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GOVERNMENT OF ASSAM

ORDERS BY THE GOVERNOR

LAW DEPARTMENT

NOTIFICATION

The 8th February 1969

No.LJL.19/67/8.—The following Act of the Assam Legislative Assembly which received the assent of the President is hereby published for general information.

ASSAM ACT I OF 1969

(Received the assent of the President on the 24th January, 1969)

THE ASSAM BORSTAL INSTITUTION ACT, 1968

[Published in the Assam Gazette Extraordinary, dated 10th February 1969]

**An
Act**

**to provide for the establishment and regulation of Borstal
Institutions in the State of Assam and for the detention
and training of adolescent offenders therein and
matters connected therewith**

Preamble

Whereas it is expedient to provide for the establishment and regulation of Borstal Institutions in the State of Assam and for the detention and training of adolescent offenders therein and matters connected therewith.

It is hereby enacted in the Nineteenth Year of the Republic of India as follows:—

Short title,
extent and
commence-
ment.

1. (1) This Act may be called the Assam Borstal Institution Act, 1968.

(2) It extends to the whole of the State of Assam.

(3) It shall come into force on such date as the State Government may, by notification in the official Gazette, appoint in this behalf.

Definitions

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

(a) "adolescent offender" means any person not less than fourteen and not more than twenty-one years of age who has been convicted of any offence punishable with imprisonment but not punishable with death or who having been ordered to give security under section 106 or section 112 of the Code of Criminal Procedure, 1898, has failed to do so or who, when the bond has been cancelled under section 126A of that Code, has failed to give fresh security ;

V of 1898

(b) "Borstal Institution" means a place in which adolescent offenders may be detained under this Act and given such industrial, vocational, general educational and cultural training and other instructions and subjected to such disciplinary and moral influences as will be conducive to their reformation ;

(c) "detained" with its grammatical variations and cognate expressions means detained in a Borstal Institution ;

(d) "Director" means a Director of Borstal Institutions appointed under sub-section (1) of section 4 ;

(e) "inmate" means any person ordered to be detained under this Act ;

(f) "officer" means an officer of a Borstal Institution appointed in such manner as may be prescribed and includes the Director and the Superintendent of Borstal Institutions appointed under section 4 ;

(g) "prescribed" means prescribed by rule made under this Act ;

(h) "Superintendent" means a Superintendent of a Borstal Institution appointed under sub-section (2) of section 4;

(i) "visiting committee" means a visiting committee appointed under sub-section (3) of section 4.

Establishment of Borstal Institutions.

3. For the purposes of this Act, the State Government may establish one or more Borstal Institutions.

Appointment of Director of Borstal Institutions, Officers and visiting committee.

4. (1) The State Government shall appoint a Director of Borstal Institutions who shall exercise, subject to the directions issued by the State Government, general control and superintendence over all Borstal Institutions.

(2) For every Borstal Institution the State Government shall appoint a Superintendent, and such other officers as it may consider necessary in such manner as may be prescribed.

(3) For every Borstal Institution a visiting committee shall be appointed in such manner as may be prescribed.

Power of court to make order for detention

5. (1) When an adolescent offender is convicted for failing to obey an order made by the High Court, a court of Session or a court of Magistrate of the first class to give security under section 106 or section 118 or section 126A of the Code of Criminal Procedure, 1898, Act V of 1898, or when such offender is convicted by such court for any offence not punishable with death or imprisonment for life and when the court convicting such offender has not passed any order under any of the provisions of the Probation of Offenders Act, 1958, Act XX of 1958, may in lieu of passing a sentence of imprisonment make an order for the detention of the adolescent offender in Borstal Institution for a term which shall not be less than two years and more than five years, when the order is made by such Court other than a Magistrate, and shall not be less than two years and more than three years when the order is made by such Magistrate.

(2) When any Magistrate not empowered to make an order under sub-section (1) is of opinion that in respect of any adolescent offender convicted by him an order should be made under the said sub-section he shall, without passing any sentence, record such opinion and submit the records of the case and forward the adolescent offender to the Sessions Judge and thereupon the Sessions Judge may either pass an order under sub-section (1) or pass such other order or sentence as the Magistrate might himself have passed,

(3) Before making an order of detention under sub-section (1) or sub-section (2), the High Court, the Sessions Judge or the Magistrate, as the case may be, shall, after considering any report submitted by the Probation Officer under the Probation of Offenders' Act, 1958 and any other report or representation which may be made to it or him as to the desirability of the detention, satisfy itself or himself that the character, state of health and mental condition of the person convicted and the other circumstances of the case are such that the person convicted is likely to profit by such detention.

