

THE KERALA CHILDREN'S CODE BILL

An Act to consolidate and codify all the existing provisions in India relating to protection of the rights of the child or juvenile applicable to the State of Kerala and to provide for new rights and obligations to promote the over all development of the child or juvenile in the State of Kerala.

1. Short title, extent and commencement.

- (1) This Code shall be called the Kerala Children's Code, —.
- (2) It extends to the whole of the State of Kerala.
- (3) It shall come into force on such date as the State Government may, by notification, appoint, and different dates may be appointed for different Chapters of this Code.

2. Definitions.

- (a) In this Code, unless the context otherwise requires—
 - (a) “appropriate provisions” includes legislative, administrative, social and educational measures;
 - (b) “board” means a Juvenile Justice Board constituted under Section 79.
 - (c) “begging” means
 - i. soliciting or receiving alms in public place or entering into any private premises for the purpose of soliciting or receiving alms, whether under the pretence of singing, dancing, future telling, performing tricks or selling articles or otherwise;
 - ii. exposing or exhibiting with the object or obtaining or extorting alms, any sore, injury, deformity or disease, whether of himself or of any other person or of an animal;
 - iii. allowing oneself to be used as an exhibit for the purpose of soliciting or receiving alms;
 - (d) “Chairperson” means the Chairperson of the Kerala State Commission for Children,
 - (e) “child or juvenile” means a person who has not attained eighteen years of age;
 - (f) “child abuse” includes child battering, extreme punishment, hard labour, emotional abuse, sexual abuse, including incest and exploitation and abandonment;
 - (g) “child in need of care and protection” means a child –
 - i. who is found without any home or settled place or abode and without any ostensible means of subsistence,
 - ii. who resides with a person (whether a guardian of the child or not) and such person has threatened to kill or injure the child and there is a reasonable likelihood of the threat being carried out, or (b) has killed, abused or neglected some other child or children and there is a reasonable likelihood of the child in question being killed, abused or neglected by that person,
 - iii. who is mentally or physically challenged or ill children or children suffering from terminal diseases or incurable diseases having no one to support or look after,

- iv. who has a parent or guardian and such parent or guardian is unfit or incapacitated to exercise control over the child,
- v. who does not have parent and no one is willing to take care of or whose parents have abandoned him or who is missing and run away child and whose parents cannot be found after reasonable enquiry,
- vi. who is being or is likely to be grossly abused, tortured or exploited for the purpose of sexual gratification or illegal acts,
- vii. who is found vulnerable and is likely to be inducted into drug abuse or trafficking,
- viii. who is being or is likely to be abused for unconscionable gains,
- ix. who is victim of any armed conflict, civil commotion or natural calamity;

(h) “Committee” means unless otherwise stated the Child Welfare Committee constituted under section 43;

(i) “Commission” means the Kerala State Commission for Children constituted under Section 3;

(j) “Director General” means the Director General of Police appointed by the Commission under Section 11;

(k) “fund” means the Kerala State Children’s Fund as constituted under Section 21;

(l) “Government” means the Government of Kerala;

(m) “guardian”, in relation to a child, means his natural guardian or any other person having the actual charge or control over the child and recognised by the competent authority as a guardian in course of proceedings before that authority;

(n) “incest” means any sexual abuse of a child by members of family, close relations, neighbors or friends;

(o) “juvenile in conflict with law” means a juvenile who is alleged to have committed an offence;

(p) “Member” means a member of the Kerala State Commission for Children and includes the Chairperson;

(q) “recognized non-Government organization” means a voluntary organization registered under the Societies Registration Act, 1956 or under any other law for the time being in force and devoted to the work of “children’s development and welfare”;

(r) “notification” means a notification published in the Official Gazette;

(s) “prescribed” means prescribed by rules made under this Code;

(t) “rights of the child” means the rights recognized under various provisions of this Code and also included in other legislation;

(u) “Secretary-General” means the Secretary-General of the Commission appointed under Section 11;

(v) “sexual abuse” means commission of any sexual act by a person/adult on a child and includes child molestation, incest or rape, as defined in Section 375 of the Indian Penal Code.

(b) Any reference in this Code to a law, which is not in force in the Kerala State, shall be construed as a reference to the corresponding law, if any, in force in any other State.

CHAPTER I

THE KERALA STATE COMMISSION FOR CHILDREN

3. Constitution of the Kerala State Commission for Children. (1) For the purpose of effectively implementing and safeguarding the rights of children throughout Kerala and to protect them from all forms of discrimination, cruelty and abuse, to provide them with necessary amenities and facilities so as to enable them to develop and grow in a healthy, conducive and pleasant surroundings free from all wants and generally to promote the welfare of children and their all round development, the State Government shall constitute a body to be known as the Kerala State Commission for Children.

(2) **The Commission shall consist of**— (a) a Chairperson who has a distinguished and eminent record in promoting the welfare and development of children.

(b) four members to be appointed from amongst persons having knowledge of and practical experience of working in areas of law, child rights, health, child psychology, care, social sciences, nutrition or education out of whom two at least shall be women one member to be appointed from amongst persons with experience in the field of law relating to children's rights.

(c) Member, State Human Rights Commission nominated by that Commission; ex-officio.

(d) The Chairperson of the State Commission for Women, ex-officio.

(3) There shall be a Secretary General who shall be the Chief Executive Officer of the Commission and shall exercise such powers and discharge such functions of the Commission as may be delegated to him by the Commission or the Chairperson either generally or specifically.

(4) The headquarters of the Commission shall be at such place as the State Government may, by notification, specify.

4. Appointment of Chairperson and other members. (1) The Chairperson and other Members shall be appointed by the Governor by warrant under his hand and seal after obtaining the recommendations of a Committee consisting of:

(i) The Chief Minister . . Chairperson

(ii) Speaker of the Kerala Assembly . . Member

(iii) Minister-in-charge of the Dept. dealing with women and child development . . Member

(iv) Leader of the opposition in the State Assembly . . Member Provided that in the case of appointment of a Member, other than the Chairperson, the Chairperson shall be a member of the Committee:

Provided further that the procedure that shall be followed by the Committee for the preparation of the panel shall be such as may be prescribed and the suggestions of the Committee shall be in the form of a report which shall state its reasons for the inclusion of persons in the panel and the preference, if any, to be given to the Members included in such panel.

(2) No appointment of a Chairperson or a Member, shall be invalid merely by reason of any vacancy in the Committee referred to in sub-section (1) or any defect in the constitution of the said Committee.

5. Removal of a Member of the Commission.

(1) Subject to the provision of sub section (2), the Chairperson or any other Member of the Commission shall only be removed from office by an order of the Governor.

(2) Notwithstanding anything contained in sub section (1) the Governor may by order remove from office the Chairperson or any other Member if the Chairperson or such other Member, as the case may be—

- (a) is adjudged an insolvent ; or
- (b) engages during his term of office in any paid employment outside the duties of his office, or
- (c) is of unsound mind and stands so declared by a competent court; or
- (d) is convicted and sentenced to imprisonment for an offence which in
- (e) the opinion of the Governor involves moral turpitude.

(3) The Chairperson or any other Member may, notwithstanding anything contained in the foregoing provisions of this section, by writing under his hand addressed to the Governor, resign his office.

6. Term of office of Members.

- (1) A person appointed as Chairperson shall hold his office for a term of five years from the date on which he enters upon his office or until he attains the age of seventy years, whichever is earlier:

Provided that the Chairperson shall, notwithstanding his/her attaining the age of seventy years, continue to hold such office until the expiry of a term of three years from the date on which he enters upon his office.

(2) A person appointed as a Member shall hold office for a term of five years from the date on which he enters upon his office and shall be eligible for reappointment for another term of five year and not for any further period:

Provided that no Member shall hold office after he has attained the age of seventy years.

(3) On ceasing to hold office, a Chairperson or a Member shall be ineligible for further employment under the Government of Kerala.

7. Member to act as Chairperson or to discharge his functions in certain circumstances.

(1) In the event of the occurrence of any vacancy in the office of the Chairperson by reason of his death, resignation or otherwise, the Governor may, by notification, authorize one of the Members to act as the Chairperson until the appointment of a new Chairperson to fill such vacancy.

(2) When the Chairperson is unable to discharge his functions owing to absence on leave for not less than six months, such one of the Members, as the Governor may, by notification, authorize in this behalf, shall discharge the functions of the Chairperson until the date on which the Chairperson resumes his duties.

8. Terms and conditions of service of Members.

The salaries and allowances payable to, and other terms and conditions of service of, the Members shall be such as may be prescribed. Provided that neither the salary and allowances nor the other terms and conditions of service of a Member shall be varied to his disadvantage after his appointment.

9. Vacancies etc., not to invalidate the proceedings of the Commission.

No act or proceedings of the Commission shall be questioned or shall be invalidated merely on the ground of the existence of any vacancy or defect in the constitution of the Commission.

10. Procedure to be regulated by the Commission.

(1) The Commission shall meet at such times and place as the Chairperson may think fit.

(2) The Commission shall, by regulations determine its own procedure for the conduct of the meetings of the Commission and for any other matter. (3) All orders and decisions of the Commission shall be authenticated by the Secretary General or any other officer of the Commission duly authorized by the Chairperson in this behalf.

11. Officers and other Staff of the Commission.

(1) The State Government shall, after consultation with the Commission, make available to the Commission —

(a) an officer of the rank of a Secretary to the Government of Kerala who shall be appointed by the Commission as the Secretary General of the Commission;

(b) an officer of the rank of a Director General of Police who shall be appointed by the Commission as the Director General of the Commission;

(c) an officer of the rank of an Additional Secretary to the Government of Kerala who shall be a woman and shall be appointed by the Commission as the Commissioner for the welfare of the girl-child;

(d) such police and investigative staff, as the Commission may consider necessary from time to time who shall be appointed by the Commission.

(2) Subject to such rules as may be made by the State Government in this behalf, the Commission may appoint such other administrative, technical and scientific staff as it may consider necessary.

(3) The salaries, allowances and other terms and conditions of service of the officers and staff, including the officers appointed under sub-section (1) shall be such as may be specified by regulations.

12. Committees of the Commission.

(1) The Commission may appoint such committee, including such standing or adhoc committees, as it may consider necessary for dealing with any issues which may be taken up by the Commission from time to time.

(2) The Commission shall have the power to co-opt as Members of any Committee appointed under sub-section (1) such number of persons, who are not members of the Commission, as it may think fit and the persons so co-opted shall have the right to attend the meetings of the Committee and take part in its proceedings, but shall not have the right to vote.

(3) The persons so co-opted shall be paid such fees and allowances, for attending its meetings and for attending to any other work of the said Committee, as may be specified by regulations.

13. Functions of the Commission.

(1) Subject to the provisions of this Code, the functions of the Commission shall be to serve as a focal point and forum for planning, review and proper co-ordination of the multiplicity of services in areas of child health care, nutrition, education and rehabilitation and to promote the fulfilment of the children's rights to survival, development, protection and the participation to ensure the full physical, mental, social development of the child in conditions of human dignity, equality, freedom and security.

(2) In particular, and without prejudice to the generality of the foregoing power, the Commission shall perform all or any of the following functions, namely:

(a) To develop a State Policy adequate to address the issues and problems relating to the effective realization and enjoyment of the rights of the child and to advise the State Government on the formulation of policies, programmes and principles, including legislation with respect to the best interest of the child.

