

ACT 31 OF 1961

THE KERALA BORSTAL SCHOOLS ACT, 1961

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

Preamble.—WHEREAS it is expedient to make provision for the establishment and regulation of borstal schools in the State of Kerala for the detention and training of adolescent offenders therein;

BE it enacted in the Twelfth Year of the Republic of India as follows:—

PART I

PRELIMINARY

1. *Short title and application.*—(1) This Act may be called the Kerala Borstal Schools Act, 1961.

(2) The Government may, by notification in the Gazette, from time to time, apply the whole or any of the provisions of this Act to adolescent offenders or any class thereof in any local area in the State, from such date as may be specified in the notification, and may cancel or modify such notification.

2. *Definitions.*—In this Act, unless the context otherwise requires,—

(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 118 of the Code of Criminal Procedure, 1898 (Central Act 5 of 1898), has failed to do so and who at the time of such conviction or failure to give security is not less than 16 nor more than 21 years of age;

(2) "borstal school" means a corrective institution wherein adolescent offenders, while detained in pursuance of this Act, are given such industrial or agricultural training and other instruction and are subjected to such disciplinary and moral influences as will conduce to their reformation and the prevention of crime;

(3) "Inspector-General" means the Inspector-General of Prisons and includes any officer appointed by the Government to exercise or perform all or any of the powers or duties of the Inspector-General under this Act;

(4) "probation officer" means an officer appointed to be a probation officer or recognised as such under section 13 of the Probation of Offenders Act, 1958 (Central Act 20 of 1958);

(5) "State" means the State of Kerala.

3. *Establishment of borstal schools.*—(1) For the purposes of this Act, the Government may establish one or more borstal schools.

(2) For every borstal school a visiting committee shall be appointed by the Government.

4. *Application of the Prisons Acts and the Prisoners Acts.*—Subject to any alterations, adaptations and exceptions made by this Act and the rules made under it, the Prisons Act, 1894 (Central Act 9 of 1894) and the Prisoners Act, 1900 (Central Act 3 of 1900) and the rules made thereunder, or, as the case may be, the Travancore-Cochin Prisons Act, 1950 (Act XVIII of 1950) and the Travancore-Cochin Prisoners Act, 1950 (Act XVII of 1950) and the rules made thereunder, shall apply in the case of every borstal school established under this Act as if it were a prison and the inmates prisoners.

PART II

COMMITTAL TO BORSTAL SCHOOLS

5. *Power of court to pass order of detention in borstal school.*—(1) Where it appears to a court that an adolescent offender should, by reason of his criminal habits or tendencies, or association with persons of bad character, be subject to detention for such term and under such instruction and discipline as appears most conducive to his reformation and the prevention of crime, it shall be lawful for the court, in lieu of passing a sentence of imprisonment, to pass an order of detention in a borstal school for a term which shall not be less than two years and shall not exceed seven years, but in no case extending beyond the date on which the adolescent offender will, in the opinion of the court, attain the age of twenty-three years:

Provided that the court shall not ordinarily order the detention of a first offender in a borstal school unless the Court is satisfied that, having regard to the character and previous conduct of the offender and to the circumstances of the case, such order is expedient to his reformation and the prevention of crime.

(2) Before passing an order under sub-section (1), the court shall take into consideration the report of the probation officer of the area in which the adolescent offender permanently resided at the time when he committed the offence and any other report or representation which may be made to it as to

the suitability of the case for treatment in a borstal school and shall be satisfied 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 instruction and discipline as aforesaid. The court shall send along with the order of detention in a borstal school a copy of the report of the probation officer.

6. *Preliminary inquiry and finding as to age of adolescent offender.*—Before passing an order under section 5, the court shall inquire into the age of the offender and, after considering the report of the probation officer and taking such evidence, if any, as may be deemed necessary, shall record a finding thereon stating his age as nearly as may be.

7. *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 118 of the Code of Criminal Procedure, 1898 (Central Act 5 of 1898), shall be released on furnishing such security or on the passing of an order under sub-section (1) of section 124 of the said Code.

