

# DAKSHA - BHU



# Preshti



Preshti is an initiative by the Alexis Society, an international non-profit organization. The initiative aims at improving the conditions of prisoners in India and bringing about strong reforms in prison administration. It is an undeniable fact that the poor, illiterate and weaker sections of our society suffer day in and day out in their struggle for survival and look to those who have promised them equality-social, political and economic. A very large number of under-trial prisoners suffer prolonged incarceration even in petty criminal matters merely for the reason that they are not in a position, even in bailable offenses, to furnish bail bonds and get released on bail.

In India, eighty per cent of the inmates in the jails are under trials. The major problems faced by these inmates are not only of not getting a trial but that of not being granted bail, inhuman treatment in jails, facing poor conditions, lack of proper medical treatment, etc. There are various statutes such as the Prisoners Act, 1894; the Model Manual Prison India, etc. and various precedents which have been laid down in landmark cases which provide for the rights which these prisoners are entitled to. However, the problem today lies not in the availability of these rights but in the implementation of these rights and precedents.

Preshti thus wishes to change the situation and bring justice to the deserved. The initiative, which is currently based in Pune, has strived to bring about aid and awareness through various prison visits and legal aid camps and prison awareness programs. While the initiative is currently based in Pune, we wish to spread our wings in different parts of the country. The project includes a number of volunteers, legal experts, partner organizations and educational institutions who carry out numerous intensive research work and field work in order to fulfil the above mentioned objectives.

# A Note from the President

*“Our prime purpose in this life is to help others.”*

— Dalai Lama.

Nitika and her team realised this saying at a very young age. These days, there are very few projects which are selfless and Preshti is one of them. I feel honoured to write the foreword for the first edition of ‘Daksha-Bhu,’ which means an intelligent creation in Sanskrit. The theme of the inaugural edition of this newsletter is Human Rights in the Global World which is very apt in the current scenario. It encompasses the thought of Vasudhaiv Kutumbakam - the world is but one family.

When I started Alexis Society in 2009, lot of people asked me the meaning and relevance of this name. Alexis has Greek origin and means helper, protector and defender. Over last five years, we did lot of projects on Youth Empowerment, Environment, Education and Healthcare but I felt something was missing. We were not really living up to our name. However, when Nitika proposed to start Preshti last year, I found the missing piece to the puzzle. This project is both living upto our name and mission to create more leaders.

In the end, I would congratulate the editorial board and contributors for the hard work they have put in to complete this newsletter.

**- Aditya Singh**  
**President and CEO**  
**Alexis Society**

## A Note from the Director

# India and Human Rights Violations: A Need to Introspect?

Following India's independence in 1947, the country's global voice against decolonization and for justice, universal dignity and freedom was loud and clear. Over time, however, India has withdrawn more and more into its shell, and today its voice is seldom heard on issues of human rights-nationally or beyond borders. This hesitation stems largely from India's resistance to Pakistan, which has consistently tried to get third countries involved in resolving the long running dispute over Kashmir and has raised human rights violations in Kashmir at the United Nations (U.N.). As a result, India chooses to remain ignorant of the outside interference in her own affairs, preferring the principle of 'non-interference' in human rights issues.

It is quite disappointing to see India's stance on global human rights, considering the fact that India stood by the resolution passed by U.N. in supporting decolonization and combating racial discrimination. Quite ironically, India was instrumental in setting up the first U.N. investigation into crimes committed by the apartheid government of South Africa. While countries chose to follow a 'non- interference policy' in domestic affairs, India extended unconditional support to South Africa.

While India seems ignorant on the international front, she remains to be helpless on the national front. India's human rights situation took serious turns for the worse with respect to civil society protections, sexual violence against women, and the longstanding failure to hold public officials accountable for offences. Furthermore, the government continued to use obsolete sedition laws and other legislations to silence critics on a range of issues, including the Maoist insurgency to protest against the nuclear power plant in Tamil Nadu. The government did not revoke the Armed Forces Special Powers Act, which provides immunity to soldiers who commit serious rights violations. The 2010 legislation to prevent torture in custody and hold police officials accountable for torture was once again not enacted.

While India may have supported a few United Nations Resolutions, Including UN Security Council resolutions concerning the escalating violence in Syria, there haven't been much efforts put in by India to combat human rights violation, nationally and internationally. Thus, the Indian government's obligations to support and respect universal human rights should not stop at India's borders. Rather, she must improve the situation at home, while being sensitive towards violations beyond her borders.

**- Nitika Nagar**  
**Project Director, Preshti**  
**Alexis Society**

# To Legalize or Not To Legalize Prostitution in India

I recently embarked upon an article that opined for legalization of prostitution. Authors have agreed and disagreed on the said proposition. The idea behind legalizing prostitution is to regulate the sex industry and improve the working and safety conditions for sex workers. The design is built on freedom of choice of occupation, i.e. by legalizing, only those women would be recruited who choose prostitution as their occupation. The sentiment and idealist theory behind the plan is much appreciated, however, on a practical front; the basic question is how many women, willfully, would want to lead a life of a prostitute. There are two questions in the context, is India socially grown to accept a trend of prostitution, while second is whether the occupation of prostitution for most women, is a path chosen.

Legalizing prostitution would mean licensing of brothels, maintaining a record of the number of women who are indulging in the occupation, also conducting health check-ups alternatively and ensuring safety standards. Understanding the repercussion of each point and measures stated above, it is observed that firstly, there are many disadvantages to legalizing prostitution. It has been empirically proven that legalizing sex industry has resulted in increase of human trafficking. Secondly, once a woman is registered as a prostitute, one has isolated and branded them as a 'prostitute' and it would be difficult for her to get alternative employment. Also, prostitution has been a social taboo and legalizing it would only showcase and bring those women and brand them as prostitutes. Thirdly, there are guidelines given for the prostitutes to get HIV check up and ensure that they are free from any sexually transmitted disease. However, such approach is client-centric, as the client is not asked to show whether he is free of any infection or not.

I firmly believe that legalizing prostitution is not a prudent method for developing India. There have been observations that number of rapes would decrease due to prostitution, such idea is to be admonished at the outset. Given the case of rapes in India, the hedonistic attack and using women as objects show that these men do not only demand sexual gratification, they are socially, morally and in many ways corrupt and diseased. Assuming but not conceding, that prostitution is legalized; those very men who raped the innocent girls may have tortured the prostitutes too. Then why endanger the lives of those women.

The concept of 'sex' in India is not free. People frown upon the very term, the concept of dating is still a far off reality for many Indians. In all likelihood, it may be wise to say that it may not be the case in cities but there are villages, communities who oppress these ideas. In my opinion, till the time Indians are not open to the idea of sex and still think homosexuality is a crime, till the time men and women, of legal age, are not given the freedom to choose partners and till there is suppression to sexual freedom. Legalizing prostitution would only worsen the current situation.

