
BENGAL BORSTAL SCHOOLS ACT, 1928

1 of 1928

[16th February, 1928]

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Objects and Reasons. The object of this Act is to provide for the detention of adolescent offenders in special institutions in which they will be given industrial training and other instructions, and subjected to such disciplinary and moral influences as will conduce to their reformation and future welfare. It is now generally recognised that the period of adolescence is the most critical in an individual's life, when the mind is specially susceptible to fresh impressions and when it is peculiarly important to prevent habits of immorality and crime from being formed, and that it is undesirable from all points of view to familiarise adolescents with ordinary jail life and bring them into contact with adult prisoners. The following

extracts from the speech of the Government member introducing the Borstal School Bill in the Legislative Council would show the reasons for the enactment of this Act: "It has long ago been recognised that in India sufficient attention has not been paid to the juvenile offender. At present, Bengal is behind other provinces in this respect, especially Madras, where much more attention has been given to reformatory treatment and after-care of prisoners. The object of the Borstal Schools Bill is to provide for the detention of adolescent offenders in a Borstal institution instead of in jail, for their training in that institution and for their after-care on release. Prisoners are to be treated as adolescents between the ages of 16 and 21. At present, there is no special provision for offenders between these ages. Under the Bengal Children's Act, 1922, which has been applied now to Calcutta, Howrah and certain suburban areas, offenders under the age of 14 can be sent to an industrial school, and those between 14 and 16 to a Reformatory School. The Juvenile Jail, Alipore, has recently been converted into an Industrial and Reformatory School. These Reformatory schools receive young offenders from the Criminal Courts having jurisdiction in the areas to which the Act has been applied. In other parts of Bengal, the Reformatory Schools Act, 1897, applies by which youthful offenders (which in this Act is defined as those under 15) can be sent to the Reformatory School at Hazaribagh (Bihar and Orissa). But except in the area to which the Children's Act has been extended, there is no special provision for offenders under section 14. As regards offenders between 16 and 21, there is no special provision at present. It is to remedy this deficiency that the present Bill is introduced. The Bill, if passed, will put on a proper basis the school which has already been established at Bankura for offenders between 16 and 21. As at present established, it is in the nature of a special jail run on the lines of a Reformatory School. Under the Borstal Schools Act, it will become a Borstal School for the reformation of adolescent offenders who will be sent there from all parts of Bengal. The idea of a Borstal institution comes from England. Borstal is, in fact, the name of a small town in Kent where such a system was first tried, and ever since, this system has been known all over the world as the "Borstal" system. (Extracts from the proceedings in Council. Vol. 26, p. 79).

1. Short title and extent :-

(1) This Act may be called the Bengal Borstal Schools Act, 1928.

(2) It extends to the whole of ¹ [West Bengal].

1. Words subs, by the Indian Independence (Adaptation of Bengal and Punjab Acts) Order. 1948.

2. Definitions :-

In this Act, unless there is anything repugnant in the subject or context

(1) "adolescent offender" means any person who has been convicted of any offence punishable with imprisonment or who having been ordered to give security under section 106 or section 118 of the Code of Criminal Procedure, 1898, has failed to do so or who, having been dealt with under the provisions of section 562 of the Code of Criminal Procedure, 1898, has failed to enter into a bond or find securities or who, when the bond has been cancelled

(i) in any area where the Bengal Children Act, 1922, is in force, is not less than sixteen nor more than twenty-one years of age, or

(ii) in any other area is not less than fifteen nor more than twenty-one years of age;

(2) "Borstal school" means a school established by the ¹[State Government] under section 3;

(3) "Inspector-General" means the Inspector-General of Prisons and includes any officer appointed by the ¹ [State Government] to perform all or any of the duties imposed, or to exercise all or any of the powers conferred by this Act, on the Inspector-General; and

(4) "prescribed" means prescribed by rules made under this Act.

1. Words subs, by the Government of India (Adaptation of Indian Laws) Order. 1937 and the Adaptation of Laws Order, 1950.

3. Establishment of Borstal schools :-

(1) The ¹[State Government] may establish Borstal schools at such places as it may think fit wherein adolescent offenders may be detained and given such industrial training and other instruction and be subjected to such disciplinary measures and moral influences as in the opinion of the ¹[State Government] will conduce to their reformation and the prevention of crime.

(2) For every Borstal school, a Visiting Committee shall be appointed in such manner as may be prescribed and the names of

the members of the Visiting Committee or, when a member is appointed ex-officio, the office by virtue of which he has been appointed shall be published in the ³ [Official Gazette].

1. Words subs, by the Government of India (Adaptation of Indian Laws) Order. 1937 and the Adaptation of Laws Order, 1950.