8. *Power of Inspector-General to transfer prisoners to borstal school.*—(1) The Inspector-General may, subject to the rules made by the Government in that behalf, if satisfied that any adolescent offender undergoing imprisonment in consequence of a sentence passed after the commencement of this Act might with advantage be detained in a borstal school, direct that such person shall be transferred from prison to a borstal school, there to serve the whole or any part of the unexpired portion of his sentence:

Provided that no adolescent offender undergoing imprisonment for life, shall be transferred to a borstal school without the previous sanction of the Government.

(2) When an adolescent offender is transferred to a borstal school under sub-section (1), the provisions of this Act shall apply to such offender as if he had been originally ordered to be detained in a borstal school.

9. *Government to determine the borstal school to which adolescent offender shall be sent.*—Every adolescent offender ordered by a court to be sent to a borstal school shall be sent to such borstal school as the Government may, by general or special order, appoint for the reception of adolescent offenders so dealt with by such court:

Provided that, if accommodation in a borstal school is not immediately available for such adolescent offender, he may be detained in a special ward or such other suitable part of a prison as the Government may direct, until he can be sent to a borstal school. The period of detention so undergone shall be treated as detention in a borstal school.

10. *Removal from one borstal school to another.*—The Inspector-General may, at any time, order an inmate to be removed from one borstal school to another, provided that the whole period of his detention in a borstal school shall not be increased by such removal.

11. *Reception of offenders from and transfer of offenders to other States in India.*—(1) The Government may, by general or special order notified in the Gazette, direct that any specified borstal school in the State shall be available for the reception of adolescent offenders in respect of whom an order of detention in a borstal school or other school of a like nature has been passed by any court or magistrate in any other State in India; and, thereupon, provision may be made for the removal of the adolescent offenders concerned accordingly:

Provided that the Government shall not pass such an order without the consent of the Government of the other State concerned.

(2) The Government may direct any inmate of a borstal school in the State to be transferred to any borstal school or other school of a like nature in any other State in India:

Provided that no such transfer shall be made without the consent of the Government of the other State concerned.

(3) The Government may consent to the transfer to a borstal school in the State, of a person detained in any borstal school or other school of a like nature in any other State in India.

(4) The provisions of this Act shall apply to any person who is removed or transferred to a borstal school in the State in pursuance of sub-section (1) or sub-section (3), as if he had been originally ordered to be detained in a borstal school in the State.

12. *Transfer of incorrigibles, etc., to prisons.*—Where a person detained in a borstal school is reported to the Government by the Superintendent of such school to be incorrigible or to be exercising a bad influence on the other inmates of the school, the Government may commute the unexpired portion of the term of detention to such term of imprisonment of either description as the Government may determine, but in no case exceeding—

- (a) such unexpired portion, or
- (b) the maximum period of imprisonment fixed for the offence or the failure to give security, as the case may be, or
- (c) the maximum period of imprisonment which the court that tried him had authority to award under the Code

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PART III

RELEASE ON LICENCE OR PAROLE

13. *Power to release on licence.*—(1) Subject to any general or special directions of the Government, the Inspector-General, on the recommendation of the visiting committee and after considering the report of the probation officer may, at any time after the expiration of six months from the commencement of the term of detention, if satisfied that there is a reasonable probability that the inmate will abstain from crime and lead a useful and industrious life, by licence permit him to be discharged from the borstal school on condition that he be placed under the supervision or authority of any Government officer, or secular institution, or person, or religious society professing the same religion as the inmate, named in the licence, who may be willing to take charge of him.

(2) A licence under this section shall be in force until the term for which the offender was ordered to be detained has expired, unless sooner revoked or forfeited.

14. *Form of licence.*—Every licence granted under section 13 shall be in such form and shall contain such conditions as the Government may by rules direct.