Also, I firmly stand by the fact that there should be abolition, regulation and partial legalization of the trade. In essence, partial legalization would take into light the current scenario. There are over lakhs of prostitutes, complete prohibition may not be easy or may find problems. Therefore, the trend should be to legalize those already working as prostitutes, side by side, the government should ensure creating employments for these women to grant them a chance to pursue an alternate path. Many women, resort to such occupation because of lack of financial support, thereby, the aim is to give them an alternative employment replacing the profession of prostitution. As and when the government has been successful in its attempt to generate employment for these women, they would be giving up the occupation once and for all. Hence, the aim is to gradually prohibit prostitution.

Each State in India can be given the power to combat, in its own way, human trafficking and be allowed to regulate prostitution. It shall also be kept in mind, that any further entry into the sex industry would be deemed illegal and any attempt, abetment, assistance in running a brothel or indulging in like activities anywhere would result in severe punishment. Moreover, compensation should be granted to the victim who is dragged into the sex industry. Hence, the strategy is to regulate and abolish prostitution at the same time. As highlighted above, that those women who might be branded as prostitutes by way of registration, if prostitution is legalized, getting an employment is troublesome. Therefore, it shall become the duty of Government to give

The entire view, in all likelihood, is with a long term vision and based upon the current sentiment of society. It is to be understood that in many ways legalizing prostitution is not a wise choice in India. Prostitution, in most cases, is borne out of social, emotional or financial coercion.

- Shikha Rastogi  
National Law University, Odisha



It can be explained as an institutionalised human rights violation legitimised by the Constitution of India under Article 21(Right to Life) through the use of the words, "procedure established by law" which is paradoxical as the same article challenges the constitutional validity of the said form of punishment. However, such legitimacy is based on a slippery slope argument as it assumes the said law to be good law.

Contrary to the principles of "reformatory justice", death penalty has often been debated upon as "a permanent solution" to curb human deviance. India, a signatory to the Universal Declaration of Human Rights which propounds prevention of individuals from torture, cruel punishment and protects their right to life under its various articles however, still deploys this savage tradition to tackle such heinous crimes shackling the sensibilities of humanity. Tracing its origin as a social control mechanism, death penalty was challenged in the court of law in *Jagmohan Singh v State of UP*, wherein the Supreme Court upheld its constitutional validity with respect to Article 21. Following this, *Rajendra Prasad v State of UP* compelled the court to take a departure from the established ruling and lay emphasis on the human rights jurisprudence associated with the ideals of Constitution in stark contrast with the Indian penal provisions. However, employing the "rarest of rare" theory in *Bachan Singh v. State of Punjab*, the Supreme Court tried to rationalise the application of death penalty in certain cases and further attempted to formulate specific criteria to determine its scope in *Macchi Singh v. State of Punjab*.

The ambiguity surrounding the inherent meaning of, "rarest of rare" has been utilised to justify judicial judgments circumscribing this issue and thus, the present position on death penalty in India legitimises "regulated" violation of human rights in the name of criminal justice. Henceforth, the paper will substantiate on the various arguments prescribing abolition of death penalty in India.

The human rights approach rejects the utilitarian justification that such punishment acts as a deterrent force as it needs to be analysed that those who contemplate committing capital crimes often view such instances as an escape route to their life long misery following the crime. The futility of death penalty has been concretised by claims made by UN officials suggesting that there is no statistical evidence to support the argument that death penalty has a deterrent effect subsequently leading to a fall in crime rate.

This argument further essentializes the essence of the statement- "Elimination of criminals does not amount to elimination of crime". This acquires greater importance with respect to individuals like Afzal Guru, Ajmal Kasab as killing in such cases often stirs an outburst of emotions causing a frenzy leading to birth of greater number of anti-social elements pervading and terrorising the society idolising such "martyrs".

**"The death penalty is the ultimate denial of human rights. It is the premeditated and cold-blooded killing of a human being by the state in the name of justice."**

While carrying out such a discourse, the irreversibility of such an action is often undermined especially in the light of erroneous judgments wherein judiciary plays God. Abolition of death penalty as a school of thought has further gained momentum with criminologists like Bentham and JS Mill who maintained that punishment must be just, adequate, fair, reasonable and proportionate to the crime to achieve the goal. Adopting a human rights perspective, it can be argued that there is no rationale behind justify killing of an individual irrespective of the severity of the crime committed as "restorative justice" (criminal centric humanitarian

redemption approach) is a feature of the progressive society that needs to be reflected in the Indian socio-legal setup.

The discriminatory and lax approach of the judiciary further perpetrates violation of the human rights as elucidated upon by Justice Bhagwati in *Bachan Singh's* case wherein he pointed out the arbitrary victimisation of the poor and deprived sections of the society incapable of hiring competent lawyers and falling into the death penalty trap combined with the mental harassment caused due to indefinite delay in execution.

Ultimately, death penalty often termed as "state administered suicide" and "legalised crime" makes one question the highly disproportionate and inequitable discretionary power derived with special regard to encroaching upon the constitutionally guaranteed human rights.

Therefore, death penalty emerges as a movement in a paradoxical world wherein one section of the society demands its abolition and the other agitated by the spiralling barbarous criminality espouses for its application. In the modern society, the retention of "rarest of rare" is argued for incorrigibles and hardened criminals serving the purpose of criminological expediency. However, in light of the arguments presented, the author holds the belief that death penalty possesses a vengeful flawed notion of justice as, "An eye for an eye makes the whole world blind".

- Shantanu Dey  
NALSAR University of Law



# - An Eternal Taboo ?

"If you prick us, do we not bleed? If you tickle us, do we not laugh?

If you poison us, do we not die? If you wrong us, shall we not revenge?"

These are the famous lines of the greatest playwright of all times-William Shakespeare highlighting anti-semitism in Elizabethan era in his play The Merchant of Venice. However, these lines can also be applied on the deplorable condition of the LGBT community.

LGBTQ is an acronym used for- Lesbian, Gay, Bisexual, Transgender, and Queer. LGBTQ right is not merely a civil right, it is a human right as well. The society only accepts man-woman comradeship. They find any other type of relationship bizarre and indecent. It is licentious and repugnant to them. The existence of the LGBTQ is not due to westernization. They are biologically different.

