copy to the District Child Protection Unit. [Rule 65(11) & (12)]

[Note: please see details under the chapter 'Rehabilitation and Social Re-integration']

STATE GOVERNMENT

I. RELEVANT STATUTORY PROVISIONS

A. Juvenile Justice (Care and Protection of Children) Act, 2000

Section	Contents
2 (h), (o), (s) & (v)	'Fit Institution' 'Observation Home', 'Probation Officer' and Home' 'Special defined.
4	Constitution of Juvenile Justice Board for every district.
8	Establishment of Observation Home in every district or a group of districts.
9	Establishment of Special Home in every district or a group of districts.
10 (2)	Rule making power to provide for persons juvenile through whom any may be produced before the Board.
16 (2)	Make arrangement for keeping juvenile in protective custody who cannot be kept in Special Homes.
40	Process of rehabilitation and social re-integration.
41(4)	Recognition of adoption agencies.
42 (3)	Rule making power for foster care programme.
43 (2)	Rule making power for sponsorship.
44	Rules making power for aftercare programme.
45	Linkages and coordination between governmental and non-governmental agencies.

57	Transfer of juvenile outside State.
61	Juvenile Justice Fund.
62	Constitution of Advisory Boards.
62A	Constitution of Child Protection Unit.
64	Transfer/ release of juvenile undergoing sentence of imprisonment at commencement of Act.
66	Delegation of powers.
67	Protection of action taken in good faith.
68	Power to make Rules.

B. Juvenile Justice (Care and Protection of Children) Rules, 2007

Rules	Contents
4	Constitution of Juvenile Justice Boards in every district.
11(12)	Recognition of protection agencies.
15(4)	Arrangement for counselling and community service
15(12)	Arrangement for detention of special category juvenile in place of safety.
16	Establishment of Observation Homes and Special Homes.
34	Foster care programme
37	Sponsorship programme
38	After care programme.
39	Linkages and co-ordination between Government and non-government agencies.
61	Establishment of organization for Juvenile suffering from dangerous diseases.
63	Constitution of Inspection Committee.
64	Social audit by monitoring and evaluating the implementation of the Act.

65 (6)	Expenses on restoration of juvenile.
69	Recognition of fit persons and fit institution.
70	Certification, recognition and transfer of management of institutions.
72	Grant in aid to certified or recognized organizations.
78(3)	Arrangement for transfer of juvenile.
83	Infrastructure and personnel for Juvenile Justice Board.
84	Appointment of Special Juvenile Police Unit.
90	Training of personnel.
91	Constitution of Selection Committee.
93	Constitution of Advisory Boards.
95	Juvenile Justice Fund.
98	Review of disposed of cases.
Form XXII	Escort order

II. Child Protection Unit (CPU)

Every State Government shall constitute a Child Protection Unit for the State and, such Units for every District, consisting of such officers and other employees as may be appointed by that Government, to take up matters relating to children in need of care and protection and juvenile in conflict with law with a view to ensure the implementation of this Act including the establishment and maintenance of homes, notification of competent authorities in relation to these children and their rehabilitation and co-ordination with various official and non-official agencies concerned. [Section 62A]

In the administrative hierarchy of the Government, district head quarter is the prominent centre of administration. It is the connecting link between the ground level officers, social workers and other Stake holders, who actually interact with the children on a day to day basis and implement the policies of the Government. District CPU therefore plays the most pivotal role in actual implementation of the provisions of the Act and the Rules.

State Child Protection Unit

1. Constitution

State Government shall constitute a Child Protection Unit (CPU) for the State consisting of such officers and employees as may be appointed by that Government [Section 62A]

2. Primary Duties

- implementation of the Act and supervision and monitoring of agencies and institutions under the Act;
- set up, support and monitor the District Child Protection Units;
- represent State Child Protection Unit as a member in the Selection Committee for appointment of members of Boards or Committees;
- make necessary funds available to the District Child Protection Units for providing or setting up required facilities to implement the Act;
- network and coordinate with all government departments to build linkages on child protection issues;
- training and capacity building of all personnel - Government and Non-government;
- establish minimum standards of care and ensure its implementation in all institutions set up under the Act;
- review the functioning of Committees; and
- all other functions necessary for effective implementation of the Act. [Rule 80]

District Child Protection Unit

1. Constitution

State Government shall constitute a Child Protection Unit (CPU) for every District consisting of such officers and employees as may be appointed by that Government [Section 62A]

2. Primary Duties

- ensure effective implementation of the Act at district or city levels by supporting creation of adequate infrastructure, such as, setting up Boards, SJPU and Homes;

- periodic and regular mapping of all child related services at district for creating a resource directory and making the information available to the Board from time to time;
- implement family based non-institutional services including sponsorship, foster care, adoption and after care;
- ensure setting-up of District, Block and Village level Child Protection Committees;
- facilitate transfer of children for their restoration;
- network and coordinate with all government departments to build linkages on child protection issues;
- develop parameters and tools for effective monitoring and supervision of agencies and institutions in the district in consultation with experts in child welfare;
- supervise and monitor all institutions or agencies providing residential facilities to children in the district;
- train and build capacity of all personnel - Government and Nongovernment;
- organize quarterly meeting with all stakeholders at district level including Childline, Specialised Adoption Agencies, Officers in-charge of homes, nongovernmental organisations and members of public;
- liaison with the State Child Protection Unit, State Adoption Resource Agency at State level and District Child Protection Units of other districts. [Rule 81]

3. Legal Aid

Legal Officer of the District Child Protection Unit shall work with the State Legal Aid Services Authority to extend free legal services to all the Juveniles in conflict with law and shall be under an obligation to provide legal services sought by the Board. [Rule 14]

4. Initiation of action for publication of name of juvenile Section 21 of the Act prohibits publication of name, etc., of juvenile involved in any proceeding under the Act and any person who contravenes this provisions is liable to a penalty of fine up-to Rs.25,000/-. In the event of violation of this section, State or District CPU shall initiate necessary action through Board. [Rule 18(1)(b)]

5. Sponsorship

The State Government, with the help of District or State CPU, shall identify families and children at risk and provide necessary support services in the form of sponsorship for education, health, nutrition and other developmental needs of the children.[Rule 37(2)]

The Board shall make an order in Form XVIII for support to a Juvenile through sponsorship and send a copy to the District or State CPU or State Government for appropriate action. [Rule 37(5)]

6. After Care Organisation

After care programmes shall be made available for 18-21 year old persons, who have no place to go to or are unable to support themselves, by the District or State CPU in collaboration with voluntary organizations for the purpose of section 44 of the Act and the Rules. [Rule 38(2)]

7. Linkages and co-ordination

District or State CPU shall help the State Government to identify the roles and responsibilities of each department at district or State level for effective implementation of the Act and the Rules. [Rule 39(2)]

District or State CPU shall arrange for appropriate training and sensitization of functionaries of various departments from time to time in coordination with National Institute of Public Cooperation and Child Development (NIPCCD) and its Regional Centres. [Rule 39(3)]

8. Restoration and Follow-up

District CPU or State Government shall provide funds for restoration of the juvenile. [Rule 65(2)]. The expenses incurred on restoration of a juvenile including travel and other incidental expenses, shall be borne by the District CPU or State Government. [Rule 65(6)]

Where a follow-up is not possible due to unavailability of government functionaries or nongovernmental organisations, the concerned District CPU shall provide necessary assistance and support to the concerned Board. [Rule 65(13)]

9. Social workers for SJPU

District CPU or State Government shall provide services of two social workers to the Special Juvenile Police Unit for discharging their duties. [Rule 84(2)]

10. Training of Personnel

State Government with the help of the State CPU and NIPCCD shall organize regular training and capacity building of personnel involved in the implementation of the Act and the Rules.

11. Special Juvenile Police Unit

State Government shall constitute Special Juvenile Police Unit (SJPU) in each District within 4 months of the notification of the Central Model Rules i.e. latest by 26.2.2008. [Section 63 r/w Rule 84]

III. ESTABLISHMENT OF HOMES

A. Observation Home

State Government shall establish and maintain separate Observation Homes for boys and girls in every district or a group of districts for temporary reception of juvenile during pendency of inquiry.

Observation Homes may be set up by the State Government either by itself or under an agreement with voluntary organisation. [Section 8 r/w Rule 16]

B. Special Home

State Government shall establish and maintain separate Special Homes for boys and girls in every district or a group of districts for reception and rehabilitation of juvenile in conflict with law. Special Homes may be set up by the State Government either itself or under an agreement with voluntary organisations. [Section 9 r/w Rule 16]

C. After Care Organization

State Government shall establish and maintain separate After Care Organization for rehabilitation and social reintegration of juveniles after they leave special homes to enable them to lead an honest, industrious and useful life with the objective to facilitate their transition from an institution-based life to mainstream society for social re-integration. After Care Organization may be set up by the State Government either

itself or under an agreement with voluntary organisations. [Sections 40 & 44 r/w Rule 38]

IV. SCHEMES & PROGRAMMES

A. Sponsorship

- The State Government shall prepare sponsorship programme in consultation with the NGO, Child Welfare Committees, other relevant government agencies and the corporate sector to provide supplementary support to families, to children's homes and to special homes to meet medical, nutritional, educational and other needs of the children with a view to improve their quality of life. [Section 43 r/w Rule 37]
- The State Government, with the help of State or District Child Protection Units shall identify families and children at risk and provide necessary support services in the form of sponsorship for child's education, health, nutrition and other developmental needs. On such identification, Board may make an order in Form XVIII directing the State Government to release specified amount on monthly or one time basis for support to a juvenile through sponsorship. [Rule 37 (5)]

B. Grants-in-Aid

- State Government may provide grant in aid to certified or recognized organisations for the maintenance of juvenile and expenses incurred on their education, treatment, vocational training, development and rehabilitation. The grants-in-aid may be admitted, at such rates, which shall be sufficient to meet the prescribed norms, in such manner and subject to such conditions as may be mutually agreed to by both the parties. [Rule 72]

C. Linkage and Co-Ordination

1. State Government, with the help of State or District Child Protection Unit, shall -

- identify the roles and responsibilities of each department and inform them through a notification;
- arrange for appropriate training and sensitization of functionaries of these departments from time to time in coordination with National Institute of Public Cooperation and Child Development and its Regional Centers (NIPCCD); and
- develop effective networking and linkages with local nongovernmental organizations for specialized services and technical assistance like vocational training, education, health care, nutrition, mental health intervention, drug de-addition and legal aid services.

[Section 45 r/w Rule 39]

2. State Government shall establish effective linkages between various government, non-government, corporate and other community agencies for facilitating the rehabilitation and social reintegration of juveniles. [Rule 39(1)]

3. State Government shall -

- circulate a copy of the Act and the Rules amongst all concerned;
- ensure that copies of the Act and Rules are to be kept by the Observation Homes for the use of staff and juveniles;
- develop and make available simplified and child friendly versions of the Act and the rules in regional languages. [Rule 16]

D. Social Auditing

- The State Government shall monitor and evaluate the implementation of the Act annually by reviewing matters concerning establishment and functioning of Board, Special Juvenile Police Unit, Institutions and any other matter concerning effective implementation of the Act. [Section 36 r/w Rule 64(1)]
- The social audit can be carried out with support and involvement of NGOs and autonomous bodies like the National Institute of Public Cooperation and Child Development (NIPCCD), Indian Council for Child Welfare, Child line India Foundation, Central and State level Social Welfare Boards, School of Social Work and School of Law. [Rule 64(2)]

E. Preparation of Guidelines for Prevention of Sexual abuse

State Government shall prepare guidelines for prevention of sexual abuse of children and shall ensure that every person, school or such other educational institutions abide by these guidelines. [Rule 31]

F. After Care Programme

State Government shall set up an after care program for rehabilitation and social reintegration of juveniles after they leave special homes to enable them to lead an honest, industrious and useful life with the objective to facilitate their transition from an institution based life to mainstream society for social re-integration. [Sections 40 & 44 r/w Rule 38]

G. Adoption

The State Government may issue various guidelines for adoption from time to time and the court giving the children in adoption have to conform to those guidelines. [Section 41 (3)]

H. Foster Care

The State government may make rules for the purposes of carrying out the scheme of foster care program of children and every State Government shall design its own foster care program so as to reduce institutionalization of children and enable a nurturing family environment for every child. [Section 42(3) & Rule 34 (2)]

V. CREATION OF JUVENILE JUSTICE FUND

The State Government shall create a 'Juvenile Justice Fund' at the State level for the welfare and rehabilitation of the juvenile which shall be administered by the State Advisory Board. [Section 61 r/w Rule 95 (1)]

- The assets of the Fund shall include grants and contributions from
 - Central Government;
 - State Government;
 - Statutory or non-statutory bodies set up by the Central or State Government; and
 - Voluntary donations from any individual or organization.[Rule 95(2)(5)]

- The Fund shall be applied for following purposes:
 - To implement programmes for the welfare, rehabilitation and restoration of juveniles or children;
 - To pay grant-in-aid to non-governmental organizations;
 - To meet the expenses of State Advisory Board and its purpose; and
 - To do all other things that are incidental and necessary for the above purposes. [Rule 95(3)]

VI. MISCELLANEOUS FUNCTIONS

A. Transfer outside State

- The State Government may direct a juvenile to be transferred from any special home within the State to any other special home or institution outside the State in consultation with the concerned State government and with the prior intimation to the Board. [Section 57]

B. Provide Place of Safety

- On the order of the Board, the State government shall make arrangement in respect of juvenile who is above the age of 16 years and has committed a serious offence to be kept under protective custody at a place of safety other than the Special Home. [Section 2(q)

and 16 & Rule 15 (12)]

C. Arrange Counseling and Community Service

- When the Board releases the juvenile after advice and admonition or after participation in group counseling or order him to perform community service, the State Government shall arrange for the individual counseling or group counseling or community service on receiving necessary directions in this respect from the Board [Rule 15(4)]

- Community service implies service rendered to the society by juveniles, which is not degrading and dehumanizing and may include:

(i) cleaning a park;

(ii) getting involved with Habitat for Humanity;

- (iii) serving the elderly in nursing homes;
- (iv) helping out a local fire or police department;
- (v) helping out at a local hospital or nursing home; and
- (vi) serving disabled children.[Rule 2 (e)]

D. Set Up Treatment Centre for Juvenile suffering from Dangerous Disease

- State Government shall set up necessary organization like leper asylum or mental hospital or treatment centre for drug addicts or place of safety to cater to the special needs of juveniles suffering from a dangerous disease or physical or mental health problems requiring prolonged medical treatment, or is found addicted to a narcotic drug or psychotropic substance. [Section 58 r/w Rule 61]

VII. RULE MAKING POWER

1. State Government shall make rules to carry out the purposes of this Act which shall conform to Juvenile Justice (Care and Protection of Children) Rules, 2007, so far as is practicable. Every rule made by a State Government under this Act shall be laid, as soon as may be after it is made, before the Legislature of that State. [Section 68]

2. State Government may also make rules- to provide for persons through whom any juvenile may be produced before the Board; [Section 10(2)]

- for foster care program; [Section 42(3)]
- for sponsorship; [Section 43(2)] and
- for after care program [Section 44].

Application of Central Rules

Until the rules are made by the State Government, Juvenile Justice (Care and Protection of Children) Rules, 2007 framed by the Central Government shall apply to the State. [proviso to Section 68 (1) r/w Rule 96]

NON GOVERNMENTAL ORGANISATION (NGO) & SOCIAL WORKER

I. RELEVANT STATUTORY PROVISIONS

A. Juvenile Justice (Care and Protection of Children) Act, 2000

Sections	Contents
2 (h) (o) & (v)	'Fit Institution', 'Observation Home' and 'Special Home' defined including those run by NGO and certified/recognized by the State Government.
8	Establishment of Observation Homes under an agreement with voluntary organization.
9	Establishment of Special Homes under an agreement with voluntary organization.
10	Production of juvenile before Board through registered voluntary organizations.
12	Release of juvenile on bail under the care of Fit Institution or Fit Person pending inquiry.
15 (1)(f)	Release of juvenile on probation under the care of Fit Institution on completion of inquiry.
15(2)	Social Investigation Report through a Voluntary Organization.
44	After-Care Organizations.
45	Linkage and co-ordination between Governmental and non- governmental agencies.
51	Report of social worker confidential.
62	Advisory Boards to include social workers and voluntary organizations
67	Protection of action taken in good faith.

B. Juvenile Justice (Care and Protection of Children) Rules, 2007

Rules	Contents
2 (h), (i)	'Individual Care Plan', and 'Institution' defined.
11(12)	Recognition of voluntary organizations as protection agencies.
14	Legal and Para legal assistance through voluntary legal service organizations and the university legal service clinics.
16	Establishment of Observation Homes or Special Homes by voluntary organization recognized by State Government.
37	Sponsorship program.
38	After Care Organization.
39	Linkages and co-ordination between Governmental and non- Governmental agencies
69	Recognition of fit person and fit institution.
70	Certification/recognition of voluntary organization and transfer of management of State run institution to voluntary organization.
72	Grants-in-aid.
87	Duties of case worker.
Form IV	Social Investigation Report
Form XXI	Individual Care plan

A. Protection Agencies

1. Voluntary organizations which are in a position to provide the services of probation, counseling, case work, a safe place and also associate with the Police may be recognized as protection agencies by the State Government. [Rule 11(12)]

2. Such protection agencies may assist the Police/SJPU -

- at the time of apprehension,
- in preparation of the report containing social background of the juvenile , circumstances of apprehension and the alleged offence,
- in taking charge of the juvenile until production before the Board, and

- in actual production before the Board within twenty-four hours. [Rule 11 (12) r/w Section 10]

B. After Care Organisation

1. After-care organisation may be recognised for rehabilitation and social reintegration of juveniles after they leave special homes to enable them to lead an honest, industrious and useful life with the objective to facilitate their transition from an institution-based life to mainstream society for social re-integration. [Sections 40 & 44 r/w Rule 38]

2. After-care organisation run by an NGO must be certified and recognized by the State Government. The procedure for certification/cancellation is the same as that of the Institutions (Homes). [Rule 70]

C. CASE WORKER

- A case worker is allotted to every juvenile newly admitted to an institution from amongst the probation officers or child welfare officers or social workers or counsellors attached to the institutions or voluntary social workers or counsellors. [Rule 50 (2)]
- Case worker is one of the members of the Management Committee constituted in every institution for the management of the institution and monitoring the progress of every juvenile. [Rule 50 (3) r/w Rule 55 (3)]

1. Prepare Social Investigation Report

Social investigation of the juvenile through personal interview and from the family, social agencies and other sources on receipt of information from the Police or otherwise about apprehension of a juvenile under section 13 of the Act. The SIR shall contain such material circumstances, as may be necessary and submit in Form IV to the Board as early as possible. [Rule 87 (1) (a) r/w 87 (2)]

2. Prepare Case History

A case history of the juvenile shall be prepared by the case worker containing information regarding his socio-cultural and economic background collected through all possible and available sources, including home, parents or guardians, employer, school, friends and

community admitted to an institution and shall be maintained as per Form XX of the Rules. [Rule 50 (9)]

3. Assist the Institutionalised Juvenile

As soon as case worker shall the juvenile on his admission to an institution in the following ways:

- Correspondence with the person, whom the juvenile might have named and develop contacts with family and also provide assistance to family members; [Rule 50 (5) r/w Rule 87 (1) (e)]
- Attend the proceedings of the Board and submit reports as and when required; [Rule 87 (1) (b)]
- Clarify problems of Juvenile and deal with their difficulties in institutional life. [Rule 87 (1) (c)]
- Participate in the orientation, monitoring, education, vocational and rehabilitation programmes of the juvenile. [Rule 87 (1) (d)]
- Establish co-operation and understanding between the juvenile and the Officer- in-charge. [Rule 87 (1) (e)]
- Accompany juveniles, where ever possible, from the office of the Board to observation home, special home. [Rule 87 (1) (l)]

LEGAL SERVICES AUTHORITY AND ADVOCATES

I. RELEVANT STATUTORY PROVISIONS

A. Juvenile Justice (Care and Protection of Children) Rules, 2007

Rules	Contents
3.I(d)(ii)	Procedural safeguard under the Constitution made applicable
3.I (d) (iii)	Provisions of legal aid.
14	Legal aid.
86 (2)(y)	Co-ordination between Officer-in-charge of institution and Legal Service Authority.

II. FUNDAMENTAL RIGHT

- Constitution of India guarantees every person right to consult and to be defended by a legal practitioner of his choice. [Article 22 (1) r/w Rule 3.I(d)(ii)]

III. LEGAL SERVICES AUTHORITY

- Every juvenile who has to file or defend a case is entitled to legal aid under Legal Services Authority Act, 1987. [Section 12(1)(c) of Legal Services Authority Act,1987 r/w Rule 14 (2)]

IV. LEGAL AID

- The Board shall ensure free legal aid to all juvenile through State Legal Aid Services Authority or recognized voluntary legal services organisations or the University legal services clinics. [Rule 3.I (d) (iii) r/w 14(2)]
- The Legal Officer in the District Child Protection Unit and the State Legal Aid Services Authority shall extend free legal services to all the Juveniles. [Rule 14(3)]
- Officer-in-charge to coordinate with the legal officer in the District Child Protection Unit or District/State Legal Service Authority to ensure that every Juvenile is legally represented and provided free legal aid and other necessary support. [Rule 86(2)(y)]

- In the event of shortfall in the State Legal Aid Services support, the Board shall be responsible for seeking legal services from recognized voluntary legal services organisations or the university legal services clinics. [Rule 14 (4)]

V. PARA-LEGAL TASKS

- The Board may also deploy the services of the student legal services volunteers and non-governmental organisation volunteers in para-legal tasks such as contacting the parents of juveniles and gathering relevant social and rehabilitative information. [(Rule 14(5)]

REHABILITATION AND SOCIAL REINTEGRATION

I. RELEVANT STATUTORY PROVISIONS

A. Juvenile Justice (Care and Protection of Children) Act, 2000

Section	Content
40	Process of rehabilitation and social reintegration
41	Adoption
42	Foster care
43	Sponsorship
44	After Care Organisation
45	Linkages and Co-ordination

B. Juvenile Justice (Care and Protection of Children) Rules, 2007

Rule	Content
2(h)	'Individual Care Plan' defined
15(3)	All final order of the Board to include individual care plan
17	Release of juvenile

32	Rehabilitation and Social Reintegration
33	Adoption
34	Foster care
35	Criteria for selection of families for foster care
36	Pre-adoption Foster Care
37	Sponsorship
38	After Care Organisation
39	Linkages and co-ordination
46(7)	Mental health care plan integrated into the individual care plan of juvenile.
47	Education
48	Vocational Training
49	Recreation facilities
50	Institutional management of juvenile
57	Rewards and earnings
55 (6) (a) (x)	Review of post release and post rehabilitation programme
61 (3)	Restoration of juvenile suffering from dangerous disease mental or health
65	Restoration and follow-up
81(2)(g)	District Child Protection Unit to facilitate restoration and rehabilitation of children
87(1)(h) (j)	Duty of Probation Officer to participate in pre-release programme and establish linkage with voluntary organisations
Form XIV	Declaration regarding child legally free for adoption
Form XVI	Foster carer's assessment
Form XVII	Order of Foster care placement

Form XVIII	Order of Sponsorship placement
Form XIX	Order of After Care placement
Form XXI	Individual Care plan

II. REHABILITATION/SOCIAL REINTEGRATION

The rehabilitation and social reintegration of a child shall begin during the stay of the child in Special Home and it shall be carried out alternatively by (i) adoption, (ii) foster care, (iii) sponsorship or (iv) sending the child to an After-Care Organisation. [Section 40 r/w Rule 32]

A. Adoption

1. The primary responsibility for providing care and protection to children shall be that of his family and adoption shall be resorted to for the rehabilitation of the children who are orphan, abandoned or surrendered. [Section 41 (1) & (2) r/w Rule 33 (1)]
2. The State Government or Central Adoption Resource Agency (CARA) is required to issue guidelines for adoption. [Section 41 (3) r/w Rule 33 (3)]
3. For the placement of children who are orphan, abandoned or surrendered the State Government shall recognise one or more of its institutions or voluntary organisations in each District as specialized adoption agencies. [Section 41 (4)]

B. After Care Programme

1. State Government shall set up an after care programme for rehabilitation and social reintegration of juveniles after they leave special homes to enable them to lead an honest, industrious and useful life. The objective is to facilitate their transition from an institutionbased life to mainstream society for social re-integration. [Sections 40 & 44 r/w Rule 38]
2. After care programme is made available to juvenile between 18-21 years of age, who have no place to go to or are unable to support himself. The programme is prepared by the District or State CPU in collaboration with voluntary organizations. [Section 44 proviso r/w Rule 38(2)]
3. The Board may pass an order for placing a juvenile under an after care programme in Form XIX, a copy of which is sent to the District and the State CPU and the State Government, who are responsible for arranging after care. [Rule 38(3)]

4. The key components of the after care programme include -

- community group housing on a temporary basis;
- encouragement to learn a vocation or gain employment and provide for payment of stipend;
- encouragement to gradually sustain themselves;
- provision for a peer counsellor;
- payment of stipend during vocational training till the youth gets employment.
- arrangement of loan to set up entrepreneurial activities; [Rule 38(6) to (9)]

दण्ड प्रक्रिया संहिता, 1973

27. किशोरों के मामलों में अधिकारिता- किसी ऐसे अपराध का विचारण, जो मृत्यु या आजीवन कारावास से दण्डनीय नहीं है और जो ऐसे व्यक्ति द्वारा किया गया है, जिसकी आयु उस तारीख को, जब वह न्यायलय के समक्ष हाजिर हो या जाया जाए, सोलह वर्ष से कम है, मुख्य न्यायिक मजिस्ट्रेट के न्यायालय द्वारा या किसी ऐसे न्यायालय द्वारा किया जा सकता है जिसे बालक अधिनियम, 1960 (1960 का 60) या किशोर अपराधियों के उपचार, प्रशिक्षण और पुनर्वास के लिए उपबन्ध करने वाली तत्समय प्रवृत्त किसी अन्य विधि के अधीन विशेष रूप से सशक्त किया गया है।

361. कुछ मामलों में विशेष कारणों का अभिलिखित किया जाना -

(ख) किसी किशोर अपराधी के संबंधों में कार्य कार्यवाही बालक अधिनियम 1960 (1960 का 60) के अधीन या किशोर अपराधियों के उपचार प्रशिक्षण या सुधार से संबंधित तत्समय प्रवृत्त किसी अन्य विधि के अधीन कर सकता था।

किन्तु उसने ऐसा नहीं किया है वहाँ वह ऐसा ने करने के विशेष कारण अपने निर्णय में अभिलिखित करेगा।

भारतीय दण्ड संहिता, 1860

82. सात वर्ष से कम आयु के शिशु का कार्य--कोई बात अपराध नहीं है जो सात वर्ष से कम आयु के शिशु द्वारा की जाती है।

83. सात वर्ष से ऊपर किन्तु बारह वर्ष से कम आयु के अबपरिपक्व समझ क शिशु का कार्य-को बात अपराध नहीं है जो सात वर्ष से ऊपर और बारह वर्ष से कम आयु के ऐसे शिशु द्वारा की जानी है जिसकी समझ इतनी परिपक्व नहीं है कि वह उस अवसर पर अपने आचरण की प्रकृति और परिणामों का निर्णय कर सके।

किशोर न्याय
(बालकों की देखरेख और संरक्षक)
अधिनियम, 2000
क्रमांक 56 सन् 2000*

[30 दिसम्बर, 2000]

