



The Bengal Borstal Schools Act, 1928

Act 1 of 1928

Keyword(s):

Adolescent Offender, Borstal School, Inspector-General

DISCLAIMER: This document is being furnished to you for your information by PRS Legislative Research (PRS). The contents of this document have been obtained from sources PRS believes to be reliable. These contents have not been independently verified, and PRS makes no representation or warranty as to the accuracy, completeness or correctness. In some cases the Principal Act and/or Amendment Act may not be available. Principal Acts may or may not include subsequent amendments. For authoritative text, please contact the relevant state department concerned or refer to the latest government publication or the gazette notification. Any person using this material should take their own professional and legal advice before acting on any information contained in this document. PRS or any persons connected with it do not accept any liability arising from the use of this document. PRS or any persons connected with it shall not be in any way responsible for any loss, damage, or distress to any person on account of any action taken or not taken on the basis of this document.

©

Bengal Act I of 1928¹

[THE BENGAL BORSTAL SCHOOLS ACT, 1928.]²

ADAPTED

- (a) The Government of India (Adaptation of Indian Laws) Order, 1937.
- (b) The Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.
- (c) The Adaptation of Laws Order, 1950.

[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;

Preamble.

AND WHEREAS the previous sanction of the Governor General has been obtained under sub-section (3) of section 80A of the Government of India Act to the passing of this Act;

It is hereby enacted as follows:—

1. (1) This Act may be called the Bengal Borstal Schools Act, 1928.
- (2) It extends to the whole of ³[West Bengal].

Short title and extent.

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

Definitions.

(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 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 Bengal Children Act, 1922, is in force, is not less than sixteen nor more than twenty-one years of age, or

5 & 6 Geo. V, c. 61; 6 & 7 Geo. V, c. 37; 9 & 10 Geo. V, c. 101.

Act V of 1898.

Ben. Act II of 1922.

¹This Act should be read with s. 51 of the West Bengal Children Act, 1959 (West Ben. Act XXX of 1959) and notifications (1) No. 1955-S.W/1H—15/60, dated the 22nd June, 1961 (2) No. 284-S.W/1.H.—43/61, dated 8.2.63 and (3) No. 479-S.W/4A—4/63, dated 15.3.63, which bring certain sections of the later Act into force in Calcutta, Howrah, and certain other places of Howrah and 24-Parganas districts and other areas.

²For Statement of Objects and Reasons, see the *Calcutta Gazette* of 1927, Pt. IV, page 38; and for Proceedings in Council, see the Proceedings of the Bengal Legislative Council, Vol. XXVI, pages 79 and 141.

³The words "West Bengal" were substituted for the word "Bengal" by Article 3(2) of the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

(Sections 3-5.)

- (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.

Establishment of Borstal schools.

3. (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 ²[Official Gazette].

Application of 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.

IX of 1894,
III of 1900.

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

5. (1) If it appears to the High Court, a Court of Sessions or the Court of a District Magistrate, a Sub-divisional 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 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.

Act V of
1898.

¹The words "Provincial Government" were originally substituted for the words "Local Government" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "State" was substituted for the word "Provincial" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

²The words within square brackets were substituted for the words "Calcutta Gazette" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

of 1928.]

(Sections 6, 7.)

- (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 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 Sub-divisional Magistrate to whom he is subordinate or a salaried Presidency Magistrate.

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

(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. (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—

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 a salaried Presidency Magistrate, to the Court of Session;

within two months from the date of such order.

(Sections 8-11.)

(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.

Act V of
1898.

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

Procedure
after making
order under
section 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.

(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.

Limitation
on powers
conferred by
section 5.

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.

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

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.

Removal
from one
school to
another.

11. 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

of 1928.]

(Sections 12, 13.)

12. 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—

Power to
release on
license.

- (a) [servant of the 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 ²[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.

13. (1) Subject to the prescribed conditions, the Inspector-General may at any time, with the approval of the ³[State Government] and shall, at the request of the institution, society or person under whose supervision

Revocation
of license.

¹The words "servant of the Crown" were originally substituted for the words "officer of Government" by para. 3 and Sch. IV to the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "Government" was substituted for the word "Crown" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

²The words "report to the Provincial Government" were originally substituted for the words "report to Government" by para. 3 and Sch. IV to the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "State" was substituted for the word "Provincial" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

³See foot-note 1 on page 154, *ante*.

(Sections 14, 15.)

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 to live, his license shall be deemed to have been revoked from the date on which he has so removed himself.

Powers of
arrest of
police.

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.

Transfer of
incorrigibles,
etc., to
prisons.

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

- (a) is reported to the '[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 '[State Government]' may alter the unexpired residue of the term of detention to such term of imprisonment of either description as the '[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 '[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.

¹See foot-note 1 on page 154, *ante*.

of 1928.]

(Section 16.)

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

Rules

(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 of 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 ²[Official Gazette] and, on such publication, shall have the same effect as if enacted in this Act.

¹See foot-note 1 on page 154, ante.

²See foot-note 2 on page 154, ante.