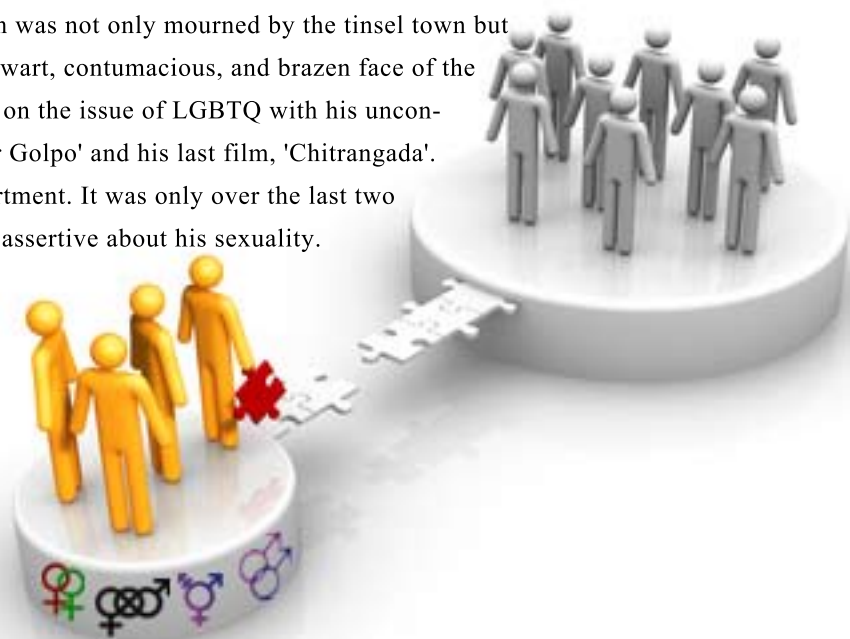
The LGBTQ movement did not start recently though gay pride parade is a western concept. In the year 1922 "Poems Written in Prison" by Gopabandhu Das was published which was addressed to poet's male friend and it alluded on the intense erotic relationship they share. Many other authors and poets have time and again tried to sensitize people through their stories and poems. The Stonewall riots of USA in the year 1969 marked the threshold of modern day LGBTQ right movement.

The demise of the Bengali film director Rituparno Ghosh was not only mourned by the tinsel town but also by the LGBTQ community. He was widely touted as a stalwart, contumacious, and brazen face of the LGBTQ community. A silent activist, he sensitized the society on the issue of LGBTQ with his unconventional movies such as- 'Memories In March', 'Arekti Premer Golpo' and his last film, 'Chitrangada'. Rituparno was discreet and surreptitious about his sexual department. It was only over the last two years of his life that he came out in the open and became more assertive about his sexuality.

In year 2009, the Delhi High Court in its epoch-making judgment in the Naz Foundation case decriminalized Section 377 of the Indian Penal Code which imposes incarceration for LGBT relations and bestiality. This section prescribes punishment for "carnal intercourse against the order of nature". LGBTQ are a part of our society. Who are we to decide that they are against the "order of nature?" Through this section are we trying to claim divine powers?

In this case, it was held that section 377 is violative of many fundamental rights which are formulated for the citizens in the Constitution of India. Section 377 violates Article 14 (right to equality before law), 15 (prohibition of discrimination on grounds of religion, race, caste, sex or place of birth) and Articles 21 (right to protection of life and personal liberty), of the Constitution.

It is sad that having a deviant sexual orientation becomes a major besmirchment. It becomes a blemish on a person's character. The effeminate mannerisms are looked down upon with unfathomable contempt and withering looks. They are touted as the warped and ornery, a scourge of the society. But what the people fail to understand is that they are not "anomalous". The problem does not lie in them but in the society's perception. Every society hinges on certain unspoken norms. Anyone who is deviant or defiant and not normative faces flak. Nobody can impose his thoughts and opinions. You cannot be sorry for being who you are. What is the need of the charade? What is the masquerade for? To please the society? A society which does not care a hoot? These rhetorical questions we all need to ask ourselves.





# - An Eternal Taboo ?

**T**he LGBTQ community faces discrimination from their families, employers, police and the society in general. Endless disparaging and insinuating remarks break their spirit. They become the hapless victims of the social stigma. They are bounded by unseen fetters at every stage of life. They are scorned and spurned by the society. All their lives, they fall prey to mordant and caustic comments. It is of immense importance to understand that members of the LGBTQ are not exanimate but are flesh and bones just like us fraught with feelings and emotions. They have the power to form healthy relationships. They do have the heart to love.

**R**ecently, Harish Iyer, an Indian LGBTQ activist was added in the World Pride Power List 2013 under 100 most influential LGBTQ people. Such world-wide recognition verily galvanizes people to come out of the closet and accept their identity unabashed like a free person instead of living akin to a fugitive. It also encourages people to take up cudgels and fight for the cause of LGBTQ rights. Just like Harish, India is in a dire and desperate need of trailblazers who can take ahead the LGBTQ rights boldly and create milestones in the legal world.

**I**t is not a lifestyle choice. It is a person's natural disposition. You do not ask a lion not to be wild or a snake not to regurgitate venom. The inherent, innate proclivity cannot be moulded according to the perception of the society.

**A** great deal of sensitivity and openness of mind is needed to understand the sexuality of the LGBTQ. Awareness has to be spread in the society. The decriminalization of Section 377 must be made uniform in the country and not just be circumscribed to Delhi. It will surely take time but all we can do is to remain hopeful and look forward to a future where an individual is known and appreciated for his art and skill than his sexual inclination. France legalized gay marriages in the month of May this year. Even Britain passed the historic bill after obtaining the royal assent of Queen Elizabeth II very recently on the 18th of July. Now it is India's turn to cast off outdated, antiquated ideologies and embrace the rights of the LGBTQ.

- Bhavini Srivastava  
Symbiosis Law School, Pune



# PRISON RIGHTS IN THE UNITED STATES OF AMERICA

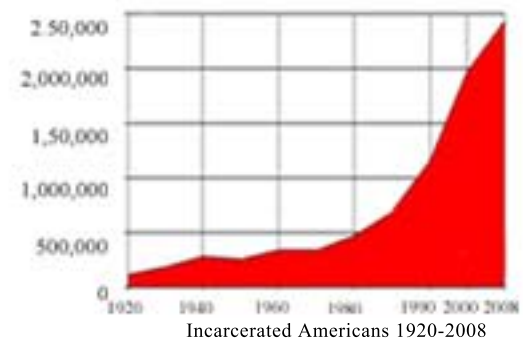
## THE NEED FOR REFORM

The United States of America (hereinafter US) has the highest rate of incarceration in the developed world. Nearing the end of the 1990s, over two million people were behind bars and another four and half million people were on probation or parole. The number of people imprisoned almost doubled in the 1990s, increasing from one in every 218 residents in 1990 to one in every 145 in 2001. The high rate of imprisonment in the US may translate to a significant proportion of time being spent in prison, especially for certain sub-groups of the population. If imprisonment influences life expectancy, time spent in prison becomes a matter of public health importance. Prison officials are obligated under the Eighth Amendment to provide prisoners with adequate medical care. This principle applies regardless of whether the medical care is provided by governmental employees or by private medical staff under contract with the government.