3. Words substituted by the Government of India (Adaptation of Indian Laws) Order, 1937.

4. Application of the Prisons Act, 1894, and the Prisoners Act, 1900 :-

Subject to the provisions of this Act, the provisions of the Prisons Act, 1894, and the Prisoners Act, 1900, shall apply to a Borstal school established under this Act as if it were a prison and an inmate thereof a prisoner.

5. Power of Court to make order for detention in Borstal school :-

(1) If it appears to the High Court, a Court of Sessions or the Court of a District Magistrate, a Subdivisional Magistrate, a salaried Presidency Magistrate or any Magistrate of the first class specially empowered by the ¹ [State Government] in this behalf in any case that comes before such Court originally, on appeal or in revision that an adolescent offender convicted by such Court or any Court subordinate to it or failing to obey an order made by such Court or any Court subordinate to it to give security under section 106 or section 118 or to enter into a bond or find security under section 562 or section 126A of the Code

(2) Before making an order under sub-section (1) the Court shall

(a) inquire into the age of the offender and, after taking such evidence (if any) as may be deemed necessary, shall record a finding thereon stating his approximate age;

(b) after considering any report or representation which may be made to it as to the desirability of the detention of the adolescent offender in a Borstal school, satisfy itself that the character, state of health and mental condition of the offender and the other circumstances of the case are such that the offender is likely to profit by such detention.

1. Words subs, by the Government of India (Adaptation of Indian Laws) Order. 1937 and the Adaptation of Laws Order, 1950.

6. Procedure where the Court is not empowered to pass an

detention in a Borstal school :-

(1) If any Court not empowered to pass an order of detention in a Borstal school under sub-section (1) of section 5 is of opinion that an adolescent offender who has been convicted by such Court or having been ordered by such Court to give security has failed to do so is a proper person to be detained in a Borstal school, the Court may, in lieu of passing sentence, record such opinion and submit the record of the case and forward the adolescent offender to or take bail for his appearance before the District Magistrate or Subdivisional Magistrate to whom he is subordinate or a salaried Presidency Magistrate.

(2) Before forwarding an adolescent offender or taking bail for his appearance in accordance with the provisions of sub-section (1) the Court shall make the inquiry and record the finding prescribed in clause (a) of sub-section (2) of section 5 in respect of such adolescent offender.

(3) A District Magistrate, Sub-divisional Magistrate or salaried Presidency Magistrate, to whom an adolescent offender is forwarded or before whom an adolescent offender appears in accordance with the provisions of sub-section (1) may make such further inquiry (if any) as he may think fit and may, subject to the conditions contained in clause (b) of sub-section (2) of section 5, make an order for the detention of the adolescent offender in a Borstal school for a term which shall not be less than two and shall not exceed three years, or may return the record of the case to the Court which tried it for passing such sentence as that Court may think fit.

7. Appeal :-

(1) Any adolescent offender in respect of whom an order of detention in a Borstal school is made under section 5 or section 6 by a Court in any case that comes before it originally may appeal

(a) if the order is made by a Court of Session or a Court of a salaried Presidency Magistrate to the High Court; or

(b) if the order is made by the Court of any Magistrate other than salaried Presidency Magistrate, to the Court of Session; within two months from the date of such order.

(2) The procedure prescribed for appeals in Chapter XXXI of the

Code of Criminal Procedure, 1898. shall apply as far as possible to appeals under this section.

(3) The Appellate Court may dismiss the appeal or may

(a) reverse the order and make any other order or pass any sentence which might have been lawfully made or passed in respect of the adolescent offender by the Court which passed the order of detention; or

(b) alter the term of detention subject to the limits prescribed in subsection (1) section 5.

8. Procedure after making order under section 5 :-

(1) Every adolescent offender directed by a Court to be sent to a Borstal school shall be forthwith sent to the place of intermediate custody prescribed in this behalf in respect of such Court.

(2) A copy of the order of the Court directing the adolescent offender to be detained in a Borstal school shall forthwith be sent by the Court to the Inspector-General, who shall take immediate steps for the removal of the adolescent offender from the place of intermediate custody to a Borstal school as soon as may be practicable.

(3) The period during which the adolescent offender is kept in the prescribed place of intermediate custody shall, for the purposes of computing his total period of detention in a Borstal school, be deemed to be part of that detention.

9. Limitation on powers conferred by section 5 :-

Any person detained in a Borstal school for failure to furnish security when ordered to do so under section 106, section 118, section 562 or section 126A of the Code of Criminal Procedure, 1898, shall be released on furnishing such security or on the passing of an order under section 124 of the Code.

10. Power of Inspector General to transfer adolescent prisoners to Borstal school :-

If the Inspector-General is satisfied that any adolescent offender sentenced to undergo imprisonment in a jail or detention in a reformatory school is a proper person to be detained in a Borstal school he may, subject to the prescribed conditions, direct that the adolescent offender shall be transferred to a Borstal school and there be detained for the whole or any part of the unexpired

residue of his sentence. The provisions of this Act shall thereupon apply to such person as if he had been originally sentenced to detention in a Borstal school.