(b) Monitor and evaluate the impact of policies and programmes designed for achieving the elimination of all discrimination against children;

(c) Investigate and examine all matters relating to the safeguards provided for children under the Constitution of India and other laws;

(d) Review, from time to time, the existing laws affecting children and recommend amendments thereto so as to bring about remedial legislative measures to meet any lacunae, inadequacies or short comings in such legislations;

(e) Take up cases of violation of the provisions of the Constitution and of all other laws relating to children;

(f) Inquire suo-motu, or on an application presented to it, complaints of –

- a. deprivation of rights of the child;
- b. molestation or attempt thereof on a child;
- c. discrimination perpetrated on children;
- d. cruelty on children either at home or at other places;
- e. child abuse;
- f. inhuman treatment of children;

- g. child labour or exploitation of children in work places; non implementation of laws enacted to provide protection to children and also to achieve the objective of equality and development;
- h. non-compliance of policy decisions or instructions aimed at mitigating hardships and ensuring development and providing relief to children;
- i. generally in all matters of discrimination, cruelty and abuse and take up the issues arising out of such matters with appropriate authorities.

(j) Intervene in any proceedings involving violation of the rights of the child pending before a Court with the approval of such court;

(k) Visit any jail or other institutions where under-trials or other children detained under any law for the time being in force are kept or where children are lodged for the purpose of treatment, reformation or protection, for the purpose of studying the living conditions of such under-trials or children and make recommendations thereof;

(l) Monitor the activities of other institutions and authorities functioning all over Kerala in the field of child welfare and development and issue of directions to such authorities;

(m) Call for special studies or investigations into specific problems or situations arising out of discrimination and atrocities perpetrated on children and identify the pathology so as to recommend strategies for their removal;

(n) Undertake promotional and educational research so as to suggest ways of ensuring due representation of children in all spheres and identify factors responsible for impeding their advancement such as, lack of access to housing, adequate care and basic services;

(o) Shall be consulted on the planning process of socio-economic development of children;

(p) Study treaties and other international instruments on children and make recommendations for their effective implementation;

(q) Undertake and promote research in the field of rights of the child;

(r) Promote awareness of the safeguards available for the protection of the rights of child through publications, media, seminars and other available means;

(s) Encourage the efforts of non-governmental organizations and institutions working in the field of rights of the child;

(t) Assist Panchayats or Municipalities in their efforts to promote the welfare and development of children, especially in the fields of education, health, protection and care of children;

(u) Present to the State Government annually and at such other times as the State Government may require or the Commission may deem fit, reports upon the working of the safeguard provided for children under Constitution and other laws.

(w) Make in such reports recommendations for the effective implementation of the rights of child for improving the conditions of children;

(x) Make periodical reports to the State Government on any matter pertaining to children;

(y) Such other functions as the Commission may consider necessary for the protection, care and custody of children.

14. Powers of Commission relating to inquiries made by it.

(1) The Commission shall, while inquiring into the complaints under this Code or any other law for the time being in force relating to children have all the powers of a Civil Court trying a suit under the Code of Civil Procedure, 1908, including the power to implement or execute its own decisions, reports or orders.

(2) The Commission shall have power to require any person subject to any privilege which may be claimed by that person under any law for the time being in force, to furnish information on such points or matters as, in the opinion of the Commission may be useful for, or relevant to the subject matter of the inquiry and any person so required shall be deemed to be legally bound to furnish such information within the meaning of Section 176 and Section 177 of the Indian Penal Code.

(3) The Commission or any other officer, specially authorized in this behalf by the Commission may enter any building or place where the Commission has reason to believe that any document relating to the subject matter of the inquiry may be found, and may seize any such document or take extracts or copies there from subject to the provisions of section 100 of the Code of Criminal Procedure, 1973, in so far as they may be applicable.

(4) The Commission shall be deemed to be a Civil Court and when any offence as is described in Section 175, Section 178, Section 179, Section 180 or Section 228 of the Indian Penal Code is committed in the view or presence of the Commission, the Commission may, after recording the facts constituting the offence and the statement of the accused as provided for in the Code of Criminal Procedure, 1973, forward the case to a Magistrate having jurisdiction to try the same and the Magistrate to whom any such case is forwarded shall proceed to hear the complaint against the accused as if the case had been forwarded to him under Section 346 of the Code of Criminal Procedure, 1973.

(5) Every proceeding before the Commission, shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228, and for the purposes of Section 196, of the Indian Penal Code, and the Commission shall be deemed to be a civil court for all the purposes of Section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

15. Investigation by the Commission.

(1) The Commission may for the purpose of conducting any inquiry relating to any complaints received by it or in respect of any matter which had been taken by it suo motu, direct the Director General or any of the officers subordinate to him or utilize the services of any officer or investigating agency of the State Government to make a preliminary investigation into the complaint or other matter, and

(2) For the purpose of investigating any matter under sub-section (1), the Director General or any police officer or any officer or agency whose services are utilized under that sub-section may, subject to the direction and control of the Commission.

- (i) summon and enforce the attendance of any person and examine human oath;
- (ii) require the discovery and production of any document; and
- (iii) requisition any public record or copy thereon from any office.

(3) The officer of the Commission or the officer or agency whose services are utilized under sub-section (1) shall investigate into any inquiry or matter thereof and submit report to the Commission within such period as may be specified by the Commission in this behalf.

(3) The Commission may, if it is satisfied about the correctness of the facts stated and conclusions, if any, arrived at in the report submitted to it under subsection

(4), pass appropriate orders on the basis of such report after issuing notice to the party or parties affected and after giving them an opportunity to be heard.

(5) Notwithstanding anything contained in sub-section (4), the Commission may itself make such further inquiry including the examination of any persons who conducted or assisted the investigation as it thinks fit before passing final orders in the matter.

16. Power of Commission to call for information, etc.

The Commission, while inquiring into the complaints of violation of the rights of the child may, at any time—

(i) call for information or report from any authority or organization subordinate thereto within such time as may be specified by it:

Provided that if the Commission is satisfied, on receipt of such information or report, that no further inquiry is required or that the required action has been initiated or taken by authority, it shall not proceed with the complaint and inform the complainant accordingly.

(ii) if it considers necessary and without prejudice to any conclusions it may arrive at the conclusion of its inquiry, recommend to the State Government or authority, for the grant of such immediate interim relief to the victim or the members of his family as the Commission may consider necessary pending the completion of its inquiry:

Provided that where any claim for interim relief granted is at any time found to be unjustifiable by the Commission, it may order the refund of the amount of interim relief so granted.

17. Persons likely to be prejudicially affected to be heard.

Where at any stage of the inquiry, the Commission considers that the interests of any person are likely to be prejudicially affected, it shall give to that person a reasonable opportunity of being heard in the inquiry and produce evidence in his defence.

18. Statement made by persons to the Commission or officer, etc.

(1) No statement made by a person in the course of giving evidence before the Commission or any officer or agency authorized by the Commission to investigate any matter on its behalf shall subject him to, or be used against him in, any civil or criminal proceedings except a prosecution for giving false evidence by such statement:

Provided that the statement—

- (a) is made in reply to the question which he is required by the Commission, officer or agency to answer; or
- (b) is relevant to the subject matter of the inquiry.

(2) Where, after the completion of the inquiry, the Commission finds that,

(a) there had been a violation of any of the rights of children or negligence in the protection of such rights by Government or a public servant or by any person or authority, either public or private, which had necessitated the filing of the complaint; or any injury, harm or grievance (other than a violation of a right) had been caused to a child or group of children; or

(b) any discriminatory treatment or injury had been perpetrated on a child; it may, by a report, direct the concerned person or authority—

- (i) to pay compensation or damages to the complainant or to the victim or the members of his family as the Commission may consider necessary;
- (ii) to initiate proceedings for prosecution or such other action as the Commission may deem fit against the concerned person or persons;
- (iii) subject to the provisions of sub-sections (2) and (3), provide a copy of the report to the complainant or his representative;
- (iv) approach the Supreme Court or the High Court concerned for such directions, orders or writs as that Court may deem necessary relating to the report or any matter thereof.

(3) Any person or authority, other than the Government to whom a report has been sent under sub-section (2) shall comply with the, direction contained in the report.

(4) The Commission shall also send a copy of its report together with its directions to the concerned authority and the concerned authority excepting the Government shall, within a period of one month or such extended period not exceeding three months, as the Commission may allow, communicate to the Commission the acceptance or otherwise of its recommendations and the reasons for non-acceptance of its recommendations and where the concerned authority is the Government it shall communicate to the Commission the acceptance or the recommendation, if any. The Commission shall publish its report indicating acceptance or otherwise of the recommendations of the Commission by the concerned authority;

(5) Subject to the above provisions, the recommendations of the Commission shall be binding on all authorities within Kerala and they shall be given effect to by the said authorities.

19. Grants and loans by the State Government.

The State Government may after due appropriation made by Legislative Assembly by law in this behalf, provide to the Commission grants and loans of such sums of money as the Commission may consider necessary.

20. Levy and Collection of a cess.

(1) There shall be levied and collected by way of cess for the purpose of this Code, a cess on infant milk food, milk substitutes and teats at such rate not exceeding three per cent advalorem, as the State Government may, from time to time, by notification, fix.

Explanation.— In this sub-section, the expressions “infant milk foods”, “milk substitutes” and “teats” shall have the same meaning as in the Infant Milk Substitutes, Feeding Bottles and Infant Foods (Regulation of Production and Distribution) Act, 1992.

(2) The cess levied under sub-section (1) shall be in addition to any Value Added Tax leviable on the articles as per any law for the time being in force.

21. Constitution of Kerala State Children’s Fund.

(1) There shall be constituted, for the purposes of this Code, a Fund to be called the Kerala State Children’s Fund and there shall be credited thereto—

(a) such sums of money as the State Government may provide to the Commission as grants and loans besides grants and loans given under section 19;

- (b) such sums of money as the State Government may, provide from and out of the proceeds of the cess levied under section 20;
- (c) all fees and charges levied and collected in respect of registration of homes and other institutions under this Code or rules made thereunder;
- (d) any fines or other amount that may be directed to be paid to the Fund by any court on the conviction of a person committing an offence under this code;
- (e) any grants or loans that may be made by any person, voluntary organization or other institutions for the purposes of this Code;
- (f) any donations or gifts made by any person, or company or any other institution charitably disposed of.

(2) The Fund shall be applied for—

- (a) meeting the cost of measures referred to in section 13;
- (b) meeting the other administrative expenses of the Commission and any other expenses authorized by it under this Code; and
- (c) any other expenditure which the Commission may consider it to be paid from the Fund.

22. Borrowing powers of the Commission.

Subject to such rules as may be made in this behalf, the Commission shall have the power to borrow on the security of the State Children's Fund or any other asset for carrying out the purposes of this Code.

23. Accounts and Audit.

(1) The Commission shall maintain proper accounts and other relevant records and prepare an annual statement of accounts, in such form as may be prescribed by the State Government in consultation with the Accountant and Auditor, General of Kerala. (2) The accounts of the Commission shall be audited by the Accountant and Auditor General as per the Rules laid down in this regard.

24. Power to call reports and returns.

The Commission may require any manufacturer of infant foods, milk substitutes or teats to furnish for the purposes of this Code such statistical and other information in respect of the articles manufactured by him in such form and within such period as may be prescribed and every such manufacturer shall comply with such requirement.

25. Powers to submit reports and statements.

(1) The Commission shall furnish to the State Government at such time and

in such form and manner as may be prescribed or as the State Government may direct such returns and statements and such particulars with regard to any proposed or existing programme for the promotion and development of the interests of children, the State Government may, from time to time require.

(2) Without prejudice to the provisions of sub-section (1), the Commission shall, as soon as possible after the end of each financial year, submit to the State Government concerned a report in such form and before such date, as may be prescribed, give a true and full account of its activities, policies and programme during the previous financial year and may at any time submit special reports on a matter which in its opinion, is of such urgency or importance that it should not be deferred till the submission of the annual report.