A lawsuit filed by the American Civil Liberties Union and the Southern Poverty Law Center accuses the for-profit East Mississippi Correctional Facility of major human rights violations. The prison, operated by Management and Training Corporation with health care provided by Health Assurance, LLC, the facility, located in Meridian, Mississippi, is supposed to provide intensive treatment to the state's prisoners with serious psychiatric disabilities, many of whom are locked down in long-term solitary confinement. EMCF is a cesspool. Prisoners are underfed and often held in rat-infested cells without working toilets or lights. The prison is dangerously understaffed, and prisoners routinely set fires to attract the attention of officers to respond to emergencies. Medical care is grossly substandard. Without sufficient staff to protect prisoners, rapes, beatings, and stabbings are rampant. And some of the most sadistic violence is inflicted on prisoners by security staff. And due to this solitary confinement, abuse, lack of basic medical and mental health care, and denial of basic human needs, the place is a recipe for disaster. It is pertinent to cite the case of William Easterwood, who was repeatedly raped in the confinement by the management. Mr. Easterwood's attempts to get help were in vain and the violence continued.

The lawsuit is filed in federal court on behalf of the inmates, many seriously mentally ill at the East Mississippi Correctional Facility. The conditions shock the conscience and, as complaint charges, have cost many prisoners their health, their limbs, their eyesight, and even their lives. According to a statement by the American Civil Liberties Union, medical conditions are so poor that one inmate went blind from glaucoma and another had a finger amputated when he failed to receive treatment for angrene. The class action lawsuit says the facility represents a long history of inhumane prison conditions in which the state has allowed private prison operators to mistreat and abuse people, in addition prison officials have been aware of the conditions at the facility for years but have not remedied the problems thus making conditions at EMCF are blatantly unconstitutional. This is not the first time

that the East Mississippi Correctional Facility has been in the spotlight for unfavorable news. Back in 2011, Dr. Terry Kupers, a psychiatrist who studied conditions at the facility, said that an overburdened prison psychologist, inefficient mental health programs and staffing problems, plagued the prison. The lawsuit has focused its efforts where the need is the greatest and there is no one else to take on the human rights violations.



Despite evidence demonstrating the adverse effect of long-term solitary confinement on prisoners' mental health, the prison continues to place prisoners in isolation for weeks, months or years at a time with little stimulation or access to showers and medical care. Driven by the anarchy of the market to keep costs as low as possible while maximizing income, for-profit prisons, which account for around US\$3 billion in annual revenue, seek to cram as many inmates into as shoddy conditions as is remarkably feasible. As the industry continues to expand, such social crimes as that witnessed at East Mississippi Correctional Facility will surely only increase in number and intensity and go unreported in majority. This unruly practice ought to be monitored and discontinued on an urgent basis as this is the crying need of the hour. A judgment condemning rampant torture in for-profit prison institutions in the instant lawsuit would surely go a long way in ensuring that human rights are respected even for inmates. Such rights, which are so inherent to every living creature, ought not to dishonor the basic element or the very essence of life. Nonetheless even convicts form a part of society, not withstanding that they need reformation.

-Shashank Sharma & Akshay Shandilya  
Hidayatullah National Law University

# Human Rights of Disadvantaged Groups

*(Special reference in accessing Justice)*

Human Rights have never shown any kind of discrimination towards any individual or group of people. They apply equally to any country or culture without any bias on grounds of sex, race, religion, caste or community and language. They only advocate the welfare and well-being of all persons with equal treatment everywhere at all times. However, the socio-economic, political and cultural diversities, prevailing in each state across the world, and politics of the nation states, deprive the free exercise of human rights to a certain number of people. Any type of deprivation, which has a direct bearing on the right to life and dignity of people, certainly deprives them of the enjoyment of their guaranteed human rights. Such deprived people are normally referred to as disadvantaged groups.

In the language of human rights, disadvantaged groups may be defined as, certain groups of population who often encounter discriminatory treatment, or need some kind of special attention for protection of the State to avoid exploitation or from a harmful environment.

Disadvantaged people refer to “Groups that experience a higher risk of poverty and social exclusion than the general population, ethnic minorities, migrants, disabled people, the homeless, those struggling with substance abuse, isolated elderly people and children all often face difficulties that can lead to further social exclusion, such as low levels of education and unemployment or underemployment.”

In order to assist them to augment the rights guaranteed to everyone, the United Nations had adopted a number of specific international conventions and declarations with an aim to fix responsibility on the nation-states to take care of their rights. Based on the mandate, the regional organizations, such as European Union, the Organisation of American States, African Union, and national governments have initiated a number of welfare schemes. The United Nations appointed a number of committees and commissions to deal with the issues specific to each vulnerable group. Based on the reports of the various committees, the UN has adopted a general framework to eradicate and to address the adverse situations faced by these groups. The suggestions include:

- ☒ equal pay for equal work;
- ☒ independent mechanism or commission to establish and to deal with each category of people;
- ☒ basic compulsory education;
- ☒ special concessions to these people;
- ☒ provisions to enable them to take part in the governance;
- ☒ independent forums to express their grievances;
- ☒ easy accessibility to medical and health care; and,
- ☒ efforts to raise the standard of living, subsidized food supply, eradicate malnutrition, abolish any customary practices that threaten their survival, over all social security etc.

People living with HIV/AIDS face a number of serious violations in the free exercise of their human rights. The Government of India even before the increase of the patients suffering from this chronic disease as a preventive care, in the year 1987 launched the National AIDS Control Programme. Accordingly the objectives of the programme are:

- Covered Surveillance
- Blood Screening
- Health Education

## Constitutional aspect –

The Constitution of India guaranteed to all the people of India the civil, political, economic, social, and cultural rights for their realization by all sections of the polity without any kind of discrimination. There are various disadvantaged groups in the society. In order to augment their rights, the Constitution of India has provided a number of concessions to protect them from exploitation by other groups. However, from a variety of

discriminatory practices that are prevalent against the above groups, it has become apparent that the existing environment for the free exercise of rights is in some way deficient. In order to bridge the gaps in the social system, the Legislature has adopted a number of progressive legislations extending concessions to augment the rights of these people. The Judiciary too in a number of cases has liberally interpreted the provisions of the Constitution and various legislations to uphold the rights of the disadvantaged groups. The expansion of Public Interest Litigation or Social Action Litigation by the Supreme Court of India is a welcome feature, compared to its counterparts across the world, to augment the rights of discriminated groups.