(4) When an order for detention is made under this Act, the ground for such detentions shall be recorded and a copy thereof shall be furnished to the person ordered to be detained, free of cost.

Power of
Superin-
tendent of
Prison to
present
adolescent
offender
before
Sessions
Judge for
detention.

6. Whenever it appears or is represented to the Superintendent of a prison that any adolescent offender confined in the prison should, for the reasons mentioned in sub-section (3) of section 5, be detained, he shall send a report to this effect to, and cause the adolescent offender to be produced before the Sessions Judge of the sessions division in which the prison is situated and if the Sessions Judge after making such inquiry as may be prescribed and such further inquiry as he may consider necessary, is satisfied that the adolescent offender should, for the reasons mentioned in the said sub-section be detained, he may order the adolescent offender to be removed from the prison and detained for a period equal to the unexpired term of the imprisonment to which he was sentenced or equal to the unexpired portion of the period for which he was required to give security, as the case may be:

Provided that in no case shall he be detained for more than five years.

When ac-
tion may
not be taken
under sec-
tion 6

7. No order shall be made under the provision of section 6—

- (i) until the time allowed by law for appeal against the sentence or order under which the prisoner is committed to or confined in prison, has expired or, if an appeal has been preferred or a revision is pending until such appeal or revision has been disposed of; or
- (ii) if an application made on appeal or otherwise to have the sentence altered into an order of detention, has been rejected by an Appellate Court or the High Court; or

(iii) in the case of any person who has been sent to a Reformatory School in accordance with the provisions of the Reformatory Schools Act, 1897 ; or VII of 1897.

(iv) if the unexpired term of the imprisonment to which the prisoner was sentenced, or if the period for which security was required from him is less than two years ; or

(v) unless the provisions of sub-section (3) of section 5 have been complied with.

Application of the Code of Criminal Procedure, 1898, and the Indian Limitation Act, 1963 and provisions of appeal and revision.

8.(1) Subject to the provisions of sub-section (2), the provisions of the Code of Criminal Procedure, 1898 relating to appeal, reference and revision and Article 115 of the Indian Limitation Act, 1963, shall apply in the case of an order of detention as if the order had been a sentence of imprisonment for the same period as the period for which detention was ordered. V of 1898 Act 36 of 1963.

(2) Notwithstanding anything contained in section 423 of the Code of Criminal Procedure, 1898, in case of an adolescent offender, an Appellate Court or the High Court in exercise of its powers of revision, may, in pursuance of sub-section (1) and the provisions of that Code, and after making such inquiry as it may deem fit, alter sentence of imprisonment or an order of commitment to prison under section 123 of that Code to an order of detention if, for reasons mentioned in sub-section (3) of section 5, it considers such alteration expedient and may after an order of detention to a sentence of imprisonment or commitment to prison under the said section 123, as the case may be : V of 1898.

Provided that :—

(i) the sentence of imprisonment, order of commitment or detention shall not be in excess of the powers of the Trial Court or Magistrate; and

(ii) before making such order the Court shall give the said person or his parent or guardian a reasonable opportunity of being heard.

(3) Any person who has been ordered to be detained in a Borstal Institution for a period to expire after the term of the imprisonment to which he was

sentenced would expire had the order not been passed, may appeal to the Court of Session, and such Court may either confirm the order or set it aside and restore the sentence of imprisonment or if the order is for more than two years, reduce it to a term not shorter than two years nor shorter than the residue of imprisonment to which he was sentenced.

(4) Any person ordered by a Court of Session under the provision of sub-section (3) to be detained for a period to expire after the term of imprisonment to which he was sentenced would expire had such order not been passed, may appeal within sixty days of the order to the High Court and the High Court may pass any such order as the Court of Sessions might have passed.

Release on
furnishing
security.

9. Any person detained for failure to furnish security shall be released on furnishing the security.

Inquiry to
be made
regarding
age before
the passing
of an order
of detention.

10. (1) Before passing an order of detention under this Act, the High Court, Sessions Judge or Magistrate, as the case may be, shall inquire, or cause an inquiry to be made into the question of the age of the person convicted or failing to obey an order to give security under section 106 or under section 118 or section 126A of the Code of Criminal Procedure, 1898, and after taking such evidence, if any, in regard thereto as may be deemed necessary or proper, shall record a finding thereon.

V of 1898.

(2) A similar inquiry shall be made and finding recorded by every Magistrate not empowered to pass an order of detention under this Act before submitting the record and forwarding the accused to the Sessions Judge as required by sub-section (2) of section 5.