(3) State Government shall, soon as may be after the receipt of the annual report and special reports the Commission under sub-section (2), cause them to be placed before the State Legislature along with memorandum of action taken or proposed to be taken on the recommendations of the Commission and the reasons for non acceptance of the recommendations if any.

CHAPTER II

PROVISIONS FOR FREE AND COMPULSORY EDUCATION UPTO HIGHER SECONDARY LEVEL

26. Definitions.

In this Chapter, unless the context otherwise requires,

- (a) “attendance at an Higher Secondary School” means the presence of a child at school or schools upto I to X standards for such number of days, and on such days in a year and at such time or times on each day of attendance, as may be prescribed;
- (b) “Director” means person appointed by the State Government under Section 29 to be in-charge of the administration of the Higher Secondary Schools in the State to exercise the powers conferred upon, and to perform the functions assigned to, a Director under this Chapter;
- (c) “Higher Secondary Education” means education upto Higher Secondary level in such subjects and upto such standard as may be prescribed;
- (d) “Higher Secondary School” means a School recognized as an Higher Secondary School by the Director and includes any Higher Secondary School in existence on the date of commencement of this Code which has been recognized as such by the Director or by any authority of the State Government;
- (e) “free education” means the waiver of all kinds of fees, and includes the provision of text books, uniforms, transport and other related services or accoutrements;

(f) "parent" means the father or mother of a child and includes an adopted father or mother;

(g) "school going age" in relation to a child means the age when the child attains the age of five years and ends with the date of completion of fourteen years of age.

27. Education upto Higher Secondary level be free and compulsory.

(1) Subject to the provisions of this Chapter, education upto Higher Secondary level shall be compulsory and free for all the children residing within the State of Kerala until the completion of School going age.

(2) For the purpose of giving effect to the provisions of sub-section (1), the State Government shall take the following among other steps, namely;

(a) provide such number of primary, secondary and Higher Secondary schools within such area and in such manner that no child residing in such area shall be required to travel for more than one kilometer from his ordinary place of residence and every school so established shall contain a room for each grade or group of thirty or forty children;

(b) provide a trained teacher for each grade or group of thirty to forty children who is available for a minimum period of two hundred days in a year;

(c) provide a friendly and relevant curriculum learnable by the child;

(d) specify Malayalam as the medium of instruction so that the child learns by himself/herself at his own pace;

(e) provide a joyful and attractive atmosphere in the School;

(f) provide an usable black board and chalk for each grade or group;

(g) encouragement of the child to take to learning easily and comfortably;

(h) the teachers maintain a record to ensure that children attending the School have attained a minimum level of learning;

(i) provide that no punishment shall be administered to a child which has a tendency to affect the morale of the child or make the child to develop an aversion to attending school or to get educated;

(j) provide for non-formal and formal education or open school system in such a manner that the provision of non-formal education or open school education may enable the child to join at any stage of formal education commensurate with his age.

28. Duty of every parent or guardian of a child of school going age.

It shall be the duty of every parent or guardian of a child of school going age, irrespective of sex, to send the child to school upto the level of Higher Secondary Education, provided that nothing in this section shall apply—

(a) if there is no Higher Secondary School within three kilometers from the residence of the child;

- (b) if the child is prevented from attending any Higher Secondary School by reason of sickness, infirmity or such other reasons as may be prescribed;
- (c) if the child is attending any unrecognized school subject to the condition that the education imparted therein is declared to be satisfactory by the Director or;
- (d) if the child is imparted education in such other manner as may be declared to be satisfactory or equivalent to the Higher Secondary School Curriculum by the Director;
- (e) if the child is exempt from attendance on any other ground as may be prescribed.

29. Director of Higher Secondary Education.

- (1) The State Government may, by notification, appoint or designate an officer of the State Government to be the Director of Higher Secondary Education for the purpose of effectively carrying out the provisions of this Chapter and the rules made there under.
- (2) The State Government shall appoint or designate such other officers for such area or areas within the territory of the State for assisting the Director in the implementation of the provisions of this Chapter.
- (3) Subject to the provisions of this section, the Director and the other officers appointed or designated under sub-section (1) shall exercise such powers and perform such functions as may be prescribed by the State Government.
- (4) The Director may, for the purpose of effectively implementing the provisions of this Chapter and for monitoring that the provisions of this Chapter are being complied with, appoint such Committees for such area or areas as may be specified by him to advise him on the implementation of the Higher Secondary Education Programme and to evaluate the action taken to implement the said programme.
- (5) The Committee or Committees appointed under sub-section (4) may meet at such times and at such places in accordance with such procedure as may be prescribed by the State Government.

30. Duty of Municipalities, Panchayats etc.

- (1) It shall be the duty of every Municipality, Panchayat or a local area in a State to see that all the children of school going age and residing within its jurisdiction attend schools upto the level of Higher Secondary Classes.
- (2) For giving effect to the provisions of sub-section (1), the Director shall give such guidance and issue such guidelines as may be necessary to the Municipalities, Panchayats or other authorities and they shall be bound to comply with such guidance or guidelines.

(3) Without prejudice to sub-section (1), it shall be open to the Municipalities and Panchayats to obtain necessary advice and guidance from the Director and the Director shall be bound to give them.

(4) The Municipalities, Panchayats or other authority may, for the purpose of effectively carrying out the provisions of this Chapter appoint such officer or nongovernment organizations or institutions working in the field to make a periodic study or to conduct survey on the implementation of the provisions of this Chapter in the local area.

31. Levy of education cess

(1) Every Municipality, Panchayat or other authority entrusted with the municipal functions in a local area may, if it considers necessary to meet the expenses of providing free and compulsory Higher Secondary education, levy and collect a cess in the nature of a surcharge at such rate not exceeding three per centum on the property tax, profession tax or other tax payable to the Municipality, Panchayat or other authority as may be prescribed, apply to the levy and collection of the Cess under this section:

Provided that no cess under sub-section (1) shall be levied and collected from any person below the poverty line.

(2) The State Government may also, if it considers necessary provide such grants or other sums of money for being credited to the Fund constituted under this section.

(3) It shall be competent for the Municipality, Panchayat or to other authority to accept donations, gifts or grants in the form of money or otherwise for the purposes of the Fund.

32. Power to maintain regular accounts and submit statement of accounts.

(1) The Director shall maintain proper accounts of the income received by, and to expenditure incurred from, the Fund and prepare a balance sheet every year.

(2) The accounts prepared by the Director shall be subject to audit by the Accountant and Auditor-General and the procedure to be followed in the audit of accounts of the Commission under section 23 shall be followed in the audit of the accounts prepared under this section.

33. Annual or special reports.

(1) The Director shall submit an original report to the State Government which shall, include among other things, the implementation of the Higher Secondary school programme, the number of children covered by it, the number of schools established and

such other matters as are required for the implementation of the provisions in this Chapter.

(2) The Cess, if any, levied under sub-section (1) of Section 31 shall be credited to an Educational Development Fund maintained by the Municipality, Panchayat or other authority and the said Fund shall be utilized only for the purpose of incurring expenditure on providing Higher Secondary education by the Municipality, Panchayat or other authority without prejudice to the provisions of sub-section (1), the State Government may at any time call for any special report on the status of the Higher Secondary education in the State or part thereof and the Director shall comply with the same.

(3) The provisions of any law for the time being in force for the levy, assessment and collection of property tax, profession or other tax shall, apply as far as possible to the levy of such cess.

(4) The State Government shall cause every report furnished by the Director under sub-sections (1) and (2) to be laid before the State Legislature.

34. Power of State Government to make rules.

(1) The State Government may, by notification, make rules to carry out the provisions of this Chapter.

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

(a) The preparation of a composite syllabus with special reference to the growth and development of the child;

(b) The incentives that may be provided in the school to make education upto Higher Secondary level more attractive to children to attend the school and for the parents to send the children to school without any failure;

(c) Provision of creches or day-time shelter for children so that girls of school going age are not detained in the house on the ground of looking after children. The grounds on which a child may be exempted from attending school;

(d) The powers and functions of the Director and other officers appointed under Section 29;

(e) The time and the place in which the Committees appointed under subsection (4) of section 29 shall meet and the procedure to be followed by such Committees at their meetings;

(f) The rate at which education cess may be levied under section 20 and different rates may be specified for different Municipalities, Panchayats or other areas;

(g) An organised scheme for making the people living in a local area aware of the importance of Higher Secondary education being given to children;

- (h) Specifying a procedure by which children of school going age and working in factories are taken out of the factories and given non-formal or open School education so as to integrate them into the regular Higher Secondary schools;
- (i) Any scheme to provide, if necessary, such compensation in the form of money or otherwise to make up for the loss in the income of the family by sending the children to school;
- (j) Such other matters which are required to be or may be prescribed.

CHAPTER III

PROVISIONS REGARDING HEALTH AND NUTRITION

35. Provision of Health Services.

- (1) Every child has a right to health and nutrition as provided in this Chapter.
- (2) The State Government shall provide adequate health services and facilities to children, both before and after their birth and through the period of growth, to ensure their full physical, mental, cultural, moral and social development and the scope of such services shall be progressively increased so that within a targeted period every child in the State is provided with and enjoys optimum conditions in health care for its balanced growth.
- (3) For the purpose of increasing the rate of child survival in the State, especially the girl child and increasing child health, special emphasis and importance shall be given in the following areas, namely:—
 - (a) The prevention of child marriages;
 - (b) The age of the mother in relation to child birth, the spacing of pregnancies, the services to be provided and care to be received during pregnancy and child birth;
 - (c) Care of the new born;
 - (d) Time-bound immunization programme and properly spaced scheme till the child attains five years of age;
 - (e) Adequate nutrition and health care;
 - (f) Safe water supply and basic sanitation.

36. Safe Motherhood.

The State Government shall formulate suitable schemes to provide sufficient care to women during pregnancies which may include —

- (i) early registration of pregnant women for anti-natal care, universal coverage,
- (ii) tetanus injection supplemented with iron and folic acid,
- (iii) timely identification and treatment of maternal complications,

- (iv) promotion of clean deliveries by trained personnel, which may include imparting of training to the local mid-wives in modern methods of handling deliveries and recognising them as such,
- (v) increasing the institutional delivery rates,
- (vi) management of obstetric emergencies,
- (vii) birth spacing, timing and limitation,
- (viii) improvement of maternal care facilities, and
- (ix) media efforts to promote the awareness of safe motherhood in the community.

37. Prevention of female foeticide and infanticide.

- (1) The State Government shall take necessary steps to prevent the pre-natal sex determination conducted in any Genetic Counseling Centre, Genetic laboratory or clinic and diagnostic techniques including ultrasonography.
- (2) For the purpose of preventing female foeticide and infanticide, the voluntary and non-governmental organizations working in the local area shall be authorized to disseminate the evil effects of this practice.

CHAPTER IV

RIGHT AGAINST ECONOMIC EXPLOITATION AND ABUSE

38. Prohibition of employment of children in certain establishments.

- (1) Subject to the other provisions of this Chapter, and of any other law for the time being in force, no child who has not attained the age of fourteen years shall, after the commencement of this Code, be employed in any establishment.
- (2) No child above the age of fourteen years shall be employed in a mine, plantation or in any establishment in which hazardous process is carried on.

Explanation.—“Hazardous process” has the same meaning as in clause (b) of section 2 of the Factories Act, 1948 (63 of 1948).

- (3) Every owner or occupier in relation to an establishment (including a mine, plantation or establishment referred to in sub-section (2) or workshop and employing children on the commencement of this Code shall, before a period of three months from such commencement, furnish in such form, in such manner and to such authorities as may be prescribed, details relating to the number of children employed in the establishment or workshop, their age, conditions of service, amenities provided and such other details as may be prescribed for a licence under this Chapter to continue the employment of children after such commencement.