# Human Rights of Disadvantaged Groups

*(Special reference in accessing justice)*

After independence, the Constitution of India abolished all kinds of discriminatory practices against every person of the nation. The constitution on the lines of the Universal Declaration of Human Rights 1948 recognizing the rights of disadvantaged, has a number of provisions to protect in augmenting their rights. Some of them are:

- The constitution through Article 14 recognized equality and equal protection before law for both men and women.
- Prohibition of discrimination on ground of religion, race, sex, caste or place of birth. Article 15
- Equality of opportunity in matters of public appointments for all citizens is guaranteed and in particular gender based discrimination in respect of employment or office under the state has been prohibited. (Art. 16).
- Through Article 15 clause (3) it permits the state to make any special law or provisions or concession to be extended for the promotion and welfare of women and children.
- Article 17 prohibits untouchability in any manner.
- Article 19 confers freedom of speech, expression, to reside any part of the country, and move freely.
- Article 21 guarantees the Life and Liberty to all the citizens without any sort discrimination and make it obligatory that free and compulsory education be provided to every child in the age group of six to fourteen years
- Article 23 prohibits traffic in human beings and abolishes bonded labour.
- Article 24 bans the employment or recruitment of children below 14 years in any factory or mine or heavy and harmful industries to the health and growth of children.

The Directive Principles of States Policy directs through Article 39 (a) the state to ensure both men and women have the right to an adequate means of livelihood.

- Article 39(d) provides equal pay for equal work without any discrimination.
- Article 42 allows the state to make provisions for securing just and human conditions of work and maternity relief.
- Article 51-A of the Constitution of India lays down certain Fundamental Duties upon every citizen of India. Accordingly, the citizens are expected to respect the law of the land to denounce all kinds of discriminatory practices, to extend their support to the socially, economically, and culturally weaker sections of the society to augment their rights on par with the other developed sections of the Polity.

Apart from these rights, it confers the remedial measures through judiciary for the violation of any of the rights conferred on its citizens through judicial intervention through Articles 32 and 226 of the constitution.

It is the constitutional obligation to protect the human rights of disadvantaged groups. Man is the ultimate subject for the realization of the constitutional values. Universal Declaration of Human Rights says: "All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and act towards one another in a spirit of brotherhood." It is, therefore, of the constitutional obligation to protect human rights of disadvantaged groups.

However, due to poverty and other cross-cultural social problems many a times, a majority of disadvantaged people are not able to access their basic needs, in spite of the efforts both at the international and national plane.

# Human Rights of Disadvantaged Groups

*(Special reference in accessing justice)*

## Barriers in accessing justice:

While each disadvantaged group faces specific barriers in accessing justice, there are some strong similarities between them. Below is a list of common barriers that face disadvantaged groups:

Each disadvantaged group faces specific barriers in accessing justice, many factors are economic factors such as fees, travel cost, the cost of time off work and inability to pay bribes. Disadvantaged groups may fear and mistrust normal institutions and fear reprisal and social ostracism if they make a complaint, other common barriers are:

- Economic barriers: Poverty exacerbates problems facing disadvantaged groups in accessing justice.
- Legal and institutional discrimination: Laws may also discriminate against disadvantaged groups. They may ignore the special needs of certain groups or else actively discriminate against them, preventing them from seeking justice through the formal system.
- Legal aid and awareness programmes can target their activities and information to particular disadvantaged group.
- Insensitivity/lack of awareness of particular needs: Even when disadvantaged groups are able to access the formal system, they may not receive the services they require or may be mistreated by legal personnel.
- Insufficient support for alternative mechanisms: Civil society organisations, formal and informal ADR methods and traditional and indigenous justice systems are an extremely important component of access to justice programmes. They may be more widely available and accessible than formal justice mechanisms.
- The high cost of justice is not the only economic barrier faced by poor people- additional barriers include illiteracy, lack of awareness, and lack of support challenging powerful interests.
- Limited communication: Language and literacy is a significant barrier for most disadvantaged groups. Disadvantaged groups may not only be intimidated by formal court processes and language (the courtroom atmosphere may be too formal or the legal jargon too complicated), but they also may not be able to communicate in the official language. In addition, many members of disadvantaged groups may be illiterate which poses a huge obstacle when court procedures require forms to be filled out. Communication is a problem for many migrants and various minority ethnic groups and indigenous peoples. It may also be a significant barrier for people with sight hearing or mental disabilities.
- Lack of physical access: Physical access to formal justice systems is another difficulty for members of some disadvantaged groups. Courts can be far away and claimants may need to travel long distances to get to them. Further, for people with disabilities, physically getting into the courthouse may prove to be difficult.

# Human Rights of Disadvantaged Groups

*(Special reference in accessing justice)*

## **Recommendations:**

A holistic approach is important in addressing these challenges. A range of assistance should be offered alongside legal aid, such as literacy programmes, food, health services, drug counselling, employment schemes, housing support and credit. Civil society can help to fill organisational, networking and technical gaps within and among disadvantaged groups, especially as the needs of such groups may be neglected by the state. Among the many specific recommendations made concerning particular disadvantaged groups, some examples include:

- Waiving or subsidising the cost of court processes.
- Providing housing assistance and transportation to courts.
- Setting up mobile legal clinics to reach those in remote areas, strengthening legal aid services in rural areas and in poor communities and targeting legal aid to particular groups.
- Conducting legal awareness initiatives.
- Locating courts at the regional or district level.
- Strengthening informal dispute resolution mechanisms.

- Anju Singhal  
MJRP University, Jaipur

# CONVICTION OF MINORS (SPECIAL PROVISIONS) ACT 2013

## INTRODUCTION TO THE MODEL DRAFT LEGISLATION

The Indian penal laws including the procedural laws as well as the substantive laws are one of a kind as they elaborate on various issues with great detail considering every angle for the commission of the offence as well as the punishment when convicted, ensuring all human rights are rightly provided to individuals.

An essential Human Right which should be provided to every citizen of democratic country is the right to get justice. But many a times this right is defeated by old stagnant laws, which need some modification so as to work properly.

There are laws though old but yet they do serve the purpose very well, but as we all know that just like stagnant water source is not the best source to consume water from, where as a free flowing stream of water is considered much useful for consumption, as in the stagnant source of water or law, the purpose for the time when it is new might be fulfilled, but soon enough it may develop impurities that will defiantly not support future consumption. Thus in the similar way even laws which are isolated from each other and are stagnant in nature shall become unfit for usage by future generations.