विधि का उल्लंघन करने वाले किशोरों और देखरेख तथा संरक्षण की आवश्यकता वाले बालकों को उनके विकास की आवश्यकताओं की पूर्ति करके उनकी समुचित देखरेख, संरक्षण और उपचार करने के लिए और बालकों के सर्वोत्तम हित में उनसे सम्बन्धित मामलों के न्याय-निर्णयन और निपटारे में एक शिशु-मैत्री दृष्टिकोण अपनाकर और ¹[उनके अन्तिम पुनर्वास के लिए समेकन और उससे सम्बन्धित या उसके अनुषंगिक विषयों का संशोधन करने के लिए अधिनियम]।

यतः संविधान ने विभिन्न उपबन्धों में जिसमें अनुच्छेद 15 का खण्ड (3), अनुच्छेद 39 का खण्ड (ड़) और (च), अनुच्छेद 45 और 47 सम्मिलित है, राज्य पर यह सुनिश्चित करने का एक प्रारम्भिक उत्तरदायित्व अधिरोपित किया है कि बालकों की सभी आवश्यकताओं को पूरा किया जाय और यह भी कि उनके मूल मानवाधिकारों का पूरी तरह संरक्षण हो :

और यतः संयुक्त राष्ट्रसंघ की साधारण सभा ने भी 20 नवम्बर, 1989 को बालकों के अधिकारों पर सम्पन्न अभिसमय को अंगीकृत कर लिया है :

और यतः बालकों के अधिकारों के अभिसमय द्वारा मानकों के लिए कुलक को विहित कर रखा है जिसका पालन पक्षकार राज्यों को बालक के सर्वोत्तम हित को सुनिश्चित करने के लिए करना है :

और यतः बालकों के अधिकारों के अभिसमय द्वारा न्यायिक कार्यवाहियों की शरण लिए बिना यथा संभाव्य शिकार बच्चों के सामाजिक पुनर्एकीकरण पर जोर दिया गया है :

और यतः भारत सरकार ने 11 दिसम्बर, 1992 को उक्त अभिसमय का अनुसमर्थन कर दिया है :

और यतः यह समीचीन है कि किशोरों से सम्बन्धित विद्यमान विधि का पुनर्अधिनियमन किया जाय और इस निमित्त उन मानकों को ध्यान में रखा जाये जो कि बालकों के अधिकारों के अभिसमय द्वारा, किशोर न्याय के प्रशासन हेतु संयुक्त राष्ट्र संघ के मानव न्यूनतम नियम, 1985 (जिसे बीजिंग नियम कहा जाता है), अपनी स्वाधीनता से वंचित किशोरों के संरक्षण के लिए संयुक्त राष्ट्र संघ के नियम, 1990 द्वारा अन्य समस्त सुसंगत अन्तर्राष्ट्रीय लिखतों द्वारा विहित किया गया है।

भारत गणराज्य के 51वें वर्ष में संसद द्वारा निम्नलिखित रूप में यह अधिनियम हो :

अध्याय-1

प्रारम्भिक

1. संक्षिप्त नाम, विस्तार¹ [प्रारम्भ और लागू होना] – (1) इस अधिनियम का संक्षिप्त नाम किशोर न्याय (बालकों की देखरेख और संरक्षण) अधिनियम, 2000 है।
(2) इसका विस्तार जम्मू-कश्मीर राज्य के सिवाय संपूर्ण भारत पर है।

* राष्ट्रपति की स्वीकृति दिनांक 30 दिसम्बर, 2000 को प्राप्त हुई। अधिनियम का अंग्रेजी पाठ भारत के राजपत्र (असाधारण) भाग 2 खण्ड 1 दिनांक 30-12-2000 पृष्ठ 1-19 पर प्रकाशित।

¹ केन्द्रीय अधिनियम क्रमांक 33 सन् 2006 द्वारा दिनांक 22-8-2006 से प्रतिस्थापित।

(3) यह उस तारीख को प्रवृत्त होगा जो केन्द्रीय सरकार, राजपत्र में अधिसूचना द्वारा, नियम करे।

¹[(4) तत्समय प्रवृत्त किसी अन्य विधि में किसी बात के होते हुए भी, इस अधिनियम के उपबन्ध, ऐसे सभी मामलों को लागू जिनमें ऐसी अन्य विधि के अधीन विधि का उल्लंघन करने वाले किशारों का निरोध, अभियोजन, शास्ति या कारावास का दंडादेश अंतर्वलित है।]

टिप्पणी

दिनांक-1 अप्रैल, 2001 को प्रवृत्त। देखिये अधिसूचना क्र०का०आ० 177 (अ) दिनांक-28-2-2001, भारत का राजपत्र (असाधारण) भाग-2 खण्ड 3 (2) दिनांक 28-2-2001 पृष्ठ 1 पर प्रकाशित।

2. परिभाषाएं – इस अधिनियम में, जब तक कि संदर्भ से अन्यथा अपेक्षित न हो-

(क) “सलाहकार बोर्ड” से धारा 62 के अधीन गठित जैसी भी स्थिति हो, कोई केन्द्रीय अथवा राज्य सलाहकार बोर्ड अथवा किसी जिले और नगर स्तर का सलाहकार बोर्ड अभिप्रेत है;

(कक) “दत्तक ग्रहण” से वह प्रक्रिया अभिप्रेत है जिसके द्वारा दत्तक बालक अपने जैविक माता-पिता से स्थायी रूप से अलग कर दिया जाता है और अपने दत्तक माता-पिता का उन सभी अधिकारों, विशेषाधिकारों और दायित्वों के साथ जो उस नातेदारी के साथ संलग्न है, धर्मज सन्तान बन जाता है”।

(ख) “भीख मांगना” से अभिप्रेत है-

(1) लोक स्थान में भिक्षा की याचना या प्राप्ति या किसी प्राइवेट परिसर में भिक्षा की याचना या प्राप्ति के प्रयोजन से प्रवेश करना चाहे किसी भी बहाने से हो;

(2) भिक्षा अभिप्राप्त या उद्दापित करने के उद्देश्य से, अपना या किसी अन्य व्यक्ति या जीव-जन्तु का कोई व्रण, घाव, क्षति, विरूपिता या रोग अभिदर्शित या प्रदर्शित करना;

(ग) “बोर्ड” से धारा 4 के अधीन गठित किशोर न्याय बोर्ड अभिप्रेत है;

(घ) “देखरेख और संरक्षण की आवश्यकता वाले बालक” से कोई ऐसा बालक अभिप्रेत है :

(i) जिसे गृह विहीन अथवा किसी निश्चित स्थान पर निवास स्थान के और जीवन निर्वाह के किसी दृश्यमान साधन के बिना पाया जाता है;

[(i)1] जो भीख मांगते हुए पाया जाता है, या जो अवारा बालक हैं या श्रमजीवी बालक हैं;]

(ii) जो किसी व्यक्ति के साथ रहता है (जो उस बालक का संरक्षक है अथवा नहीं) और उस व्यक्ति ने,

(क) बालक को मार डालने अथवा क्षतिग्रस्त करने की धमकी दी है और उस धमकी को पूरा कर देने की युक्ति युक्त संभावना है; अथवा

¹ केन्द्रीय अधिनियम क्रमांक 33 सन 2006 द्वारा दिनांक 22-8-2006 से अंतःस्थापित।

- (ख) किसी अन्य बालक या बालकों को मार डाला है, उनका दुरुपयोग किया है या उनकी उपेक्षा की है और इस बात की युक्तियुक्त संभावना है कि प्रश्नगत बालक भी उस व्यक्ति द्वारा मार डाला जायेगा, उसका दुरुपयोग किया जायेगा या उसकी उपेक्षा होगी;
- (iii) जो मानसिक अथवा शारीरिक रूप से विवादित या रोगग्रस्त है या ऐसा बालक है जो सावधिक बीमारियों या ऐसी बीमारियों से ग्रस्त रहता है जिनका कोई उपचार नहीं है और उसको सहारा देने वाला या उसकी देखरेख करने वाला कोई नहीं है;
- (iv) जिसके माता-पिता या संरक्षक हैं और ऐसे माता पिता या संरक्षक बालक पर नियंत्रण स्थापित करने के योग्य नहीं हैं या अक्षम हैं;
- (v) जिसके माता-पिता नहीं हैं और कोई भी ऐसा नहीं है जो उसकी देखरेख करने का इच्छुक हो या उसके माता-पिता ने उसका त्याग कर दिया है या वे गायब हैं या बालक का परित्याग ¹[या अभ्यर्पण] कर चले गये हैं और उसके माता-पिता को युक्ति पूछताछ के बाद भी नहीं पाया जा सकता है;
- (vi) जिसका लैंगिक दुरुपयोग या अवैध कार्यों के लिए घोर दुरुपयोग हो रहा है, यातना दी जा रही है अथवा शोषण किया जा रहा है या उसका ऐसा किए जाने की संभावना है;
- (vii) जिसे भेद्य पाया जाता है और इस बात की संभावना है कि उसे मादक द्रव्यों के दुरुपयोग अथवा दुर्व्यापार के कार्य में लगा दिया जायेगा;
- (viii) जिसका लोकात्मा के विरुद्ध अभिलाभों के लिए दुरुपयोग किया जा रहा है या वैसा किये जाने की जिसकी संभावना है;
- (ix) जो किसी सशस्त्र संघर्ष, सिविल अशांति अथवा दैवी आपदा का शिकार है;
- (ड) "बालक गृह" से कोई ऐसा संस्थान अभिप्रेत है जो किसी राज्य सरकार द्वारा या किसी स्वैच्छिक संगठन द्वारा स्थापित किया गया है और धारा 34 के अधीन उस सरकार द्वारा प्रमाणित है;
- (च) "समिति" से धारा 29 के अधीन गठित बालक कल्याण समिति अभिप्रेत है;
- (छ) "सक्षम प्राधिकारी" से किसी ऐसे बालक के सम्बन्ध में जिसे देखरेख और संरक्षण की आवश्यकता है कोई समिति और विधि का उल्लंघन करने वाले किशोरों के सम्बन्ध में कोई बोर्ड अभिप्रेत है;

¹ केन्द्रीय अधिनियम क्रमांक 33 सन 2006 द्वारा दिनांक 22-8-2006 से अंतःस्थापित।

(ज) "उपयुक्त संस्थान" से कोई सरकारी अथवा कोई गैर सरकारी संगठन या कोई स्वैच्छिक संगठन अभिप्रेत है जो किसी बालक की जिम्मेदारी को अपनाने के लिए तैयार हो और ऐसा संगठन (सक्षम प्राधिकारी की सिफारिश पर राज्य सरकार द्वारा) उपयुक्त पाया गया हो;

(झ) "उपयुक्त व्यक्ति" से कोई ऐसा व्यक्ति अभिप्रेत है जो कि कोई सामाजिक कार्यकर्ता है या कोई अन्य व्यक्ति है जो कि किसी बालक की जिम्मेदारी को अपनाने के लिए तैयार है और उसे सक्षम प्राधिकारी द्वारा बालक को लेने और उसकी देखरेख करने के लिए उपयुक्त पाया गया हो;

(ञ) "संरक्षक" से किसी बालक के सम्बन्ध में नैसर्गिक संरक्षक अथवा कोई अन्य व्यक्ति अभिप्रेत है जिसका कि बालक पर वास्तविक भारसाधन और नियंत्रण है और सक्षम प्राधिकारी द्वारा अपने समक्ष की कार्यवाहियों के दौरान उसे संरक्षक के रूप में मान्य किया गया हो;

(ट) "किशोर" अथवा "बालक" से कोई ऐसा व्यक्ति अभिप्रेत है, जिसने अठारह वर्ष की आयु पूरी न की हो;

¹[(ठ) "विधि का उल्लंघन करने वाला किशोर" से ऐसा एक किशोर अभिप्रेत है जिसके बारे में यह अभिकथन है कि उसने कोई अपराध किया है और ऐसा अपराध करने की तारीख को उसने अठारह वर्ष की आयु पूरी नहीं की है;]

(ड) ² [* * *]

(ढ) "स्वापक औषधि" तथा "मनः प्रभावी पदार्थ" के वही अर्थ हैं जो उनके स्वापक औषधि और मनः प्रभावी पदार्थ अधिनियम, 1985 (1985 का 61) में है ;

(ण) "संप्रक्षण गृह" से वह गृह अभिप्रेत है जो कि किसी राज्य सरकार द्वारा या किसी स्वैच्छिक संगठन द्वारा स्थापित किया गया है और उस सरकार द्वारा विधि का उल्लंघन करने वाला किशोर के लिए धारा 8 के अधीन एक संप्रक्षण गृह के रूप में प्रमाणित किया गया है;

(त) "अपराध" से तत्समय प्रवृत्त किसी विधि के अधीन दण्डनीय कोई अपराध अभिप्रेत है;

(थ) "सुरक्षित स्थान" से अभिप्रेत है ऐसा कोई स्थान या ऐसी कोई संस्था (जो पुलिस हवालात या जेल नहीं है) जिसका भारसाधक व्यक्ति किसी किशोर को अस्थायी रूप में लेने और उसकी देखरेख करने के लिए रजामन्द है और जो सक्षम प्राधिकारी की राय में किशोर के लिए सुरक्षित स्थान है;

(द) "विहित" से इस अधिनियम के अधीन बनाये गये नियमों द्वारा विहित अभिप्रेत है;

(ध) "परिवीक्षा अधिकारी" से अपराधी परिवीक्षा अधिनियम, 1958 (1958 का 20) के अधीन परिवीक्षा अधिकारी के रूप में राज्य सरकार द्वारा नियुक्त कोई अधिकारी अभिप्रेत है।

¹ केन्द्रीय अधिनियम क्रमांक 33 सन 2006 द्वारा दिनांक 22-8-2006 से प्रतिस्थापित।

² केन्द्रीय अधिनियम क्रमांक 33 सन 2006 द्वारा दिनांक 22-8-2006 से विलुप्त।

- (न) "लोक स्थान" का वही अर्थ है जो उसका अनैतिक व्यापार (निवारण अधिनियम, 1956 (1956 का 104) में है;
- (प) "आश्रय गृह" से वह गृह या त्यक्त केन्द्र (ड्राप इन सेन्टर) अभिप्रेत है जो धारा 37 के अधीन स्थापित किया गया है;
- (फ) "विशेष गृह" से वह संस्थान अभिप्रेत है जिसे किसी राज्य सरकार द्वारा या किसी स्वैच्छिक संगठन द्वारा स्थापित किया गया है और उस सरकार द्वारा धारा 9 के अधीन प्रमाणित किया गया है;
- (ब) "विशेष किशोर पुलिस इकाई" से किसी राज्य के पुलिस बल की वह इकाई अभिप्रेत है जिसे धारा 63 के अधीन किशोरों अथवा बालकों को संभालने के लिए पदनामित किया गया है;
- (भ) "राज्य सरकार" से किसी संघ राज्य क्षेत्र के सम्बन्ध में संविधान के अनुच्छेद 239 के अधीन राष्ट्रपति द्वारा नियुक्त उस संघ राज्य क्षेत्र का प्रशासक अभिप्रेत है;
- (म) उन सभी शब्दों और पदों के जो इस अधिनियम में प्रयुक्त हैं किन्तु परिभाषित नहीं हैं और दण्ड प्रक्रिया संहिता, 1973 (1974 का 2) में परिभाषित हैं, वही अर्थ होंगे, जो उनके उस संहिता में हैं।

3. ऐसे किशोर के बारे में जांच चालू रखना जो किशोर नहीं रह गया है...— जहाँ किसी विधि का उल्लंघन करने वाला किशोर या देखरेख और संरक्षणता की आवश्यकता वाले बालक के विरुद्ध जाँच आरम्भ कर दी गई है और उस जाँच के दौरान वह किशोर या बालक ऐसा नहीं रह जाता है वहाँ इस अधिनियम में या तत्समय प्रवृत्त किसी अन्य विधि में किसी बात के होते हुये भी, उस व्यक्ति के बारे में जांच ऐसे चालू रखी जा सकेगी और आदेश ऐसे किये जा सकेंगे मानो वह व्यक्ति किशोर या बालक बना रहा है।

अध्याय—2

विधि का उल्लंघन करने वाला किशोर

4. किशोर न्याय बोर्ड— (1) दण्ड प्रक्रिया संहिता, 1973 (1974 का 2) में किसी बात के होते हुए भी राज्य सरकार, ¹[किशोर न्याय (बालकों की देखरेख और संरक्षण) संशोधन अधिनियम, 2006 के प्रारम्भ की तारीख से एक वर्ष की अवधि के भीतर राजपत्र में अधिसूचना द्वारा प्रत्येक जिले के लिए], एक या अधिक किशोर कल्याण बोर्ड विधि का उल्लंघन करने वाले किशोरों के सम्बन्ध में इस अधिनियम के अधीन ऐसे बोर्ड को प्रदत्त या अधिरोपित शक्तियों का प्रयोग और कर्तव्यों का निर्वहन करने के लिए गठित कर सकेगी।

(2) ऐसे किसी बोर्ड में एक मेट्रोपॉलिटन मजिस्ट्रेट अथवा प्रथम श्रेणी का कोई न्यायिक मजिस्ट्रेट जैसी भी स्थिति हो, और दो सामाजिक कार्यकर्ता सम्मिलित होंगे, जिसमें कम से कम एक कोई स्त्री

¹ केन्द्रीय अधिनियम क्रमांक 33 सन 2006 द्वारा दिनांक 22-8-2006 से प्रतिस्थापित।

होगी और इन सबके द्वारा एक पीठ का निर्माण होगा और ऐसी प्रत्येक पीठ को दण्ड प्रक्रिया संहिता, 1973 (1974 का 2) द्वारा किसी महानगरीय मजिस्ट्रेट को अथवा जैसी भी स्थिति हो किसी प्रथम वर्ग के मजिस्ट्रेट को प्रदत्त शक्तियाँ होंगी और बोर्ड का मजिस्ट्रेट प्रधान मजिस्ट्रेट के रूप में पदनामित होगा।

(3) किसी भी मजिस्ट्रेट को बोर्ड के सदस्य के रूप में तब तक नियुक्त नहीं किया जायेगा जब तक कि उसको बाल-मनोविज्ञान अथवा बाल-कल्याण का विशेष ज्ञान अथवा प्रशिक्षण न प्राप्त हो और किसी सामाजिक कार्यकर्ता को तब तक बोर्ड के सदस्य के रूप में नियुक्त नहीं किया जायेगा जब तक कि वह सक्रिय रूप से कम से कम सात वर्षों से बालकों से सम्बन्धित स्वास्थ्य, शिक्षा अथवा कल्याणकारी कार्यों में न लगा रहा हो।

(4) बोर्ड के सदस्यों की पदावधि और ऐसे सदस्य द्वारा त्याग पत्र देने की रीति वह होगी जो विहित की जाये।

(5) बोर्ड के किसी सदस्य की नियुक्ति राज्य सरकार द्वारा जांच के बाद समाप्त की जा सकती है यदि—

(i) वह इस अधिनियम के अधीन निहित शक्ति के दुरुपयोग का दोषी पाया जाता है,

(ii) वह नैतिक अधमता से सम्बन्धित किसी अपराध के लिए दोष सिद्ध किया जाता है और वह दोष सिद्धि उलट नहीं दी गई है या उसको उस अपराध के सम्बन्ध में पूर्ण क्षमा प्रदान नहीं की गई है।

(iii) वह लगातार तीन महीनों तक बिना किसी वैध कारण के बोर्ड की कार्यवाहियों में उपस्थित होने में विफल रहा है या वह किसी वर्ष में होने वाली बैठकों में तीन चौथाई से भी कम में उपस्थित होने में विल रहा है।

5. बोर्ड से सम्बन्धित प्रक्रिया आदि— (1) बोर्ड ऐसे समयों पर अपनी बैठक करेगा और अपनी बैठकों में कार्य सम्पादन सम्बन्धित प्रक्रिया के ऐसे नियमों का पालन करेगा, जो विहित किये जायें।

(2) जब बोर्ड की बैठक न हो रही हो विधि का उल्लंघन करने वाला किशोर को बोर्ड के किसी एक सदस्य के समक्ष प्रस्तुत किया जा सकेगा।

(3) किसी सदस्य के अनुपस्थित रहने पर भी बोर्ड कार्य कर सकेगा और उसके द्वारा किया गया कोई भी आदेश केवल इस कारण अवैध नहीं होगा कि कार्यवाहियों के किसी प्रक्रम के दौरान उसका कोई सदस्य अनुपस्थित था:

परन्तु यह कि मामले के अन्तिम निपटारे के समय प्रधान मजिस्ट्रेट को सम्मिलित करते हुए कम से कम दो सदस्य अवश्य उपस्थित होने चाहिए।

(4) अन्तरिम अथवा अन्तिम निपटारे के समय बोर्ड के सदस्यों के बीच मतभेद होने की दशा में, बहुमत की राय अभिभावी होगी, परन्तु जहाँ ऐसा कोई बहुमत नहीं है वहाँ प्रधान मजिस्ट्रेट की राय अभिभावी होगी।

6. किशोर न्याय बोर्ड की शक्तियाँ— (1) जहाँ किसी जिले ¹[* * *] के लिए किसी बोर्ड का गठन किया गया है, वहाँ तत्समय प्रवृत्त किसी अन्य विधि में किसी बात के होते हुये भी परन्तु इस अधिनियम में अन्यथा उपबन्धित को छोड़कर, ऐसे बोर्ड को विधि का उल्लंघन करने वाला किशोर के समबन्ध में इस अधिनियम के अधीन सारी कार्यवाहियों से संव्यवहार करने की अनन्यतम शक्ति होगी।

(2) इस अधिनियम द्वारा या इसके अधीन बोर्ड को प्रदत्त की गई शक्तियों को प्रयोग उच्च न्यायालय और सेशन न्यायालय द्वारा भी किया जा सकेगा जब अपील, पुनरीक्षण अथवा अन्यथा के रूप में कार्यवाहियाँ उनके समक्ष आएं।

7. इस अधिनियम के अधीन सशक्त न किये गये मजिस्ट्रेट द्वारा अनुसरण की जाने वाली प्रक्रिया—

(1) जब किसी ऐसे मजिस्ट्रेट की, जो इस अधिनियम के अधीन बोर्ड की शक्तियों को प्रयोग करने के लिए सशक्त नहीं है, यह राय है कि इस अधिनियम के किन्हीं उपबन्धों के अधीन (उसके समक्ष साक्ष्य देने के प्रयोजन से अन्यथा) लाया गया कोई व्यक्ति किशोर या बालक है तब वह बिना किसी विलम्ब के उस राय को अभिलिखित करेगा और उस किशोर या बालक को तथा उस कार्यवाही के अभिलेख को उस कार्यवाही पर अधिकारिता रखने वाले समक्ष प्राधिकारी को भेजेगा।

(2) वह सक्षम प्राधिकारी, जिसे उपधारा (1) के अधीन कार्यवाही भेजी गई है, इस प्रकार जाँच करेगा मानो किशोर या बालक मूलतः उसके समक्ष लाया गया हो।

7²[क—किसी न्यायालय के समक्ष किशोरावस्था का दावा किये जाने पर अनुसरण की जाने वाली प्रक्रिया—

(1) जब कभी किसी न्यायालय के समक्ष किशोरावस्था का कोई दावा किया जाता है या न्यायालय की यह राय है कि अभियुक्त व्यक्ति अपराध कारित होने की तारीख को किशोर था तब न्यायालय ऐसे व्यक्ति की आयु का अवधारण करने के लिए जाँच करेगा, ऐसा साक्ष्य लेगा जो आवश्यक हो (किन्तु शपथ—पत्र पर नहीं) और इस बारे में उसकी निकटतम आयु का कथन करते हुए निष्कर्ष अभिलिखित करेगा कि वह व्यक्ति किशोर या बालक है अथवा नहीं :

¹ केन्द्रीय अधिनियम क्रमांक 33 सन 2006 द्वारा दिनांक 22-8-2006 से विलुप्त।

² केन्द्रीय अधिनियम क्रमांक 33 सन 2006 द्वारा दिनांक 22-8-2006 से अंतःस्थापित।

परन्तु किशोरावस्था का दावा किसी न्यायालय के समक्ष किया जा सकेगा और उसे किसी भी प्रक्रम पर, यहाँ तक कि मामले के अन्तिम निपटान के पश्चात् भी, मान्यता दी जाएगी और ऐसे दावे का इस अधिनियम में और उसके अधीन बनाए गए नियमों के उपबन्धों के अनुसार अवधारण किया जाएगा, भले ही उसकी किशोरावस्था पर अधिनियम के प्रारम्भ की तारीख को या उससे पहले समाप्त हो गई हो।

(2) यदि न्यायालय इस निष्कर्ष पर पहुँचता है कि कोई व्यक्ति उपधारा (1) के अधीन अपराध कारित करने की तारीख को किशोर था, तो वह उस किशोर को समुचित आदेश पारित किए जाने के लिए बोर्ड को भेजेगा और यदि न्यायालय द्वारा कोई दण्डादेश पारित किया गया है तो यह समझा जाएगा कि उसका कोई प्रभाव नहीं है।]

8. संप्रेक्षण गृह— (1) कोई राज्य सरकार किन्हीं विधि का उल्लंघन करने वाले किशोरों के बारे में इस अधिनियम के अधीन जाँच लम्बित रहने के दौरान उन्हें अस्थायी तौर पर रखने के लिए या तो स्वयं अथवा स्वयंसेवी संगठनों से किसी करार के अधीन प्रत्येक जिले अथवा जिलों के किसी समूह में जैसा कि अपेक्षित हो, संप्रेक्षण गृह स्थापित कर सकेगी और बनाये रख सकेगी।

2. जहाँ राज्य सरकार की यह राय है कि उपधारा (1) के अधीन स्थापित या अनुरक्षित गृह से भिन्न कोई संस्था इस अधिनियम के अधीन विधि का उल्लंघन करने वाला किशोर के बारे में जाँच लम्बित रहने के दौरान उन्हें अस्थायी तौर पर रखने के लिए ठीक है, वहाँ वह उस संस्था को इस अधिनियम के प्रयोजनों के लिए संप्रेक्षण गृह के रूप में मान्यता प्रदान कर सकेगी।

3. राज्य सरकार संप्रेक्षण गृहों के प्रबन्ध के लिए, जिसमें उनके द्वारा किशोरों के पुनर्वासन और सामाजिक एकीकरण के लिए दी जाने वाली विभिन्न प्रकार की सेवायें और स्तर भी हैं, और उन परिस्थितियों के लिए जिनमें तथा उस रीति के लिए जिससे किसी संस्था को संप्रेक्षण गृह के रूप में मान्यता प्रदान की जा सकेगी या प्रत्याहृत की जा सकेगी, उपबन्ध इस अधिनियम के अधीन बनाये गये नियमों द्वारा कर सकेगी।

4. प्रत्येक वह किशोर जिसे उसके माता-पिता या संरक्षक के भारसाधन में नहीं रखा गया है और जिसे किसी संप्रेक्षण गृह को भेजा गया है प्रारंभ में उसे संप्रेक्षण गृह के प्रवेश यूनिट में प्रारम्भिक जाँच, देखरेख और उसकी आयु समूह के अनुसार किशोरों के वर्गीकरण के लिए रखा जायेगा जैसे कि सात से बारह वर्ष, बारह से सोलह वर्ष और सोलह से अठारह वर्ष और संप्रेक्षण गृह में आगे रखने के लिए उनकी शारीरिक और मानसिक स्थिति और किये गये अपराध की मात्रा पर सम्यक् विचार किया जायेगा।

9. विशेष गृह—

(1) कोई राज्य सरकार या तो स्वयं अथवा स्वयं सेवी संगठनों से किये गये किसी करार के अधीन प्रत्येक जिले या जिलों के किसी समूह में, जैसा अपेक्षित हो, इस अधिनियम के अधीन विधि, विवादित किशोर के प्रवेश और पुनर्वास के लिए विशेष गृहों को स्थापित और अनुरक्षित कर सकेगी।