(4) No owner or occupier of any establishment or workshop in existence on the commencement of this Code or proposed to be established after such commencement shall, if he has employed children in establishment or workshop or if he intends to employ children in such establishment or workshop obtain a licence for employing such children from such authority as may be prescribed:

Provided that such authority shall issue such licence after inspection of the establishment or workshop and after satisfying itself about the conditions of service of children proposed to be employed, amenities proposed and other matters.

(5) The licence issued under sub-section (4) may provide for such conditions, including the payment of compensation either in lump sum or in installments, to the parent or guardian for loss of their earnings from out of that child or for providing education to such children as it may consider necessary.

(6) The authorities referred to in sub-section (3) and (4) shall send copies of the orders issued by it to the State Commission and such orders shall be treated as confidential.

(7) The officers appointed under this Code and the non-governmental or other organizations working in the field shall have power to inspect the establishments or workshop operating within their area of jurisdiction and make periodical reports about the conditions of children working in such establishment or workshop to the prescribed authority.

39. Provision for education to children.

(1) The owner or occupier of an establishment or workshop who had to discontinue the employment of children under the preceding section shall, in addition to the provision of compensation or damage, if any payable to the parents or guardians of the children, provide the children with such facilities for education as may be prescribed.

(2) The State Government shall at the same time provide adequate measures in the education system to admit such children who are withdrawn from employment into Higher Secondary schools established by it and if they are not fit to join the regular schools or the formal education provided by such schools, the owner or employer shall arrange for the imparting of non-formal education to such children so that they may be enabled to fit into the curricula of formal education adopted by the regular Higher Secondary schools.

(3) The State Government shall arrange periodically for meetings workshops or seminars to project the evils of child labour, particularly in respect of children of school going age, the importance of providing education to children, and create awareness among the

people, especially the parents and guardians about the advantage of sending school going children to school.

(4) The non-governmental organizations and other institutions working in this field shall be directed by the State Commission to periodically visit the factories and schools within the area of their jurisdiction to see that the children are put in schools and ensure regular attendance and provision of essential facilities.

40. Power of State Government to make rules.

(1) The State Government may, by notification, make rules to carry out the provisions of this Chapter.

(2) The rules made under sub-section (1) may provide for all or any of the following matters, namely—

- (a) the form and manner in which, and the authorities to whom information under sub-section (2), sub-section (3), sub-section (5) of Section 38 shall be furnished;
- (b) the guidelines by which compensation, damage or other incentive shall be determined to be payable to the father or guardian of the children, who have to be withdrawn from employment;
- (c) the conditions subject to which a licence may be granted under subsection (3) or sub-section (4) of Section 38;
- (d) the facilities for education that may be provided to the children by the owner or occupier of an establishment under sub-section (1) of Section 39;
- (e) such other matters which are required to be, or may be prescribed.

CHAPTER V

CARE AND PROTECTION OF CHILDREN

41. Responsibility of Parents and Guardian to look after Children.

The parents and guardians shall provide all their children under their control with a comfortable home, healthy surroundings, providing affection and not be cruel to them, provide them with all their requirements, render them assistance necessary to bring them up in a healthy and safe surrounding so that they may not feel anything wanting and the children in turn would respect the feelings of their parents and guardians, satisfy them and live up to their expectations. To achieve this the parents and guardian shall ensure:—

- (a) a child in the first years of the new born, necessary food complimentary to mother's milk and other things required to make the child grow without any infantile ailments;

- (b) no discrimination in the matter of provision to the children, like food, medicine and other requirements between a male and a female child and it shall be the duty of the father to prevent such discrimination being perpetrated on the girl child;
- (c) preventing female infanticide;
- (d) periodical immunization till the fifth year of age and for registration of the child in the primary health centre;
- (e) the child to be taken to the primary health centre for periodical check up and in case of any ailment, take the child to the hospital, if necessary and timely and immediate treatment to prevent any further deterioration in the health or any permanent damage to the child;
- (f) affection, essential security and comfort to them by spending more time with the children, ascertaining their views, wants and requirements and their behaviour to the children shall be in such a manner as to create a feeling of safety, protection and care in the minds of the children that there is no place like home and the parents;
- (g) that children do not fall into bad company or cultivate unhealthy and bad habits;
- (h) them to acquire good qualities, compassion and friendliness to others, understanding people and be kind to every one without being harsh;
- (i) sending children, boys and girls, without any discrimination to Higher Secondary schools during the school going age and provide them with all the necessities so as to enable them to devote their full energies to education and create a desire to pursue further higher education;
- (j) periodical checking of the progress of the child in school by making visits to the school and seeing their teachers and participate in the school functions and activities;
- (k) verifying of the behaviour of children inside and outside school, their attitude towards other children, the treatment of children by others, in that there is no teasing and beating by the teacher or others;
- (l) encouraging and assisting the children to pursue further education and where it is not possible economically, to get assistance from Government institution or other persons and obtain financial assistance in the form of loans or grants;
- (m) that the girl child is not compelled to do domestic chores and to mind the younger children and the girl child should be treated in the same manner as a male child and should not create any feeling in the mind of the girl child that she is being discriminated against;
- (n) the girl child is not sent to work in other houses to do domestic work on the pretext of increasing the family income;
- (o) protecting girls from incest by close relations;
- (p) not be neglected in any manner;
- (q) inculcate in children good behaviour and discipline so that they may grow morally strong and not expose them to actions that will cause them unnecessary mental or physical tension or suffering;
- (r) the children should not be driven to begging or the parents also should not cause them to beg;

- (s) the children should be prevented from taking any drug or intoxicants, liquor or get them into the habit of drinking, smoking or used to taking any narcotic drug or psychotropic substances;
- (t) the child not to be exploited by anyone and prevent any child abuse;
- (u) such other behaviour that may be necessary to make the children grow in a healthy and peaceful atmosphere so that they may achieve an all round development to become responsible citizens.

42. Duty of Government to assist families to provide better treatment to children.

(1) The State Government may, subject to the available means at its disposal, assist parents, guardians or other persons in-charge of children by providing financial or other assistance to enable them to perform their duties towards children under Section 41.

(2) For the purpose of fulfilling its obligations under sub-section (1), the State Government may formulate such scheme or schemes by which the families where children are not well treated or are subjected to cruelty are identified either by the appointment of suitable officers, authorizing non-governmental or other agencies working in the field of child welfare or by constituting Child Welfare Committee consisting of experts and activists in the field of child welfare or authorizing Panchayats or Municipalities to perform the aforesaid functions.

(3) The scheme or schemes formulated under sub-section (2) may include—

- (a) providing financial or other assistance;
- (b) sending children to schools;
- (c) introducing boys and girls alike to domestic chores and encouraging education for girls;
- (d) providing crèches or day care homes for children of primary level with all amenities;
- (e) orienting parents on the importance of child care;
- (f) in appropriate cases, provide for good adoption both within the country and abroad;
- (g) making arrangements for the child to be shifted to Special Homes, Protective Homes, Observation Homes, after care organizations, other institutions, certified school of orphanages, depending on the condition of the children;
- (h) such other measures or assistance to see that children are provided with healthy atmosphere and surroundings.

43. Child Welfare Committee.

(1) The State Government shall within one year of commencement of this Code, by notification in Official Gazette, constitute for every district, specified in the notification, Child Welfare Committees for exercising the powers and discharge the duties conferred on such Committees in relation to child in need of care and protection under this Code.

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

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

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

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

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

44. Procedure, etc., in relation to Committee.

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

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

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

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

45. Powers of Committee.

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

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

46. Production before Committee.

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

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

Provided that the child shall be produced before the Committee without any loss of time but within a period of twenty-four hours excluding the time necessary for the journey.

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

47. Inquiry.

(1) On receipt of a report under Section 46, the Committee shall hold an inquiry in the prescribed manner and the Committee, on its own or on the report from any person or agency as mentioned in sub-section (1) of Section 45, may pass an order to send the child to the children's home for speedy inquiry by a social worker or child welfare officer.

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

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

(3) The State Government shall review the pendency of cases of the Committee at every six months, and shall direct the Committee to increase the frequency of its sittings or may cause the constitution of additional Committees.

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

48. Transfer.

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

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

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

49. Restoration.

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

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

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

Explanation.—For the purposes of this section “restoration of and protection of a child” means restoration to—

- (a) parents;
- (b) adopted parents;
- (c) foster parents;
- (d) guardian;
- (e) fit person;

(f) fit institution.

CHAPTER VI

SPECIAL PROVISIONS RELATING TO GIRL CHILD

50. Measures to prevent all forms of discrimination against girl child.

The State Government shall take necessary measures to prevent all forms of discrimination against girl child as given below:

(1) Elimination of all forms of discrimination against the girl child including:

- (a) Ensuring that the girl child receives appropriate financial and other support and provide educational opportunities for girls;
- (b) Enforcing strictly the provisions relating to the minimum age for marriage as provided in the Child Marriage Restraint Act, 1929, by providing employment opportunities for girls;
- (c) Develop and implement comprehensive policies, plans of action and programmes for the survival, protection, development and advancement of the girl child to promote and protect the full enjoyment of her human rights and to ensure equal opportunities for girls;
- (d) Ensure the desegregation by sex and age of all data relating to children in health, education and other sections.

(2) Elimination of negative cultural attitudes and practices against girls including:—

- (a) steps to remove traditional and customary practices that promote discrimination against girls;
- (b) regulate unethical practices, such as pre-natal sex selection and female foeticide and infanticide;
- (c) eliminate child pornography and degrading and violent portrayals of the girl-child;

(4) Elimination of discrimination against girls in education, skills, development and training including:

- (a) Increasing the enrolment and improve the percentage of educated girls;
- (b) Promoting the full and equal participation of girls in extracurricular activities such as sports, drama, social work and cultural activities.

(4) Elimination of discrimination against girls in health and nutrition including:

- (a) Sensitize the girl-child, teachers and the civil society concerning the general health and nutrition and raise awareness of the health and other problems connected with early pregnancies;

- (b) Strengthen and reorient health education and health services, particularly primary health care programmes, sexual and reproductive health, strengthening the individual and collective action to reduce the vulnerability of girls to HIV/AIDS and other sexually transmitted diseases;
- (c) Ensure dissemination of information to girls, especially adolescent girls, regarding the physiology of reproduction, reproductive and sexual health.

(5) Elimination of girl child labour including:

- (a) Protecting girl-child from economic exploitation and from performing any work that is likely to be hazardous or to interfere with child's education or to be harmful to the child's health or physical, mental, spiritual, moral or social development;
- (b) Protecting girls at work conditions, application of social security coverage and establishment of continuous training and education;
- (c) Strengthening the penalties or other sanctions provided in the legislations concerning girl-child to ensure their effective enforcement.

(6) Elimination of violence against the girl child including:

- (a) Taking effective actions and measures, to protect the safety and security of girls from all forms of violence at work and prevention of incidents of sexual harassment of girls in educational and other institutions;
- (b) Initiating and enforcing appropriate and effective measures to protect girls from all forms of violence;
- (c) Providing safe and confidential programmes on medical, social and psychological support services to assist girls who are subjected to violence.

51. Powers to make rules.

(1) The State Government may, by notification, make rules to carry out the provisions of this Chapter.