15. *Revocation of licence.*—Subject to any general or special directions of the Government, a licence granted under section 13 may be revoked at any time by the Inspector-General and where a licence has been revoked, the person to whom the licence related shall return to the borstal school:

Provided that before taking action under this section the Inspector-General shall consider the report of the probation officer.

16. *Escape and forfeiture of licence.*—If any inmate escapes from a borstal school or if any inmate absent on licence from a borstal school removes himself from the supervision of the society or person in whose charge he is placed or fails, after the revocation of the licence, to return from such supervision to the borstal school, a police officer not below the rank of a Sub-Inspector of Police may, without orders from a Magistrate and without warrant, arrest him and take him back to the borstal school, and his licence shall be forfeited with effect from the date of his escape or failure to return, as the case may be.

17. *Release on parole.*—(1) The Inspector-General may release on parole any inmate from a borstal school for such period or periods and subject to such conditions as may be determined by him either—

(a) for the purpose of enabling the inmate to take up

(b) in such other circumstances as may be approved by him.

(2) If the Inspector-General is satisfied that an inmate has violated any of the conditions on which he was released on parole, he may, by order, recall him to the borstal school notwithstanding that the time for which he was released has not expired, and thereupon he shall return to the borstal school.

(3) If any inmate fails to return to the borstal school when recalled under sub-section (2), any police officer not below the rank of a Sub-Inspector of Police may, without orders from a Magistrate and without warrant, arrest him and take him back to the borstal school.

18. *Absence under licence or on parole to be counted towards period of detention.*—The time during which a person is absent from a borstal school under a licence or on parole shall be treated as part of the term of his detention in the school, provided that where that person has failed to return to the school on the licence being forfeited or revoked or when recalled from parole the time which elapses after his failure so to return shall be excluded in computing the term during which he is to be detained in the school.

19. *Power of Inspector-General to allow inmates to receive instructions or training.*—Notwithstanding anything contained in this Act, the Inspector-General may, subject to such rules as may be made by the Government in that behalf, allow any inmate of a borstal school to receive instructions or training in any other institution without being released from the borstal school.

PART IV

CONTROL AND MANAGEMENT OF BORSTAL SCHOOLS

20. *Management of borstal schools.*—Subject to the orders of the Inspector-General and subject also to the rules made by the Government, the control and management of every borstal school shall vest in a Superintendent appointed by the Government.

21. *Constitution, powers and duties of visiting committees.*—(1) (a) Every visiting committee appointed under sub-section (2) of section 3 shall consist of the Sessions Judge, the District Magistrate and the District Educational Officer of the district in which the school is situate and four non-official

(b) The non-official members shall hold office for a period of two years but shall be eligible for re-appointment on the expiry of that period.

(2) It shall be the duty of the visiting committee and its members—

(a) to visit the school either individually or collectively on such occasions as may be fixed by the rules made under this Act in that behalf, for the purpose of ensuring that the provisions of this Act are duly given effect to;

(b) to make such suggestions for the improvement of the training therein as are considered necessary and to report to the Government or to the Inspector-General from time to time any matter which, in their opinion, should receive attention and annually on the progress of the school;

(c) to interview the inmates immediately after their arrival and to make suggestions, if any, as to the special training which each should receive;

(d) to consider cases of release on licence under sub-section (1) of section 13 and cases of release on parole under sub-section (1) of section 17, placed before them by the Superintendent;

(e) to consider such action as may be necessary in regard to the inmates whose term of detention is about to expire; and

(f) to consider and report to the Government cases of inmates who are fit to be discharged under section 27.

(3) Subject to such rules as may be made by the Government in that behalf, every member of the visiting committee shall be entitled to call for information from the Superintendent, to examine the records of the school and to take such other action as he deems necessary for the due discharge of his duties.

22. *Classification of inmates.*—(1) The inmates of a borstal school shall be divided by the Superintendent according to their industry and good conduct into three grades, namely:—

(i) the ordinary grade,

(ii) the star grade,

(iii) the special star grade.

(2) The privileges of each grade shall be higher than those of the grade preceding, if any.