But with minor modifications in way of amendment or a supporting act (where amendments are not enough to rectify the uncertainty or irregularity present in the act), shall be able to make the old law good once again. The present model draft legislation is also a supporting/linking act which shall have responsibility of filling up of the huge gaps between the Juvenile Justice Act 2000, and the Code of Criminal Procedure (Cr.PC), by removing the airtight compartment of the Juvenile Justice Act 2000 to an extent, thus rectifying the irregularity and also keeping the legislative intent behind the formation of the act intact by all possible means.

The inspiration for this model draft is derived mainly from the series of events which took place in Indian Capital Delhi on and after 16th December 2012, when a victim was allegedly raped by the accused who happens to be a minor, thus escaping all possible punishments for his crime if convicted. But many would just discard this view on the basis of "alleged commission of offence", thus for them a leading example could be from the case of Mohammed Ajmal Amir Kasab @ Abu Mujahid v/s State of Maharashtra, where the accused tried to prove that he was a minor to escape the provisions of law on a serious matter like terrorism. Later though it was proved that he was an adult, but still this attempt made by him was sufficient to highlight the loophole in the laws of the country.

Thus here a desperate attempt has been made to counter those loopholes in such laws by drafting of a supporting/linking legislation model, which shall remove all possible problems without defeating the legislative intent. It is as follows:

*"This act shall be called elaborately as The Special Provisions Pertaining To The Exceptions Of Juvenile Justice Act 2000 (herein referred as JJ Act), Conviction on Grounds of Such Special Provisions, Conviction of Adolescents In Special Cases, Expansion of "minors" ambit and use, Application of Cr.PC in Cases of Adolescents Act, 2013."*

### INTRODUCTION:

With the enforcement of the juvenile justice act 2000, there were many instances seen and experienced by law and order machinery which did raise questions on the way the juvenile justice act performs and discharges its cases, and the way it restricts the power of the Code of Criminal procedure (herein referred to as Cr.PC) in such instances.

The courts were made to enforce Juvenile Justice Act with its rough cover that stops the law and order machinery in absolute terms of the act, thus eliminating the scope of application of judicial mind in some cases, which may be termed as resulting in failure of justice.

Also in this time, an additional aspect of the social background was seen in which there were not just minors and adults in the society. Some additional factors apart from the background of the convict also grabbed attention, such as nature of offence committed, gravity of offence, and circumstances in which the offence is committed by the accused.

Thus a need for an act to fill the loopholes of the Juvenile Justice Act 2000 was felt and also a cause to build a bridge of understanding between the Code of Criminal Procedure, and JJ Act 2000.

### PREAMBLE OF THE ACT:

This act aims at preserving the provisions of JJ Act 2000 and application of the doctrine of harmonious constructions in between the JJ Act and Cr. PC, in special cases expressly defined in this Act, thus to ensure justice in all cases.

To re model the term "minor" mentioned under the JJ Act 2000 by further expansion of the term in this Act.

To provide with the exceptions to the procedure mentioned in the JJ Act 2000 in certain cases expressly mentioned under this act, and under such cases provide with the procedure mentioned under Cr.PC.

To elaborately explain the meaning of the term "Adolescents", which is included under the meaning of term minor of the JJ Act. Thereby creating a special category of offenders in special situation to enable the prosecution of such minors who fall under the ambit of adolescents". under Cr.PC.

# CONVICTION OF MINORS (SPECIAL PROVISIONS) ACT 2013

## CHAPTER 1

### PRELIMINARY

#### 1. Short Title, Extent and Commencement :-

- (1) This Act may be called Conviction of Minors (Special Provisions) Act 2013.
- (2) This act shall apply to whole of India except state of Jammu & Kashmir [as provided in the JJ Act 2000].
- (3) It shall come into force as per the day chosen by the Central Government, by publication in the official gazette.

#### 2. Definition clause:-

- (a) “adolescents”:- A child between the age of 14years to 18years but not achieving the status of a major, or A minor child between the age above, or of 14 years but below 18 years of age.
- (b) “Juvenile child” means a person who have not achieved 18 years of age.
- (c) “Conviction as per the provisions of this act” shall relate to the application of Section 11(c) of this act along with other relevant provisions of this act only.
- (d) “Heinous crimes” shall mean those offences for which the maximum punishment is either death penalty or life imprisonment. Or, Those crimes for which any adult offender ordinarily might have been awarded either of the two punishments that is life imprisonment or death penalty, in due course of trial. Or For crimes for which the law of the land has provision of awarding an adult offender with capital punishments only, if found guilty after the completion of trial.
- (e) “Appropriate authority” shall refer to the board provided for in this act known as “Board for Adolescent Recognition and Welfare”.
- (f) “Court of trial” shall be the court in which the case of the adolescent is pending trial.
- (g) “Board for Adolescent recognition and welfare” shall comprise of the members as provide under the provisions of this act and shall discharge their respective duties within time provided in this act.
- (h) “Corrupt moral” shall relate to the offence committed by the accused. When, from the manner of the commission of the offence, and/or by the conduct of the accused, recorded during the trial, the appropriate authority comes to a conclusion that there is no scope of reformation of such adolescent and that it reflects the intelligence that of an adult offender, then it shall be coined as “corrupt moral”.
- (i) “Highest punishment” shall refer to the punishments of Death penalty and/or Life imprisonment
- (j) “habitual offender” under this act may refer to a juvenile child who is charged of an offence of nature such that the maximum punishment of such an offence ordinarily for an adult offender may extend upto 10 years imprisonment or more, multiple times before he attains the age of majority. The Board for Adolescent recognition and welfare under this act shall have power to decide over the charges alleged over such persons, and shall have the duty to grant them status of habitual offender if found appropriate.

#### Illustration:-

*X is a juvenile child of age 15 years who is charged under section 363A(1) of Indian Penal Code, for which the maximum punishment for an adult is ordinarily 10 years. He is mean while sent to a juvenile home during the pendency of the case. In the juvenile home X commits rape under section 375 of Indian Penal Code, for which an adult offender shall be awarded punishment extending up to life imprisonment. Under such a situation Board for Adolescent recognition and welfare can give X the title of habitual offender if they regard X's alleged offences to be prima facie genuine.*

- (k) All words and expression used but not defined under this act shall derive the interpretation for their use from Code of Criminal Procedure or/and the JJ Act 2000.