(2) जहां राज्य सरकार की यह राय है कि उपधारा (1) के अधीन स्थापित या अनुरक्षित गृह से भिन्न कोई संस्था इस अधिनियम के अधीन वहां भेजे जाने वाले विधि का उल्लंघन करने वाला किशोर को रखने के लिए उपयुक्त है, वहाँ उस संस्था को इस अधिनियम के प्रयोजनों के लिए विशेष गृह के रूप में प्रमाणित कर सकेगी।

(3) राज्य सरकार विशेष गृहों के प्रबन्ध के लिए, जिसमें उनके द्वारा किशोरों के पुनर्वासन और सामाजिक एकीकरण के लिए दी जाने वाली विभिन्न प्रकार की सेवायें और स्तर भी हैं, और उन परिस्थितियों के लिए जिनमें तथा उस रीति के लिए जिससे, किसी संस्था की विशेष गृह के रूप में मान्यता प्रदान की जा सकेगी या प्रत्याहृत की जा सकेगी, उपबन्ध इस अधिनियम के अधीन बनाये गये नियमों द्वारा कर सकेगी।

(4) उपधारा (3) के अधीन बनाये गये नियमों में विधि का उल्लंघन करने वाले किशोरों का उनकी आयु और उनके द्वारा किये गये अपराधों की प्रकृति और मानसिक तथा शारीरिक स्थिति के आधार पर वर्गीकरण और पृथक्करण के लिए भी उबन्ध किया जा सकेगा।

10. विधि का उल्लंघन करने वाला किशोर की गिरफ्तारी—

¹[1. जैसे ही विधि का उल्लंघन करने वाला कोई किशोर पुलिस द्वारा गिरफ्तार किया जाता है तभी वह विशेष किशोर पुलिस बल एकक या अभिहित पुलिस अधिकारी के प्रभार के अधीन रखा जाएगा जो किशोर को समय नष्ट किए बिना चौबीस घंटे के भीतर किशोर की गिरफ्तारी के स्थान से यात्रा में लिए गए आवश्यक समय को छोड़कर बोर्ड के समक्ष प्रस्तुत करेगा :

परन्तु किसी भी दशा में, विधि का उल्लंघन करने वाले किशोर को पुलिस हवालात या जेल में नहीं रखा जाएगा।]

2. राज्य सरकार—

(i) उन व्यक्तियों के लिए व्यवस्था करने हेतु जिनके द्वारा (जिसमें रजिस्ट्रीकृत स्वयंसेवी संगठन भी सम्मिलित हैं) विधि का उल्लंघन करने वाला कोई किशोर बोर्ड के समक्ष पेश किया जा सकता है;

¹ केन्द्रीय अधिनियम क्रमांक 33 सन 2006 द्वारा दिनांक 22-8-2006 से प्रतिस्थापित।

(ii) उस रीति की व्यवस्था करने हेतु जिससे ऐसे किशोर को किसी संप्रेक्षण गृह में भेजा जा सकता है;

इस अधिनियम से संगत नियम बना सकेगी।

11. किशोर पर अभिरक्षक का नियंत्रण—

ऐसा कोई व्यक्ति जिसके भारसाधन में इस अधिनियम के अनुसरण में किसी किशोर को रखा गया है, आदेश के प्रवर्तन तक उसी तरह उस किशोर पर नियंत्रण रखेगा जिस तरह वह रखता यदि वह उसका माता-पिता और वह उसके भरण-पोषण का जिम्मेदार होगा और किशोर उसके भारसाधन में उस अवधि तक निरन्तर बना रहेगा जैसा कि सक्षम प्राधिकारी द्वारा कथित किया गया हो चाहे भले ही उसके माता-पिता या किसी अन्य व्यक्ति द्वारा उस पर दावा किया गया हो।

12. किशोर की जमानत—

1. किसी जमानतीय अथवा गैर जमानतीय अपराध का अभियुक्त कोई व्यक्ति और प्रकट रूप से एक किशोर जब गिरफ्तार अथवा अवरूद्ध किया जाता है या किसी बोर्ड के समक्ष उपस्थित होता है या लाया जाता है, तब वह व्यक्ति दण्ड प्रक्रिया संहिता, 1973 (1974 का 2) अथवा तत्समय प्रवृत्त किसी विधि में किसी बात के होते हुए भी प्रतिभू सहित या रहित जमानत पर छोड़ दिया जायेगा, ¹[या किसी परिवीक्षा अधिकारी के पर्यवेक्षण के अधीन या किसी उपयुक्त संस्था या किसी उपयुक्त व्यक्ति की देखरेख के अधीन रखा जाएगा] परन्तु उसे इस तरह नहीं छोड़ा जायेगा यदि यह विश्वास करने का कोई युक्तियुक्त आधार प्रतीत हो रहा हो कि उसका इस तरह छोड़ा जाना उसको किसी ज्ञात अपराधी के साहचर्य में ला देगा अथवा उसको नैतिक, शारीरिक अथवा मनोवैज्ञानिक खतरे में डाल देगा अथवा यह कि उसका छोड़ा जाना न्याय के उद्देश्यों को विफल कर देगा।

2. यदि ऐसा व्यक्ति गिरफ्तार हो जाने के बाद पुलिस थाने के भारसाधक अधिकारी द्वारा उपधारा (1) के अधीन जमानत पर नहीं छोड़ा जाता तो ऐसा अधिकारी विहित रीति से उसका तब तक केवल किसी संप्रेक्षण गृह में रखना कारित करेगा जब तक कि उसे बोर्ड के समक्ष नहीं लाया जा सकता।

3. जब ऐसा व्यक्ति उपधारा (1) के अधीन बोर्ड द्वारा जमानत पर नहीं छोड़ा जाता तब वह उसे कारागार को सुपुर्द करने के बजाय एक आदेश जारी करेगा और उस आदेश में विनिर्दिष्ट रीति से उससे सम्बन्धित जांच की लम्बित रहने की अवधि के दौरान उसे किसी संप्रेक्षणगृह अथवा सुरक्षा के किसी स्थान पर भेजेगा।

¹ केन्द्रीय अधिनियम क्रमांक 33 सन 2006 द्वारा दिनांक 22-8-2006 से अंतःस्थापित।

13. माता-पिता, संरक्षक अथवा परिवीक्षा अधिकारी को सूचना-

जहाँ किसी किशोर को गिरफ्तार किया जाता है पुलिस थाने का भारसाधक अधिकारी अथवा विशेष किशोर पुलिस इकाई जिसके समक्ष उस किशोर को लाया जाता है गिरफ्तारी के बाद यथाशीघ्र-

क- किशोर के माता-पिता या संरक्षक को, यदि वह पाया जा सकता है, ऐसी गिरफ्तारी की सूचना देगा और बोर्ड के समक्ष उपस्थित होने के लिए निर्देशित करेगा, जिसके समक्ष किशोर को उपस्थित होना है, और

ख- ऐसी गिरफ्तारी की सूचना परिवीक्षा अधिकारी को देगा ताकि वह किशोर के पूर्व वृत्तान्त और पारिवारिक पृष्ठभूमि और अन्य तात्विक परिस्थितियों को प्राप्त कर सके जिनसे बोर्ड को जाँच करने में सहायता मिल सके।

14. किशोर के सम्बन्ध में बोर्ड द्वारा जाँच-

¹[1.] जहाँ कोई किशोर जो किसी अपराध से आरोपित किया गया है किसी बोर्ड के समक्ष पेश किया जाता है जहाँ वह बोर्ड इस अधिनियम के उपबन्धों के अनुसार जाँच करेगा और उस किशोर के सम्बन्ध में ऐसा आदेश कर सकेगा जैसा वह ठीक समझे :

परन्तु यह कि इस धारा के अधीन जाँच को उसके प्रारम्भ होने की तारीख से चार महीनों के भीतर समाप्त कर दिया जायेगा जब तक कि बोर्ड द्वारा मामले की परिस्थितियों को ध्यान में रखते हुए ओर विशेष मामलों में ऐसे विस्तार के कारणों को लिखकर अभिलिखित करते हुए इस अवधि को आगे नहीं बढ़ा दिया जाता।

²[2.] मुख्य न्यायिक मजिस्ट्रेट या मुख्य महानगर मजिस्ट्रेट प्रत्येक छह मास पर बोर्ड के समक्ष लंबित मामलों का पुनर्विलोकन करेगा और बोर्ड को अपनी बैठकों की आवृत्ति बढ़ाने का निर्देश या अतिरिक्त बोर्डों का गठन करा सकेगा।

15. किशोर के सम्बन्ध में जो आदेश पारित किये जा सकते हैं-

1. जहाँ किसी बोर्ड का जाँच करने पर यह समाधान हो जाता है कि किसी किशोर ने कोई अपराध किया है तब तत्समय प्रवृत्त किसी अन्य विधि में किसी प्रतिकूल बात के होते हुये भी, बोर्ड यदि ठीक समझता है, तो वह-

क. किशोर के विरुद्ध समुचित जांच करके और उसको सलाह देने और भर्त्सना करने के बाद तथा माता-पिता अथवा संरक्षक को परामर्श देकर किशोर को घर जाने की अनुमति दे सकता है।

¹ केन्द्रीय अधिनियम क्रमांक 33 सन 2006 द्वारा दिनांक 22-8-2006 से पुनर्संख्यांकित।

² केन्द्रीय अधिनियम क्रमांक 33 सन 2006 द्वारा दिनांक 22-8-2006 से अंतःस्थापित।

ख. किशोर को सामूहिक परामर्श और उसी तरह के कार्य कलाप में सम्मिलित होने के लिए निर्दिष्ट कर सकता है ;

ग. किशोर को सामुदायिक सेवा करने का आदेश दे सकता है;

घ. किशोर के माता-पिता को अथवा स्वयं किशोर को कोई जुर्माना अदा करने का, आदेश दे सकता है, यदि वह चौदह वर्ष से अधिक आयु का है और धन अर्जित करता है;

ड. किशोर को अच्छे आचरण की परिवीक्षा पर छोड़ देने का और उसको माता-पिता, संरक्षक अथवा योग्य व्यक्ति की देखरेख में अथवा ऐसे माता-पिता, संरक्षक या योग्य व्यक्ति की देखरेख में रखने का निर्देश दे सकता है जो प्रतिभू सहित या रहित, जैसा कि बोर्ड अपेक्षा करे, तीन वर्षों से अनधिक किसी अवधि के लिए किशोर के अच्छे आचरण और कल्याण का बन्धपत्र निष्पादित करे;

च. किशोर को अच्छे आचरण की परिवीक्षा पर छोड़ देने का और तीन वर्षों से अनधिक किसी अवधि के लिए किशोर के अच्छे आचरण और कल्याण के लिए उसे किसी अनुकूल संस्थान की देखरेख में रखने का निर्देश दे सकता है;

¹[छ] किशोर को तीन वर्ष की अवधि के लिए विशेष गृह में भेजने के लिए निर्देश देने वाला आदेश कर सकेगा;

परन्तु यदि बोर्ड का यह समाधान हो जाता है कि अपराध की प्रकृति और मामले की परिस्थितियों को ध्यान में रखते हुए उन कारणों से, जो लेखबद्ध किए जाएं, ऐसा करना समीचीन है, तो बोर्ड रोक आदेश की अवधि को ऐसी अवधि तक घटा सकेगा जो वह ठीक समझे।

2. बोर्ड या तो किसी परिवीक्षा अधिकारी के या किसी मान्यताप्राप्त स्वयंसेवी संगठन या अन्यथा के माध्यम से किशोर के सम्बन्ध अन्वेषण की रिपोर्ट करेगा और किसी आदेश को पारित करने के पूर्व रिपोर्ट के निष्कर्ष को ध्यान में रखेगा।

3. जहां कोई आदेश उपधारा (1) के खण्ड (घ) खण्ड (ड.) अथवा खण्ड (च) के अधीन किया जाता है वहां बोर्ड की यदि यह राय है कि किशोर और लोकहित में ऐसा करना समीचीन है तो वह उसके अतिरिक्त यह भी आदेश कर सकेगा कि विधि-विवादित किशोर आदेश में नाम निर्दिष्ट

किसी परिवीक्षा अधिकारी के पर्यवेक्षण में ऐसी अवधि के लिए रहेगा जो कि तीन वर्षों से अधिक की नहीं होगी, जैसा कि उस आदेश में विनिर्दिष्ट किया जाय, और पर्यवेक्षण के ऐसे आदेश में ऐसी शर्तें अधिरोपित कर सकेगा जो कि विधि-विवादित किशोर पर सम्यक् पर्यवेक्षण के लिए आवश्यक समझे :

¹ केन्द्रीय अधिनियम क्रमांक 33 सन 2006 द्वारा दिनांक 22-8-2006 से प्रतिस्थापित।

परन्तु यह कि यदि उसके बाद किसी समय बोर्ड को परिवीक्षा अधिकारी की अन्यथा अन्यथा किसी रिपोर्ट से यह प्रतीत होता है कि विधि-विवादित किशोर पर्यवेक्षण की अवधि में अच्छे आचरण का नहीं रहा है अथवा यह कि यह योग्य संस्था जिसकी देखरेख में किशोर को रखा गया था अब योग्य नहीं रह गई है या यह कि वह अब किशोर के अच्छे आचरण और कल्याणको सुनिश्चित रखने की इच्छुक नहीं है, तो वह ऐसी जांच करने के बाद जैसी वी ठीक समझे विधि का उल्लंघन करने वाला किशोर को किसी विशेष गृह में भेजने का आदेश देगा।

4. बोर्ड उपधारा (3) के अधीन कोई पर्यवेक्षक आदेश जारी करते समय किशोर और माता-पिता को, संरक्षक या अन्य योग्य व्यक्ति या योग्य संस्थान को, जैसी स्थिति हो, जिसकी देखरेख में किशोर को रखा गया है आदेश की निबन्धन और शर्तों को स्पष्ट करेगा और उसी के साथ-साथ पर्यवेक्षण आदेश की एक प्रति किशोर, माता-पिता, संरक्षक या अन्य योग्य व्यक्ति या योग्य संस्थान को, जैसी स्थिति हो, प्रतिभुओं को, यदि कोई हों और परिवीक्षा अधिकारी को देगा।

16. वे आदेश जो किशोर के विरुद्ध पारित न किए जा सकेंगे-

1. तत्समय प्रवृत्त किसी अन्य विधि में किसी प्रत्यतिकूल बात के होते हुए भी किसी विधि का उल्लंघन करने वाला किशोर को मृत्यु या ऐसे किसी कारावास का जिसकी अवधि आजीवन कारावास तक की हो सकेगी, दण्डादेश नहीं दिया जाएगा और न जुर्माना देने में व्यतिक्रम होने पर या प्रतिभूति देने में व्यतिक्रम होने पर कारागार सुपुर्द किया जायेगा :

परन्तु यह कि जहां किशोर ने सोलह वर्ष की आयु पूरी कर ली है और उसने कोई अपराध किया है और बोर्ड का यह समाधान हो जाता है कि किया गया अपराध ऐसी गंभीर प्रकृति का है या यह कि उसका आचरण और व्यवहार ऐसा रहा है कि यह उसके हित में नहीं होगा या ऐसे किसी अन्य किशोर के हित में नहीं होगा जो कि विशेष गृह में हैं कि उसे ऐसे विशेष गृह में भेजा जाए और यह भी कि इस अधिनियम में अन्य कोई भी उपाय उपयुक्त अथवा पर्याप्त नहीं है, वहां बोर्ड विधि-विवादित किशोर को सुरक्षा के ऐसे स्थान में और ऐसी रीति से रखने का आदेश देगा जैसा कि वह ठीक समझे और उस प्रकरण को आदेश के लिए राज्य सरकार को रिपोर्ट करेगा।

(2) बोर्ड से उपधारा (1) के अधीन रिपोर्ट की प्राप्ति पर राज्य सरकार किशोर के बारे में ऐसे इन्तजाम कर सकेगी जैसे वह उचित और ऐसे किशोर के ऐसे स्थान में और ऐसी शर्तों पर, जिनहें वह ठीक समझे, निरुद्ध रखे जाने का आदेश कर सकेगी :

¹[परन्तु इस प्रकार आदिष्ट निरोध की कालावधि किसी भी दशा में इस अधिनियम की धारा 15 के अधीन उपबन्धित की गई अधिकतम से अधिक नहीं होगी]]

¹ केन्द्रीय अधिनियम क्रमांक 33 सन 2006 द्वारा दिनांक 22-8-2006 से प्रतिस्थापित।

17. **दण्ड प्रक्रिया संहिता के अध्याय 8 के अधीन की कार्यवाही का किशोर के विरुद्ध न हो सकना—**
दण्ड प्रक्रिया संहिता, 1973 (1974 का 2) में किसी तत्प्रतिकूल बात के होते हुए भी किसी किशोर के विरुद्ध उक्त संहिता के अध्याय 8 के अधीन न कोई कार्यवाही संस्थित की जाएगी और न कोई आदेश किया जाएगा।

18. **किशोर का और किशोर से भिन्न व्यक्ति का संयुक्त विचारण न होना—**

1. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2) की धारा 223 में या तत्समय प्रवृत्त किसी अन्य विधि में किसी तत्प्रतिकूल बात के होते हुए भी कोई किशोर किसी ऐसे व्यक्ति के साथ जो किशोर नहीं है किसी अपराध के लिए आरोपित या विचारित नहीं किया जाएगा।

2. यदि कोई किशोर किसी ऐसे अपराध का अभियुक्त है जिसके लिए वह किशोर और कोई अन्य व्यक्ति, जो किशोर नहीं है, दण्ड प्रक्रिया संहिता, 1973 (1974 का 2) की धारा 223 के अधीन या तत्समय प्रवृत्त किसी अन्य विधि के अधीन, उस दशा में जबकि उपधारा (1) में अर्न्तविष्टि प्रतिषेध न होता, एक साथ आरोपित और विचारित किया जाता तो उस अपराध का संज्ञान करने वाला बोर्ड उस किशोर और अन्य व्यक्ति के पृथक विचारणों का निदेश देगा।

19. **दोषसिद्धि से होने वाली निरर्हताओं का हटाया जाना—** किसी अन्य विधि में किसी बात के होते हुए भी कोई किशोर, जिसने कोई अपराध किया है और जिसके बारे में इस अधिनियम, के उपबन्धों के अधीन कार्यवाही की जा चुकी है, किसी ऐसी निरर्हता के, यदि कोई हो, अधीन नहीं होगा जो ऐसी विधि के अधीन अपराध की दोषसिद्धि से संलग्न है।

2. बोर्ड यह निर्देश करने वाला आदेश जारी करेगा कि ऐसी दोष सिद्धि के सुसंगत अभिलेखों को अपील की अवधि अथवा नियमों के अधीन विहित किसी युक्ति युक्त अवधि की समाप्ति के बाद, जैसी भी स्थिति हो, निकाल दिया जायेगा।

20. **लम्बित मामलों के बारे में विशेष उपबन्ध—**

इस अधिनियम में किसी बात के होते हुए भी किसी क्षेत्र में के न्यायालय में उस तारीख को जब कि यह अधिनियम उस क्षेत्र में प्रवृत्त होता है, लम्बित किशोर विषयक सब कार्यवाहियां उस न्यायालय में चालू रखी जाएंगी, मानो यह अधिनियम पारित नहीं किया गया है और यदि न्यायालय का यह निष्कर्ष है कि किशोर ने अपराध किया है तो वह उस निष्कर्ष को अभिलिखित करेगा और उस किशोर के बारे में कोई दण्डादेश करने के बजाए उस किशोर को बोर्ड भेज देगा, जो उस किशोर के बारे में आदेश इस अधिनियम के उपबन्धों के अनुसार ऐसे करेगा मानो इस अधिनियम के अधीन जांच पर उसका समाधान हो गया है कि किशोर ने यह अपराध किया है :

¹[परन्तु बोर्ड किसी ऐसे उपयुक्त और विशेष कारण से जो आदेश में वर्णित किया जाए, मामले का पुनर्विलोकन कर सकेगा और ऐसे किशोर के हित में उपयुक्त आदेश पारित कर सकेगा।]

स्पष्टीकरण—

किसी न्यायालय में विधि का उल्लंघन करने वाले किशोर से सम्बन्धित सभी लंबित मामलों में जिनके अन्तर्गत विचारण, पुनरीक्षण, अपील या कोई अन्य दायित्व कार्यवाहियां भी हैं, ऐसे किशोर की किशोरावस्था का आवधारण धारा 2 के खण्ड (ठ) के निबन्धानुसार किया जाएगा भले ही किशोर इस अधिनियम के प्रारम्भ की तारीख को या उससे पहले किशोर न रहा हो और इस अधिनियम के उपबन्ध ऐसे लागू होंगे मानों उक्त उपबन्ध सभी प्रयोजनों के लिए और सभी तात्विक समयों पर प्रवर्तन में थे जब ऐसा अभिकथित अपराध किया गया था।

²[21. इस अधिनियम के अधीन किसी कार्यवाही में अंतर्वलित विधि का उल्लंघन करने वाले किशोर या देखरेख और संरक्षण की आवश्यकता वाले बालक के नाम आदि के प्रकाश का प्रतिषेध—

1. किसी समाचार पत्र, पत्रिका या समाचार, पत्रिका या समाचार पृष्ठ या दृश्य माध्यम में इस अधिनियम के अधीन विधि का उल्लंघन करने वाले किशोर या देखरेख और संरक्षण की आवश्यकता वाले बालक के बारे में किसी जांच की कोई रिपोर्ट किशोर या बालक का नाम, पता या विद्यालय या कोई अन्य विशिष्टियां जिनसे किशोर या बालक का पहचाना जाना प्रकल्पित हो, प्रकट नहीं की जाएगी और न ही ऐसे किशोर या बालक का कोई चित्र ही प्रकाशित किया जायेगा।

परन्तु जांच करने वाला प्राधिकारी ऐसा प्रकटन ऐसे कारणों से जो लेखबद्ध किये जायेंगे जब अनुज्ञात कर सकेगा जब उसकी राय में ऐसा प्रकटन किशोर या बालक के हित में हो।

2. उपधारा (1) के उपबन्धों का उल्लंघन करने वाला कोई व्यक्ति जो ऐसी शास्ति के लिए दायी होगा, जो पच्चीस हजार रूपये तक की हो सकेगी।]

22. निकल भागने वाले किशोरों के बारे में उपबन्ध—

तत्समय प्रवृत्त किसी अन्य विधि में किसी प्रत्प्रतिकूल बात के होते हुए भी, कोई पुलिस अधिकारी किसी ऐसे विधि-विवादित किशोर को, जो विशेष गृह या सम्प्रेक्षण गृह से, या उस व्यक्ति की, उसके अधीन वह इस अधिनियम के अधीन रखा गया हो, देखरेख से भाग निकला हो, वारन्ट के बिना अपने भारसाधन में ले सकेगा और यह किशोर, यथास्थिति उस विशेष गृह या सम्प्रेक्षण गृह को या उस व्यक्ति के पास वापस भेज दिया जाएगा और किशोर के बारे में कोई कार्यवाही इस प्रकार निकले भागने के कारण संस्थित नहीं की जाएगी, किन्तु विशेष गृह, या सम्प्रेक्षण गृह या वह व्यक्ति उस बोर्ड को,

¹ केन्द्रीय अधिनियम क्रमांक 33 सन 2006 द्वारा दिनांक 22-8-2006 से अंतःस्थापित।

² केन्द्रीय अधिनियम क्रमांक 33 सन 2006 द्वारा दिनांक 22-8-2006 से प्रतिस्थापित।

जिसने किशोर के बारे में आदेश किया हो, इत्तिला देने के पश्चात् किशोर के विरुद्ध ऐसा कदम उठा सकेगा जो इस अधिनियम के प्रावधानों के अन्तर्गत आवश्यक समझा जाए।

23. किशोर या बालक के प्रति क्रूरता के लिए दण्ड—

जो कोई किशोर या बालक का वास्तविक भारसाधन या उस पर नियंत्रण रखते हुए ऐसी रीति से, जिससे उस किशोर या बालक को अनावश्यक मानसिक या शारीरिक कष्ट होना संभाव्य हो या उस किशोर पर हमला करेगा, उसका परित्याग करेगा, उसे उच्छन्न करेगा या जानबूझकर उसकी उपेक्षा करेगा या उस हमला या उसका परित्यक्त, अच्छन्न किया जाना कारित या उपाप्त करेगा वह कारावा से, जिसकी अवधि छह मास तक की हो सकेगी, या जुर्माने से, या दोनों से, दण्डनीय होगा।

24. भीख मांगने के लिए किशोर या बालक का नियोजन—

1. जो कोई भीख मांगने के प्रयोजन के लिए किसी किशोर या बालक को नियोजित या प्रयुक्त करेगा या किसी किशोर से भीख मंगवाएगा वह कारावास से, जिसकी अवधि तीन वर्ष तक की हो सकेगी और जुर्माने से भी दण्डनीय होगा।

2. जो कोई किशोर का वास्तविक भारसाधन या उस पर नियंत्रण रहने हुए, उपराधा (1) के अधीन दण्डनीय अपराध का दुष्प्रेरण करेगा, वह कारावास से, जिसकी अवधि एक वर्ष तक की हो सकेगी और जुर्माने से भी, दण्डनीय होगा।

25. किशोर या बालक को मादक लिकर या स्वापक औषधि या मनः प्रभावी पदार्थ देने के लिए शास्ति—

जो कोई सम्यक् रूप से अर्हित चिकित्सा अव्यवसायी के आदेश या बीमारी से अन्यथा किसी किशोर या बालक को लोकस्थान में कोई मादक लिकर या कोई स्वापक औषधि या मनः प्रभावी पदार्थ देगा या दिलवाएगा वह कारावास से, जिसकी अवधि तीन वर्ष तक की हो सकेगी, और जुर्माने से भी, दण्डनीय होगा।

26. किशोर या बालक कर्मचारी का शोषण—

जो कोई किसी परिसंकटमय नियोजन के प्रयोजन के लिए किशोर या बालक को दृश्यमानतः उपाप्त करेगा, उसे बांधित अवस्था में रखेगा और उसके उपार्जनो को विधारित करेगा या उसके उपार्जन स्वयं अपने प्रयोजन के लिए उपयोग में लाएगा वह कारावास से, जिसकी अवधि तीन वर्ष तक की हो सकेगी, और जुर्माने से भी, दण्डनीय होगा।

27. विशेष अपराध— धारा 23, 24, 25 और 26 में दण्डनीय अपराध संज्ञेय होंगे।

28. वैकल्पिक दण्ड— जहां कोई कार्य या लोप ऐसा अपराध गठित करता है जो इस अधिनियम के अधीन दण्डनीय और किसी केन्द्रीय या राज्य अधिनियम के अधीन भी दण्डनीय है, तब तत्समय प्रवृत्त किसी विधि में किसी बात के होते हुए भी, ऐसे अपराध का दोषी पाया गया अपराधी ऐसे

अधिनियम के अधीन ही, जो किसी दण्ड का उपबन्ध करता है ऐसे दण्ड का दायी होगा जो मात्रा में अधिक हो।