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

- (a) Necessary syllabus or curricula for imparting sex education in Schools and Colleges, the age and the level at which such education shall be provided and the counseling that may be required in continuation of the syllabus or curricula;
- (b) The manner in which periodical checks to find out children, and especially girl-children, are sent to Schools or are they being kept by parents to look after the household or younger children and requiring School authorities periodically to report about the dropouts of girl students from Schools;

- (c) Formulation of scheme or schemes through which suitable incentives may be provided to parents to send their girl-children to School;
- (d) Frame necessary guidelines by which the Panchayats or Municipalities are required to see—
 - a. that sufficient Schools are provided for the education of the children of the village, town or city;
 - b. that an efficient health care scheme is implemented in the village through which all the children are covered;
 - (e) Initiate necessary schemes to prevent sexual harassment including eve teasing and ragging in Schools and Colleges, buses, hotels or other public places and specify deterrent punishments for such behaviour;
 - (f) Provide for an efficient system by which organizations working in the field of child welfare in the village, town or city may be authorized to make periodic inspections in the locality and take necessary action to protect girls from cruelty, eve-teasing, ragging or other derogatory practices, including the filing of complaints of prosecutions relating to offences against girl-children;
 - (g) Domestic violence and cruelties perpetrated on girl-children;
 - (h) Cruelty in relation to any demand for dowry;
 - (i) Child marriages;
 - (j) Female foeticide and infanticide;
 - (k) Illegal or unnatural sexual offences, incest and other abuse of young children;
 - (l) Child abuse of any other form;
 - (m) Guidelines for the prevention of sexual abuse in work places;
 - (n) Any other matter which is required to be, or may be specified by rules.

52. Duty of Government to direct its policies to eliminate discrimination against girl child.

It shall be the duty and endeavor of all the authorities in Kerala to direct its policies or actions to prevent effectively all discrimination and atrocities against the girl child.

CHAPTER VII **SPECIAL PROVISION FOR DIFFERENTLY ABLED CHILDREN**

53. Special provisions for differently-abled children.

- (1) The State Government shall ensure taking of necessary steps for the prevention or occurrence of any mental or physical disabilities in children through adequate provision for immunization, nutrition, access to health implementation, safety regulations in establishments and workshops and prohibit the use and sale of dangerous drugs.

(2) The State Government shall formulate such scheme or schemes to provide assistance to differently-abled children in the following areas, namely:—

- (a) create awareness in the State;
- (b) care and maintenance;
- (c) referring cases of disability for treatment at the earliest possible time;
- (d) planning and providing applications and assistance in maintaining the otherwise abled;
- (e) provide specifically services or rendering financial assistance to purchase special appliances;
- (f) providing sufficient scholarships for the deserving differently-abled children; to continue their education;
- (g) such other matters as may be necessary for the proper care and maintenance of differently-abled children.

54. Child affected by natural disaster or calamity.

The state shall ensure that adequate assistance is provided to children affected by natural disaster, violence or armed conflict in the form of meeting the children's requirements.

CHAPTER VII A SPECIAL PROVISION FOR ABANDONED CHILD

54A. Care of abandoned or neglected child.

(1) Any person who finds a child abandoned in public places like bus stand, railway station etc., shall inform any of the officers or the person in charge of any of the institution specified in Chapter VIII of the Code or to the nearest police station.

(2) The authorities to whom an information is given under sub-section (1) shall immediately take custody of the child and hand over the child to any of the appropriate homes stated in sub-section (8) of Section 55 or to any of the registered Child Welfare Institution.

CHAPTER VIII APPOINTMENT OF OFFICERS AND ESTABLISHMENT OF INSTITUTIONS

55. Appointment of Officers and Establishment of Institutions to implement the Code.

(1) The State Government, The State Commission, a Panchayat or a Municipality may appoint such number of officers, authorities and organizations to effectively implement

the provisions of this Code and indicate their areas of jurisdiction within which they shall perform their functions and discharge their duties.

(2) The persons, officers and authorities appointed under sub-section (1) may include State level, District level, Municipal and Panchayat levels and may include Directors, inspectors, District Officers, non-governmental and other organizations who are authorized or registered under this Code to perform functions under it, constitution of Welfare Boards, Advisory Committees and Probation Officers and define their respective functions.

(3) The welfare institutions or homes for the protection and welfare of children, established or managed by the State Government or other organizations, by whatever name called, and in existence on the commencement of this Code shall, within a period of three months from such commencement, apply to the State Government for re-registration as such under this Code in such form and in such manner.

(4) The State Government shall appoint such others as may be necessary to scrutinize the applications under sub-section (3) and shall re-register them only if it is satisfied about the proper and efficient management of these institutions especially with regard to the treatment and care of children provided therein and considered necessary, after due inspection of the premises:

Provided that before refusing re-registration of any institution, it shall be given an opportunity of being heard.

(5) The State Government shall periodically appoint experts for inspection and furnish reports on the working of these institutions, requesting the institutions to furnish periodical reports with respect to the number of inmates, the training imparted to them or the work given to them, and if necessary, appoint its own officials to manage their institutions.

(6) If the State Government is of the opinion that the institution is not well managed or that the inmates are not well looked after, it may direct such concrete steps as it may consider, to be carried out, or may even cancel the registration:

Provided that no registration shall be cancelled under this sub-section unless the institution is given an opportunity of being heard.

(7) The State Government shall publish such periodical reports on the working of the institutions and the same shall be placed before the State Legislature.

(8) The State Government may establish and maintain either by itself or in association with voluntary organisations, the following institutions for the purpose of enforcing various provisions of this Code:

- (a) After Care homes
- (b) Children's Home
- (c) Certified Schools
- (d) Juvenile Homes
- (e) Observation Home
- (f) Shelter Homes
- (g) Special Homes
- (h) Protective Home
- (i) Schools for differently abled children.

(9) Any other organization may also establish Child Welfare Institutions after the commencement of this Code subject to their registration under this Code and subject to such terms and conditions as may be provided.

56. Power of State Commission to make regulations.

- (a) The State Commission may, by regulations made under this Code provide for the efficient management and administration of juvenile homes, special homes, observation homes, and other institutions referred to in section 55 and the supervision and control that may be exercised by it for effectively carrying out their functions under this Chapter, notwithstanding anything contained in the law under which such institutions are established, managed or registered;
- (b) specify the standards and nature of service to be maintained by such homes or institutions;
- (c) provide for such other matters as may be necessary for the purpose of effectively carrying out the services to be provided to children.

57. Government to set up “Special Juvenile Police Units” in the police force.

(1) The State Government shall, as far as possible, organize and set up cells, to be known as “Special Juvenile Police Units” and such cells which shall exercise the powers conferred upon, and discharge the functions assigned to them, under this Code and which shall be under the charge of a police officer, not below the rank of a senior Superintendent of Police.

(2) The Cell may consist of such officers preferably women who shall be sensitive to the problems of children and committed to help children in need, receive complaints and take up investigation early.

(3) The officers of the Cell shall closely monitor the children's programmes within their jurisdiction and maintain a liaison with the officers of the State Government or the State Commission and the non-governmental organizations and assist them in the conduct of prosecutions and such other measures for the effective implementation of the provisions of this Code.

(4) The State Government may also register non-governmental organizations working in the field of child rights and confer on them such powers, including inspection of the institutions, counselling parents on the provisions of this Code, filing prosecutions and such other matters as may be prescribed.

CHAPTER IX

ADOPTION OF CHILDREN THROUGH CHILD WELFARE AGENCIES

58. Definitions.

In this Chapter, unless the context otherwise requires:

- (a) "adoption order" means an order made by a Court for the adoption of a child to parents in India;
- (b) "Kerala Adoption Agency" means the Kerala State Adoption Resource Agency established by the State Government under section 62.
- (c) "Guardianship order" means an order made by a Court conferring guardianship on a prospective foreign adoptive father in respect of a child, pending his adoption in the country to which the adoptive father belongs;
- (d) "in-country adoption" means adoption of Children by Indian parents in accordance with the provisions of this Chapter;
- (e) "Child Welfare Agency" means a voluntary agency having under its control a child care centre, by whatever name called, and is primarily engaged in child welfare programmes for the growth and development of children;
- (f) "inter-country adoption" means permitting Kerala children to be adopted by foreign parents in accordance with the provisions of this Chapter;
- (g) "natural father" and "natural mother" in relation to an adopted child, means the biological parents of the child;
- (h) "orphan and destitute child" means any child who has been abandoned by both his father and mother or by the guardian or by his father or mother, or whose parentage is not known, or whose father and mother are dead or have completely and finally renounced the world or have been declared by a court of competent jurisdiction to be of unsound mind;
- (i) "parent" in relation to an adopted child means the adoptive parent;
- (j) "recognized foreign agency" means an agency recognized by a foreign country for sending applications for adoptions outside that country and listed by the Kerala Adoption Agency;

(k) “recognized Voluntary Agency” means a Child Welfare Agency recognized by the Kerala Adoption Agency for processing applications for adoption received from foreign countries;

(l) “recognised Placement Agency” means a Child Welfare Agency recognized by the Kerala Adoption Agency for processing adoptions within the country.

59. Persons who may adopt.

(1) Any person who is married and has completed the age of twenty five years and is of sound mind may either solely or jointly with his or her spouse adopt a child under this Chapter.

Explanation.—In the case of adoption of a child by spouses, the requirement as to age under this sub-section shall be deemed to have been satisfied if either of the spouses has completed the age of twenty-five years.

(2) The person or each of the persons seeking to adopt a child shall be older than the child by at least twenty-five years:

Provided that the District Court may dispense with the requirements of this sub-section in any case if it is satisfied that there may be special circumstances which render it necessary to do so.

(3) For the removal of doubts, it is hereby declared that the existence of a child or children, whether female or male, to the person who intends to adopt shall not by virtue of such existence alone, be a disqualification for adoption under this Chapter.

60. Persons who may be adopted.

(1) Any child who is not already adopted, or if adopted, such adoption has duly been revoked under section 74, may be taken in adoption.

(2) No adoption order shall be made where the sole applicant for an adoption is a male and the child to be adopted is a female, unless the District Court is satisfied that there are other special circumstances which justify the making of an adoption order.

61. Adoptions to be regulated by this Chapter.

(1) Save as otherwise provided in any law for the time being in force, or in any custom, or usage having the force of law, no adoption of a child from the State of Kerala, made otherwise than by a natural father or mother or both, either within India or to any country outside, shall, after the commencement of this Chapter, be made except through a Child

Welfare Agency in accordance with the provisions of this Chapter and any adoption made in contravention of such provisions shall be void and be of no effect.

(2) An adoption which is void shall not create any rights in the adoptive family in favour of the adopted person which he or she would not have acquired except by reason of the adoption nor destroy the rights of such person in the family of his or her birth.

(3) The paramount objective in all the adoptions under this Chapter shall be the best interest of the child given in adoption and by this process, the child is provided with a home, family atmosphere, affection, protection, care and basic necessities so as to enable him to grow up without economic wants and under circumstances most congenial for the proper and balanced development of the child.

62. Establishment of a Kerala State Adoption Agency for adoption, etc.

(1) The State Government shall establish a Kerala State Adoption Resource agency (Kerala Adoption Agency) for the purpose of co-ordinating all matters concerning adoption within the State and in particular, to regulate inter-country adoption.

(2) The Kerala Adoption Agency shall consist of the following members;

- (a) a non-official Chairman to be nominated by the State Government;
- (b) one representative from the Indian Council of Child Welfare to be nominated by it;
- (c) one representative from the State Council of Child Welfare to be nominated by it;
- (d) five representatives of recognized Kerala Agencies, one from each of the five regions in Kerala to be nominated by the State Government;
- (e) five representatives of recognized Placement Agencies, one from each of the five regions in Kerala to be nominated by the State Government;
- (f) One representative each from the Department of Home, Department of Communication and the Department of Women and child Development of the Government of Kerala;
- (g) An officer of the rank of a Deputy Secretary to the Government of Kerala who shall be the Secretary and the Executive Officer of the Agency.