## CHAPTER 2

### CONSTITUTION OF BOARDS

3. Board for Adolescent recognition and welfare:- Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the Central/State Government may, by notification in the Official Gazette, constitute for a district or a group of districts specified in the notification, one or more such Boards for exercising the powers and discharging the duties conferred or imposed on them in relation to “Adolescents” in conflict with law under this act.
4. Constitution of “Board for Adolescent recognition and welfare”:- The board shall consist of a
  - (a) Metropolitan Magistrate or a Judicial Magistrate of the first class, as the case may be, or in cases relating to imposition of death punishment to the said person, the board shall consist of a High Court judge, accompanied with a Magistrate of first class having special knowledge or training in child psychology,
  - (b) A psychiatrist, or a panel of doctors who are experts in child psychology, or both,
  - (c) Two social workers, of whom at least one shall be a woman, provided 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.
  - (d) A child counsellor, who is well aware of the common behaviour of an ordinary child and about their mental growth.
  - (e) Any other person whom the court and the board deems fit.
5. The term of the members of the board shall not be less than 2 years after appointment, unless the said member resigns from the post or falls incapable under the provisions of the act.
6. The appointment of any member of the Board may be terminated after holding inquiry, by the Central/State Government, if : -
  - (a) he has been found guilty of misuse of power vested under this act,
  - (b) he has been convicted of an offence involving moral turpitude, and such conviction has not been reversed or he has not been granted pardon in respect of such offence,
  - (c) he fails to attend the proceedings of the Board for consecutive three months without any valid reason or he fails to attend less than three-fourth of the sittings in a year.
  - (d) if the member ceases to retain the said designation by any other reason, like retirement, expiry of tenure, closure of the organisation that he was working for.
7. Procedure to approach the Board for Adolescent recognition and welfare:-
  - (a) The court of law dealing with the case of such adolescent falling under the provisions of the act, has the right to refer the case to the Board so mentioned, before starting up the trial or in between the procedure of such trial.  
Note:- the reference shall be made before pronouncement of decision of the court.
  - (b) The High Court shall refer such a case to the Board if the matter comes up to the court by way of an appeal from the lower court, in which, the said adolescent is held convicted, in cases of nature where an ordinary adult may have received a highest punishment.
  - (c) The court can refer to the board, on request of the prosecution on the following grounds:-
    - i. If the adolescent falls under the category of habitual offender under this Act, or
    - ii. If the adolescent has alleged to have committed offence for which an adult may receive the highest punishment under the meaning of this Act, or
    - iii. The prosecution may as a right ask the court to refer such a case of adolescent if the subsequent lower court had already convicted him of the crime, but because of non application of this Act during the pendency of the case, court was not able to award highest punishment under the meaning of this Act.
8. Once the matter relating to the status of adolescent is referred to the appropriate authority under the Act by any of the provisions in section 7 of this Act, the court appearance of the adolescent shall be stayed by the court till the final order of the board comes up before the court. Provided that, in exceptional circumstances the court of trial, with approval of the board can call for the appearance of the accused in the court of trial, or any other place so suggested.



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9. Procedure, etc. in relation to Board: - 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.
10. In the event of any difference of opinion among the members of the Board in the interim or final disposition, the opinion of the majority shall prevail, but where there is no such majority, the opinion of the principal Magistrate or the High Court judge, as the case may be, shall prevail.
11. Powers of the board :-
- (a) The Board for Adolescent recognition and welfare has all rights relating to the adolescents defined under this Act.
- (b) When decision of Board for Adolescent recognition and welfare, and the Juvenile Board under the JJ Act 2000 are in conflict, the decision of the Board for Adolescent recognition and welfare shall prevail.
- (c) Procedure in case the adolescent is found of a corrupt moral character under the definition of this act, the board has power to:-
- i. Authorise the courts of law to treat the adolescent as a major, thus the punishment of an adult offender can be awarded to him. Provided if at the completion of the trial, the court awards any other punishment other than the highest punishment under this Act to the adolescent [habitual offender excluded], the adolescent shall regain the privilege of having his award getting reduced as per the provisions of the JJ Act, till any of the appellate court's decision awards him with highest punishment.
- ii. The board can cease the benefits being given to the adolescent under the JJ Act 2000 with its final order. Provided the board can give some privileges to the person in exceptional circumstances as notified, with consent of the court of trial.
- iii. With the final order of the board, the adolescent if found to be of a corrupt moral, he will be ordered to be shifted from the Juvenile homes to a central prison for adult offenders, so as to protect other juvenile offenders from getting affected.
- The same power can be exercised by the court of trial with ratification by the respective High Court, In case the adolescent is found guilty of a heinous crime under the meaning of this Act, even in situations where this act was not invoked during the pendency of the case.
- (d) Board has the right to not to apply any or all of the powers of the board under section 10 (c) (i) & (iii) on an adolescent charged under the provisions of habitual offender under this act.
- (e) Once the adolescent is convicted by the Board, Cr.PC shall apply in the case from there on, with some modifications approved by the court of trial.
- (f) The board reserves the power for a joint trial of cases for the habitual offender under this Act, and to authorise the court of trial to do so as to save time.
12. The Board for Adolescent recognition and welfare has the obligation to dispose of the matter before them at the earliest, not exceeding the period of 1 year.
13. The Board for Adolescent recognition and welfare has the right to give priority to matters in which the alleged adolescent is either closer to the age of maturity, or/and depending on the nature of offence and the punishment which can be awarded. Illustration- A and B are two adolescents before the board amongst which A is of age 15 years and alleged to have been a habitual offender, whereas B is of 17 years and is alleged to have committed offence for which an adult offender would get highest punishment under meaning of this Act. In such a situation the board on ground that B is closer to age of maturity [ i.e. 18] and on the nature of offence committed by him may take his case on priority, than that of case of A. Cases kept on priority can be dealt with the board on a faster pace than that in usual cases.
14. Duty of the board:- To treat the person as a child having rights under JJ act 2000 till the decision reaches the stage of finality.
15. Points for determination and recognition of an adolescent under this Act by Board of Adolescent recognition and welfare:- The Board has to consider the following factors as the bases of application of this Act and change of status from minor to major under the law:-
- (a) Gravity of the alleged offence, which shall include the factors like the offence, nature of commission of the alleged offence, role in the alleged offence and other factors as per the case required.
- Illustration- an adolescent X is charged with murder by stabbing into the body numerous times, and death caused by heavy blood loss of the victim. X is the prime accused in the case. He can be tried under this Act by the board.
- (b) Actual age of the alleged adolescent:- The Board shall take note of the actual age of the accused adolescent, and the closer he is from attaining age of majority, the easier it shall be for the board to charge him under this act.

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Illustration: - A is of age 17 years. The board, keeping other factors in view can charge A under this Act.

- (c) Award of sentence which might be granted to any adult offender in same situation, by the court of law, for the alleged offence committed. Cases for which the maximum punishment for any adult offender when convicted if extends up to highest punishment under the meaning of this act is more likely to be convicted under provisions of this act by the board, in consideration of other factors as well.
- (d) Scope of rehabilitation if possible. Not valid in cases for which the maximum punishment extends up to death penalty. Under this provision the Board has to see the scope of reformation by the accused, by analysing the behavioural aspects of the accused and the other factors of the crime in this section.