अध्याय-3

देखरेख और संरक्षण की आवश्यकता वाला बालक

29. बालक कल्याण समिति-

1. राज्य सरकार ¹[किशोर न्याय (बालकों की देखरेख और संरक्षण) संशोधन अधिनियम, 2006 के प्रारम्भ की तारीख से एक वर्ष की अवधि के भीतर राजपत्र में अधिसूचना द्वारा प्रत्येक जिले के लिए], इस अधिनियम के अधीन देख रेख और संरक्षण की आवश्यकता वाले बालक के सम्बन्ध में ऐसी समिति को प्रदत्त शक्तियों का प्रयोग और कर्तव्यों का निर्वहन करने के लिए एक या अधिक बालक कल्याण समितियों का गठन कर सकेगी।
2. समिति में एक अध्यक्ष और चार अन्य सदस्य होंगे, जैसा कि राज्य सरकार नियुक्त करना उचित समझे, किजन्में से कम से कम एक महिला होगी और एक अन्य, बालकों से सम्बन्धित विषयों का कोई विशेषज्ञ होगा।
3. अध्यक्ष और सदस्यों की योग्यतायें और पदावधि जिसके लिए वे नियुक्त हो सकेंगे वैसी होगी जैसा कि विहित की जाए।
4. समिति के किसी सदस्य की नियुक्ति राज्य सरकार द्वारा जांच कराने के लिए बाद समाप्त की जा सकेगी, यदि—
 - (i) वह इस अधिनियम के अधीन निहित शक्ति के दुरुपयोग का दोषी पाया गया है;
 - (ii) वह ऐसे किसी अपराध के लिए दोषसिद्ध किया गया है जिसमें नैतिक अधमता निहित है और ऐसी दोषसिद्धि को उलट नहीं दिया गया है या उस अपराध के सम्बन्ध में उसको पूर्ण क्षमा नहीं कर दिया है;
 - (iii) वह समिति की कार्यवाहियों में लगातार तीन महीनों तक बिना किसी वैध कारण के हाजिर होने में विफल रहता है या एक वर्ष में तीन चौथाई बैठकों में भी हाजिर होने में वह विफल रहता है।
5. समिति मजिस्ट्रेटों की एक पीठ के रूप में कार्य करेगी और उसको वही शक्तियां होगी, जो कि दण्ड प्रक्रिया संहिता, 1973 (1974 का 2) द्वारा किसी महानगरीय मजिस्ट्रेट या जैसी भी स्थिति हो, प्रथम श्रेणी के किसी न्यायिक मजिस्ट्रेट को प्रदत्त की गई है।

¹ केन्द्रीय अधिनियम क्रमांक 33 सन 2006 द्वारा दिनांक 22-8-2006 से प्रतिस्थापित।

30. समिति से सम्बन्धित प्रक्रिया, आदि—

1. समिति ऐसे समयों पर अपनी बैठकें करेगी और अपनी बैठकों में कार्य सम्पादन से सम्बन्धित प्रक्रिया के ऐसे नियमों का पालन करेगी जैसा कि विहित किया जाये।
2. देखरेख और संरक्ष की आवश्यकता वाले किसी बालक को उस स्थिति में समिति की बैठक नहीं चल रही है तब उसको सुरक्षित अभिरक्षा में रखने के लिए अथवा अन्यथा किसी व्यष्टिक सदस्य के समक्ष पेश किया जा सकेगा।
3. किसी अन्तरिम विनिश्चय के समय समिति के सदस्यों के बीच मत-भिन्नता होने की स्थिति में बहुमत की राय अभिभावी होगी, परन्तु जहां ऐसा कोई बहुमत नहीं है वहां अध्यक्ष की राय अभिभावी होगी।
4. उपधारा— (1) के उपबन्धों के अधीन रहते हुए, समिति कार्य कर सकेगी चाहे भले ही समिति का कोई सदस्य अनुपस्थित हो और समिति द्वारा किया गया कोई भी आदेश केवल इस कारण अवैध नहीं होगा क्योंकि कार्यवाही के किसी प्रक्रम पर कोई सदस्य अनुपस्थित रहा है।

31. समिति की शक्तियाँ—

1. बालकों की देखरेख, संरक्षा, उपचार, विकास और पुनर्वासन से सम्बन्धित मामलों के निपटारे तथा उनकी मूलभूत आवश्यकताओं की व्यवस्था और उनके मानावाधिकारों के संरक्षण के सम्बन्ध में समिति को अन्तिम शक्ति होगी।
2. जहां किसी क्षेत्र के लिए किसी समिति का गठन किया गया है, वहां ऐसी समिति को तत्समय प्रवृत्त किसी अन्य विधि में समाविष्ट किसी बात के होते हुए भी, परन्तु इस अधिनियम में अभिव्यक्त रूप से अन्यथा उपबन्धित को छोड़कर, देखरेख और संरक्षण की आवश्यकता वाले बालकों के सम्बन्ध में इस अधिनियम के अधीन सभी कार्यवाहियों के साथ अनन्यतम रूप से संव्यवहार करने की शक्ति होगी।

32. समिति के समक्ष पेश करना—

1. देखरेख और संरक्षण की आवश्यकता वाले किसी बालक को निम्नलिखित व्यक्तियों में से किसी एक द्वारा समिति के समक्ष पेश किया जा सकेगा।
 - (i) कोई पुलिस अधिकारी या विशेष किशोर पुलिस यूनिट या कोई नाम निर्दिष्ट पुलिस अधिकारी;
 - (ii) कोई लोक सेवक;

- (iii) 'चाइल्डलाइन' एक रजिस्ट्रीकृत स्वयंसेवी संगठन या किसी अन्य स्वयंसेवी संगठन या अभिकरण द्वारा जैसा कि राज्य सरकार द्वारा मान्य किया जाए;
- (iv) ¹[***] कोई सामाजिक कार्यकर्ता या लोकात्मा से अभिभूत कोई नागरिक;
अथवा
- (v) स्वयं बालक द्वारा;
²[परन्तु बालक को समय नष्ट किए बिना चौबीस घण्टे की अवधि के भीतर यात्रा में लिए गए अनावश्यक समय को छोड़कर समिति के समक्ष पेश किया जाएगा।]
2. राज्य सरकार ¹[***] समिति की रिपोर्ट करने की रीति और जांच की लम्बितावस्था में बालक को बालक गृह भेजने और न्यस्त करने की रीति उपबन्धित करने के लिए इस अधिनियम से सुसंगत नियम बना सकेगी।

33. जाँच—

1. धारा 32 के अधीन कोई रिपोर्ट प्राप्त होने पर, समिति ¹[***] विहित रीति से जांच करेगा और समिति या तो अपनी अथवा किसी व्यक्ति या अभिकरण की रिपोर्ट पर जैसा कि धारा 32 की उपधारा 1 में उल्लिखित है, किसी सामाजिक कार्यकर्ता या बालक कल्याण अधिकारी द्वारा त्वरित जांच के लिए बालक को बालक गृह भेजने के लिए आदेश परित कर सकेगी।
2. इस धारा के अधीन जांच को, आदेश प्राप्त करने के चार महीनों के भीतर अथवा ऐसी कम अवधि के भीतर जैसा कि समिति द्वारा निर्धारित किया जाए पूर्ण करना होगा।
परन्तु यह कि जांच रिपोर्ट प्रस्तुत करने के लिए समय को ऐसी अवधि के लिए बढ़ाया जा सकेगा जैसा कि समिति परिस्थितियों पर ध्यान देते हुए और उन कारणों से जिन्हें लेख में अभिलिखित किया जाए, अवधारित करें।
- ³[3. राज्य सरकार, प्रत्येक छह मास में समिति के समक्ष लंबित मामलों का पुनर्विलोकन करेगी और समिति को अपनी बैठकों की आवृत्ति को बढ़ाने के लिए निर्देश देगी या अतिरिक्त समितियों का गठन करा सकेगी।

¹ केन्द्रीय अधिनियम क्रमांक 33 सन 2006 द्वारा दिनांक 22-8-2006 से विलुप्त।

² केन्द्रीय अधिनियम क्रमांक 33 सन 2006 द्वारा दिनांक 22-8-2006 से अंतःस्थापित।

³ केन्द्रीय अधिनियम क्रमांक 33 सन 2006 द्वारा दिनांक 22-8-2006 से विलुप्त।

4. जांच के पूरा हो जाने के पश्चात् यदि समिति की यह राय है कि उक्त बालक का कोई कुटुम्ब या उसका कोई दृश्यमान सहारा नहीं है या उसे देखरेख या संरक्षण की लगातार आवश्यकता है, तो वह बालक को तब तक बालगृह या आश्रयगृह में रहने की अनुज्ञा दे से सकेगी जब तक उसका उपयुक्त पुनर्वास नहीं हो जाता या जब तक वह अठारह वर्ष की आयु प्राप्त नहीं कर लेता है।]

34. बालक गृह—

1. राज्य सरकार या तो स्वयं अथवा स्वयंसेवी संगठनों के साथ मिलकर प्रत्येक जिले या जिलों के समूह में, जैसी भी स्थिति हो, जांच की लम्बितावस्था में देखरेख और संरक्षण की आवश्यकता वाले बालक के प्रवेश और उसके बाद उनकी देखरेख, उपचार, शिक्षा, प्रशिक्षण, विकास और पुनर्वास के लिए बालक गृहों को स्थापित और अनुरक्षित कर सकेगी।
2. राज्य सरकार, इस अधिनियम के अधीन बनाये गये नियमों द्वारा, बालक गृहों के प्रबन्धन की व्यवस्था कर सकेगी, जिसमें उनके द्वारा प्रदान की जाने वाली सेवाओं के स्तर और उनकी प्रकृति और वे परिस्थितियां जिनके अधीन और वह रीति भी सम्मिलित है जिसमें किसी बालक गृह को प्रमाणन अथवा किसी स्वयं सेवी संगठन को मान्यता प्रदान की जा सकेगी या उसको वापस लिया जा सकेगा।
- ¹[3. तत्समय प्रवृत्त किसी अन्य विधि में अंतर्विष्ट किसी बात पर प्रतिकूल प्रभाव डाले बिना, सभी संस्थाएं, चाहे वे राज्य सरकार द्वारा स्वैच्छिक संगठनों द्वारा देखरेख और संरक्षण की आवश्यकता वाले बालकों के लिए चलाई जाती है, किशोर न्याय (बालकों की देखरेख और संरक्षण) संशोधन अधिनियम, 2006 के प्रारम्भ की तारीख से छह मास की अवधि के भीतर इस अधिनियम के अधीन, ऐसी रीति में, जो विहित की जाए, रजिस्ट्रीकृत की जाएंगी।]

35. निरीक्षण—

1. राज्य सरकार ऐसी अवधि और ऐसे प्रयोजनों के लिए जैसा कि विहित किया जाय, राज्य, किसी जिले और नगर के लिए, जैसी भी स्थिति हो, बालक गृहों के लिए निरीक्षण समितियां (जिसे इसमें इसके पश्चात् निरीक्षण समितियां निर्दिष्ट किया गया है) नियुक्त कर सकेगी।
2. किसी राज्य, जिला या नगर की निरीक्षण समिति में राज्य सरकार, ²[***] समिति, स्वयंसेवी संगठनों और ऐसे अन्य चिकित्सीय विशेषज्ञों और सामाजिक कार्यकर्ताओं के उतनी संख्या में प्रतिनिधि सम्मिलित होंगे जैसा कि उस सरकार द्वारा विनिर्दिष्ट किया जाये।

¹ केन्द्रीय अधिनियम क्रमांक 33 सन 2006 द्वारा दिनांक 22-8-2006 से अंतःस्थापित।

² केन्द्रीय अधिनियम क्रमांक 33 सन 2006 द्वारा दिनांक 22-8-2006 से विलुप्त।

- 36. सामाजिक लेखा परीक्षण—** केन्द्रीय सरकार अथवा राज्य सरकार ऐसी अवधि में और ऐसे व्यक्तियों और संस्थाओं के माध्यम से, जैसा कि उस सरकार द्वारा विनिर्दिष्ट किया जाये, बालक गृहों के कार्य कलाप का अनुवीक्षण और मूल्यांकन कर सकेगी।
- 37. आश्रयगृह—**
1. राज्य सरकार प्रतिष्ठित और सक्षम स्वयंसेवी संगठनों को मान्यता दे सकेगी और उन्हें किशोरों और बालकों के लिए, जैसा अपेक्षित हो, जितने हो सकें आश्रय गृहों को स्थापित और प्रशासित करने की सहायता का उपलब्ध कर सकेगी।
 2. उपधारा (1) में निर्दिष्ट आश्रय गृह ऐसे बालकों के लिए व्यक्त केन्द्र के रूप में कार्य करेगा जिन्हें तत्काल सहारे की जरूरत है और जिन्हें ऐसे गृहों में उन व्यक्तियों के द्वारा लाया गया है जैसा कि धारा 32 की उपधारा (1) में निर्दिष्ट है।
 3. आश्रय गृहों में यथाशक्त ऐसी सुविधायें होंगी जैसा कि नियमों द्वारा विहित किया जाये।
- 38. स्थानान्तरण—**
1. यदि जांच के दौरान यह पाया जाता है कि बालक, समिति की अधिकारिता से बाहर के स्थान से आया है, तो समिति बालक को उस सक्षम प्राधिकारी के पास स्थानान्तरित कर देना आदेशित करेगी, जिसको बालक के निवास के स्थान पर अधिकारिता प्राप्त है।
 2. ऐसे किशोर या बालक को उस गृह के कर्मचारी के अनुरक्षण में ले जाया जायेगा जहां पर उसको प्रारम्भ में रखा गया था।
 3. राज्य सरकार बालक को यात्रा भत्ता का भुगतान करने के लिए नियम बना सकेगी।
- 39. प्रत्यावर्तन—**
1. किसी भी बालक गृह अथवा आश्रय गृह का प्रधान उद्देश्य किसी बालक का प्रत्यावर्तन और संरक्षण होगा।
 2. बालक गृह अथवा आश्रय गृह, जैसी भी स्थिति हो, ऐसे किसी बालक के लिए जो कि अस्थायी अथवा स्थायी तौर पर अपने पारिवारिक वातावरण से वंचित हो गया है; ऐसे कदम उठायेगा जो कि उसके प्रत्यावर्तन और संरक्षण के लिए आवश्यक हों, जां कि ऐसा बालक किसी बालक गृह या आश्रय गृह की, जैसी भी स्थिति हो, देखरेख और उसके संरक्षण में है।
 3. समिति को ऐसे किसी बालक के सम्बन्ध में जिसे देखरेख और संरक्षण की आवश्यकता है, जैसी भी स्थिति हो, उसके माता-पिता, संरक्षक, योग्य व्यक्ति या योग्य संस्थान को प्रत्यावर्तित और उपयुक्त निर्देश देने की शक्तियां होंगी।

¹[स्पष्टीकरण— इस धारा के प्रयोजनों के लिए “बालक का प्रत्यावर्तन और संरक्षण” से—

- क— माता—पिता;
- ख— दत्तक माता—पिता;
- ग— पोषक माता—पिता;
- घ— संरक्षक;
- ड.— उपयुक्त व्यक्ति;
- च— उपयुक्त संस्था,
को प्रत्यावर्तन अभिप्रेत है।]

अध्याय—4

पुनर्वास और सामाजिक पुनर्कीकरण

40. पुनर्वास और सामाजिक पुनर्कीकरण की प्रक्रिया—

किसी बालक का पुनर्वास और सामाजिक पुनर्कीकरण उसी दौरान प्रारम्भ हो जायेगा जब उसे किसी बालक गृह अथवा विशेष गृह में ठहराया गया है और बालकों का पुनर्वास और सामाजिक पुनर्कीकरण आनुकल्पित रूप से (i) दत्तक ग्रहण (ii) धातृ देखरेख (iii) प्रायोजन द्वारा और (iv) बालक को किसी पश्चात्पूर्ति देखरेख संगठन को भेजकर किया जायेगा।

41. दत्तक ग्रहण—

1. बालकों को देखरेख और संरक्षण प्रदान करने की प्रारम्भिक जिम्मेदारी उसके परिवार की होगी।
- ¹[2. ऐसे बालकों को पुनर्वास के लिए, जो अनाथ, परित्यक्त या अभ्यर्पित हैं, ऐसे तंत्र के माध्यम से, जो विहित किया जाए, दत्तक ग्रहण का सहारा लिया जाएगा।
3. राज्य सरकार या केन्द्रीय दत्तक ग्रहण अधिकरण द्वारा समय—समय पर जारी किए गए और केन्द्रीय सरकार द्वारा अधिसूचित दत्तक ग्रहण के लिए विभिन्न मार्गदर्शक सिद्धान्तों के उपबन्धों को ध्यान में रखते हुए, किसी न्यायालय द्वारा बालकों को, ऐसे बालकों को दत्तक में देने के लिए यथाअपेक्षित किए गए अन्वेषणों के सम्बन्ध में अपना समाधान हो जाने के पश्चात् दत्तक गृह में दिया जा सकेगा।

¹ केन्द्रीय अधिनियम क्रमांक 33 सन 2006 द्वारा दिनांक 22—8—2006 से प्रतिस्थापित।

4. राज्य सरकार, प्रत्येक जिले में अपनी एक या अधिक संस्थाओं अथवा स्वैच्छिक संगठनों को, विशेषज्ञ दत्तक ग्रहण अधिकरणों के रूप में, ऐसी रीति में जो उपधारा (3) के अधीन अधिसूचित मार्गदर्शक सिद्धान्तों के अनुसार दत्तक ग्रहण के लिए अनाथ, परित्यक्त या अभ्यर्पित बालकों के नियोजन के लिए विहित की जाए, मान्यता देगी :
- परन्तु देखरेख और संरक्षण की आवश्यकता वाले बालकों के लिए, जो अनाथ, परित्यक्त या अभ्यर्पित हैं, राज्य सरकार या किसी स्वैच्छिक संगठन द्वारा चलाए जाने वाले बाल गृह और संस्थाएं यह सुनिश्चित करेंगी कि ये बालक समिति द्वारा दत्तक ग्रहण के लिए उपलब्ध घोषित किए गए हैं और सभी ऐसे मामले, उस जिले में दत्तक ग्रहण अभिकरण को, उपधारा (3) के अधीन अधिसूचित मार्गदर्शक सिद्धान्तों के अनुसार दत्तक ग्रहण में ऐसे बालकों के नियोजन के लिए निर्दिष्ट किए जाएंगे।]
5. किसी भी बालक को दत्तक ग्रहण के लिए प्रस्तावित नहीं किया जायेगा—
- क— जब तक कि परित्यक्त बालकों के मामले में समिति के दो सदस्य बालक को स्थानन के लिए वैधानिक रूप से स्वतंत्र घोषित नहीं करते हैं;
- ख— समर्पित बालकों के मामले में जब तक कि माता—पिता द्वारा पुनर्विचार करने की दो महीने की अवधि समाप्त नहीं हो जाती है, और
- ग— ऐसे किसी बालक के मामले में जो कि अपनी सम्पत्ति को समझ और अभिव्यक्त कर सकता है, उसकी सम्मति के बिना।
- ¹[6. न्यायालय बालक को दत्तक ग्रहण में—
- क— किसी व्यक्ति को उसकी वैवाहिक स्थिति को विचार में लाए बिना; या
- ख— जीवित स्वयं के उत्पन्न (जैविक) पुत्रों या पुत्रियों की संख्या को विचार में लाए बिना समान लिंग के बालक को दत्तक ग्रहण के लिए माता—पिता को; या
- ग— निःसंतान दम्पति को,
- दिये जाने के लिए अनुज्ञात कर सकेगा।]

42. धातु देखरेख—

- उन शिशुओं के अस्थायी स्थानन के लिए, जिन्हें अन्ततः दत्तक ग्रहण में दे दिया जायेगा धातु देखरेख का प्रयोग किया जा सकेगा।
- धातु देखरेख में बालक को किसी अल्प अथवा विस्तृत अवधि के लिए किसी अन्य परिवार में वैधानित किया जा सकेगा, परन्तु यह स्थानन उन परिस्थितियों पर निर्भर करेगा जिसमें

¹ केन्द्रीय अधिनियम क्रमांक 33 सन 2006 द्वारा दिनांक 22-8-2006 से प्रतिस्थापित।

पुनर्वास के बाद बालक के अपने माता-पिता साधारण तौर पर नियमित रूप से या कभी-कभी बालक को देखने के लिए आते हैं और जहां बालक अपने स्वयं के घरों को लौट सकते हैं।

3. राज्य सरकार बालकों के धातु देखरेख कार्यक्रम की योजना को कार्यान्वित करने के प्रयोजनों के लिए नियम बना सकेगी।

43. प्रायोजन—

1. प्रायोजन कार्यक्रम, बालकों के जीवन-गुण को विकसित करने के लिए दृष्टिकोण से उनकी चिकित्सीय, पोषाहार, सम्बन्धी, शैक्षणिक और अन्य आवश्यकताओं की पूर्ति के लिए परिवारों, बालक गृहों और विशेष गृहों के अनुपूरक समर्थन की व्यवस्था कर सकेगा।
2. राज्य सरकार बालकों के विभिन्न प्रायोजन कार्यक्रमों को कार्यान्वित करने के प्रयोजनों के लिए, जैसे कि व्यक्ति से व्यक्ति तक प्रायोजन, सामूहिक प्रायोजन अथवा सामुदायिक प्रायोजन के लिए नियम बना सकेगी।

44. पश्चात्वर्ती देखरेख संगठन— इस सरकार इस अधिनियम के अधीन बनाये गये नियमों द्वारा—

- क— पश्चात्वर्ती देखरेख संगठनों की स्थापना अथवा उनकी मान्यता और उनके उन कार्यों के लिए जो कि उनके द्वारा इस अधिनियम के अधीन किए जाएंगे;
- ख— पश्चात्वर्ती देखरेख कार्यक्रमों के लिए जिनका ऐसे देखरेख संगठनों द्वारा उन किशोरों अथवा बालकों पर तब देखरेख करने के प्रयोजन से अनुसरण किया जाएगा जब वे विशेष गृहों, बालक गृहों से छोड़ देंगे और इस प्रायोजन के लिए भी कि वे एक ईमानदार, उद्यमी और उपयोगी जीवन की ओर उन्मुख हो सकें;
- ग— परिवीक्षा अधिकारी अथवा उस सरकार द्वारा नियुक्त किसी अन्य अधिकारी द्वारा कोई ऐसी रिपोर्ट तैयार अथवा प्रस्तुत करने के लिए जो कि प्रत्येक किशोर अथवा बालक के सम्बन्ध में हो और उसके किसी विशेष गृह, बालक गृह से छोड़ने के पूर्व की हो और जो ऐसे प्रत्येक किशोर या बालक के पश्चात्वर्ती देख रेख की आवश्यकता उसकी प्रकृति पश्चात्वर्ती देखरेख की अवधि, उस पर किये जाने वाले पर्यवेक्षण और परिवीक्षा अधिकारी अथवा इस प्रयोजन के लिए नियुक्त किसी अन्य अधिकारी द्वारा प्रत्येक किशोर अथवा बालक की प्रगति पर रिपोर्ट प्रस्तुत करने के लिए;
- घ— ऐसे पश्चात्वर्ती देखरेख संगठनों द्वारा की जाने वाली सेवाओं के स्तर और प्रकृति के लिए;
- ड.— ऐसी अन्य बातों के लिए जो कि किशोर अथवा बालक के लिए पश्चात्वर्ती देखरेख कार्यक्रम की योजना को लागू करने के प्रयोजन के आवश्यक हों—

उपबन्ध कर सकेगी :

परन्तु यह कि इस धारा के अधीन बनाया गया कोई नियम ऐसे किशोर या बालक की पश्चात्वर्ती देखरेख संगठन में तीन वर्षों से अधिक तक ठहरने का उपबन्ध नहीं करेगा। :

परन्तु यह भी कोई किशोर अथवा बालक जो सत्रह वर्षों से अधिक की आयु का है, परन्तु अठारह वर्षों की आयु का नहीं हो जाता।

45. सम्बद्धतायें और समन्वय—

राज्य सरकार बालक के पुनर्वास और सामाजिक पुनर्एकीकरण को सुकर बनाने के लिए विभिन्न सरकार, गैर सरकारी, निगमित और अन्य सामुदायिक अभिकरणों के बीच प्रभावी सम्बद्धतायें सुनिश्चित करने के लिए नियम बना सकेगी।

अध्याय—5

विविध

46. किशोर या बालक के माता—पिता या संरक्षक की हाजिरी—

कोई सक्षम प्राधिकारी जिसके समक्ष कोई किशोर या बालक इस अधिनियम के किसी उपबन्ध के अधीन लाया जाता है, जब भी वह ऐसा करना ठीक समझे, किशोर या बालक के वास्तविक भारसाधक या उस पर नियंत्रण रखने वाले माता—पिता या संरक्षक से अपेक्षा कर सकेगा कि वह किशोर या बालक के बारे में किसी कार्यवाही में उपस्थित हो।

47. किशोर या बालक को हाजिरी से अभिमुक्ति प्रदान करना—

यदि जांच के अनुक्रम में किसी प्रक्रम पर सक्षम प्राधिकारी का समाधान हो जाता है कि किशोर या बालक की हाजिरी जांच के प्रयोजनार्थ आवश्यक नहीं है, तो सक्षम प्राधिकारी उसकी हाजिरी से अभिमुक्ति प्रदान कर सकेगा और किशोर या बालक की अनुपस्थिति में जांच में अग्रसर हो सकेगा।

48. खतरनाक रोग से पीड़ित किशोर या बालक को अनुमोदित स्थान के सुपुर्द करना तथा भावी व्यवस्था—

1. जब किसी ऐसे किशोर या बालक के बारे में जो इस अधिनियम के अधीन सक्षम प्राधिकारी के समक्ष लाया गया है, यह पाया जाता है कि वह ऐसे रोग से पीड़ित है जिसके लिए लम्बे समय तक चिकित्सीय उपचार की अपेक्षा होगी या उसे कोई शारीरिक या मानसिक व्याधि है जो उपचार से ठीक हो जाएगी, तब सक्षम प्राधिकारी किशोर या बालक को ऐसे समय के लिए जिसे वह अपेक्षित उपचार के लिए आवश्यक समझता है कि ऐसे स्थान को भेज सकेगा जो इस अधिनियम के अधीन बनाये गये नियमों के अनुसार अनुमोदित स्थान के रूप मान्यता प्राप्त स्थान है।

2. जहां कोई किशोर या बालक कुष्ठ रोग, संभोग जन्य बीमारी, हिपाटाइटिस बी, तपेदिक के प्रकट मामले और अन्य ऐसी बीमारियों से पीड़ित पाया जाता है अथवा वह विकृतचित्त मस्तिष्क का है वहां उसके साथ विभिन्न विशेषीकरण प्राप्त निर्देशकीय सेवाओं के माध्यम से अथवा उस तरह की सुसंगत विधियों के अधीन व्यवहारित किया जाएगा।

49. आयु के विषय में अवधारणा और उसका अनुधारण—

1. जहां सक्षम प्राधिकारी को यह प्रतीत होता है कि इस अधिनियम के उपबन्धों में से किसी के अधीन उसके सक्षम (साक्ष्य देने के प्रयोजनार्थ से अन्यथा) लागया गया व्यक्ति किशोर या बालक है वहां सक्षम प्राधिकारी उस व्यक्ति की आयु में सक्षम प्राधिकारी द्वारा अभिलिखित आयु इस अधिनियम के प्रयोजनों के लिए उस व्यक्ति की सही आयु समझी जाएगी।

50. किशोर या बालक को अधिकारिता के बाहर भेजना—

ऐसे किशोर या बालक की दशा में, जिसका सामान्य तौर पर निवास का स्थान उस सक्षम प्राधिकारी की, जिसके सक्षम वह लाया गया है, अधिकारिता के बाहर है, सक्षम प्राधिकारी, यदि सम्यक् जांच के पश्चात् उसका यह समाधान हो जाता है कि ऐसा करना समीचीन है, उस किशोर या बालक को उस नातेदार या अन्य योग्य व्यक्ति के पास जो अपने सामान्य तौर पर निवास के स्थान पर उसे रखने के लिए और उसकी उचित देखरेख और उस पर नियंत्रण रखने के लिए रजामंद है, वापस भेज सकेगा, यद्यपि वह निवास स्थान सक्षम प्राधिकारी की अधिकारिता के बाहर है, और वह सक्षम प्राधिकारी जो उस स्थान पर अधिकारिता का प्रयोग करता है जहां किशोर या बालक भेजा गया है, तत्पश्चात् उद्भूत होने वाली किसी बात के बोर में उस किशोर या बालक के संबंध में ऐससी शक्तियां रखेगा मानो मूल आदेश उसके द्वारा किया गया हो।