(3) The term of office of the representatives of the recognized agencies shall be for a period of two years from the date of their nomination on a rotational basis in such manner as may be prescribed and shall not be eligible for re-nomination for the next succeeding period of two years.

(4) The appointment of the Chairman shall be in an honorary capacity for two years, but the Executive Officer shall be whole time and shall hold office for a tenure of five years from the date of his appointment.

(5) Subject to the above provisions, the terms and conditions of service of the Chairman, Members and Executive Officer shall be such as may be prescribed.

(6) The Kerala Adoption Agency shall constitute a Committee to exclusively look after the promotion of in-country adoption and advise the Kerala Adoption Agency on policies and programmes for this purpose.

(7) The Kerala Adoption Agency shall appoint such officers and other staff to carry out the functions conferred on it by this Chapter.

(8) The State Government shall pay to the Kerala Adoption Agency such sums of money as may be necessary for the administration of the agency and for the performance of its functions under this Chapter.

(9) The Kerala Adoption Agency shall maintain its accounts in the manner prescribed by the Accounts and Auditor-General and shall be audited in such manner as may be specified by him.

(10) The Kerala Adoption Agency shall, subject to the approval of the State Government, frame its own regulations and by-laws for the performance of its functions under this Chapter.

63. Functions of Kerala Adoption Agency.

The functions of the Kerala Adoption Agency shall be as follows:

(a) act as clearing house of information with regard to children in Kerala available for inter-country adoption and in-country adoption;

(b) recognize and maintain a list of foreign and Voluntary Agencies for inter-country adoption operating in the State and publishing the same once in every year in three leading dailies circulating in the State; one in the English language, the other two in the Malayalam language and send this list to all the State Governments authorities, High Court, recognized foreign and Indian agencies, the Indian missions abroad and Passport Officers in India;

(c) recognize and maintain a list of Placement Agencies and send this list to the State Governments authorities, High Court, recognized foreign and Indian agencies;

(d) maintain a close liaison with Indian diplomatic missions abroad in order to safeguard the interests of children of Kerala origin adopted by foreign parents, against neglect, maltreatment, exploitation or abuse and to maintain unobtrusive watch over the welfare and progress of such children;

(e) monitor the adoption programme within the State and coordinate the activities of Placement Agencies and Voluntary Agencies;

- (f) encourage and promote placement of eligible children for adoption to families within the country or guardianship with foreign families;
- (g) formulate suitable rules, apart from the rules made under other Acts in order to maintain certain minimum standards for child care in child welfare institutions;
- (h) form an advisory committee on adoption which shall have due representation to the Government, Placement Agencies, Voluntary Agencies and experts in the field of social and child welfare and specify their functions, periodicity of the meetings and other matters necessary for monitoring adoptions made within the State.
- (i) to receive lists of all eligible children for adoption from all agencies within its jurisdiction;
- (j) to maintain a register of all prospective adoptive parents;
- (k) to coordinate the work of all the agencies within the State;
- (l) to give clearance for inter-country adoption of children;
- (m) such other functions as are required to be performed by Kerala Adoption Agency under the provisions of this Chapter, or may be prescribed.

64. Recognition of Placement Agencies and Voluntary Agencies.

- (1) The Kerala Adoption Agency shall, after appropriate inspection and verification, recognize, register and maintain a list of all Placement Agencies operating in the State.
- (2) Every recognized Placement Agency shall regularly maintain a list of all prospective adoptive parents in India containing their names, address and data for taking a child in adoption and other relevant details.
- (3) The Kerala Adoption Agency shall separately after proper inspection and verification recognize, register and maintain a list of Voluntary Agencies operating in the State.
- (4) The Kerala Adoption Agency shall identify those Child Welfare Agencies which have children who are legally available for adoption.

65. Formalities to be observed by the Child Welfare Agency receiving children.

- (1) All children admitted to any Child Welfare Agency shall be entered in an admission register with all the information available in the form specified by the Kerala Adoption Agency.
- (2) Every Child Welfare Agency receiving a child for care and maintenance shall try to locate the natural parents and restore the child to them.
- (3) The Child Welfare Agency shall keep a separate file for each child received by it and prepare a child study report if the child is legally available for adoption as per the details prescribed.

(4) Where a child in need of care is received by the institution without any commendation from the Child Welfare Board or through direct surrender by the natural parents, the institution shall file a First Information Report to the Police Station and to the Child Welfare Board operating within its jurisdiction within twenty four hours of the receipt of the child.

(5) The Child Welfare Board shall, within six weeks from the date of receipt of a report from the institution under sub-section (4), pass a release order directing the child free for adoption.

(6) The Child Welfare Agency shall also ensure that the child has been subject to medical examination and necessary treatment shall be given to him.

(7) If the Child Welfare Agency that received the child is not recognized as a Placement or Voluntary Agency it shall inform the availability of the child for adoption to the Kerala Adoption Agency or a recognized Placement or Voluntary Agency.

66. Surrender of a child.

(1) In the case of a surrender of a child by a natural parent, it should be evidenced by a properly stamped surrender document signed by the natural parent, and authenticated by two witnesses known to the Child Welfare Agency.

(2) Any preference given by the natural parent for upbringing the child on any religious persuasion, shall be respected and the parent has the right to redeem the child within ninety days from date of execution of the surrender deed.

(3) The Child Welfare Agency shall also try to convince the natural parent of the advantages of keeping the child in the family instead of surrendering it.

67. Procedure to be followed by institutions undertaking adoption.

(1) No Child Welfare Agency shall engage in the work of in-country adoptions unless it is recognized as a Placement Agency by the Kerala Adoption Agency under this Chapter.

(2) No Child Welfare Agency shall engage in the work of inter-country adoption unless it is recognized as a Voluntary Agency by the Kerala Adoption Agency.

(3) Every Child Welfare Agency referred to in sub-section (1) or (2) receiving a child for care and maintenance shall try to locate the natural parents and restore the child to them.

(4) Where it is not possible to locate the natural parent or to persuade such parents to take back the child under sub-section (3), the institution shall first try to place the children in adoption with any Indian family.

(5) Every Placement and Voluntary Agency shall inform the Kerala Adoption Agency the list of children available for adoption.

(6) For the purpose of giving the child in adoption to Indian parents, the institution shall send the full details of the children to prospective parents, except the names and addresses of the natural parent, and also inform the Kerala Adoption Agency about the availability of the child for adoption to an Indian family.

(7) Where it is not possible for the Kerala Adoption Agency to locate an Indian family for taking a child in adoption, within sixty days of the receipt of the information from the institution, it shall give a certificate of its inability to locate an Indian family and recommend that the child may be placed for consideration for inter country adoption and issue a no objection certificate that the child may be considered for inter-country adoption.

(8) It shall be the endeavour of all the institutions to place at least fifty per cent of the children they receive for adoption with Indian families and the children available for inter-country adoption shall first be placed with the Indian families abroad and then to families consisting of one parent of Indian or in and lastly to foreign parents.

(9) Every institution shall keep a record of its efforts to place children in adoption with an Indian family and indicate the reasons for its failure to do so.

68. Procedure for in-country adoption.

(1) Any Indian eligible to make adoption under this Chapter may make a request to the Kerala Adoption Agency or Placement Agency for the adoption of a child from Kerala.

(2) Where the Kerala Adoption Agency receives an application referred to in sub-section (1) or that it had been sent directly to a recognized Placement Agency, it shall authorize any Placement Agency or as the case may be, the Placement Agency which receives the application directly to process the application.

(3) The Placement Agency receiving an application under sub-section (1) and authorized to process the application under sub-section (2) shall after registering the name of the prospective adoptive father in a register, conduct a Home Study or Family Assessment as prescribed and if it comes to a conclusion that the child could be placed with the Indian parent apply to the Kerala Adoption Agency for issue of no objection certificate.

(4) After receiving the no objection certificate from the Kerala Adoption Agency within six months, the Placement Agency shall forward all the documents along with a photograph of the child to the Indian parents for approval.

(5) After the receipt of the approval of the Indian parent to the adoption of the child identified by the Placement Agency under their custody, the Agency after informing the approval to the Kerala Adoption Agency proceed with the steps to obtain a guardianship order from the competent Court.

(6) All expenses of the Placement Agency relating to the adoption of the child shall be met by the Kerala Adoption Agency.

69. Procedure for inter-country adoption.

(1) Where a foreign family proposes to adopt a child from Kerala, it shall send an application through a recognized foreign agency in that country to the Kerala Adoption Agency along with such documents as may be prescribed, including the Home Study Report and notarized by a Notary Public whose signature shall be attested by such officers of the Indian Mission of that country in such manners as may be prescribed:

Provided that where there is no agency recognized by a country or there is no Indian Mission in any country, the application shall be forwarded through the Government of that country:

Provided further that it shall be open for the recognized foreign agency to send the application along with all the documents and duly notarized directly to a recognized Voluntary Agency.

(2) Where the Kerala Adoption Agency receives an application referred to in sub-section (1) or that it had been sent directly to a recognized Voluntary Agency, it shall authorize any Voluntary Agency or as the case may be, the Voluntary Agency which receives the application directly to process the application.

(3) The Voluntary Agency receiving an application under sub-section (1) and authorized to process the application under sub-section (2) shall after registering the name of the prospective adoptive father in a register, examine the Home Study Report of the prospective foreign adoptive parents with a child study report it has, and if it comes to a conclusion that the child could be placed with the foreign parents apply to the Kerala Adoption Agency for issue of no-objection certificate:

Provided that no such clearance is needed to a child for whom a no objection certificate has already been issued under sub-section (8) of Section 69 and it is sufficient to inform the decision:

Provided further that in the case of a differently abled child or a child which needs immediate medical treatment, a medical certificate from the hospital giving the treatment

alone would be sufficient and it shall not be necessary either to wait for the clearance from the Kerala Adoption Agency.

(4) The Kerala Adoption Agency on receipt of a request as per subsection (3) shall issue a no objection certificate recommending the child for inter country adoption within sixty days, if it fails to locate an Indian family for taking the child in adoption.

(5) After receiving the no-objection certificate from the Kerala Adoption Agency, the Voluntary Agency shall forward all the documents along with a photograph of the child to the foreign parents for approval.

(6) After the receipt of the approval of the foreign parent to the adoption of the child identified by the Voluntary Agency under their custody, the Agency after informing the approval to the Kerala Adoption Agency proceed with the steps to obtain a guardianship order from the competent Court.

(7) All expenses of the Voluntary Agency relating to the adoption of the child shall be met by the Kerala Adoption Agency.

70. Power to make orders.

(1) The District Court exercising jurisdiction over the place where the child proposed to be adopted resides or kept in a children's home shall be the competent court to pass orders under this Chapter.

(2) The proposed adoptive father in India or the recognized Voluntary Agency in the case of inter-country adoption may make an application to the competent court for an adoption order, or as the case may be, a guardianship order, along with the necessary documents, including the no-objection certificate granted by the Kerala Adoption Agency, the approval of the prospective adoptive father in India or from abroad, the home study report and such other documents as may be prescribed:

Provided that if the no-objection certificate is not received within the specified period, the concerned agency shall furnish an affidavit to the effect that necessary application had been sent to the Kerala Adoption Agency in accordance with the procedure specified in this Chapter, and in such a case the Court shall proceed as if such certificate had been received.

