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THE BORSTAL SCHOOLS ACT, 1928

ACT NO. I OF 1928

[16th February, 1928]

***An Act to make provision for the establishment and regulation of Borstal schools for the detention and training of adolescent offenders.**

WHEREAS it is expedient to make provision for the establishment and regulation of Borstal schools for the detention and training of adolescent offenders;

¹[* * *]

It is hereby enacted as follows:—

1. (1) This Act may be called the ²[* * *] Borstal Schools Act, 1928 Short title and extent

(2) It extends to the whole of Bangladesh.

2. In this Act, unless there is anything repugnant in the subject or context— Definition

- (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 provision of section 562 of the Code of Criminal Procedure, 1898,

* Throughout this Act, except otherwise provided, the words "Bangladesh" and "Government" were substituted, for the words "East Pakistan" and "Provincial Government" respectively by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

¹ Second paragraph of the preamble was omitted by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

² The word "Bengal" was omitted by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

has failed to enter into a bond or find securities or who, when the bond has been cancelled under section 126A of that Code, has failed to give fresh security and who at the time of such conviction or failure to give security—

- (i) in any area where the ¹[* * *] 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 Government under section 3;
- (3) "Inspector-General" means the Inspector-General of Prisons and includes any officer appointed by the 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.

Establishments
of Borstal
School

3. (1) The 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 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 official Gazette.

Application
for the Prisons
Act, 1894, and
the Prisoners
Act, 1900

4. 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.

¹ The word "Bengal" was omitted by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

5. (1) If it appears to the ¹[High Court Division], a Court of Session or the Court of a District Magistrate, a Sub-divisional Magistrate or any Magistrate of the first class specially empowered by the 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 of Criminal Procedure, 1898, should be detained in a Borstal school, the Court may, in lieu of passing a sentence of imprisonment, 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.

Power of Court to make order for detention in Borstal schools

(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.

6. (1) If any Court not empowered to pass an order or 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.

Procedure where the Court is not empowered to pass an order of detention in a Borstal school

¹ The words "High Court Division" were substituted, for the words "High Court" by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

(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 adolescent offender.

(3) A District or a Subdivisional 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.

Appeal

7. (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 to the ¹[High Court Division];
- (b) if the order is made by the Court of any 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 make any other order or pas 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

¹ The words "High Court Division" were substituted, for the words "High Court" by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

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

8. (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.

Procedure after making order under section 5

(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. 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.

Limitation on powers conferred by section 5

10. 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.

Powers of Inspector-General to transfer adolescent prisoners to Borstal school

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

Removal from one school to another

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.

Power to
release on
license

12. (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 month 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) Officer of Government,
- (b) secular institution,
- (c) religious society, or
- (d) responsible person,

as may be approved by the Inspector-General and willing to take charge of the adolescent offender:

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

Provided also that no adolescent offender shall be permitted by license to leave 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.

13. (1) Subject to the prescribed condition, the Inspector-Government may at any time, with the approval of the 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.

Revocation of license

(2) If an adolescent offender removed himself from the supervision of the institution, society or person under which he was by license permitted to live, his license shall be deemed to have been revoked from the date on which he has so removed himself.

14. 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 license under section 12, and shall send him, if so arrested, in custody to the Borstal school in which he was last detained.

Powers of arrest of police

15. Notwithstanding any thing elsewhere contained in this Act, if an adolescent offender detained in a Borstal school—

Transfer of incorrigibles, etc., to prisons

- (a) is reported to the Government by the Visiting Committee of such school to be incorrigible or to be exercising a 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 Government may, alter the unexpired residue of the term of detention to such term of imprisonment of either description as the 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 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,

Rules

16. (1) The 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 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 licences granted under section 12.

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

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