51. रिपोर्टों को गोपनीय माना जाना—

सक्षम प्राधिकारी द्वारा विचार की गई परीक्षा अधिकारी या सामाजिक कार्यकर्ता की रिपोर्ट गोपनीय मानी जाएगी :

परन्तु सक्षम प्राधिकारी, यदि वह ऐसा काना ठीक समझता है तो उसका सार किशोर या बालक को या उसके माता-पिता या संरक्षक को संसूचित कर सकेगा और उस किशोर या बालक के माता-पिता या संरक्षक को इस बात का अवसर दे सकेगा कि वह रिपोर्ट में कथित बात से सुसंगत कोई साक्ष्य पेश करे।

52. अपीलें—

1. इस धारा के उपबंधों के अध्यधीन रहते हुए, इस अधिनियम के अधीन सक्षम प्राधिकारी द्वारा किये गये किसी आदेश से व्यक्ति कोई व्यक्ति उस आदेश की तारीख से तीस दिन के भीतर सेशन न्यायालय को अपील कर सकेगा :
परन्तु सेशन न्यायालय उस अपील को उक्त तीस दिन की कालावधि के अवसान के पश्चात् तब ग्रहण कर सकेगा जब उसका समाधान हो जाता है कि अपीलार्थी समय के अन्दर अपील फाईल करने में पर्याप्त हेतुक से निवारित हुआ था।
2. क— ऐसे किशोर के बारे में जिसके बारे में यह अभिकथित है कि उसने अपराध किया है, बोर्ड द्वारा किए गए दोषमुक्ति के किसी आदेश, अथवा
ख— इस निष्कर्ष के बारे में कि वह व्यक्ति उपेक्षित किशोर नहीं है समिति द्वारा किये गये किसी आदेश, से अपील नहीं होगी।
3. सेशन न्यायालय द्वारा इस धारा के अधीन अपील में किए गये आदेश से द्वितीय अपील नहीं होगी।

53. पुनरीक्षण—

उच्च न्यायालय, या तो स्वप्रेरणा से या इस निमित्त आवेदन की प्राप्ति पर, किसी भी समय किसी ऐसी कार्यवाही का अभिलेख, जिसमें किसी सक्षम प्राधिकारी या सेशन न्यायालय ने कोई आदेश किया हो, आदेश की वैधता या औचित्य के बारे में अपना समाधान करने के प्रयोजनार्थ गंगा सकेगा और उसके संबंध में ऐसे आदेश कर सकेगा जो वह ठीक समझे :

परन्तु उच्च न्यायालय इस धारा के अन्तर्गत किसी व्यक्ति पर प्रतिकूल प्रभाव डालने वाला कोई आदेश उसे सुनवाई का युक्तियुक्त अवसर दिये बिना पारित नहीं करेगा।

54. जांच, अपील और पुनरीक्षण की कार्यवाहियों में प्रक्रिया—

1. उसके सिवाय जैसा कि इस अधिनियम द्वारा अभिव्यक्ततः अन्यथा उपबंधित है, सक्षम प्राधिकारी इस अधिनियम के उपबंधों में से किसी के अधीन जांच करते समय ऐसी प्रक्रिया का अनुसरण करेगा जो विहित की जाए और उसके अध्यधीन रहते हुए वह समन के मामलों के विचारण के लिए दण्ड प्रक्रिया संहिता, 1973 (1974 का 2) में अधिकथित प्रक्रिया का यावत्शक्य अनुसरण करेगा।
2. उसके सिवाय जैसा कि इस अधिनियम द्वारा या इसके अधीन अभिव्यक्ततः अन्यथा उपबन्धित हो, इस अधिनियम के अधीन अपीलों या पुनरीक्षण कार्यवाहियों की सुनवाई में अनुसरण की जाने वाली प्रक्रिया यावत्साध्य दण्ड प्रक्रिया संहिता, 1973 (1974 का 2) के उपबंधों के अनुसार होगी।

55. आदेशों के संशोधन की शक्ति—

1. इस अधिनियम के अधीन अपील या पुनरीक्षण के लिए उपबन्धों पर प्रतिकूल प्रभाव डाले बिना कोई सक्षम प्राधिकारी इस निमित्त आवेदन की प्राप्ति पर, किसी आदेश की, जो उस संस्था के बारे में हो जिसको किशोर या बालक भेजा जाना हो या उस व्यक्ति के बारे में हो, जिसकी देखरेख या पर्यवेक्षण में किशोर या बालक को इस अधिनियम के अधीन रखा जाना हो, संशोधित कर सकेगा।
2. सक्षम प्राधिकारी द्वारा किये ये आदेशों में की लिपिकीय भूलों या किसी आकस्मिक भूल या लोप से उनमें उत्पन्न होने वाली गलतियां किसी भी समय सक्षम प्राधिकारी द्वारा या तो स्वप्रेरणा से या उस निमित्त आवेदन की प्राप्ति कर सुधारी जा सकेंगी।

56. किशोर या बालक को उन्मोचित और अन्तरित करने की सक्षम प्राधिकारी की शक्ति—

1. सक्षम प्राधिकारी ¹[***] इस अधिनियम में किसी बात के होते हुए भी, किसी समय देखरेख और संरक्षण की आवश्यकता वाले किसी बालक या विधि-विवादित किशोर के उन्मोचन का आदेश कर सकेगा या उसे एक बालक गृह या विशेष गृह से किसी दूसरे को स्थानान्तरित करने, जैसी भी स्थिति हो, या तो आत्यन्तिक रूप से या ऐसी शर्तों पर जिन्हें अधिरोपित करना वह ठीक समझे, और ऐसा करते समय वह बालक या किशोर के सर्वोत्तम हित और ठहरने के उसके स्वाभाविक स्थान को ध्यान में रखेगा।

परन्तु बालक गृह या विशेष गृह या किसी योग्य संस्था में या किसी योग्य व्यक्ति के अधीन किशोर या बालक के ठहरने की कुल कालावधि ऐसे अंतरण द्वारा बढ़ाई नहीं नहीं जाएगी।

- ²[57. अधिनियम के अधीन बाल गृहों और भारत के विभिन्न भागों में ऐसी ही प्रकृति के बाल गृहों के मध्य अन्तरण— राज्य सरकार, यह निदेश दे सकती है कि कोई बालक या किशोर राज्य के भीतर किसी बाल गृह या विशेष गृह से राज्य से बाहर किसी अन्य बालगृह, विशेषगृह या ऐसी ही प्रकृति की संस्था या ऐसी संस्थाओं को सम्बद्ध राज्य सरकार के परामर्श से, यथास्थिति, समिति या बोर्ड की पूर्व सूचना से अन्तरित किया जाए और ऐसा आदेश उस क्षेत्र के समक्ष प्राधिकारी के लिए, जहां बालक या किशोर को भेजा जाता है प्रवर्त में माना जाएगा।]

- 58. विकृतचित्त के या कुष्ठ से पीड़ित या औषधि व्यसनी किशोरों का अन्तरण—** जहां सक्षम प्राधिकारी को यह प्रतीत होता है कि इस अधिनियम के अनुसरण में किसी विशेष गृह या बालक गृह या आश्रय गृह या संस्था में रखा गया कोई किशोर या बालक कुष्ठ से पीड़ित है या विकृतचित्त है या व्यापक औषधि या मनःप्रभावी पदार्थ का व्यसनी है वहां सक्षम प्राधिकारी उसके

¹ केन्द्रीय अधिनियम क्रमांक 33 सन 2006 द्वारा दिनांक 22-8-2006 से विलुप्त।

² केन्द्रीय अधिनियम क्रमांक 33 सन 2006 द्वारा दिनांक 22-8-2006 से प्रतिस्थापित।

कृष्णश्रम या मानसिक अस्पताल या औषधि व्यसनी व्यक्तियों के लिए उपचार केन्द्र या सुरक्षित स्थान, को हटाये जाने का आदेश कर सकेगा कि वह उस अवधि से अनविध अवधि पर्यन्त, जिसके दौरान वह सक्षम प्राधिकारी के आदेश के अधीन रखे जाने के लिए अपेक्षित हो, या ऐसी अतिरिक्त कालावधि पर्यन्त जो किशोर या बालक के उचित उपचार के लिए चिकित्सका अधिकारी द्वारा आवश्यक प्रमाणित की जाए, रखा जाए।

59. स्थानन पर रखे गये किशोर या बालक का छोड़ा जाना और अनुपस्थिति—

1. जब किसी किशोर या बालक को किसी बालक गृह या विशेष गृह में रखा गया हो और किसी परिवीक्षा अधिकारी या सामाजिक कार्यकर्ता या सरकारी या स्वयंसेवी संगठन की रिपोर्ट पर, जैसी भी स्थिति हो, सक्षम प्राधिकारी ऐसे किशोर अथवा बालक के छोड़े जाने का विचार कर सकेगा तब वह उसको उसके माता-पिता या संरक्षक या ऐसे किसी प्राधिकृत व्यक्ति के पर्यवेक्षण में, जिसको आदेश में नाम निर्दिष्ट किया गया हो रहने की अनुमति दे सकेगा जो कि उस किशोर अथवा बालक को शिक्षित बनाने के लिए और किसी उपयोगी व्यापार या व्यवसाय में प्रशिक्षित करने का अथवा उसके पुनर्वास हेतु उसकी देखरेख करने के लिए लेने का और उसका भार उठाने का इच्छुक है।
2. सक्षम प्राधिकारी किसी किशोर अथवा बालक को अनुपस्थित रहने की भी अनुमति दे सकेगा, परीक्षा, रिश्तेदारों के विवाह, सगे-सम्बन्धियों की मृत्यु अथवा माता-पिता की दुर्घटना या गंभीर बीमारी या उसी तरह के किसी आपातकाल जैसे विशेष अवसरों पर यात्रा में लगने वाले समय को उपवर्जित करते हुए ¹[ऐसी अवधि के लिए जो साधारणतया सात दिन से अधिक न हो], पर्यवेक्षण के अधीन अवकाश पर जाने की अनुमति दे सकेगा।
3. जहां किसी अनुमति को विखण्डित या अधिभ्रंशित कर दिया गया है और किशोर अथवा बालक ने उस सम्बन्धित गृह में वापस आने से इन्कार कर दिया है या विफल होता है जहां पर कि उसको वापस आने के लिए निर्दिष्ट किया गया था, वहां बोर्ड यदि आवश्यक समझे तो उसको अपने भार में लेना और सम्बन्धित गृह में उसको वापस लेना कारित कर सकेगा।
4. वह समय, जिसके दौरान कोई किशोर या बालक इस धारा क अधीन दी गई अनुमति के अनुसरण में किसी सम्बन्धित गृह से अनुपस्थित रहता है, उस समय का भाग समझा जायेगा जिसके लिए वह किसी विशेष गृह में रखे जाने के लिए दायी है :
परन्तु यह कि जब कोई किशोर किसी अनुमति के विखण्डित या अधिभ्रंशित कर दिये जाने के कारण विशेष गृह में वापस आने में विफल रहता है तब उस समय को जो कि उसके

¹ केन्द्रीय अधिनियम क्रमांक 33 सन 2006 द्वारा दिनांक 22-8-2006 से प्रतिस्थापित।

वापस न आने के कारण बीत गया है उस समय को प्रगणित करने में अपवर्जित कर दिया जायेगा जिसके दौरान वह संस्थान में रखे जाने के लिए दायी है।

60. माता-पिता द्वारा अभिदाय-

1. वह सक्षम प्राधिकारी, जो किसी किशोर या बालक को बालक गृह या विशेष गृह भेजने या योग्य व्यक्ति या योग्य संस्थान की देखरेख में रखने का आदेश करता है। माता-पिता को या किशोर या बालक के भरण-पोषण के दायी किसी अन्य व्यक्ति को यह अपेक्षा करने वाला आदेश कर सकेगा कि उसके भरण-पोषण के लिए, यदि वह ऐसा करने में समर्थ है, आय के अनुसार, विहित रीति से अभिदाय करे।
2. यदि आवश्यक हो तो सक्षम प्राधिकारी यह निर्दिष्ट कर सकेगा कि गृह के अधीक्षक अथवा परियोजना प्रबंधक द्वारा किशोर को भेजने के समय संवासी या माता-पिता या संरक्षक या दोनों को गृह से उनके सामान्य निवास स्थान तक यात्रा के खर्चे के लिए भुगतान करे, जैसा कि विहित किया जाये।

61. निधि-

1. राज्य सरकार ¹[***] इस अधिनियम में व्यवहृत किशोर या बालक के कल्याण और पुनर्वास के लिए ऐसे नाम से, जो वह ठीक समझे, एक निधि का सृजन कर सकेगी।
2. निधि में ऐसे स्वैच्छिक संदाय, अभिदाय जमा किए जाएंगे जो किसी व्यक्ति या संगठन द्वारा किये जायें।
3. उपधारा-1 के अधीन सृजित निधि का प्रशासन राज्य सलाहकार बोर्ड द्वारा ऐसे प्रयोजनों के लिए ऐसी रीति से किया जाएगा, जो विहित की जाये।

62. केन्द्रीय, राज्य, जिला और नगरीय सलाहकार बोर्ड-

1. केन्द्रीय सरकार अथवा राज्य सरकार, उस सरकार को गृहों की स्थापना और उनके अनुरक्षण के सम्बन्ध में स्रोतों के संचलन, देखरेख और संरक्षण की आवश्यकता वाले बालकों और विधि का उल्लंघन करने वाले किशोरों की शिक्षा, प्रशिक्षण और पुनर्वास के लिए सुविधाओं के उपबन्ध और विभिन्न सरकारी और गैर सरकारी सम्बन्धित अभिकरणों के बीच समन्वय जैसे विषयों पर सरकार को सलाह देने के लिए केन्द्रीय अथवा राज्य सलाहकार बोर्ड, जैसी भी स्थिति हो, का गठन कर सकेगी।

¹ केन्द्रीय अधिनियम क्रमांक 33 सन 2006 द्वारा दिनांक 22-8-2006 से विलुप्त।

2. केन्द्रीय अथवा राज्य सलाहकार बोर्ड में उतने व्यक्ति सम्मिलित होंगे जितने कि केन्द्रीय सरकार अथवा राज्य सरकार, जैसी भी स्थिति हो, ठीक समझे और उसमें प्रसिद्ध सामाजिक कार्यकर्ता, बालक कल्याण के क्षेत्र में स्वयंसेवी संगठनों के प्रतिनिधि, निगमित क्षेत्रक, शिक्षाविद् चिकित्सा व्यवसायी और राज्य सरकार के सम्बन्धित विभाग सम्मिलित होंगे।
3. इस अधिनियम की धारा 35 के अधीन गठित जिला अथवा नगर स्तर की निरीक्षण समिति जिला अथवा नगरीय सलाहकार बोर्ड के रूप में भी कार्य करेगी।

¹[62क. अधिनियम के कार्यान्वयन के लिए उत्तरदायी बाल संरक्षण एकक का गठन—

प्रत्येक राज्य सरकार, इस अधिनियम के कार्यान्वयन को, जिसके अन्तर्गत गृहों की स्थापना और उनका अनुरक्षण, इन बालकों के सम्बन्ध में सक्षम प्राधिकारियों से समन्वय करना भी है, सुनिश्चित करने की दृष्टि से देखरेख और संरक्षण की आवश्यकता वाले बालकों और विधि का उल्लंघन करने वाले किशोरों से सम्बन्धित मामलों पर विचार करने के लिए राज्य के लिए बालक संरक्षण एकक और प्रत्येक जिले के लिए ऐसे एककों का गठन करेगी, जिसमें ऐसे अधिकारी और अन्य कर्मचारी होंगे, जो उस राज्य सरकार द्वारा नियुक्त किए जाएं।]

63. विशेष किशोर पुलिस यूनिट—

1. ऐसे पुलिस अधिकारियों को, जो कि प्रायः अथवा अनन्य रूप से किशोरों से संव्यवहार करते हैं अथवा किशोर अपराध के निवारण में मुख्यतया लगे हुए हैं अथवा इस अधिनियम के अधीन किशोरों अथवा बालों से संव्यवहृत करते हैं, इस हेतु योग्य बनाने के लिए कि वे अपने कार्यों को अधिक प्रभावी ढंग से निष्पादित करें, उन्हें विशेष रूप से शिक्षित और प्रशिक्षित किया जायेगा।
2. प्रत्येक पुलिस थाने में कम से कम एक अधिकारी जिसकी अभियोग्यता और समुचित प्रशिक्षण और दिशा-निर्देश हासिल हो किशोर पुलिस यूनिट सृष्ट किया जा सकेगा, जिसके ऊपर नाम निर्दिष्ट किशोरों अथवा बालकों से संव्यवहार करने वाली सभी पुलिस अधिकारी सदस्य होंगे।
3. प्रत्येक जिले और नगर में समन्वय स्थापित करने के लिए और किशोरों तथा बालकों के पुलिस उपचार के स्तर को उठाने के लिए विशेष किशोर पुलिस यूनिट सृष्ट किया जा सकेगा, जिसके ऊपर नाम निर्दिष्ट किशोरों अथवा बालकों से संव्यवहार करने वाले सभी पुलिस अधिकारी सदस्य होंगे।

¹ केन्द्रीय अधिनियम क्रमांक 33 सन 2006 द्वारा दिनांक 22-8-2006 से अंतःस्थापित।

64. इस अधिनियम के प्रारम्भ के समय दण्डादेश भोग रहा विधि का उल्लंघन करने वाला किशोर— किसी ऐसे क्षेत्र में जिसमें यह अधिनियम प्रवृत्त किया जाता है, राज्य सरकार ¹[***] ²[यह निर्देश देगी] कि कोई विधि विवादित किशोर जो इस अधिनियम के प्रारम्भ के समय कोई दंडादेश भोग रहा हो, ऐसा दण्डादेश भोगने के बजाय उस दण्डादेश की अवशिष्ट कालाविधि के लिए विशेष गृह भेजा जाएगा या योग्य संस्था में ऐसी रीति से रखा जाएगा, जो राज्य सरकार ¹[***] ठीक समझे, सुरक्षित अभिरक्षा में रखा जाएगा और इस अधिनियम के उपबन्ध उस किशोर को ऐसे लागू होंगे मानो वह, यथास्थिति ऐसे विशेष गृह या संस्था जैसी भी स्थिति हो, को भेजे जाने के लिए बोर्ड द्वारा आदिष्ट किया गया हो या धारा 16 की उपधारा-2 के अधीन सुरक्षित देखरेख में रखे जाने के लिए आदिष्ट किया गया हो :

³[परन्तु यथास्थिति, राज्य सरकार या बोर्ड किसी ऐसे पर्याप्त और विशेष कारण से जो लेखबद्ध किया जाए, ऐसे कारावास का दण्डादेश भोग रहे विधि का उल्लंघन करने वाले ऐसे किशोर के मामले का जो इस अधिनियम के प्रारम्भ पर या उससे पूर्व किशोर नहीं रहा है पुनर्विलोकन कर सकेगा और ऐसे किशोर के हित में समुचित आदेश पारित कर सकेगा।]

स्पष्टीकरण—

ऐसे सभी मामलों में जिनमें इस अधिनियम के प्रारम्भ की तारीख को विधि का उल्लंघन करने वाला किशोर किसी भी प्रक्रम पर कारावास का कोई दण्डादेश भोग रहा है, किशोरावस्था के विवाद्यक सहित उसका मामला इस अधिनियम में अधिनियम में अधिनियम की धारा 2 के खंड-ठ में अंतर्विष्ट और अन्य उपबन्धों तथा उसके अधीन बनाए गये नियमों के निबंधानुसार इस तथ्य के होते हुए भी वह ऐसी तारीख को या उससे पूर्व किशोर नहीं रहा है विनिश्चय किया गया माना जाएगा और तदनुसार वह दण्डादेश की शेष अवधि के लिए, यथास्थिति, विशेष गृह या उपयुक्त संस्था में भेजा जाएगा किन्तु ऐसा दण्डादेश किसी भी दशा में इस अधिनियम की धारा 15 में उपबन्धित अधिकतम अवधि से अधिक का नहीं होगा।

65. बन्धपत्रों के बारे में प्रक्रिया—

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2) के अध्याय 33 के उपबन्ध इस अधिनियम के अधीन लिए गए बन्धपत्रों को यावत्शक्त लागू होंगे।

¹ केन्द्रीय अधिनियम क्रमांक 33 सन 2006 द्वारा दिनांक 22-8-2006 से विलुप्त।

² केन्द्रीय अधिनियम क्रमांक 33 सन 2006 द्वारा दिनांक 22-8-2006 से प्रतिस्थापित।

³ केन्द्रीय अधिनियम क्रमांक 33 सन 2006 द्वारा दिनांक 22-8-2006 से अंतःस्थापित।

66. शक्तियों का पत्यायोजन—

राज्य सरकार, साधारण आदेश द्वारा, यह निदेश दे सकेगी कि इस अधिनियम के अधीन उसके द्वारा प्रयोक्तव्य कोई शक्ति, उन परिस्थितियों में और ऐसी शर्तों के अधीन, यदि कोई हों, जो आदेश में विहित की जाएं, उस सरकार के अधीनस्थ किसी अधिकारी ¹[***] द्वारा भी प्रयोक्तव्य होंगी।

67. सद्भावनापूर्वक की गई कार्यवाही के लिए संरक्षण—

इस अधिनियम या उसके अधीन बनाये ये किसी नियम या आदेश के अनुसरण में सद्भावनापूर्वक की गई या की जाने के लिए आशयित किस बात के बारे में कोई वाद या विधिक कार्यवाही राज्य सरकार या गृह को चलाने वाले किसी स्वयंसेवी संगठन या इस अधिनियम के अधीन नियुक्त किसी अधिकारी और कर्मचारी के विरुद्ध नहीं होगी।

68. नियम बनाने की शक्ति—

1. राज्य सरकार, इस अधिनियम के प्रयोजनों को कार्यान्वित करने के लिए, राजपत्र में अधिसूचना द्वारा, नियम बना सकेगी :

²[परन्तु केन्द्रीय सरकार, उन सभी या किन्हीं विषयों के सम्बन्ध में जिनकी बाबत राज्य सरकार, इस धारा के अधीन नियम बना सकेगी, आदर्श नियम बनाए गये हैं, वहां वे राज्य सरकार को लागू होंगे जब तक कि उस विषय के सम्बन्ध में राज्य सरकार द्वारा नियम नहीं बना दिये जाते और कोई ऐसे नियम बनाए जाते समय जहां तक व्यवहार्य हो वे ऐसे आदर्श नियम के अनुरूप होंगे।]

2. विशिष्टतया और पूर्वगामी शक्ति की व्यापकता पर प्रतिकूल प्रभाव डाले बिना, ऐसे नियमों में निम्नलिखित सभी या किन्हीं विषयों के लिए उपबन्ध किया जा सकेगा, अर्थात्—

- (i) बोर्ड के सदस्यों के पद की अवधि और वह रीति जिसमें ऐसे सदस्य धारा 4 की उपधारा-4 के अधीन पदत्याग कर सकेंगे;
- (ii) धारा-5 की उपधारा-1 के अधीन बोर्ड की बैठकों का समय और उसकी बैठकों में कार्य सम्पादन के सम्बन्ध में प्रक्रिया के नियम;
- (iii) सम्प्रेक्षण गृहों का प्रबन्धन जिसमें उनके द्वारा प्रदान की जाने वाली सेवाओं का स्तर और उनका विभिन्न प्रकार और परिस्थितियों और रीति जिसमें सम्प्रेक्षण गृहा का प्रमाणन मंजूर अथवा वापस लिया जा सकेगा और ऐसे अन्य विषय भी सम्मिलित हैं जो कि धारा 8 में निर्दिष्ट हैं ;

¹ केन्द्रीय अधिनियम क्रमांक 33 सन 2006 द्वारा दिनांक 22-8-2006 से विलुप्त।

² केन्द्रीय अधिनियम क्रमांक 33 सन 2006 द्वारा दिनांक 22-8-2006 से अंतःस्थापित।

- (iv) विशेष गृहों का प्रबन्धक जिसमें उनके द्वारा प्रदान की जाने वाली सेवाओं का स्तर और उनका विभिन्न प्रकार और परिस्थितियों की रीति जिसमें विशेष गृहों का प्रमाणन मंजून अथवा वापस लिया जा सकेगा और अन्य ऐसे विषय भी सम्मिलित हैं, जो धारा 9 में निर्दिष्ट हैं;
- (v) वे व्यक्ति जिनके द्वारा कोई विधि-विवादित किशोर बोर्ड के समक्ष पेश किया जा सकेगा और ऐसे किशोर को धारा-10 की उपधारा-2 के अधीन किसी सम्प्रेक्षण गृह को भेजने की रीति;
- (vi) धारा-19 के अधीन किसी किशोर की दोषसिद्धि से सम्बद्ध निर्योग्यताओं को हटाने से सम्बन्धित विषय;
- (vii) अध्यक्ष और सदस्यों की योग्यतायें और वह अवधि जिसके लिए उन्हें धारा-29 की उपधारा-3 के अधीन नियुक्त किया जा सकेगा ;
- (viii) समिति की बैठकों का समय और धारा-30 की उपधारा-1 के अधीन उसकी बैठकों में कार्य-सम्पादन से सम्पादन से सम्बन्धित प्रक्रिया के नियम ;
- (ix) धारा-32 की उपधारा-2 के अधीन पुलिस और समिति की रिपोर्ट करने की रीति और जांच कल लम्बितावस्था में बालक को बालक गृह भेजने और न्यस्त करने की रीति;
- (x) धारा-34 की उपधारा-2 के अधीन बालक गृहों का प्रबन्धन, जिसमें उनके द्वारा प्रदान की जाने वाली सेवाओं का स्तर और उनकी प्रकृति और वह रीति भी सम्मिलित है जिसमें बालक गृहों का प्रमाणन या किसी स्वयंसेवी संगठन को मान्यता प्रदान की या वापस ली जा सकेगी और उपधारा-3 के अधीन संस्थाओं के रजिस्ट्रीकरण की रीति;
- (xi) बालक गृहों के लिए निरीक्षण समितियों की नियुक्ति, उनकी पदावधि और वे प्रयोजन जिनके लिए निरीक्षण समितियों को नियुक्त किया जा सकेगा और अन्य ऐसे विषय जो कि धारा-35 में निर्दिष्ट हैं;
- (xii) धारा-37 की उपधारा-3 के अधीन आश्रय गृहों द्वारा प्रदान की जाने वाली सुविधाएं;
- ¹[(xii)क) धारा-41 की उपधारा-2 के अधीन दत्तक ग्रहण में पुनर्वास तंत्र का प्रत्यावर्तित किया जाना; उपधारा-3 के अधीन मार्गदर्शन सिद्धान्तों की अधिसूचना और उपधारा-4 के अधीन विशेषज्ञ दत्तक ग्रहण अभिकरणों को मान्यता की रीति;]
- (xiii) धारा-42 की उपधारा-3 के अधीन बालकों को धातु देखरेख योजना को लागू करने के लिए;