(3) The District Court may, after such enquiry as it may deem fit, and after examining the persons concerned, if it is satisfied that the adoption will be in the best interest of the child and considering all the circumstances of the case, including the status of the adoptive father and other matters, pass an adoption order or a guardianship order, as the case may be, and issue a certificate in the prescribed form:

Provided that the Court may, before passing any such order, under this subsection—

- (a) be satisfied that every person or any institution whose consent is required under this Code, has consented to and understood the nature and effect of adoption or guardianship order;
- (b) satisfy itself when the child is in the care and custody of a Child Welfare Agency, that the child is free for adoption, and for that purpose, the Court shall ensure that the Child Welfare Agency had taken proper consent of child's natural father or mother, or both, or of the guardian, as the case may be and they had understood that the effect of such consent shall be permanently to deprive them of their rights as parents;
- (c) be satisfied that the child is properly committed to the Child Welfare Agency as per the provisions of this Code;
- (d) satisfy itself that the order, if made will be in the best interest of the child;
- (e) shall satisfy itself that the applicant has been properly evaluated by the institution or by way of interview and home visit through a process called "Home Study" or "Family Assessment";
- (f) may recommend a suitable period for foster care, depending upon the circumstances of the case;
- (g) may impose such terms and conditions like submission of follow up reports or otherwise as it may think fit and in particular may require the adopter by bond or otherwise to make such provision, if any for the child, as in the opinion of the Court is just and proper for the proper care and financial security of the child.

(4) In determining whether an order, if made will be in the best interest of the child, the District Court shall have regard, among other things, to the health and the financial condition of the applicant as evidenced, in such cases as may be prescribed, by the certificate of a registered medical practitioner or from a bank of financial institution, as the case may be.

(5) The District Court may where it considers it necessary, either on its own or on the application of any of the parties, by order, provide for the residence, care maintenance or any other provision of the child from the date of application till the child is taken with the adoptive family by the adoptive father or other person depending on the circumstances of each case.

(6) All the proceedings under this section before a District Court shall be in camera and every application shall, be disposed off within three months from the date of application.

71. Appeals.

(1) Any person aggrieved by an order of the District Court allowing or dismissing an application for an adoption or guardianship order may, within thirty days from the date of such order, prefer an appeal to the High Court.

(2) The High Court shall, subject to the provisions of this Code, have the same powers, jurisdiction and authority and follow the same procedure with respect to an appeal under this section as if the appeal were an appeal from an original decree passed by the District Court.

72. Effect of adoption order.

(1) An adoption order or guardianship order shall take effect on and from such date as may be specified therein by it or where an appeal has been preferred against such order, on such date as may be specified in the appellate order.

(2) When adoption order is made the child shall be deemed to be the child of the adopter or adopters and the adopter or adopters shall be deemed to be the parent or parents of the child as if the child had been born to that adopter or adopters in lawful wedlock for all purposes; provided that,

(a) it shall not be competent for the adopted child to marry any person whom the child could not have married if he or she had continued in the family of his or her birth;
(b) any property which vested in the adopted child immediately before the date of adoption shall be subject to the obligations, if any, attaching to the ownership of such property including the obligation, if any, to maintain the relatives in the family of his or her birth;
(c) adopted children shall not be counted for any family planning measure.

(4) Notwithstanding anything contained in any other law, where the particulars relating to the birth of a child in respect of which an adoption order is made have been registered under any law relating to registration of births, the officer or authority for the time being empowered to give certified extracts of such particulars shall, upon an application made by or on behalf of the child and upon being satisfied that the adoption order in respect of the child has taken effect, issue or cause to be issued a certificate of such particulars setting out the names of the adoptive parents in place of the names of the natural parents of the child.

73. Follow up action on adoptions.

(1) The following actions shall be taken by the agency which processed an adoption under this Chapter, namely:—

- (a) where any pre-placement foster care is needed, the foster care shall be regularly monitored and evaluated and a professionally trained social worker shall visit the family;
- (b) six monthly reports in the prescribed forms by the Voluntary Agency concerned to Kerala Adoption Agency regarding the status of the child with regard to protection and care by the foreign family and his adoption in that country;
- (c) the Voluntary Agency which processed the inter-country adoption shall see that the legal adoption in the foreign country is effected at the earliest for safeguarding the best interest of the child;
- (d) the Voluntary Agency referred in clause (c) shall keep in touch with the foreign family for a period of three years even after the legal adoption and send yearly reports about the condition of the child to the Kerala Adoption Agency;
- (e) the adoptive parents shall be provided with counseling by the said agency;
- (f) where the agency referred to in clause (c) is not satisfied with the treatment meted out to the child by the foreign adoptive parents, it shall after counseling the Kerala Adoption Agency take steps to cancel the adoption order and place them with another family either in India or abroad.

74. Special provision for protection of adopted children.

(1) The District Court –

- (i) upon receiving from any person an application in the prescribed form in this behalf, or
- (ii) upon a report by any officer authorized in this behalf by the State Government, or
- (iii) upon its own knowledge or information, may, by notice, require the parent of a child adopted under this Code to produce such child if the Court has reason to believe that the Child—
 - (a) is habitually neglected or subject to cruelty, or
 - (b) lives or is made to live by begging; or lives or is made to live in circumstances calculated to cause, encourage or favour the seduction or prostitution of the child, or is sexually abused; or
 - (c) frequents or is allowed to frequent the company of any prostitute, or of any smuggler, thief or other criminal; or
 - (d) has been or is being or is likely to be taken out of India for any immoral purpose or for any purpose detrimental to his welfare and interests; or
 - (e) has taken to criminal activities, indulges in drugs or alcoholic abuse; or
 - (f) in the event of the death of both the adoptive father and mother or of a single parent who is the sole adopter; and may if it is satisfied that the revocation of the adoption is in the best interest of the child revoke such adoption.

Explanation.—For the purpose of clause (a), cruelty in relation to an adopted child includes any undue discrimination between him and his brothers or sisters in the adoptive family in the matter of care, maintenance, training, education, provision on money or

property or in any matter connected with the physical, emotional or moral well-being of the child.

(2) Where the revocation of an adoption is made under sub-section (1), the Court shall either recommit the child to the concerned placement agency or declare the child to be a ward of the Court.

(3) In the event of the death of both the adoptive mother and father, or of a single parent who is the sole adopter, the Court shall consider the Will, if any, made or wishes expressed by the parent or parents and take such measures, including the appointment of a guardian to the child, to ensure the lawful inheritance of the child.

75. Payment of costs.

(1) No payment shall be made to any Agency under this Code for the services rendered by it towards adoption, but reimbursement of the expenses specified in subsections

(2) and (3) is allowed subject to the maximum fixed by the Court. (2) The following expenses incurred by the concerned Placement Agency for in-country adoption shall be reimbursed, namely:—

(a) maintenance cost fixed by the Court from the date of approval of the child for adoption till the date of departure of the child from the institution;
(b) out of pocket expenses, administrative cost and service charges for preparation of child study reports, medical reports, legal expenses and conveyance charge as may be fixed by the court;

(3) The following expenses may be recovered by the recognized Voluntary Agency from the foreign adoptive parents, namely:—

(a) cost of surgical and medical treatment of the child against production of bills and vouchers duly certified;
(b) all the expenses incurred by the Agency in processing the adoption;
(c) cost of travel of the child from India to the receiving country and the cost of escort, if the foreign agency is not able to provide the escort;
(d) the cost of repatriating the child to India, if there is any failure of adoption and if no alternative arrangements are made by the recognized foreign Agency with the concurrence of the Indian Agency.

76. Consent.

An adoption order in respect of a child shall not be made:—

- (a) in any case, except with the consent of the person who is his parent or guardian; or
- (b) where the child is in the care of an institution, except with the consent of the institution:

Provided that the District Court may dispense with the guardian's consent, if it is satisfied that the guardian—

- (i) has abandoned, neglected or persistently ill-treated the child or has persistently failed, without reasonable cause, to discharge the obligations of a guardian of the child; or
- (ii) cannot be found.

- (c) Any consent to an adoption of a child given under this section shall not be withdrawn except with the permission of the District Court.

77. Penalties.

Any person who contravenes any of the provisions of this Chapter or any of the rules made there under relating to the processing of application for adoption or contravene any of the requirements specified in this Chapter the person committing such contravention shall be punishable with imprisonment for a term which may extend to one year, or with fine, or with both and where such contravention or failure is by the willful default of any Agency, the Court may, in addition to the awarding of punishment to the officers of the Agency responsible for the contravention, order the cancellation of the recognition given to the Agency under this Chapter.

78. Power of State Government to make rules.

(1) The State Government may by notification make rules to carry out the provisions of this Chapter.

(2) The rules made under sub-section (1) may provide for—

- (a) the recognition of Placement Agencies for processing in-country adoption, and forwarding of applications for inter-country adoption to the Voluntary Agency, period of its validity, the reasons on the happening of which such recognitions shall be cancelled, the renewal of such recognition and other matters;
- (b) such other matters which are required to be, or may be, prescribed.

CHAPTER X

JUVENILE IN CONFLICT WITH LAW

79. Juvenile Justice Board.

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the State Government shall within one year of the commencement of this Code, by notification in the Official Gazette, constitute for a district specified in the notification, a Juvenile Justice Board for exercising the powers and discharging the duties conferred or imposed on such Board in relation to juveniles in conflict with law under this Chapter.

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

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

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

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

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

80. Procedure, etc. in relation to Board.

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

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

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

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

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

81. Powers of Juvenile Justice Board.

(1) Where a Board has been constituted for any district, such Board shall, notwithstanding anything contained in any other law for the time being in force but save as otherwise expressly provided in this Code, have power to deal exclusively with all proceedings under this Chapter, relating to juvenile in conflict with law.

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

82. Procedure to be followed by a Magistrate not empowered under this Chapter.

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

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

83. Procedure to be followed when claim of juvenility is raised before any court.

(1) Whenever a claim of juvenility is raised before any court or a court is of the opinion that an accused person was a juvenile on the date of commission of the offence; the court shall make an inquiry, take such evidence as may be necessary (but not an affidavit) so as to determine the age of such person, and shall record a finding whether the person is a juvenile or a child or not, stating his age as nearly as may be:

Provided that a claim of juvenility may be raised before any court and it shall be recognised at any stage, even after final disposal of the case, and such claim shall be determined in terms of the provisions contained in this Chapter and the rules made there

under, even if the juvenile has ceased to be so on or before the date of commencement of this Chapter.

(2) If the court finds a person to be a juvenile on the date of commission of the offence under sub-section (1), it shall forward the juvenile to the Board for passing appropriate order, and the sentence if any, passed by a court shall be deemed to have no effect.

84. Apprehension of juvenile in conflict with law.

(1) As soon as a juvenile in conflict with law is apprehended by police, he shall be placed under the charge of the special juvenile police unit or the designated police officer, who shall produce the juvenile before the Board without any loss of time but within a period of twenty-four hours of his apprehension excluding the time necessary for the journey, from the place where the juvenile was apprehended, to the Board:

Provided that in no case, a juvenile in conflict with law shall be placed in a police lockup or lodged in a jail.

(2) The State Government may make rules consistent with this Chapter to provide,—

(i) for persons through whom (including registered voluntary organisations) any juvenile in conflict with law may be produced before the Board;
(ii) the manner in which such juvenile may be sent to an observation home.

85. Control of custodian over juvenile.

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

86. Bail of juvenile.

(1) When any person accused of a bailable or non-bailable offence, and apparently a juvenile, is arrested or detained or appears or is brought before a Board, such person shall, notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) or in any other law for the time being in force, be released on bail with or without surety or placed under the supervision of a Probation Officer or under the care of any fit institution or fit person but he shall not be so released if there appear reasonable grounds for believing that the release is likely to bring him into association with any known criminal or expose him to moral, physical or psychological danger or that his release would defeat the ends of justice.