11. Removal from one school to another :-

The Inspector-General may at any time order an adolescent offender to be removed from one Borstal school to another such school :

Provided that the total period for which the adolescent offender was ordered to be detained in a Borstal school shall not be increased by such removal.

12. Power to release on license :-

(1) Subject to the prescribed conditions, the Inspector-General may, on the recommendation of the Visiting Committee, at any time after the expiration of six months from the commencement of the detention of an adolescent offender in a Borstal school, if he is satisfied that there is a reasonable probability that the adolescent offender will abstain from crime and lead a useful and industrious life, discharge him from the Borstal school and grant him a written license in the prescribed form and on the prescribed conditions permitting him to live under the supervision and authority of such

(a) ¹[servant of the Government].

(b) secular institution,

(c) religious society, or

(d) responsible person,

Provided that if in any case the Inspector-General does not accept the recommendation of the Visiting Committee under this subsection, he shall ¹ [report to the State Government] his reasons for not accepting the recommendation:

Provided also that no adolescent offender shall be permitted by license to live under the supervision and authority of a religious society professing a religion other than the religion of the adolescent offender except with his consent or that of his guardian, if any.

(2) A license under this section shall be in force until the expiry of the term for which the adolescent offender was ordered to be detained in a Borstal school, unless sooner revoked or forfeited.

(3) The period during which an adolescent offender is absent from a Borstal school during the continuance of a license granted to him under this section shall, for the purposes of computing his term of detention in such school, be deemed to be part of that detention.

1. Words subs, by the Government of India (Adaptation of Indian Laws) Order. 1937 and the Adaptation of Laws Order. 1950.

13. Revocation of license :-

(1) Subject to the prescribed conditions, the Inspector-General may at time, with the approval of the ¹ [State Government] and shall, at the request of the institution, society or person under whose supervision and authority the adolescent offender has by license been permitted to live, revoke a license granted under section 12, and upon such revocation the adolescent offender shall be detained in a Borstal school until the expiry of the term for which he was ordered to be detained in such school.

(2) If an adolescent offender removes himself from the supervision of the institution society or person under which he was by license permitted

1. Words subs, by the Government of India (Adaptation of Indian Laws) Order. 1937 and the Adaptation of Laws Order. 1950.

14. Powers of arrest of police :-

Any police-officer, not below the rank of a Sub-Inspector of Police may, without orders from a Magistrate and without warrant, arrest an adolescent offender who has escaped from a Borstal school or removed himself from the supervision of the institution, society or person under which he was permitted to live by licence under section 12, and shall send him, if so arrested, in custody to the Borstal school in which he was last detained.

15. Transfer of incorrigibles, etc. to prisons :-

Notwithstanding anything elsewhere contained in this Act, if an adolescent offender detained in a Borstal school

(a) is reported to the ¹[State Government] by the Visiting Committee of such school to be incorrigible or to be exercising bad influence on the other inmates of the school, or

(b) escapes from the Borstal school or removes himself from the supervision of the institution, society or person under which he was permitted to live by license under section 12, the ¹[State

Government] may alter the unexpired residue of the term of detention to such term of imprisonment of either description as the ¹[State Government] may determine:

Provided that the period of imprisonment shall not exceed

(a) such unexpired residue, or

(b) the maximum period of imprisonment provided by law for the offence or the failure to give security, as the case may be, in consequence of which the adolescent offender was ordered to be detained in a Borstal school, whichever is less:

Provided further that no such adolescent offender shall be ordered by the ¹ [State Government] to be punished with rigorous imprisonment unless such imprisonment was provided by law for the original offence or the failure to give security, as the case may be, in consequence of which he was ordered to be detained in a Borstal school.

1. Words subs, by the Government of India (Adaptation of Indian Laws) Order. 1937 and the Adaptation of Laws Order, 1950.

16. Rules :-

(1) The ¹[State Government] may make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, the ¹[State Government] may make rules to provide for all or any or the following matters, namely:

(a) the control and management of Borstal schools;

(b) the appointment, powers and duties of officials in such schools;

(c) the constitution, powers and duties of Visiting Committees;

(d) the classification, treatment, maintenance, education, industrial training and control of the inmates of Borstal schools;

(e) the regulation of the powers of the Inspector-General under sections 10, 12 and 13;

(f) the prescribing of places of intermediate custody in respect of Courts to which such Courts may order adolescent offenders to be sent; and

(g) the form and conditions of licenses granted under section 12.

(3) All rules made under this section shall be published in the ³ [Official Gazette] and, on such publication, shall have the same effect as if enacted in this Act.

1. Words subs, by the Government of India (Adaptation of Indian Laws) Order. 1937 and the Adaptation of Laws Order, 1950.

3. words subs. by the Government of India (Adaptation of Indian Laws) order. 1937.