¹ केन्द्रीय अधिनियम क्रमांक 33 सन 2006 द्वारा दिनांक 22-8-2006 से अंतःस्थापित।

- (xiv) धारा-43 की उपधारा-2 के अधीन बालकों की विभिन्न प्रयोजन योजनाओं को लागू करने के लिए;
- (xv) धारा-44 के अधीन पश्चात्वर्ती देखरेख संगठन से सम्बन्धित विषयों;
- (xvi) धारा-45 के अधीन बालक के पुनर्वास और सामाजिक एकीकरण को सुनकर बनाने के लिए विभिन्न अभिकरणों के बीच प्रभावी सम्बद्धता सुनिश्चित करने के लिए;
- (xvii) धारा-61 की उपधारा-3 के अधीन वे प्रयोजन और रीति जिसमें निधि को प्रशासित किया जायेग ;
- (xviii) कोई अन्य विषय जो कि विहित किया जाना अपेक्षित है या हो सकता है।
- ¹[(3) इस अधिनियम के अधीन केन्द्रीय सरकार द्वारा बनाया गया प्रत्येक नियम, बनाए जाने के पश्चात् यथाशीघ्र, संसद के प्रत्येक सदन के समक्ष, ज बवह सत्र में हो, कुल तीन दिन की अवधि के लिए रखा जाएगा। यह अवधि एक सत्र में अथवा दो या अधिक आनुक्रमिक सत्रों में पूरी हो सकेगी। यदि उस सत्र के या पूर्वोक्त आनुक्रमिक सत्रों के ठीक बाद के सत्र के अवसान के पूर्व दोनों सदन उस नियम में कोई परिवर्तन के लिए सहमत हो जाएं तो तत्पश्चात् यह ऐसे परिवर्तित रूप में ही प्रभावी होगा। यदि उक्त अवसान के पूर्व दोनों सदन सहमत हो जाएं कि वह नियम नहीं बनाया जाना चाहिए तो तत्पश्चात् यह निष्प्रभाव हो जायेगा। किन्तु नियम के ऐसे परिवर्तित या निष्प्रभाव होने से उसके अधीन पहले की गई किसी बात की विधिमान्यता पर प्रतिकूल प्रभाव नहीं पड़ेगा।]
- ²[(4)] इस धारा के अधीन किसी राज्य सरकार द्वारा बनाया गया प्रत्येक नियम, बनाये जाने के पश्चात् यथाशीघ्र, उस राज्य के विधान मण्डल के समक्ष रखा जायेगा।

69. निरसन और व्यावृत्तियाँ—

1. किशोर न्याय अधिनियम, 1986 (1986 का 53) एतद्द्वारा निरसित किया जाता है।
2. ऐसे निरसन के होते हुए भी, उक्त अधिनियम के अधीन कोई बात जो की गई अथवा कोई कार्य जो किया गया, उसके बारे में यह मान लिया जायेगा कि वह अधिनियम के तत्सम उपबंधों के अधीन किया गया है।

70. कठिनाइयों को दूर करने की शक्ति—

¹ केन्द्रीय अधिनियम क्रमांक 33 सन 2006 द्वारा दिनांक 22-8-2006 से अंतःस्थापित।

² केन्द्रीय अधिनियम क्रमांक 33 सन 2006 द्वारा दिनांक 22-8-2006 से पुनर्संख्यांकित।

1. यदि इस अधिनियम के उपबन्धों को प्रभावी करने में कोई कठिनाई उत्पन्न होती है तो केन्द्रीय सरकार आदेश द्वारा जो इस अधिनियम के उपबन्धों से असंगत न हो, कठिनाई को दूर कर सकेगी :
परन्तु ऐसा कोई आदेश इस अधिनियम के प्रभावी होने के दो वर्ष की अवधि की समाप्ति के पश्चात् नहीं किया जायेगा।
2. तथापि, इस धारा के अधीन किया गया आदेश, किये जाने के पश्चात् यथाशीघ्र संसद के प्रत्येक सदन के समक्ष रखा जायेगा।

Section II:
TABLE OF JUDGEMENTS

भाग II:
न्यायिक फैसलों की तालिका

TABLE OF JUDGEMENTS: JUVENILES IN CONFLICT WITH LAW

S. NO.	CASE NAME, CITATION & COURT NAME	ISSUE	DECISION
APPLICABILITY OF THE ACT			
1.	Pratap Singh vs. State of Jharkhand and Anr. ▪ AIR2005SC2731 ▪ 2005CriLJ3091 ▪ (2005)3SCC551 ❖ Supreme Court of India	Whether date of occurrence is reckoning date for determining age of alleged offender as juvenile offender or date when he is produced before Court/Competent authority? Whether provisions of new Act to apply to proceedings initiated under old Act and pending on 1.4.2001 when new Act came into force?	The relevant date for determining the age of the juvenile would be one on which the offence has been committed and not when he is produced in Court. In an event of juvenile delinquency vis-a-vis commission of an offence, he is to be provided the post-delinquency care and for the said purpose, the date when delinquency took place would be the relevant date. Also the provisions of new Act will apply but only when offender had not completed 18 years of age on 1.4.2001.
ROLE OF POLICE			
2.	Court on its own Motion vs. Govt. of NCT Delhi ❖ WP(C) No. 8801/2008 ❖ High Court of Delhi	Guidelines regarding apprehension of juvenile in conflict with law	i) Whenever a police officer apprehends a juvenile alleged to be in conflict with law, he is required to inform the designated juvenile or child welfare officer in the nearest police station to take charge of the matters and also the parents and guardians of the juvenile and inform him about the address of the Board where the juveniles will be produced. ii) The period of 24 hours mentioned in the latter part of Section 10(1) is the outer limit. The requirement of the Section is the immediate production of the juvenile.

DETERMINATION OF AGE			
3.	<p>Babloo Passi Vs. State of Jharkhand</p> <p>❖ 2009 (64) ACC 754</p> <p>❖ Supreme Court of India</p>	<p>What are the correct parameters for determining the age of delinquent in borderline cases?</p>	<p>It is well settled that it is neither feasible nor desirable to lay down an abstract formula to determine the age of a person. The date of birth is to be determined on the basis of material on record and on appreciation of evidence adduced by the parties. The Medical evidence as to the age of a person, though a very useful guiding factor, is not conclusive and has to be considered along with other cogent evidence.</p> <p>If two views may be possible on the same evidence, the Court should lean in favor of holding the accused to be a juvenile in borderline cases.</p>
4.	<p>Court on its own Motion vs. Department of Women and Child Development & Ors.</p> <p>❖ (3)RCR(Criminal)394</p> <p>❖ High Court of Delhi</p>	<p>Guidelines regarding conducting of inquiry in cases involving juveniles</p>	<p>i) Inmates who are suspected to be juvenile as per initial investigations shall be kept separately from all the prisoners.</p> <p>ii) Teams of NCPCR/CLSA shall visit Tihar Jail and follow the procedure for ascertainment of the ages of those who appear to be juveniles.</p> <p>iii) The investigating officers while making arrest shall reflect the age of the prisoner arrested in the Arrest Memo.</p> <p>iv) Investigating officer shall ask the person if he has been a part of formal schooling at any time.</p>
5.	<p>Ram Suresh Singh vs. Prabhat Singh @ Chhotu</p>	<p>Whether entries in regard to date of birth of</p>	<p>Rule 22 of the Juvenile Justice (Care & Protection of Children)</p>

	<p>Singh & Anr.</p> <ul style="list-style-type: none"> ❖ (2009) 6 SCC 681 ❖ Supreme Court of India 	<p>a student recorded in admission register/certificate could be considered while determining age of a person?</p>	<p>Rules, 2001, provides for the procedure to be followed in respect of determination of the age of a person. It indicates that the opinion of the Medical Board is to be preferred only when a date of birth certificate from the school first attended is not available.</p> <p>If a document is proved to be genuine and satisfies the requirements of law, it should be, subject to just exceptions, relied upon.</p> <p>And same standard is required to be applied for the purpose of Section 35 of the Evidence Act both in civil as also criminal proceedings.</p>
<p>6.</p>	<p>Bhola Bhagat Vs. State of Bihar</p> <ul style="list-style-type: none"> ❖ (1997) 8 SCC 720 ❖ Supreme Court of India 	<p>Should the delay in raising the plea of juvenility affect the determination?</p>	<p>Technicalities should not be allowed to defeat the benefits of a socially oriented legislation like the Bihar Children Act, 1982 and the Juvenile Justice Act.</p> <p>When a plea is raised on behalf of an accused it becomes obligatory for the court, in case it entertains any doubt about the age as claimed by the accused, to hold an inquiry itself for determination of the question of age of the accused or cause an enquiry to be held and seek a report regarding the same, if necessary, by asking the parties to lead evidence in that regard.</p> <p>The High Courts may issue administrative directions to the subordinate courts that whenever such a plea is raised</p>

			before them and they entertain any reasonable doubt about the correctness of the plea, they must as a rule, conduct an inquiry by giving opportunity to the parties to establish their respective claims and return a finding regarding the age of the concerned accused and then deal with the case in the manner provided by law.
7.	Kailash Singh v. Ramveer Singh (Raj.) ❖ 2008 CrLJ 290 ❖ Rajasthan High Court	Relevance of medical evidence in the presence of school record of date of birth in order to determine juvenility?	The opinion of the medical expert and the age mentioned in the voter list cannot be regarded to be conclusive. Medical evidence regarding the age can be considered only after rejecting the case of birth mentioned in the school record. Where the school record has been maintained regularly and in the discharge of official duty, there should be absolutely no reason to doubt the school record.
8.	Khem Chand Vs. State of Rajasthan MANU/RH/0056/2008 ❖ Rajasthan High Court	Whether it is the duty of the trial court to hold an inquiry about age determination and to provide opportunity to both parties to lead evidence under Section 7A of the Act?	After receipt of the affidavit of the father and the certificate issued by the Board of Secondary Education, it was a duty of the trial court to make an inquiry on the point as to whether accused was juvenile or not within the meaning of Section 2(k) of the Act of 2000 on the date of incident. The matter should have been fixed for producing evidence by the parties. The trial court was directed to make an inquiry in the matter in accordance with the provisions of Section 7A of the Act of 2000 and, after affording an opportunity to the parties to

			lead evidence in the case, will record a finding as to whether accused was juvenile or not.
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JUVENILE VIS-À-VIS SPECIAL LAWS

9.	<p>Mohd. Irshad @ Shiv Raj vs State</p> <ul style="list-style-type: none"> ▪ 2006 (134) DLT 507 ▪ 2006 (3) JCC 129 ▪ 2007 (1) Crimes 73 <p>❖ Delhi High Court</p>	<p>Can a juvenile charged with the provisions of the NDPS Act be tried before the Special Judge under the NDPS Act or he has to be tried before the Juvenile Justice Board?</p>	<p>Firstly, Section 6 of the Juvenile Justice Act contains a non-obstante clause which is very wide and is to operate notwithstanding anything contained in "any other law for the time being in force". Section 36A of the NDPS Act, however contains a non-obstante clause which is of limited amplitude inasmuch as it is to operate notwithstanding anything contained in "the Code of Criminal Procedure, 1973". The wordings of the two Sections themselves make it clear that in the event of any conflict between Sections 6 and 36A, it will be Section 6 that will override.</p> <p>Secondly, Section 18(2) makes it the mandatory duty of the Juvenile Justice Board to direct separate trials for the juvenile and the other person which makes it clear that a juvenile can be tried only in terms of the Juvenile Justice Act and that is before the Juvenile Justice Board.</p> <p>Another case on the same point is Raj Singh vs. State of Haryana; Citation: 2000 (6) SCC 759; Supreme Court of India.</p>
10.	<p>Ratan Lal vs. State (Raj)</p> <ul style="list-style-type: none"> ▪ 2004 CrLJ 734 	<p>Can a juvenile charged with the provisions of Scheduled Castes/ Scheduled Tribes</p>	<p>The trial by the Sessions Court against a juvenile stands vitiated because of the inherent lack of jurisdiction to conduct</p>

	❖ Rajasthan High Court	(Prevention of Atrocities) Act be tried under the SC/ST Act or he has to be tried under the Juvenile Justice (Care and Protection of Children) Act, 2000?	trial against the 'juvenile' or the 'child'. The Court directed that the learned Court below shall first conduct inquiry with regard to the age of petitioner and if he is found to be a Juvenile, he may be forwarded along with the relevant record to the competent Court for his trial in accordance with the provisions of the Act of 2000 and if found otherwise he may proceed to decide the Sessions case as per law.
11.	State vs. Harshad ▪ 2005 CriLJ 2357 ▪ ILR 2005 Kar 1572 ▪ 2005 (2) KarLJ 481 ❖ Karnataka High Court	Whether the Sessions Court will have jurisdiction to deal with a juvenile in a case committed to it under Section 209 of the Cr. P.C. by the Juvenile Justice Board? Whether Section 27 of the Cr.P.C. has overriding effect over Section 6 of the Juvenile Justice Act, 2000 or vice-versa?	In view of the fact that a Juvenile Justice Board has already been constituted, it is that Board which has the exclusive power of dealing with the trial of juveniles in conflict with law and to that extent, the jurisdiction of any Court including that of the Sessions Court or Fast Track Court is barred. It is held that Section 27 of the Cr. P.C. has no inconsistency with Section 6 of the Juvenile Justice (Care and Protection of Children) Act, 2000. However, the words "notwithstanding anything contained in any other law for the time being in force", used in Section 6(1) of the Act, 2000 has overridden the provisions of Section 26(a) of the Cr. P.C.
12.	Prerana vs. State of Maharashtra ❖ (2003) 2 BOMLR 562, ❖ High Court of Bombay	Whether the juvenile girls rescued from flesh trade to be treated as accused or victims under the Immoral Trafficking (Prevention) Act and Juvenile Justice Act,	The girls who are below 18 years of age and are found to be a part of the flesh trade should be treated as children in need of care and protection and not juveniles in conflict with law. Hence, they should be

		<p>2000?</p> <p>Should these juvenile girls be produced before the Child Welfare Committee or Juvenile Justice Board?</p> <p>Can an advocate appear for both the pimp or brothel keeper and the victims rescued under ITPA, 1985 ?</p>	<p>produced before a Child Welfare Committee (CWC) and not Juvenile Justice Board as they are minors and not accused. The Court held that the lower court cannot order these minors to not enter the local jurisdiction of their social service branch as it confirms them as prostitutes. In fact, it shall order them to be released in the custody of their respective parents/ guardians. The Court further held that an advocate appearing for a pimp or brothel keeper is barred from appearing in the same case for the victims rescued under Immoral Trafficking (Prevention) Act, 1956.</p>
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COMPENSATION

13.	<p>Master Salim Ikramuddin Ansari and Maharukh Adenwalla v. Officer-in-charge, The Superintendent and State of Maharashtra through Secretary, Home Department</p> <ul style="list-style-type: none"> ▪ 2005 CriLJ 799 ▪ 2004 (4) MhLJ 725 <p>❖ High Court of Bombay</p>	<p>Whether a juvenile can be released on personal bond in case of non-fulfilment of the financial conditions attached to the bail order?</p> <p>Whether monetary compensation can be awarded where juvenile has been produced for one and a half years and therefore was deprived of asserting his juvenility?</p>	<p>The Court discussed Section 12 of the Juvenile Justice Act which clearly explains the provision relating to bail of a Juvenile and directed the Juvenile Justice Board to release the petitioner on his executing personal bond only.</p> <p>On consideration of the totality of the facts and circumstances of this case, the petitioner was ordered to receive compensation of Rupees one lakh only.</p>
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ANTICIPATORY BAIL

14.	<p>Tara Chand Vs. State of Rajasthan (Raj)</p> <ul style="list-style-type: none"> ▪ 2007 CriLJ 3047 ▪ RLW 2008 (2) Raj 1013 	<p>Can a juvenile charged with the provisions of the Schedule Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 be granted</p>	<p>Where a juvenile moves an application for being released on anticipatory bail, the case would be covered by the language "appears before... the Board" of Section 12 of the</p>
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	❖ Rajasthan High Court	Anticipatory Bail?	Juvenile Justice Act, 2000 and his application under Section 438, Cr.P.C. would be maintainable. With regards to the statement of objects and reasons of the Juvenile Justice Act, Section 12 has an overriding effect on Section 18 of the Act of Schedule Castes and the Scheduled Tribes (Prevention of Atrocities) Act. Thus, in the case of a 'juvenile', the exclusion of the provisions of Section 438, Cr.P.C. as provided under Section 18 of the Schedule Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 shall not apply.
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BAIL

15.	<p>Prakash v. State of Rajasthan (RJ)</p> <ul style="list-style-type: none"> ▪ 2006 CriLJ 1373 ▪ RLW 2006 (1) Raj 538 <p>❖ Rajasthan High Court</p>	Whether a juvenile delinquent can be released on bail irrespective of nature of offence alleged to have been committed by him?	<p>At the time of consideration of bail under Section 12 of the Act, 2000, the merit or nature of offence has no relevancy. The language of Section 12 of the Act, using the word "shall" is mandatory in nature and providing non-obstante clause shows the intention of the Legislature to grant bail to the delinquent juvenile offender by releasing him on bail who is arrested or produced before a Court, however, with exception to release him on bail if there are reasonable grounds for believing that his release is likely to bring him into association with any known criminal or expose him to moral, physical or psychological danger or that his release would defeat the ends of justice.</p> <p>It is for the prosecution to bring</p>
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			<p>on record such material while opposing the bail and to make out any of the grounds provided in this section which may persuade the Court not to release the juvenile on bail.</p> <p>The same point has been reiterated in <i>Bharat @ Bharat Ram v. State (Rajasthan)</i>, decided on 12 March 2008.</p>
16.	<p>Mata @ Manohar Singh v. State of Rajasthan</p> <ul style="list-style-type: none"> ▪ 1996 CriLJ 743 ▪ 1995 (2) WLC 699 <p>❖ Rajasthan High Court</p>	<p>Whether the Juvenile Court and the Sessions Court were justified in rejecting the bail of a juvenile on the grounds of nature and seriousness of the case and also the interest of the delinquent juvenile?</p>	<p>Section 18(1) of the Act clearly lays down that bail to a delinquent child is a rule and mandate of the Act irrespective of the nature and seriousness of the offence committed by him. The Section also provides the grounds and circumstances when bail can be declined to a juvenile delinquent. Those grounds are that: release is likely to bring him into association with any known criminal or expose him to moral danger or that his release would defeat the ends of justice.</p> <p>Further, there should be material on record to show that any of the above circumstances exists to decline bail. It appears that neither the Juvenile Court nor the learned Sessions Judge cared to look into the provisions of Section 18 before declining bail to the petitioner.</p>
17.	<p>Jaif Ahmed Sheikh v. State of Rajasthan</p> <ul style="list-style-type: none"> ▪ 2004 CriLJ 3272, ▪ RLW 2004 (2) Raj1090, ▪ 2004 (2) WLC 662 <p>❖ Rajasthan High Court</p>	<p>Whether the bail to a minor under Narcotics Drugs and Psychotropic Substances Act 1985 can be granted?</p>	<p>The petitioner strongly placed reliance on a decision of this court in <i>Manohar Lal v. State of Rajasthan</i> (2002 CriLJ 394), wherein the court directed to release the accused of an offence under the provisions of N.D.P.S. Act on the ground that</p>

			<p>he was a juvenile.</p> <p>Where an accused alleged to have been engaged in smuggling activity, the possibility of his being joining the gang and repeating the activity if released on bail cannot be ruled out. The release of an accused on an offence of N.D.P.S. Act may be of below 18 years of age is bound to defeat the ends of justice. Thus, Manohar Lal's case does not advance the case of the petitioner.</p>
18.	<p>Gopal Sharma v. State of Rajasthan</p> <ul style="list-style-type: none"> ▪ RLW 2004 (1) Raj 450, ▪ 2004 (1) WLC 722 <p>❖ Rajasthan High Court</p>	Whether bail can be denied on the ground that the act is prejudicial to image of the country?	<p>The bail application has been refused not only because that the applicant is facing trial on a serious charge of murder but also the special circumstance that his act is prejudicial, to image of the country in the world, adversely affecting the tourism business.</p> <p>The tourists move in the country on the guidance and faith of guide. A betrayal to foreign tourist is betrayal to the country, projecting a bad image in the eye of the world. Thus, the view taken by both the courts - Juvenile Court and Sessions Court - cannot said to be erroneous in considering that the case of the petitioner falls in the exceptional category provided under Section 12 of the Act.</p>
19.	<p>Vijendra Kumar Mali etc. vs. State of U.P.</p> <p>❖ 2003 CriLJ 4619</p>	Whether the bail application of the juvenile delinquent is to be considered under the provisions of the Code of	Bail to the juvenile can only be refused if anyone of the grounds enlisted in Section 12 exists. So far as the ground of gravity is concerned, it is not

	❖ Allahabad High Court	Criminal Procedure or under the Juvenile Justice (Care & Protection of Children) Act, 2000?	covered under the above provisions of the JJ Act. If the bail application of the juvenile was to be considered under the provisions of the Code of Criminal Procedure, there would have been absolutely no necessity for the enactment of the aforesaid Act. The language of Section 12 of the Act itself lays down that notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) or in any other law for the time being in force, the juvenile accused shall be released.
20.	Shashi Kumar Saini vs. State ❖ 120 (2005) DLT 313 ❖ High Court of Delhi	Whether the rigours of Section 37 of Narcotics, Drugs and Psychotropic Substances Act, 1985 would be attracted in refusing or granting bail to a juvenile?	The Court held that when the accused is a juvenile, Section 12 of the Juvenile Justice Act, 2000 would have an overriding effect over the Section 37 of the NDPS Act. The only way by which the accused juvenile could be refused bail is by invoking the exceptions as enumerated under Section 12 of the JJ Act. And in the present case it was held that if the accused would be released on bail, there would be every likelihood that he might be exposed to moral or psychological danger as it has been observed in the SIR that he was instigated by an adult into the subject offence who is now absconding.
BAR ON SERVING JAIL TERM			
21.	Munna and Ors. Vs. State of Uttar Pradesh and Ors. ❖ AIR1982 SC 806 ❖ (1982)1 SCC 545	Whether any detenu below age of 16 years can be detained in District Jail?	No person apparently under age of 16 years is sent to jail but he must be detained in Children's Home or committed to approved school under Section 29 of U.P. Children Act,

	<ul style="list-style-type: none"> ❖ 1982 CriLJ 620 ❖ Supreme Court of India 		<p>1951, or either discharged or committed to suitable custody under Section 30. It is absolutely essential in order to implement provisions that Children's Home or other suitable places of safety are set up by government for purpose of providing place of detention for children under age of 16 years.</p> <p>Even where child is found to have committed offence of so serious nature no punishment which under Act is authorized to inflict is sufficient, Section 32 provides that offender shall not be sent to jail but shall be kept in safe custody in such place or manner as it thinks fit and shall report case for orders of State Government.</p>
22.	<p>Devendra @ Sonu and Anr vs. State of Rajasthan</p> <ul style="list-style-type: none"> ❖ RLW (2006) 1 (Raj) 407 ❖ High Court of Rajasthan 	Can a juvenile, if held guilty for committing a crime, be sent to serve the term of jail?	The Court held that on the basis of Sections 6(2), 15, 16 and 20 of the JJ Act a juvenile cannot be sent to serve the term of jail and it would also apply to cases pending in appeal.

SIGNIFICANCE OF SOCIAL INVESTIGATION REPORT (SIR)

23.	<p>Nand Kishore (in JC) vs. State</p> <ul style="list-style-type: none"> ❖ MANU/DE/8814/2006 ❖ High Court of Delhi 	Whether the Social Investigating Report (SIR) should be primarily emphasized upon while deciding the refusal or grant of bail to a juvenile?	<p>The Court held that the Social Investigating Report holds a lot of importance in deciding the refusal or grant of bail to juveniles. It tries to depict the social and family background of the juvenile which helps in indicating the criminal inclinations of the accused, if any.</p> <p>Moreover, it also gives a clear picture of whether the accused</p>
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			would be associated with a known criminal if released on bail considering his social and family conditions. The Court further held that one must identify the 'known criminal' as carved out in Section 12 of JJ Act to invoke this exception.
24.	Sandeep Kumar vs. State ❖ 2005CriLJ3182 ❖ High Court Of Delhi	Whether the Social Investigation Report should be wholly relied upon to check the application of exception on the juvenile accused?	The Court held that in the present case, the Social Investigating Report was self contradictory which clearly validates all the exceptions as mentioned in Section 12 of JJ Act. Hence, the SIR should be given proper and watchful reading before deciding on the refusal or grant of bail to the juvenile.