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

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

87. Information to parent, guardian or probation officer.

Where a juvenile is arrested, the officer in charge of the police station or the special juvenile police unit to which the juvenile is brought shall, as soon as may be after the arrest, inform—

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

88. Inquiry by Board regarding juvenile.

(1) Where a juvenile having been charged with the offence is produced before a Board, the Board shall hold the inquiry in accordance with the provisions of this Chapter and may make such order in relation to the juvenile as it deems fit: Provided that an inquiry under this section shall be completed within a period of four months from the date of its commencement, unless the period is extended by the Board having regard to the circumstances of the case and in special cases after recording the reasons in writing for such extension.

(2) The Chief Judicial Magistrate or the Chief Metropolitan Magistrate shall review the pendency of cases of the Board at every six months, and shall direct the Board to increase the frequency of its sittings or may cause the constitution of additional Boards.

89. Order that may be passed regarding juvenile.

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

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

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

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

(3) Where an order under clause (d), clause (e) or clause (f) of subsection (1) is made, the Board may, if it is of opinion that in the interests of the juvenile and of the public, it is expedient so to do, in addition make an order that the juvenile in conflict with law shall remain under the supervision of a probation officer named in the order during such period, not exceeding three years as may be specified therein, and may in such supervision order impose such conditions as it deems necessary for the due supervision of the juvenile in conflict with law :

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

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

guardian or other fit person or fit institution, as the case may be, the sureties, if any, and the probation officer.

90. Order that may not be passed against juvenile.

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

Provided that where a juvenile who has attained the age of sixteen years has committed an offence and the Board is satisfied that the offence committed is 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 a special home to send him to such special home and that none of the other measures provided under this Act is suitable or sufficient, the Board may order the juvenile in conflict with law to be kept in such place of safety and in such manner as it thinks fit and shall report the case for the order of the State Government.

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

Provided that the period of detention so ordered shall not exceed in any case the maximum period of imprisonment to which the Juvenile Court has been sentenced for the offence committed.

91. Proceeding under Chapter VIII of the Code of Criminal Procedure not applicable against juvenile.

Notwithstanding anything to the contrary contained in the Code of Criminal Procedure, 1973 (2 of 1974) no proceeding shall be instituted and no order shall be passed against the juvenile under Chapter VIII of the said Code.

92. No joint proceeding of juvenile and person not a juvenile.

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

(2) If a juvenile is accused of an offence for which under Section 223 of the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force, such

juvenile and any person who is not a juvenile would, but for the prohibition contained in sub-section (1), have been charged and tried together, the Board taking cognizance of that offence shall direct separate trials of the juvenile and the other person.

93. Removal of disqualification attaching to conviction.

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

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

94. Special provision in respect of pending cases.

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

Provided that the Board may, for any adequate and special reason to be mentioned in the order, review the case and pass appropriate order in the interest of such juvenile.

Explanation.—In all pending cases including trial, revision, appeal or any other criminal proceedings in respect of a juvenile in conflict with law, in any court, the determination of juvenility of such a juvenile shall be in terms of clause (1) of Section 88, even if the juvenile ceases to be so on or before the date of commencement of this Code and the provisions of this Chapter shall apply as if the said provisions had been in force, for all purposes and at all material times when the alleged offence was committed.

95. Prohibition of publication of name, etc., of juvenile involved in any proceeding under the Code.

(1) No report in any newspaper, magazine, news-sheet or visual media of any inquiry regarding a juvenile in conflict with law or a child in need of care and protection under this Code shall disclose the name, address or school or any other particulars calculated to lead to the identification of the juvenile or child nor shall any picture of any such juvenile or child be published:

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

(2) Any person who contravenes the provisions of sub-section (1), shall be liable to a penalty which may extend to twenty-five thousand rupees.

96. Provision in respect of escaped juvenile.

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

CHAPTER XI OFFENCES AND PENALTIES

97. Penalty for child battering at school.

Whoever gives the punishment of child battering at School shall be punishable with fine which may extend to one hundred rupees.

98. Penalty for servant of municipality etc. for not doing certain things.

Whoever, being an officer of a Municipality or a Panchayat duly authorized in this behalf, or a member of a registered non-governmental organization, fails without reason or cause, to persuade persons living within his jurisdiction to send children of school going age to a Higher Secondary school shall be subjected to disciplinary action by the concerned authority and if the offence is directly attributable to a member of the said organization, the registration of the organization shall also be liable to be cancelled.

99. Penalty for failure to keep record of attendance at Schools or about dropouts.

Whoever fails to keep a record of the attendance at school or dropouts from the school especially girl children shall be punishable with fine which may extend to one thousand rupees.

100. Punishment for female foeticide.

Whoever commits female foeticide shall be punishable with imprisonment for a term which may extend to ten years or with fine which may extend to ten thousand rupees or with both.

101. Penalty for not equipping primary health centres with medicines or medical personnel.

Where any primary health centre is not equipped with necessary medicines or the medical personnel to attend patients, the officers responsible for such omission shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine.

102. Punishment for cruelty to children.

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

103. Employment of children for begging.

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

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

104. Employment of Children below the age of fourteen.

Whoever employs any child below the age of fourteen of any work shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine.

105. Penalty for giving intoxicating liquor or narcotic drug or psychotropic substance etc., to a child.

Whoever gives, or causes to be given, to any child any intoxicating liquor or any substance for smoking in a public place or any narcotic drug or psychotropic substance

except upon the order of a duly qualified medical practitioner in case of sickness shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine.

106. Exploitation of juvenile or child employees.

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

107. Alternative punishments.

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

108. General provision for disobedience of orders.

Whoever contravenes any provision of this Code or of any rule, regulation or scheme or of any order made there under for the contravention of which no penalty is provided hereunder shall be punishable with imprisonment for a term which may extend to one year or with fine which may extend to two thousand rupees or with both.

109. Enhanced penalty after previous conviction.

If any person who has been convicted of an offence punishable under any of the foregoing provisions is again convicted for an offence committed within two years of the previous conviction and involving a contravention of the same provision, he shall be liable for each subsequent conviction with double the punishment to which he would have been liable for the first conviction of such provision.

110. Power to compound offences under the Code

(1) Any officer of the State Commission or of a Municipality or Panchayat duly authorized by it by general or special order in this behalf, may either before or after the institution of any proceedings, compound any offence made punishable by or under this Code.

(2) Where an offence has been compounded, the offender, if in custody, shall be discharged and no further proceedings shall be taken against him in respect of the offence so compounded.

111. Cognizance of offences.

The offences punishable under Sections 93, 94 and 96 shall be cognizable.

CHAPTER XII THE CHILDREN'S COURT

112. Constitution of Children's Court.

For the purpose of providing speedy trial of offences against children or of violation of child rights, the State Government may, with the concurrence of the Chief Justice of the High Court, by notification, specify at least a court for each district, a Court of Session to be a Children's Court to try the said offences.

113. Appointment of Public Prosecutors etc.

For every Children's Court, the State Government shall, by notification, specify a Public Prosecutor or appoint an advocate who has been in practice as an advocate for not less than seven years, as a Special Public Prosecutor for the purpose of conducting cases in that Court.

CHAPTER XIII MISCELLANEOUS

114. Code in substitution of the provisions in other Acts.

(1) The provisions of this Code shall replace all the existing provisions of any law relating to juvenile or child for the time being in force in the State of Kerala.

(2) In case any of the provision of any existing law or rules conflict with the provisions of this Code, the provisions of this Code shall have predominance over the existing laws as far as the State of Kerala is concerned.

115. Protection of action taken in good faith.

No suit or other legal proceedings shall lie against the State Commission, or State Government, Municipality or Panchayat or any probation officer or other officers appointed under this Code or a member or a representative of a registered nongovernmental organization in respect of anything which is in good faith done or intended to be done in pursuance of this Code or of any rules or regulations or orders or schemes made there under.

116. Power to delegate.

The State Government or the State Commission may, by general or special order direct that any power exercisable by it under this Code (other than the power to make rules or regulations) shall, in such circumstances and under such conditions, if any, as may be specified in the order, be exercisable also by an officer subordinate to that Government or Commission.

117. Officers deemed to be public servants.

Every member of the State Commission, officer or other persons authorized by the State Commission, any officer of the State Government, Municipality or Panchayats or officer of such Government, Municipality or Panchayat, authorized to perform any functions under this Code shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

118. General power of the State Government to make rules.

(1) The State Government shall, by notification, make rules to carry out the provisions of this Code.

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

- (a) the procedure to be followed by the Committee appointed by the State Government under sub-section (1) of section 4 for the preparation of a panel for the posts of Chairperson and members of the commission under subsection (2) of section 3;
- (b) the salaries and allowances and the other terms and conditions of service of the Member under section 8;
- (c) the condition subject to which other administrative, technical and scientific staff may be appointed by the State Commission under sub-section (2) of section 11;
- (d) the conditions subject to which the State Commission may borrow on the security of the Fund or any other asset under section 22;
- (e) the form in which the annual statement of accounts is to be prepared by the State Commission under sub-section (1) of section 23;
- (f) the form in which, and the period within which manufacturers of infant food, milk substitutes and teats are required to furnish statistical and other information under section 24;
- (g) the form in which and the manner in which returns; statements and other particular with regard to proposed and existing programmes for the promotion and development of the interests of children under sub-section (1) of section 25;

- (h) the form in which and the date before which, the State Commission shall give a true and full account of its activities, policies and programmes during the previous financial year;
- (i) such other matters which are required to be, or may be, prescribed.

119. Power of State Commission to make regulations.

The State Commission, may, by notification, and subject to the rules made by the State Government and with the approval of that Government, make regulations to provide for all or any of the following matters, namely,

- (a) the procedure to be followed for the conduct of meeting of the State Commission under sub-section (2) of section 10;
- (b) the salaries, allowances and other terms and conditions of service of the officers and staff of the State Commission under sub-section (3) of section 11;
- (c) the fees and the allowances payable to persons co-opted as members of the committee appointed by the State Commission under sub-section (1) of section 12 for attending the meetings of the Committee or any other work connected with the committee under sub-section (3) of the said section;
- (d) such other matters which the State Commission may require to be specified by regulations.

120. Rules and regulations to be laid before the State Legislatures.

Every rule or regulation made by the State Government or the State Commission shall be laid as soon as may be after it is made, before the State Legislature.

121. Repeals and savings.

If there is in existence immediately before the date on which this Code comes into force in the State, any law corresponding to this Code that law shall stand repealed on that date:

Provided that the repeal shall not affect —

- (i) the previous operation of any law so repealed or anything duly done or suffered there under; or
- (ii) any right, privilege, obligation or liability acquired, accrued or incurred under any law so repealed; or
- (iii) any penalty, forfeiture or punishment incurred in respect of any offence committed against any law so repealed; or

Statement of Objects and Reasons

As the title of the Bill itself indicates, the Bill has been prepared with the avowed object of consolidating and codifying all the existing provisions in India relating to protection of the rights of the child of any category juvenile, differently abled and children either abandoned or neglected, applicable to the State of Kerala and to provide new rights and obligations to various functionaries constituted or working under the existing enactments in force for the over all development of all kinds of children in the State of Kerala. The reason for attempting a complete code is that if every relevant provision dealing with a particular subject is made available in one and the same statute it can be implemented more effectively and with ease. Another important object and reason for recommending the Bill is the need felt by the commission for incorporating stringent provisions to prevent the sex abuses and all other kinds of serious abuses and atrocities perpetrated on children of both sexes especially girl child. In the changed social set up there is need for having strict provisions to prevent such immoral and obnoxious practices and to deal with the offenders in an exemplary manner. With this object in mind special provisions have been incorporated in the Bill.