(3) Every inmate shall, on reception in a borstal school, be placed in the ordinary grade.

(4) The Superintendent may promote or reduce any inmate from one grade to another in accordance with the provisions of sub-section (5), the rules made under this Act and the general instructions of the visiting committee.

(5) Promotions and reductions shall be regulated by close personal observation of the inmates and shall depend specially on their general behaviour, amenability to discipline and attention to instructions, both literary and industrial.

23. *Punishment for offences.*—(1) The punishments which may be inflicted on an inmate of a borstal school for offences specified in the Prisons Act, 1894 (Central Act 9 of 1894) or the Travancore-Cochin Prisons Act, 1950 (Act XVIII of 1950), as the case may be, and the rules made thereunder, shall be in the following forms and no other:—

- (i) formal warning,
- (ii) extra drill,
- (iii) deprivation of any of the privileges of the grade,
- (iv) reduction in grade.

(2) No punishment shall be awarded to any inmate by any official of the school except the Superintendent or in his absence the official exercising his functions.

24. *Limitation of hours of work.*—No inmate of a borstal school shall be made to work for more than six hours a day:

Provided that extra drill awarded as a punishment under sub-section (1) of section 23 shall not be deemed, for the purposes of this section, to be work.

PART V

APPEAL AND REVISION

25. *Appeal and revision.*—For purposes of appeal and revision under the Code of Criminal Procedure, 1898 (Central Act 5 of 1898), an order of detention under section 5 of this Act shall be deemed to be a sentence of imprisonment for the same period.

Any person affected by an order of the Inspector-General under this Act may appeal to the Government whose orders shall be final.

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PART VI

MISCELLANEOUS

26. *Minimum age-limit of adolescents in areas to which the Children Acts have not been extended.*—In areas in which the provisions of the Madras Children Act, 1920 (Act IV of 1920), or the Cochin Children Act, XXXVI of 1111 or the Travancore Children Act, 1120 (Act XXXII of 1120), are not in force, the figures "16" appearing in section 2(1) of this Act shall be read as "15".

27. *Power of Government to discharge inmates.*—The Government may at any time order the discharge of an inmate of any borstal school either absolutely or subject to such conditions as they may think fit.

28. *Removal of disqualification attaching to convictions for offences.*—The conviction of an adolescent offender shall not be regarded as a conviction for the purposes of any disqualification attaching to a conviction for any offence.

29. *Rules.*—(1) The Government may, after previous publication, make rules for the purpose of carrying into effect the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for—

(a) the appointment, powers and duties of officials in borstal schools;

(b) the treatment, maintenance, education, industrial or agricultural training and control of the inmates of borstal schools;

(c) the grant of permission to the inmates of borstal schools to absent themselves for short periods;

(d) visits to and communications with the inmates of borstal schools;

(e) the temporary detention of adolescent offenders until arrangements can be made for sending them to borstal schools;

(f) the transfer of adolescent offenders from a prison to a borstal school by the Inspector-General;

(g) the form of, and the conditions under which, licences may be granted;

(h) the period for which and the conditions subject to which an inmate may be allowed to receive instructions and training under section 19;

(i) the control and management of borstal schools;

(j) the matters subject to which information may be called for from the Superintendent and the records of the school may be examined by the members of the visiting committee;

(k) the powers and duties of probation officers under this Act and the submission of reports by them;

(l) any other matter which is to be, or may be, prescribed.

(3) All rules made under this Act shall be laid for not less than fourteen days before the Legislative Assembly as soon as may be after they are made, and shall be subject to such modifications as the Legislative Assembly may make during the session in which they are so laid or the session immediately following.

30. *Repeal.*—The Madras Borstal Schools Act, 1925 (Act V of 1926), as in force in the Malabar district referred to in sub-section (2) of section 5 of the States Reorganisation Act, 1956 (Central Act 37 of 1956) and the Travancore Borstal Schools Act, 1120 (Act XXXI of 1120), are hereby repealed.