ROLE OF SESSIONS COURT / HIGH COURT/ SUPREME COURT

25.	Gurpreet Singh V. State of Punjab ❖ (2005) 12 SCC 615 ❖ Supreme Court of India	What is the role of the Supreme Court if the plea of juvenility was not raised either before the trial court or the High Court?	This Court should first consider the legality of otherwise of conviction of the accused and in case the conviction is upheld, a report should be called for from the trial court on the point as to whether the accused was juvenile on the date of occurrence and upon receipt of the report, if it is found that the accused was juvenile on such date and continues to be so, he shall be sent to juvenile home. But in case it finds that on the date of occurrence, he was juvenile but on date this Court is passing final order upon the report received from the trial court, he no longer continues to be juvenile, the sentence imposed against him would be liable to be set aside.
26.	Manish Tyagi Vs. State of	Whether Sessions Judge	Section 6 Sub-section (2) of the

	<p>U.P.</p> <ul style="list-style-type: none"> ❖ 2007 CriLJ 3165 ❖ Allahabad High Court 	<p>had got the power of Juvenile Justice Board in consonance with Section 6(2) of Juvenile Justice (care and protection of children) Act 2000, or not?</p>	<p>Act Provides that the power conferred on the Board by or under this Act may also be exercised by the High Court and the court of Session when the proceedings comes before them in appeal revision or otherwise.</p> <p>The Juvenile Board's order that Session's court does not have the right to exercise power under the Act is against the very statutory provision under Section 6 of the Act and hence is wholly illegal and totally perverse.</p>
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IMPLEMENTATION OF JUVENILE JUSTICE ACT

<p>27.</p>	<p>Supreme Court Legal Aid Committee (III) vs. Union of India</p> <ul style="list-style-type: none"> ❖ (1989)4SCC740 ❖ Supreme Court of India 	<p>Writ Petition filed to set up Advisory Boards both at the State and District levels.</p>	<p>The Court directed each of the States to set up its Advisory Board consisting of Ministers of Law and Social or Children's Welfare, as the case may be the Secretary to Government in the relevant Department, the Head of the Police Establishment (Director General or the Inspector General, as the case may be), the Head of the Health Directorate, two members of the Bar with appropriate aptitude, an acknowledged lady social worker, a Member of Parliament and a Member of the State Legislature, one or two social workers of acknowledged repute preferably connected with children's rehabilitation activity.</p>
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विधि से संघर्ष—रत बालक: न्यायिक फैसलों की तालिका

क्रमांक	केस(मामले) का नाम, साइटेशन(उद्धरण) और कोर्ट(अदालत)	मुद्दा	फैसला
अधिनियम के लागू होने के बारे			
1.	<p>प्रताप सिंह बनाम झारखंड राज्य और अन्य</p> <p><i>एआईआर 2005 एससी 2731</i> <i>2005 सीआरआईएलजे 3091</i> <i>(2005)3 एससीसी 551</i></p> <p><i>उच्चतम न्यायालय, भारत</i></p>	<p>जिस व्यक्ति को अभियुक्त ठहराया जा रहा है उसे नाबालिग होने के बारे में अनुमान लगाने के लिए उम्र की गणना में किस तारीख को प्रधान माना जाय? क्या उस तारीख को जिन दिन वारदात हुई या उस तारीख को जिस दिन अभियुक्त को अदालत या सक्षम प्राधिकारी के समक्ष प्रस्तुत किया गया।</p> <p>नया अधिनियम 1.4.2001 को प्रभाव में आया था। इस तारीख तक लंबित और पुराने अधिनियम के तहत प्रारंभ की गई प्रक्रियाओं पर क्या नये अधिनियम के प्रावधान लागू होंगे?</p>	<p>नाबालिग की उम्र की गणना के लिए प्रासंगिक तिथि वह होगी जिस दिन वारदात को अंजाम दिया गया था ना कि वह तिथि जिस दिन उसे अदालत में प्रस्तुत किया गया। किसी अपराध-कर्म के संदर्भ में नाबालिग के दोषी पाये जाने पर उसे दोष-कर्म के बाद की देखरेख प्रदान की जाय और इस उद्देश्य के लिए प्रासंगिक तिथि वह मानी जाय जिस दिन दोष-कर्म किया गया।</p> <p>नये अधिनियम के प्रावधान भी लागू होंगे लेकिन सिर्फ तब ही जब अपराधी की उम्र 1.4.2001 को 18 साल ना हो।</p>
पुलिस की भूमिका			
2.	<p>अदालत का स्वतः संज्ञान बनाम राष्ट्रीय राजधानी क्षेत्र दिल्ली की सरकार</p> <p>डब्ल्यूपी (सी) संख्या. 8801/2008</p> <p>उच्च न्यायालय, दिल्ली</p>	<p>कानून के उल्लंघन के मामले में हिरासत में लिए गए नाबालिग के बारे में दिशानिर्देश</p>	<p>iii) जब भी कोई पुलिस अधिकारी कानून के उल्लंघन के आरोपी नाबालिग को हिरासत में लेता है तो उसके लिए जरूरी हो जाता है कि वह नजदीकी थाना के प्राधिकृत नाबालिग या बाल-कल्याण अधिकारी को मामले</p>

			<p>को अपने प्रभार में लेने के लिए सूचित करे। साथ ही उसे नाबालिग के अभिभावक तथा माता-पिता को उस बोर्ड के पता-ठिकाना के बारे में सूचना देनी होती है जहां नाबालिग को पेश किया जाएगा।</p> <p>iv) धारा 10(1) के अंतिम हिस्से में वर्णित 24 घंटे की अवधि आत्यांतिक सीमा है। उक्त धारा के अंतर्गत नाबालिग को तत्काल पेश करना जरूरी है।</p>
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उम्र का निर्धारण

3.	<p>बबलू पासी बनाम झारखंड राज्य;</p> <p>2008(13)एससीसी 133 2009(3) एससीसी(सीआरआई)266</p> <p>उच्चतम न्यायालय, भारत</p>	<p>जिन मामलों में यह निर्णय करना कठिन हो कि अपराधी बालिग है या नाबालिग, उन मामलों में उम्र के निर्धारण के लिए सही कसौटी क्या है?</p>	<p>यह स्थापित बात है कि किसी व्यक्ति की उम्र के निर्धारण के लिए कोई अमूर्त फार्मूला तय करना ना तो व्यवहारिक है और ना ही वांछित। जन्मतिथि का निर्धारण रिकार्ड में मौजूद सामग्री तथा संबद्ध पार्टियों द्वारा प्रस्तुत साक्ष्यों के मूल्यांकन के आधार पर किया जाय। जहां तक व्यक्ति की उम्र के बारे में मेडिकल साक्ष्य का सवाल है, इस दिशा में निर्देश करने के मामले में एक उपयोगी चीज होने के बावजूद उसे निर्णायक नहीं माना जा सकता और उस पर अन्य अकाट्य साक्ष्यों के साथ ही विचार किया जाय।</p>
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			जिन मामलों में बालिग-नाबालिग का निर्णय करना कठिन हो उन मामलों में यदि एक ही साक्ष्य को लेकर दो तरह के विचार संभव हों तो अदालत को चाहिए कि वह आरोपी को नाबालिग माने।
4.	अदालत स्वयं अपने वेग से बनाम महिला एवं बाल विकास व अन्य (3)आरर.सी.आर. (क्रिमनल)394 दिल्ली उच्च न्यायालय	किशोरों से संबंधित केसों में इंक्वायरी करने के लिए दिशा-निर्देश।	1) ऐसे बंदो प्राथमिक जांच के बाद जिनके किशोर होने का संदेह हो, उन्हें दूसरे सभी कैदियों के साथ नहीं रखा जाना चाहिए। 2) एन.सी.पी.सी.आर. /सी.एल.एस.ए. की टीम तिहाड़ जेल का वीक्षण करेगी और जो लोग किशोर लगते हैं उनकी आयु निश्चित करेंगे। 3) गिरफ्तार करते समय जांच अधिकारी को गिरफ्तारी पर्चे पर बंदी की सम्भावित आयु दर्ज करनी होगी। 4) जांच अधिकारी को उस व्यक्ति से पूछना होगा कि उसने किसी भी समय औपचारिक शिक्षा प्राप्त की है या नहीं।
5.	राम सुरेश सिंह बनाम प्रभाव सिंह, छोटू सिंह एवं अन्य	क्या व्यक्ति की आयु का निर्धारण, स्कूल के दाखिला रजिस्टर अथवा प्रमाण पत्र में दर्ज तिथि के आधार पर	किशोर न्याय (बालकों की देख-रेख और संरक्षण) अधिनियम, 2000 के 22वें नियम के तहत आयु

	<p>(2009) 6 एससीसी 68 आई</p> <p>उच्चतम न्यायालय, भारत</p>	<p>किया जाना चाहिए?</p>	<p>निर्धारण के संबंध में अनुसरण की जाने वाली कार्यविधि का उल्लेख है। यह नियम बताता है कि व्यक्ति के पहले स्कूल से जारी जन्म तिथि प्रमाण पत्र न होने की स्थिति में ही मेडिकल बोर्ड के विचार को मान्यता दी जानी चाहिए। यदि स्कूल के दस्तावेज वास्तविक या असल प्रमाणित होते हैं और विधि सम्मत जरूरत को पूरा करते हैं तब कुछ एक अपवादों को छोड़ कर, इन्हें विश्वसनीय माना जाता है। इसी तरह, सिविल मामला एवं आपराधिक मामलों की कार्यवाही में, साक्ष्य अधिनियम की धारा 35 के तहत उपरोक्त मानदण्ड को लागू किया जाना चाहिए।</p>
<p>6.</p>	<p>भोला भगत बनाम बिहार राज्य</p> <p>(1997) 8 एससीसी 720</p> <p>उच्चतम न्यायालय, भारत</p>	<p>नाबालिग होने को लेकर सफाई पेश करने में देरी हुई हो तो क्या फैसला सुनाने में इसे एक मुद्दा बनाया जा सकता है ?</p>	<p>तकनीकी नुक्तों की ओट लेकर समाजोन्मुखी कानून के फायदों को नहीं नकारा जाना चाहिए। बिहार चिल्ड्रेन एक्ट 1982 और जुवेनाइल जस्टिस एक्ट ऐसे ही कानून हैं। किसी आरोपी के पक्ष में अगर सफाई पेश की गई है तो अदालत के लिए यह अनिवार्य हो जाता है कि वह आरोपी द्वारा अपने उम्र के बारे व्यक्त की गई किसी भी शंका को विचारार्थ स्वीकार करे, खुद इस विषय में जांच करके आरोपी</p>

			<p>की उम्र का निर्धारण करे अथवा जांच करवाकर इस विषय में रिपोर्ट मांगे और जरूरी हो तो इस बारे में संबद्ध पार्टियों से साक्ष्य प्रस्तुत करने को कहे।</p> <p>उच्च न्यायालय निचली अदालतों को प्रशासनिक निर्देश जारी करते हुए कह सकता कि जब भी उनके आगे इस तरह की सफाई पेश की जाय और अदालतों को सफाई की सच्चाई को लेकर युक्तिसंगत संदेह हो तो उन्हें संबद्ध पक्षों को अपने अपने दावे की पुष्टी का मौका देते हुए बतौर नियम जांच करनी चाहिए और संबद्ध अभियुक्त की उम्र के बारे में एक निष्कर्ष पर पहुंचना चाहिए और इसके बाद मामले पर विधि अनुसार सुनवाई करनी चाहिए।</p>
7.	<p>कैलाश सिंह बनाम रामवीर सिंह(राज.) 2008 सीआरएलजे 290 उच्च न्यायालय राजस्थान</p>	<p>आरोपी नाबालिग है या नहीं इसके निर्धारण में मेडिकल साक्ष्य की प्रासंगिकता जबकि आरोपी का स्कूली जन्म-प्रमाण मौजूद हो ?</p>	<p>मेडिकल एक्सपर्ट की राय और मतदाता पहचान-पत्र में दर्ज उम्र को निर्णायक नहीं माना जा सकता। स्कूली जन्म प्रमाण पत्र में वर्णित तिथि के खारिज हो जाने के बाद ही मेडिकल साक्ष्य पर विचार किया जा सकता है। अगर स्कूल में रिकार्ड नियमित रूप से अद्यतन किया जाता हो और इसे आधिकारिक कर्तव्य मानकर निर्वाह किया जाता हो तो फिर स्कूली रिकार्ड पर शक</p>

			करने का कोई कारण नहीं है।
8.	<p>खेम चंद बनाम राजस्थान राज्य</p> <ul style="list-style-type: none"> ❖ मनु/आर.एच. /0056/2008 ❖ राजस्थान उच्च न्यायालय 	<p>क्या यह ट्रायल कोर्ट का दायित्व है कि वह आयु निश्चित करने के लिए इंक्वायरी करे और दोनों पार्टियों को अधिनियम की धारा 7क के अंतर्गत सबूत पेश करने का अवसर प्रदान करे?</p>	<p>पिता द्वारा हलफनामा प्राप्त करने के बाद और माध्यमिक परीक्षा बोर्ड द्वारा जारी प्रमाणपत्र के मद्देनजर, ट्रायल कोर्ट का यह दायित्व है कि 2000 के अधिनियम की धारा 2(के) के अंतर्गत घटना के समय आरोपी किशोर था कि नहीं इसकी जांच करना चाहिए।</p> <p>ट्रायल कोर्ट को निर्देश दिया गया कि 2000 के अधिनियम की धारा 7क के प्रावधान के अनुसार और दोनों पार्टियों को केस में सबूत पेश करने का अवसर प्रदान करके, इसके परिणाम के अनुसार आरोपी किशोर है कि नहीं यह दर्ज करना होगा।</p>
विशेष कानूनों के बरक्स नाबालिग			
9.	<p>मोहम्मद इरशाद अलियास शिवराज बनाम राज्य</p> <p>2006 (134) डीएलटी 507, 2006 (3) JCC 129, 2007 (1) क्राइम्स 73</p> <p>दिल्ली उच्च न्यायालय</p>	<p>जिस नाबालिग पर एनडीपीएस एक्ट के प्रावधानों के तहत अभियोग हो, क्या उस पर एनडीपीएस एक्ट के तहत स्पेशल जज के समक्ष मुकादमा चलाया जा सकता है या फिर उस पर जुवेनाइल जस्टिस बोर्ड के समक्ष मुकादमा चलेगा?</p>	<p>पहली बात तो यह कि जुवेनाइल जस्टिस एक्ट की धारा 6 में एक नॉन ऑब्स्टान्टो उपबंध(क्लॉज) मौजूद है जो कि बहुत व्यापक है और "दी गई अवधि में प्रभावी किसी भी कानून" में विन्यस्त किसी भी बात के रहते प्रभावी है।</p> <p>बहरहाल, एनडीपीएस एक्ट की धारा 36ए में एक नॉन</p>

			<p>ऑब्सटान्टो उपबंध(क्लॉज) है जो कि सीमित दायरे का है। इसके प्रभावी होने के बारे में कहा गया है कि "द कोड ऑव क्रिमिनल प्रॉसिज्योर, 1973" में वर्णित किसी बात के बावजूद इसे लागू माना जाएगा। दोनों धाराओं के शब्दावली से स्वयं ही स्पष्ट है कि धारा-6 और धारा-36ए के बीच विरोध उत्पन्न हो तो धारा 36 ए ही निरस्त मानी जायेगी।</p> <p>दूसरी बात, धारा 18(2) में जुवेनाइल जस्टिस बोर्ड के अनिवार्य दायित्वों में एक यह माना गया है कि बोर्ड नाबालिग और अन्य व्यक्तियों के लिए अलग-अलग मुकदमा चलाने का निर्देश करेगा। इससे स्पष्ट होता है कि किसी नाबालिग पर मुकदमा सिर्फ जुवेनाइल जस्टिस एक्ट के तहत ही चलाया जा सकता है और यह मुकदमा जुवेनाइल जस्टिस बोर्ड के समक्ष चलेगा।</p> <p>इसी नुक्ते का एक केस राजसिंह बनाम हरियाणा राज्य; साइटेशन: 2000 (6) एससीसी 759; उच्चतम न्यायालय, भारत, भी है।</p>
10.	रतन लाल बनाम स्टेट(राज.) 2004 सीआरएलजे 734	क्या अनुसूचित जाति/अनुसूचित जनजाति(अत्याचार निवारक)	किसी नाबालिग के विरुद्ध सेशन कोर्ट में चला मुकदमा दोषपूर्ण है क्योंकि "नाबालिग"

	उच्च न्यायालय, राजस्थान	अधिनियम के प्रावधानों के तहत आरोपी नाबालिग पर मुकदमा उक्त अधिनियम के अंतर्गत चलाया जा सकता है या उस पर मुकदमा जुवेनाइल जस्टिस(केयर एंड प्रोटेक्शन ऑव चिल्ड्रन) एक्ट 2000 के अंतर्गत चलाया जायेगा?	या "बच्चे" के विरुद्ध मुकदमा चलाना उसके न्यायाधिकार के दायरे में नहीं आता। अदालत ने आदेश दिया कि निचली अदालत पहले अर्जीदार की उम्र के बारे में जांच कराये और अगर अर्जीदार नाबालिग पाया जाता है तो उसे प्रासंगिक रिकार्ड के साथ सक्षम अदालत में अग्रेषित(forwarded)कर दिया जाय ताकि उसपर सन् 2000 के अधिनियम के प्रावधानों के तहत मुकदमा चले और अगर ऐसा नहीं पाया जाता तो वह सेशन कोर्ट में विधि अनुसार फैसले का भागी होगा।
11.	राज्य बनाम हर्षद 2005 सीआरएलजे 2357 ILR 2005 केएआर 1572 2005 (2) केएआरएलजे 481 उच्च न्यायालय, कर्नाटक	किसी नाबालिग के विरुद्ध जुवेनाइल जस्टिस बोर्ड द्वारा सीआर.पी.सी की धारा 209 के अंतर्गत मुकदमा दर्ज हो तो क्या इसपर फैसला देना सेशन कोर्ट के न्यायाधिकार में आता है? क्या सीआर. पी.सी की धारा 27 को जुवेनाइल जस्टिस(केयर एंड प्रोटेक्शन ऑव चिल्ड्रन) अधिनियम 2000 की धारा 6 के ऊपर वरीयता हासिल है या बात ठीक इसके विपरीत है ?	इस तथ्य को ध्यान में रखते हुए कि जुवेनाइल जस्टिस बोर्ड का गठन हो चुका है, तो कानूनी टकराव की स्थिति बनने पर नाबालिग के बारे में फैसला देना बोर्ड के ही विशेषाधिकार के अन्तर्गत आता है और इस अर्थ में किसी भी कोर्ट का न्यायाधिकार, चाहे वह सेशन कोर्ट हो या फास्ट ट्रैक कोर्ट, ऐसे मामले में प्रतिवारित(barred) है। सीआर. पी.सी की धारा 27 जुवेनाइल जस्टिस(केयर एंड प्रोटेक्शन ऑव चिल्ड्रन) अधिनियम 2000 की धारा 6 के असंगत नहीं है। बहरहाल,

			<p>जुवेनाइल जस्टिस(केयर एंड प्रोटेक्शन ऑव चिल्ड्रन) अधिनियम 2000 की धारा 6(1) में एक वाक्यांश कुछ इस प्रकार आता है-"दी गई अवधि में प्रभावी किसी भी अन्य कानून में कही गई किसी बात के बावजूद "। इस वाक्यांश के कारण सीआर. पी.सी की धारा 26(ए) के प्रावधान निरस्त हो जाते हैं।</p>
12.	<p>प्रेरणा बनाम महाराष्ट्र राज्य</p> <ul style="list-style-type: none"> ❖ (2003)2 बॉम एल. आर.562 ❖ बॉम्बे उच्च न्यायालय 	<p>क्या देह व्यापारों से बचाई गई किशोर युवतियों को अनैतिक व्यापार (निषेध) अधिनियम और किशोर न्याय अधिनियम 2000, के अंतर्गत पीड़ित माना जाना चाहिए या आरोपी?</p> <p>इन किशोर युवतियों को बाल कल्याण समिति के समक्ष प्रस्तुत किया जाना चाहिए या किशोर न्याय बोर्ड के समक्ष?</p> <p>क्या एक ही अधिवक्ता दलाल या कोठा मालिक और इ.ट.प. एक्ट के अंतर्गत बचाई गई युवतियों का भी प्रतिनिधित्व कर सकता है?</p>	<p>18 वर्ष से कम आयु की युवतियां जो देह व्यापार में लिप्त पाई जाती हैं उनके साथ देखरेख व सुरक्षा की आवश्यकता वाले किशोरों की तरह व्यवहार किया जाना चाहिए न कि कानून के विरुद्ध हो गये किशोरों के समान। इस प्रकार, उन्हें बाल कल्याण समिति(सी.डब्ल्यू.सी.) के समक्ष प्रस्तुत किया जाना चाहिए न कि बाल न्याय बोर्ड के क्योंकि वह नाबालिग हैं आरोपी नहीं।</p> <p>इसके अलावा, निचली अदालत ने अपने निर्णय में इन नाबालिग युवतियों को उसके सामाजिक सेवा शाखा के अधिकार क्षेत्र में प्रवेश करने पर रोक लगा कर उन्हें रिहा कर दिया था जिससे यह सिद्ध हो गया था कि</p>

			<p>वह पक्की वैश्याएं हैं। उच्च न्यायालय ने इस बिन्दू को यह कह कर निरस्त कर दिया कि नाबालिग युवतियों को यदि सी.डब्ल्यू.सी के संरक्षण में नहीं रखा जाता है, उन्हें केवल उनके अभिभावक के संरक्षण में रिहा करना चाहिए।</p> <p>इस ब ने आगे यह निर्णय दिया कि एक अधिवक्ता यदि वह कोठा मालिक या दलाल का प्रतिनिधित्व कर रहा है, उसो केस में इ.ट.प. एक्ट के अंतर्गत बचाई गई पीड़ित युवती का प्रतिनिधित्व नहीं कर सकता है।</p>
मुआवजा			
13.	<p>मास्टर सलीम एकरामुद्दीन अन्सारी और माहरुख अडेनवाला बनाम प्रभारी अधिकारी, अधीक्षक(सुप्रीन्टेन्डेन्ट) तथा महाराष्ट्र सरकार बजरिए सचिव, गृह विभाग</p> <p>2005 सीआरआईएलजे 799 2004 (4) एमएचएलजे 725</p> <p>उच्च न्यायालय बंबई</p>	<p>क्या किसी बेल ऑर्डर से जुड़ी वित्तीय शर्तों को पूरा ना कर पाने की स्थिति में किसी नाबालिग को निजी मुचलके पर छोड़ा जा सकता है?</p> <p>अगर किसी नाबालिग की पेशी डेढ़ साल की अवधि तक ना हो पायी हो और इस वजह से वह अपने नाबालिग होने की दावेदारी से वंचित रहा हो तो क्या उसे इस एवज में नगद मुआवजा दिया जा सकता है?</p>	<p>अदालत ने जुवेनाइल जस्टिस एक्ट के सेक्शन 12 पर चर्चा की जिसमें किसी नाबालिग की जमानत से संबंधित प्रावधानों की स्पष्ट व्याख्या की गई है और जुवेनाइस जस्टिस बोर्ड को निर्देश दिया कि अर्जीदार को केवल उसके निजी मुचलके पर रिहा किया जाय।</p> <p>इस मामले की तमाम परिस्थितियों और तथ्यों पर समग्रता से गौर करते हुए अर्जीदार को एक लाख रुपये</p>

			मात्र का मुआवजा देने का आदेश दिया गया।
अग्रिम जमानत			
14.	तारा चंद बनाम राजस्थान राज्य(राज.) 2007 सीआरआईएलजे 3047 आरएलडब्ल्यू 2008 (2) आरएजे 1013 उच्च न्यायालय, राजस्थान	क्या अनुसूचित जाति तथा अनुसूचित जनजाति(अत्याचार निवारण) अधिनियम 1889 के प्रावधानों के तहत आरोपी नाबालिग को अग्रिम जमानत दी जा सकती है ?	यदि नाबालिग अपनी अग्रिम जमानत की अर्जी लगाता है तो मामले में प्रयुक्त शब्दावली कुछ इस प्रकार रखी जाय- जुवेनाइल जस्टिस एक्ट 2000 की धारा 12 के अंतर्गत "बोर्ड..... के समक्ष उपस्थित हुआ " और उसकी अर्जी को सीआर.पी.सी की धारा 438 के तहत विचारणीय माना जायेगा। जुवेनाइल जस्टिस एक्ट के उद्देश्यों और कारणों के कथन के संदर्भ में धारा 12 अनुसूचित जाति एवं अनुसूचित जनजाति(अत्याचार निवारण अधिनियम) की धारा 18 को निरस्त करती है।इसलिए, नाबालिग के मामले में सीआर.पी.सी. की धारा 438 का अपवर्जन जैसा कि अनुसूचित जाति एवं अनुसूचित जनजाति(अत्याचार निवारण) अधिनियम 1989 की धारा 18 में प्रावधानित है, लागू नहीं होगा।
जमानत			
15.	प्रकाश बनाम राजस्थान राज्य (आरजे)	क्या किसी बाल-अपराधी को जमानत पर रिहा किया जा सकता है, भले ही उस पर	एक्ट 2000 की धारा 12 के अंतर्गत जमानत पर विचार करते समय अपराध की प्रकृति

	<p>2006 सीआरआईएलजे 1373 आरएलडब्ल्यू 2006 (1) आरएजे 538</p> <p>उच्च न्यायालय, राजस्थान</p>	<p>जिस अपराध-कर्म को करने के आरोप लगे हैं उस अपराध की प्रकृति कुछ भी हो ?</p>	<p>या गुण कोई अहमियत नहीं रखता। धारा 12 में “होगा(shall)” शब्द का प्रयोग किया गया है और यह शब्द अपने स्वभाव में अनिवार्यता सूचक है। साथ ही नॉन ऑब्स्टान्टो उपबंध(क्लॉज) का भी विधान है। इससे कानून की मंशा का पता चलता है कि वह गिरफ्तार किए गए या अदालत में पेश किए गए बाल-अपराधी को जमानत पर रिहा करने के पक्ष में है। बहरहाल, इस मामले में अपवादस्वरूप यह व्यवस्था दी गई है कि अगर इस बात को मानने का कोई युक्तिसंगत आधार हो कि बाल-अपराधी को जमानत पर रिहा करने की स्थिति में वह किसी ज्ञात अपराधी के संपर्क में आ सकता है अथवा उसे नैतिक, शारीरिक या मनोवैज्ञानिक खतरा पहुंच सकता है या उसे रिहा करने से न्याय के उद्देश्य की हानि होती है तो फिर उसे जमानत पर रिहा नहीं किया जाना चाहिए।</p> <p>अभियोजन पक्ष के ऊपर है कि जमानत की अर्जी के विरोध में वह ऐसी सामग्री को बतौर रिकार्ड सामने लाये और उक्त धारा में व्यक्त आधारों में से किसी एक के आधार पर अपने विरोध का औचित्य जाहिर करे</p>
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			<p>ताकि अदालत प्रस्तुत औचित्य पर विचार करके बाल-अपराधी को जमानत पर ना रिहा करने के बारे में अपना मन बना सके।</p> <p>यही बात भरत अलियास भारत बनाम राज्य(राजस्थान) मामले में कही गई थी। इस मामले में फैसला 12 मार्च 2008 को सुनाया गया था।</p>
16.	<p>माता @मनोहर सिंह बनाम राजस्थान राज्य 1996 क्रि.ल.र्ज.743 1995 (2) डब्ल्यू.एल.सी. 699 राजस्थान उच्च न्यायालय</p>	<p>क्या किशोर न्यायालय और सत्र न्यायालय द्वारा आरोपी को जमानत को केस की प्रकृति और गंभीरता और आरोपी किशोर के हित के आधार पर रद्द करना उचित है?</p>	<p>अधिनियम की धारा 18 (1) में स्पष्ट रूप से यह उल्लेखित है कि अपराध की प्रकृति और गंभीरता को विचार किये बगैर एक किशोर आरोपी को जमानत पर रिहा करना, नियम और अधिनियम का अधिदेश है। धारा में उन आधारों को भी बताया गया है जिसके आधार पर किशोर आरोपी की जमानत रद्द की जा सकती है। वे आधार हैं: रिहाई से उसे ज्ञात अपराधी के संपर्क में आने की सम्भावना हो या उसे किसी नैतिक खतरे में डालने की सम्भावना हो या जिससे न्याय में विफल हो जाए। साथ ही, जमानत रद्द करने के लिए उपरोक्त परिस्थितियों के उपलब्ध होने का भौतिक साक्ष्य का होना आवश्यक है। ऐसा प्रतीत होता है कि</p>

			याचिकाकर्ता के जमानत को रद्द करते समय न तो किशोर न्यायालय और न ही सत्र न्यायालय ने धारा 18 के प्रावधानों को ध्यान से देखा।
17.	<p>जैफ़ अहमद शेख़ बनाम राजस्थान राज्य</p> <p>2004 क्रि.ल.र्ज.3272 आर.एल.डब्ल्यू 2004(2)राज1090 2004(2) डब्ल्यू.एल.सी. 662</p> <p>राजस्थान उच्च न्यायालय</p>	<p>क्या किसी नाबालिग को एन.डी.पी.एस. अधिनियम 1985 के अंतर्गत जमानत दी जा सकती है?</p>	<p>आवदेनकर्ता ने पूरी तरह से इस अदालत द्वारा मनोहर लाल बनाम राजस्थान राज्य (2002 क्रि. ल.र्ज. 394) में दिये गये निर्णय पर अपनी निर्भरता दर्शायी हैं जिसमें अदालत ने एन.डी.पी.एस. अधिनियम के अंतर्गत आरोपी को इस आधार पर जमानत पर रिहा करने का निर्देश दिया था कि वह किशोर था।</p> <p>जहां एक किशोर पर तस्करी के गतिविधियों में सम्मिलित रहने का आरोप हो, यदि उसे जमानत पर रिहा कर दिया जाता है तब उसके दोबारा उस गैंग में शामिल होकर उन गतिविधियों को दोहराने की सम्भवना हो सकती है। एन.डी.पी.एस. अधिनियम के अंतर्गत 18 वर्ष से कम आयु के आरोपी को अगर जमानत पर रिहा किया गया, निश्चित ही न्याय को विफलता मिलेगी।</p>