Illustration:- X is an adolescent charged under section 489D of Indian Penal Code[making or possessing machinery, instruments or material for forging or counterfeiting currency notes or bank notes], for which an adult can be awarded life imprisonment. Here the board after analysing the behaviour of X can opt to convict or acquit the adolescent under this Act.

- (e) Background of alleged offence committed if any:- The board can take into consideration the circumstances and the background of the alleged offence committed. Only applicable if the accused accepts the alleged offence. Does not apply on cases where the maximum punishment for an adult offender is extended up to Death penalty.
- (f) Any other reason which the board may find relevant
16. To ensure speedy disposal of cases by the appropriate authority on the direction of the court when demanded, the Central/State government can constitute Additional Boards for Adolescent recognition and welfare, comprising of the same essential elements as mentioned in Section 4 of this Act, for a limited time period as determined by the government.
17. Fee for trial by the board: - shall be paid by the respective state government.[for it is the duty of the state to ensure fair trial, and to consider an accused innocent unless proved guilty]
18. Provisions relating to the Executive Board: - the act shall provide for the constitution of an executive board which shall have the power and duty to harmonise the relationship and working of the JJ Act and the Conviction of Minors (SPECIAL PROVISIONS) Act 2013.
19. Constitution of Executive Board: - the board shall comprise of the following:-
- (a) Representative of the State Police force, not below the rank of Assistant Commissioner of Police (A.C.P),
- (b) Representative of the Juvenile police force, equivalent to the rank of the representative of the State police force.
- (c) A representative from the central and the state government, who have the authority to take decisions relating to the police force.
20. Duty of the Executive Board:- The Executive Board under this act is duty bound to maintain and improve co-ordination between the Juvenile Police force and the State Police force.
21. Powers with the Executive Board:- The Executive Board shall have all powers needed, with respect to police force, for the smooth performance of the provisions of this act.

## CHAPTER 3

### APPEALS

22. This act provides for constitution of an appellate Board under this act, where the first appeal shall lie for the interested parties, only in the cases provided for under this act.
23. Constitution of Appellate Board: - the board shall comprise of the following members mentioned:-
- (a) A Judge, not below the rank of an Additional Session Judge, (b) A panel of child behavioural experts, which may include psychiatrist, social workers under the meaning of section 4 (c) of this Act, child counsellors, or (c) Any other person whom the board may require as per the case.
24. Procedure for appeal:- when the Board for Adolescent recognition and welfare has given the final order, either of the parties interested can ask for the appeal to be heard before the board, strictly on the grounds provided under this act.
25. Grounds for Appeal Before the Board: - the appeals shall be entertained by the board on the grounds as follows:-
- (a) In case where negligence resulting in failure of justice is proved on part of the Boards for Adolescent recognition and welfare.
- (b) If it is proved that the Boards for Adolescent recognition and welfare was not provided with a factor so important for the case, that it might have had changed the decision of the board.
- (c) In cases resulting from any form of unfair trial procedure adopted by the Boards for Adolescent recognition and welfare for pronouncement of its order.
- (d) In any other case where the Appellate Board thinks that the purpose of justice is not served by Boards for Adolescent recognition and welfare

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26. Subject to the provisions of this section, any person aggrieved by an order made by an appropriate authority under this Act may, and not finding grounds for appeal before the Appellate Board under section 25 of this Act, may within thirty days from the date of such order, prefer an appeal to the Court of Session. Provided that the Court of Session may entertain the appeal after the expiry of the said period of thirty days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time. No second appeal shall lie from any order of the Court of Session passed in appeal under this section.
27. Revision.-The High Court may, at any time, either of its own motion or on an application received in this behalf, call for the record of any proceeding in which any competent authority or Court of Session has passed an order for the purpose of satisfying itself as to the legality or propriety of any such order and may pass such order in relation thereto as it thinks fit: Provided that the High Court shall not pass an order under this section prejudicial to any person without giving him a reasonable opportunity of being heard.
28. Procedure in inquiries, appeals and revision proceedings:-
  - (a) Competent authority while holding any inquiry under any of the provisions of this Act, shall follow such procedure as may be prescribed and shall follow, as far as may be, the procedure laid down in the Code of Criminal Procedure, 1973 ( 2 of 1974) for trials in summons cases.
  - (b) The procedure to be followed in hearing appeals or revision proceedings under this Act shall be, as far as practicable, in accordance with the provisions of the Code of Criminal Procedure, 1973 ( 2 of 1974).

## CHAPTER 4

### MISCELLANEOUS PROVISIONS:

29. The state government and the central government shall have all powers vested in them as conferred in section 66 &68 of JJ Act.
30. The welfare committees provided under the JJ Act shall continue to work as normal, till function or role limited by the board under this Act.
31. The provisions of this Act can at first only be invoked by the court of first jurisdiction.
32. Special provisions for female offenders: - The ordinary benefits shall be given to female offenders, during the trial by the board as well as by the court.  
For example:- camera proceedings, female constables, a women counsellor etc.
33. The person will be recognised as a major responsible citizen from this time, thus in future no such trial has to be conducted by the state to see the prudence of the person (only for state related offences [applies in case of offences conducted during parole period etc] ). Provided that some of the child rights associated directly with the age of the accused/convicted shall not be terminated. (Chapter IV of JJ act, rehabilitation)
34. In cases where death penalty is awarded by the supreme court's bench, all rights relaxed in the proviso of section 26 of this Act, shall be waved off till president of India does not accepts mercy petition for the convicted.
35. Once a person, by final order of the Board for Adolescent recognition and welfare is held to be a minor [order of acquittal], then the question of his liability under any of the provisions of this Act cannot be brought back into question before the expiry of one year time period from the order of the board, or commission of yet another offence relevant to this Act, whichever is later. Provided that the Appellate Board or any of the Appellate authorities under this act reverses the decision by their, interim or final order.
36. If the Boards for Adolescent recognition and welfare is found guilty of harassment of the adolescent in any way during the course of trial before the Board, by any inquiry conducted by appropriate authority which the State may deem fit, the existence of such a board shall stand terminated from thereon, and the state shall provide for constitution of a new Board or Boards under this act. Also, the members of such a board shall lose the right of appearing in any such Board in future, provided they prove themselves innocent during trial, Also, the board members shall face a trial under the relevant provisions of the law, by the appropriate court of law.
37. Notwithstanding anything in this act, for any provision, procedure or definition mentioned under this act but not explained here shall derive their interpretation from the JJ Act or the Cr.PC as the case may be.

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