			इसलिए याचिकाकर्ता का केस मनोहर लाल के आगे नहीं आता है।
18.	<p>गोपाल शर्मा बनाम राजस्थान राज्य</p> <p>❖ आर.एल.डब्ल्यू 2004(1) राज 450, 2004(1) डब्ल्यू.एल.सी. 722</p> <p>❖ राजस्थान उच्च न्यायालय</p>	क्या जमानत इस आधार पर अस्वीकार किया जा सकती है कि ऐसा करना देश की छवि के लिए हानिकारक होगा?	<p>जमानत की अर्जी को न केवल इसलिए अस्वीकार कर दिया गया क्योंकि आवेदनकर्ता हत्या जैसे एक गंभीर आरोप में मुकदमे का सामना कर रहा है बल्कि इसलिए भी क्योंकि उसकी हरकत की विशेष परिस्थिति, दुनिया में देश की छवि के लिए और पर्यटन व्यवसाय के लिए हानिकारक है।</p> <p>पर्यटक देश में मार्गदर्शक गाइड के भरोसे और अगुआई में देश में घूमते हैं। किसी विदेशी पर्यटक के साथ धोखा करना, देश के साथ धोखा करना है, जिससे दुनिया भर की आँखों में देश की छवि खराब होती है। इसलिए, दोनों अदालतों – किशोर अदालत और सत्र न्यायालय द्वारा लिया गये निर्णय को गलत नहीं ठहराया जा सकता है क्योंकि आवेदनकर्ता का केस अधिनियम की धारा 12 के अपवाद की श्रेणी में आता है।</p>
19.	विजेन्द्र कुमार माली इत्यादि बनाम उत्तरप्रदेश राज्य	बाल-अपराधी की जमानत याचिका पर विचार कोड ऑव	जमानत की याचिका सिर्फ उसी स्थिति में खारिज की जा

	<p>2003 सीआरआईएलजे4619</p> <p>उच्च न्यायालय, इलाहाबाद</p>	<p>क्रिमिनल प्रासिज्योर के प्रावधानों के तहत किया जाय कि जुवेनाइल जस्टिस(केयर एंड प्रोटेक्शन ऑव चिल्ड्रन) एक्ट 2000 के अंतर्गत?</p>	<p>सकती है जब धारा 12 में सूचित कारणों में कोई भी एक मौजूद हो। जहां तक (अपराध की) गंभीरता के आधार की बात है तो उसे जुवेनाइल जस्टिस(केयर एंड प्रोटेक्शन ऑव चिल्ड्रन) एक्ट 2000 में शामिल नहीं किया गया है।</p> <p>यदि नाबालिग की जमानत अर्जी पर कोड ऑव क्रिमिनल प्रासिज्योर के अंतर्गत विचार किया जाना था तो फिर जुवेनाइल जस्टिस(केयर एंड प्रोटेक्शन ऑव चिल्ड्रन) एक्ट 2000 को अमल में लाने की कोई जरूरत ही नहीं थी। इस एक्ट की धारा 12 की शब्दावली में स्वयं ही कहा गया है कि कोड ऑव क्रिमिनल प्रासिज्योर, 1973(2 ऑव 1974) में वर्णित किसी भी बात या अमल में चल रहे अन्य किसी भी कानून की किसी भी बात के बावजूद नाबालिग आरोपी को रिहा किया जायेगा।</p>
20.	<p>शशि कुमार सैनी बनाम क्या राज्य</p> <p>120(2005)डी.एल.टी. 313</p> <p>दिल्ली उच्च न्यायालय</p>	<p>क्या एन.डी.पी.एस. अधिनियम 1985 की धारा 37 की कठोरता, किसी किशोर की जमानत मंजूर करने या इंकार करने में आकर्षित होगी?</p>	<p>अदालत ने निर्णय दिया कि जब आरोपी एक किशोर हो, किशोर न्याय अधिनियम की धारा 12 एन.डी.पी.एस. अधिनियम की धारा 37 को निरस्त कर देगी। किसी किशोर की जमानत रद्द करने का</p>

			केवल एक ही रास्ता है कि किशोर न्याय अधिनियम की धारा 12 में उल्लेखित अपवादों को लागू किया जाए। ओर वर्तमान केस में, यह माना गया कि यदि आरोपी को जमानत पर रिहा कर दिया जाता है, इस बात की संपूर्ण रूप से सम्भावना है कि उसे नैतिक या मनोवैज्ञानिक खतरे का सामना करना पड़ेगा क्योंकि जैसा कि सामाजिक जांच रिपोर्ट में बताया गया है इस अपराध में वह एक व्यस्क द्वारा उकसाने पर ही सम्मिलित हुआ था और वह व्यक्ति वर्तमान में फ़रार है।
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जेल में दण्ड काटने पर रोक

21.	मुन्ना एवं अन्य बनाम उत्तर प्रदेश राज्य एवं अन्य <i>एआईआर 1982 एससी 806 (1982) आईएससीसी 545 1982 सीआरआईएलजे 620</i> <i>उच्चतम न्यायालय, भारत</i>	क्या किसी 16 वर्ष से कम आयु के किशोर/किशोरी को जिला कारावास में रखा जा सकता है?	16 वर्ष से कम आयु के किसी भी व्यक्ति को जेल नहीं भेजा जा सकता। उसे बाल गृह अथवा उ० प्र० बाल अधिनियम 1951 की धारा 29 के अंतर्गत मान्यता प्राप्त स्कूल में रखा जाना चाहिए या उसे मुक्त कर दिया जाना चाहिए या धारा 30 के तहत किसी अनुकूल अभिरक्षा में भेज दिया जाना चाहिए। इन प्रावधानों को लागू करने के लिए यह अति आवश्यक है कि सरकार बाल गृह अथवा
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			<p>अन्य अनुकूल सुरक्षित आवासों का निर्माण करे ताकि 16 वर्ष से कम आयु के बालकों को अभिरक्षा प्रदान की जा सके।</p> <p>ऐसी स्थिति में जहां अदालत क अनुसार अधिनियम के तहत दी जाने वाली सजा गुनाह के मुताबिक पर्याप्त नहीं है तब धारा 32 में यह निर्देशित है कि दोषी को जेल नहीं भेजा जावेगा बल्कि अदालत उसे अपने विवेक के आधार पर सुरक्षित अभिरक्षा में भेजेगी और राज्य सरकार के आदेश के लिए राज्य सरकार को मामले की जानकारी देगी।</p>
22.	<p>देवेन्द्र /सोनू एवं अन्य बनाम राजस्थान राज्य</p> <p>आर.एल.डब्ल्यू (2006)1 (राज) 407</p> <p>राजस्थान उच्च न्यायलय</p>	<p>क्या किसी किशोर को, यदि वह एक अपराध करने का दोषी पाया जाता है, दण्ड के रूप में जेल में भेजा जा सकता है?</p>	<p>अदालत ने निर्णय दिया कि किशोर न्याय अधिनियम की धारा 6(2), 15, 16 एवं 20 के आधार पर किसी किशोर को जेल में सजा काटने के लिए नहीं भेजा जा सकता है और यह उन केसों पर भी लागू होगा जो अपील के लिए विचाराधीन हैं।</p>
सामाजिक जांच रिपोर्ट का महत्व (एस.आई.आर.)			
23.	<p>नन्द किशोर (न्यायिक हिरासत में) बनाम राज्य</p>	<p>क्या किसी किशोर को जमानत याचिका को स्वीकृत या रद्द करने के</p>	<p>अदालत ने निर्णय दिया कि किशोरों के जमानत याचिका को स्वीकार या</p>

	<p>मनु/डी.ई. /8814/2006</p> <p>दल्ली उच्च न्यायलय</p>	<p>निर्णय लेने के पूर्व उसकी सामाजिक जांच रिपोर्ट(एस.आई.आर.) पर बल दिया जाना चाहिए? अदालत ने निर्णय दिया कि</p>	<p>रद्द करने के निर्णय में, सामाजिक जांच रिपोर्ट बहुत महत्व रखती है। यह किशोर के सामाजिक और पारिवारिक पृष्ठभूमि को चित्रित करने का प्रयत्न करता है जिससे यदि आरोपी का कोई अपराधिक रुझान हो, बताने में सहायता करता है। आरोपी के पारिवारिक और सामाजिक स्थिति को देखते हुए यह भी साफ़ हो जाता है कि यदि आरोपी को जमानत पर रिहा कर दिया जाता है तब वह किसी परिचित अपराधी के संपर्क में तो नहीं आएगा। अदालत ने आगे यह भी निर्णय दिया कि किशोर न्याय कानून की धारा 12 के अंतर्गत के अपवाद को लागू करने के लिए 'ज्ञात अपराधी' की अवश्य ही पहचान की जानी चाहिए।</p>
<p>24.</p>	<p>संदीप कुमार बनाम राज्य</p> <p>2005 क्रि.ल.ज. 3182</p> <p>दिल्ली उच्च न्यायालय</p>	<p>क्या किशोर आरोपी पर अपवाद के लागू करने की जांच करने के लिए, सामाजिक जांच रिपोर्ट पर पूरी तरह निर्भर करना चाहिए?</p>	<p>अदालत ने निर्णय दिया कि वर्तमान केस में, सामाजिक जांच रिपोर्ट आत्म विरोधी था जो किशोर न्याय कानून की धारा 12 में उल्लेखित सभी अपवादों की साफ़ तौर से प्रामाणिक बनाता है। इसलिए जमानत याचिका को स्वीकृत या</p>

			रद्द करने के निर्णय लेने के पूर्व एस.आई.आर. को उचित रूप से और ध्यानपूर्वक पढ़ा जान चाहिए।
उच्चतम न्यायालय/ उच्च न्यायालय / सेशन कोर्ट की भूमिका			
25.	गुरप्रीत सिंह बनाम पंजाब राज्य (2005) 12 एससीसी 615 <i>उच्चतम न्यायालय, भारत</i>	नाबालिग होने के संदर्भ में अगर कोई दलील ट्रायल कोर्ट या फिर हाईकोर्ट(उच्च न्यायालय) में ना पेश की गई हो तो इस संदर्भ में सुप्रीम कोर्ट(उच्चतम न्यायालय) की भूमिका क्या है?	इस अदालत को सबसे पहले अभियुक्त की दोषसिद्धि की वैधानिकता के संदर्भ में विचार करना चाहिए और अगर अभियुक्त दोषी पाया जाता है तो ट्रायल कोर्ट से इस आशय की एक रिपोर्ट मांगी जानी चाहिए कि क्या अभियुक्त वारदात को अंजाम दिए जाने की तारीख को नाबालिग था और रिपोर्ट के प्राप्त होने के बाद अगर यह पाया जाता है कि अभियुक्त उक्त तिथि को नाबालिग था और उक्त तिथि के बाद भी लगातार नाबालिग ही है तो उसे बाल-सुधारगृह भेज दिया जायेगा. लेकिन अगर यह पता चलता है कि वारदात की तारीख को वह नाबालिग था मगर यह अदालत जिस तारीख को ट्रायल कार्ट की रिपोर्ट पर अंतिम फैसला सुना रही है उस तारीख को वह नाबालिग नहीं है तो उसको सुनायी गई सज़ा को खारिज माना जाएगा।
26.	मनीष त्यागी बनाम उत्तरप्रदेश राज्य	जुवेनाइल जस्टिस(केयर एंड प्रोटेक्शन ऑव चिल्ड्रन) एक्ट	एक्ट की धारा 6 की उपधारा (2) में कहा गया है कि अगर

	<p>2007 सीआरआईएलजे 3165</p> <p>इलाहाबाद उच्च न्यायालय</p>	<p>2000 की धारा 6(2) में वर्णित बातों के आलोक में जुवेनाइल जस्टिस बोर्ड की शक्तियां सेशन जज को हासिल हैं या नहीं?</p>	<p>अपीली पुनर्वीक्षण (appeal revision) के लिए अथवा अन्य कारणों से मामला उच्च न्यायालय और सेशन कोर्ट में आता है तो वे भी इस अधिनियम के अंतर्गत या इस अधिनियम के द्वारा बोर्ड को प्रदान की गई शक्तियों का प्रयोग कर सकते हैं।</p> <p>जुवेनाइल बोर्ड का आदेश कि सेशन कोर्ट के पास इस एक्ट के अंतर्गत प्रदान की गई शक्तियों के प्रयोग का हक नहीं है, एक्ट की धारा 6 के सांविधिक प्रावधानों के विपरीत है और इस वजह से जुवेनाइल बोर्ड का उक्त आदेश पूरी तरह अवैधानिक और सम्पूर्ण रूप से विकृत है।</p>
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बाल न्याय कानून का कार्यान्वयन

<p>27.</p>	<p>उच्चतम न्यायालय विधिक सहायता समिति(III) बनाम भारत गणराज्य</p> <p>(1989) 4 एस.सी.सी.740</p> <p>भारत का सर्वोच्च न्यायालय</p>	<p>ज़िला और राज्य स्तर पर एडवाईज़री बोर्ड के गठन के लिए दायर की गई रिट याचिका।</p>	<p>अदालत ने सभी राज्यों को एडवाईज़री बोर्ड के गठन का निर्देश दिया जिसके सदस्य हों— कानून और या समाज या बाल कल्याण मंत्री, जैसा भी हो समबद्ध विभाग में सरकार के सचिव, पुलिस संस्थापना के प्रमुख(डी.जी. या आई.जी. जैसे भी हो), स्वास्थ्य निदेशालय के प्रमुख, उचित योग्यता वाले अधिवक्ता वर्ग के</p>
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			दो सदस्य, एक अभिस्वीकृति वाली महिला समाज सेविका, एक सांसद और एक विधायक, एक या दो ख्याति प्राप्त समाजसेवक अच्छा हो यदि वे बच्चों के पुनर्वास कार्यों से जुड़े हों।
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Section III:

**WHAT DOES THE NATIONAL
HUMAN RIGHTS COMMISSION SAY**

भाग III:

**क्या कहता है राष्ट्रीय मानव
अधिकार आयोग**

Letter to Chief Secretaries / Administrators of all States / Union Territories on the reporting of deaths / rapes in Juvenile / Children's Homes within 24 hours

R.V. Pilai
Secretary General

National Human Rights Commission

To
The Chief Secretary / Administrator
All State Governments / Union Territories

September 11, 1996

Sir / Madam,

The National Human Rights Commission at its meeting held on 22 July, 1996 discussed the occurrence of deaths and rapes in Juvenile Homes. During the discussions it was felt that information on similar incidents in other homes run under different statutes should be collected and compiled along with information on incidents of deaths and rapes in Juvenile Homes. These could cover the following institutions:

- (I) Set up under Juvenile Justice Act, 1986:
 - i. Observation Homes
 - ii. Juvenile homes
 - iii. Special homes

- (II) Set up under Probation of Offenders Act, 1958:
 - (i) Probation Homes

- (III) Set up under Immoral Traffic (Prevention) Act, 1956:
 - (ii) Reception Centres
 - (iii) Short Stay Homes
 - (iv) Nari Niketan/ After Care Homes

- (IV) Set up under Prevention of Beggars / Begging Act:
 - (i) Reception Centres
 - (ii) Beggars Homes

- (V) Set up under Borstal Act:
 - (i) Borstal Institutions

2. In order to enable a compilation of reports on the incidents of deaths and rapes in these homes, the NHRC had directed that all the DMs and SPs may be instructed to report to the Secretary General of the Commission about such incidents within 24 hours of occurrence or of these officers having come to know about such incidents. Failure to report promptly would give rise to presumption that there was attempt to suppress the incidents.

3. It is accordingly requested that the District Magistrate / Senior Superintendent of Police may be given suitable instructions in this regard so on to ensure prompt communication of incidents of deaths and rapes in these homes to the undersigned.

4. It is possible that some of the institutions listed above are not functioning in your State. If so, a list of institutions and statutes under which they have been set up may also be sent to the Commission for record and reference.

Yours faithfully,
Sd/-

(R.V. Pillai)
Secretary General

Copy to:

Secretary (Welfare Department),
All State Governments / Union Territories

Letter to Chief Secretaries / Administrators of all States / Union Territories to ensure prompt communication of incidents of custodial deaths / rapes in Juvenile / Children's Home

Subodh C. Verma
Registrar (Law)

National Human Rights Commission
Sardar Patel Bhawan, Sansad Marg,
New Delhi-110001

To

February 07, 2002

The Chief Secretary / Administrator
of all State / UTs

Sir / Madam,

Vide letter no. 10/9/96- Research dated 11.09.1996 (copy enclosed*) you were requested to give suitable instructions to all the DMs / SPs to ensure prompt communication of incidents of custodial deaths / custodial rapes in the homes which were covered under Juvenile Justice Act, 1986, Probation of Offenders Act, 1958, Immoral Traffic (Prevention) Act, 1956, Prevention of beggar / Begging Act and Borstal Act.

Since some of the Homes were not found functioning properly, the matter was again placed before the Commission on 07.12.2001 for further consideration. After deliberations the Commission, has directed that the existing instructions on the subject may be further modified as under:

- (a) An inquest by a Magistrate should immediately be conducted in all cases of deaths in Homes and the inquest report sent to the Commission expeditiously. The Magistrate should also comment whether there has been any medical negligence on the part of the authorities concerned;
- (b) In case of any allegation of rape / unnatural offence committed on any inmate of the Protection Home, a criminal case should be registered immediately. It should be supervised by an officer not below the rank of Dy. S.P. and the case be investigated by an officer not below the rank of Inspector of Police. A copy of the FIR and the supervision note should invariably be sent to the Commission soon after the first intimation;
- (c) If any foul play is suspected in the magisterial inquest, the post- mortem examination should invariably be done to ascertain the cause of death and the post- mortem report sent to the Commission;
- (d) In all cases of death of an inmate where the initial inquest by a Magistrate indicates some foul- play, magisterial inquiry should be made mandatory.

* For copy of the letter refer to page nos. 199 & 200.

It is accordingly requested that the DMs/ SPs may be given suitable instructions in this regard so as to ensure prompt action on the aforesaid directions of the Commission.

Yours faithfully,

Sd/-
(Subodh C. Verma)

Encl: As Above.

Commonwealth Human Rights Initiative's (CHRI) Work on Pre-trial Detention in Rajasthan

As part of its mandate to ensure that the working of the criminal justice system promotes fair trial and prevents unnecessary detention, Commonwealth Human Rights Initiative (CHRI) has been conducting a series of micro studies in Rajasthan, using the Right to Information Act, interviews with undertrial prisoners in judicial custody and court observation exercises to understand and record court practices related to pre-trial detention such as court production, remand and bail.

Pursuant to a study on access to counsel in the district jail of Alwar that was completed in November 2010, CHRI conducted four workshops between February 2011 and September 2011 with a focus on effective representation and rights of the accused in the three towns of Jaipur, Jodhpur and Alwar. One of the major findings of the study was that a large percentage of undertrials had no access to legal representation or legal aid, or representation was obtained after the first production, sometimes at the time of filing of the chargesheet. The study also indicated poor lawyer-client relationship, as even those undertrials who had legal representation could only meet their respective lawyer in the courts.

With an aim to improving early access to counsel and effective representation, CHRI has also been conducting workshops in collaboration with the District Legal Services Authority in Jodhpur district of the state of Rajasthan on remand and bail for legal aid lawyers appointed under the State's Model Scheme of 'remand and bail lawyers'. Alongside, CHRI has engaged with the Jodhpur Bar Association with a plan to jointly hold regular discussions and debates on topical legal issues for lawyers.

In 2013, CHRI conducted three impact assessment workshops to evaluate the impacts of the workshops in Jaipur, Jodhpur and Alwar. The broad impact assessment areas were interventions, preparedness and results vis-à-vis arrest and first production, bail, remand, chargesheet, pro-bono lawyering, lawyer-client relationship, and defense preparedness. The assessment also highlighted future learning needs of the lawyers.

With the objective to strengthen the legal aid structure inside prison and to demonstrate a legal aid environment where no suspect/accused goes unrepresented, CHRI, in 2012, began *Swadhikaar*, a legal aid services initiative in Jodhpur Central Prison. The legal aid clinic's area of work ranges from identifying illegal and unnecessary detentions, providing legal representation through referrals to DLSA and to the CJM, the Convenor of the Periodic Review Committee for Undertrials, drafting petitions and applications on behalf of the inmates, providing legal counselling and guidance whenever sought by the inmates, conducting legal aid awareness activities inside the prison and training convicts as jail paralegals to support the work of the DLSA and *Swadhikaar* legal aid clinic.

Many of these activities have been undertaken in close co-operation with the Rajasthan Prisons Department, the District Legal Services Authority, Jodhpur, the International Bridges to Justice and the National Law University (NLU), Jodhpur.

सुनवाई-पूर्व कैद से संबंधित सीएचआरआई का राजस्थान में कार्य-कलाप

कॉमनवेल्थ ह्यूमन राइट्स इनिशिएटिव (सीएचआरआई) का एक संकल्प दंडपरक न्याय-व्यवस्था के भीतर निष्पक्ष सुनवाई को सुनिश्चित करना और अनावश्यक कैद को रोकना है। अपने इस संकल्प के एक हिस्से के रूप में सीएचआरआई राजस्थान में व्यक्तिगत अध्ययनों की एक श्रृंखला चला रहा है जिसमें सूचना का अधिकार अधिनियम का इस्तेमाल करना, न्यायिक हिरासत में लिए गए विचाराधीन कैदियों का साक्षात्कार लेना तथा अदालती कार्रवाइयों के नजदीकी अवलोकन के जरिए विचाराधीन कैदी से संबंधित कोर्ट प्रोडक्शन, रिमांड और बेल सरीखे अदालती कार्य-व्यवहारों को दर्ज करना शामिल है।

साल 2010 के नवंबर महीने में सीएचआरआई ने अलवर जिला-जेल में प्राप्त न्यायिक परामर्श की स्थिति के अवलोकन पर केंद्रित एक अध्ययन पूरा किया था। इस अध्ययन के बाद इसी क्रम में साल 2011 के फरवरी से सितंबर महीने के बीच तीन शहरों जयपुर, जोधपुर और अलवर में चार कार्यशालाओं का आयोजन किया गया। इन कार्यशालाओं का जोर अभियुक्त के कारगर प्रतिनिधित्व और उसके अधिकारों पर था। अध्ययन का एक मुख्य निष्कर्ष यह था कि ज्यादातर विचाराधीन कैदी न्यायिक प्रतिनिधित्व या विधिक सहायता हासिल नहीं कर पा रहे या फिर उन्हें न्यायिक प्रतिनिधित्व अपने प्रथम कोर्ट-प्रॉडक्शन के बाद हासिल हुआ, कभी-कभी तो आरोप-पत्र दाखिल किए जाने के बाद उन्हें वकील की सहायता मिल पायी। इस अध्ययन से यह भी स्पष्ट हुआ कि वकील और मुक्किल के बीच संबंधों की स्थिति अच्छी नहीं है क्योंकि जिन विचाराधीन कैदियों को अपनी पैरवी के लिए वकील की सहायता हासिल हो पायी थी, उनकी अपने-अपने वकील से मुलाकात अदालत पहुंचकर ही हो पायी।

विचाराधीन कैदियों को शुरुआती चरण में ही न्यायिक परामर्श मिले जाये और अदालती कार्रवाई में ऐसे कैदियों की पैरवी कारगर तरीके से हो सके, इस लक्ष्य को ध्यान में रखते हुए सीएचआरआई राजस्थान के जोधपुर जिले में जिला विधिक सेवा प्राधिकरण के साथ मिलकर रिमांड और बेल के मामले में सहायता प्रदान करने के मुद्दे पर वकीलों को लेकर कार्यशाला का आयोजन करता रहा है। इन वकीलों की नियुक्ति राज्य सरकार की एक मॉडल योजना रिमांड एंड बेल लॉयर्स के तहत की गई है। इसके साथ-साथ सीएचआरआई की एक योजना जोधपुर बार एसोसिएशन के साथ मिलकर प्रासंगिक कानूनी मसलों पर नियमित चर्चा और बहस-मुबाहिसा चलाने की है।

जयपुर, जोधपुर और अलवर में आयोजित कार्यशालाओं के प्रभाव के आकलन के लिए साल 2013 में सीएचआरआई ने तीन इम्पैक्ट असेसमेंट कार्यशालाएं आयोजित कीं। प्रभाव के आकलन के अंतर्गत मुख्य तौर पर यह जानने की कोशिश की गई कि गिरफ्तारी और प्रथम कोर्ट-प्रॉडक्शन, बेल, रिमांड, चार्जशीट, जन-कल्याण के निमित्त की गई वकालत, वकील और मुवक्कील के आपसी संबंध तथा बचाव-पक्ष की तरफ से की जाने वाली तैयारी के मामले में हस्तक्षेप, बंदोबस्त और परिणाम क्या रहे। प्रभाव के आकलन से यह बात भी उभरकर सामने आई कि आगे आने वाले दिनों में वकीलों के लिए किन बातों को जानना-सीखना जरूरी होगा।

कारागृह के भीतर और उसके बाहर हासिल होने वाली विधिक सहायता का ढांचा मजबूत हो और विधिक वातावरण कुछ इस तरह का बने कि संदिग्ध या अभियुक्त करार दिया गया कोई भी व्यक्ति कानूनी पैरवी से वंचित ना रहे- इस उद्देश्य को ध्यान में रखते हुए सीएचआरआई ने साल 2012 में पहल करते हुए जोधपुर केंद्रीय कारा में एक विधिक सहायता सेवा 'स्वाधिकार' नाम से शुरू की। विधिक सेवा केंद्र के कामकाज के दायरे में अनेक चीजें शामिल हैं, जैसे- गैरकानूनी और अनावश्यक नजरबंदी की पहचान करना, डीएलएसए और सीजेएम के पास रेफरल के माध्यम से कानूनी प्रतिनिधित्व प्रदान करना, विचाराधीन कैदियों के लिए आवधिक पुनर्वीक्षा समिति का संयोजन, बंदियों के लिए अर्जी और आवेदन लिखना, बंदी के कहने पर उसे कानूनी परामर्श और मार्गदर्शन प्रदान करना, कारागृह के भीतर विधिक सहायता विषयक जागृति की गतिविधियां संचालित करना तथा डीएलएसए और 'स्वाधिकार' विधिक सेवा केंद्र की मदद के लिए अभियुक्तों को जेल-पैरालीगल्स के रूप में प्रशिक्षित करना।

इनमें से कई गतिविधियां राजस्थान कारा विभाग, जिला विधिक सहायता प्राधिकरण(जोधपुर) तथा इंटरनेशनल ब्रिजेज टू जस्टिस एंड द नेशनल लॉ यूनिवर्सिटी(जोधपुर) के निकट सहयोग से संचालित की जा रही हैं।

About the Course

This Legal Refresher Course on Pre-trial Justice will be conducted primarily for legal aid advocates by the Prison Reforms Programme of the Commonwealth Human Rights Initiative (CHRI), in collaboration with State Legal Services Authority (SLSA), Rajasthan, the District Legal Services Authority (DLSA), Jodhpur, in co-operation with Jodhpur Bar Association, Rajasthan High Court Lawyers Association, and the International Bridges to Justice.

The course will help legal aid advocates to find solutions to unnecessary and long detentions in police and judicial custody. Through a revisiting of constitutional values and legal safeguards of writs and bail; re-familiarising with skills of opposing unnecessary custody, argumentation, cross-examination, evidence-building; reiterating the core principles of legal aid, ethics of the advocate's profession and lawyer-client relationship, the course attempts to refine courtroom practices towards reaching the high goal of rule of law.

By focusing on the short term and long term impacts of incarceration on the prisoner, the Course will approach their constructive diagnosis with a focus on due process treatment, strengthening legal aid services, and effective legal interventions by advocates that are grounded in the organic link between police reform, jail reform, legal aid reform and judicial reforms.

The Course will include Refresher Workshops on Cr.P.C, Workshops on Case Analysis, Legal Strategies, Legal Aid & Pro-Bono Lawyering, New Developments in Evidence, a Module on Law, Justice & Everything in Between; Rule of Law and Reform of the Criminal Justice System and will use lectures and talks, exercises and case studies, exposures to places of custody, synthesis workshops and mentoring sessions to advance the knowledge and skills of the participants towards furthering the goals of early access to counsel, effective representation and access to justice for all.



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