Additional
Sessions
Judge to
have power
of Sessions
Judge.

11. The Sessions Judge may transfer any matter or proceeding pending before him under this Act to an Additional Sessions Judge for disposal and on such transfer being made the Additional Sessions Judge shall exercise in regard thereto the same powers as are vested in the Court of Sessions or the Sessions Judge by or under this Act.

Detention
for the first
time not to
be regarded
as disqualifi-
cation.

12. The detention of a person for the first time under the provisions of this Act shall not be regarded as a conviction for the purpose of any disqualification attaching to a conviction for any offence.

Power to re-
lease on
licence.

13. (1) Subject to any general or specific direction of the State Government, the Director of Borstal Institutions may, on the recommendation of the visiting committee, at any time after the expiration of six months, or in the case of women, three months from the commencement of the term of detention, if he is satisfied that the inmate is likely to abstain from crime and to lead a useful and industrious life, by licence permit him to be discharged from the Borstal Institution on condition that he be placed under the supervision or authority of such Government Officer, such secular institution or such person or religious society belonging to the same religion as that of the inmate named in the licence who may be willing to take charge of him.

(2) The Director of Borstal Institutions may, subject to such conditions as the State Government may prescribe, discharge any inmate who had been previously granted a licence but whose licence was subsequently revoked under section 16 and grant him a fresh written licence and in such case the provisions of this Act shall apply as if such fresh licence had been granted under sub-section (1).

(3) A licence under this section shall be in force until the expiry of the term for which the offender was ordered to be detained in a Borstal Institution, unless sooner revoked.

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

Absence un-
der licence
to be count-
ed towards
period of
detention.

14. The time during which an inmate is absent from a Borstal Institution in accordance with licence granted under section 13 shall be reckoned as part of the period of detention.

Form of
licence.

15. Every licence granted under the provisions of section 13 shall be in such Form and shall contain such conditions as the State Government may, by general or special order, direct.

Suspension
and revo-
cation of
licence.

16. (1) Subject to any general or special directions of the State Government, a licence granted under section 13 may be suspended for a period not exceeding three months by the Superintendent or the Director or be revoked by the Director in consultation with the visiting committee. For the purposes

of such revocation, the Director or the visiting committee may make such enquiry as he or it deems necessary, either through a Probation Officer or otherwise.

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

(3) When any licence is suspended or revoked or deemed to be revoked, the offender shall forthwith return to the Borstal Institution, and, if he fails to do so, he may be arrested without warrant by any Police Officer not below the rank of a Sub-Inspector and committed to the Institution.

(4) On the suspension or revocation of a licence, the period beginning from the date on which the licence is suspended or revoked or deemed to be revoked till the date on which the offender returns to the Institution or is arrested, whichever is earlier, shall be excluded in computing the period for which he has been ordered to be detained in a Borstal Institution.

Penalty for
escape.

17. If any inmate escapes from a Borstal Institution before the expiry of the period for which he was ordered to be detained or if any inmate absense on licence from a Borstal Institution escapes from the supervision or authority of any Government Officer or secular institution or person or religious society in whose charge he was placed, or fails on the suspension or revocation of his licence to return to the Borstal Institution he may, on conviction by a Magistrate, be punished with imprisonment of either description for a term which may extend to two years or with fine or with both, and his licence, if any, shall be forfeited with effect from the date of his escape or failure to return, as the case may be. An offence under this section shall be deemed to be a cognizable offence within the meaning of sections 4 (i) (f) of the Code of Criminal Procedure, 1898.

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Incorrigi-
bles.

18. Where an inmate is reported to the State Government by visiting committee to be incorrigible or to be exercising any unwholesome influence on the other inmates of the institution or is convicted under section 17 or is reported by the Superintendent to have committed an offence which has been prescribed to be a major Borstal Institution offence by rules in pursuance of the provisions of clause (xv) of section 31 of this Act, the State Government may

commute the residue of the term of detention to such term of imprisonment of either description not exceeding such residue as the State Government may direct and may order the transfer of the inmate to any jail in Assam in order to complete the said term of imprisonment.

Persons appointed officers to be public servants. 19. Persons appointed to be officers under this Act shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code, 1860. XLV of 1860.

Special accommodation. 20. If accommodation in a Borstal Institution is not immediately available for a person ordered to be detained, he may be detained in such special ward or other suitable part of a prison as the State Government may by special order direct until he can be sent to a Borstal Institution and the period of detention so undergone shall be treated as detention in a Borstal Institution.

Extramural custody, control and employment of inmates. 21. An inmate when being taken to or from any Borstal Institution in which he may be lawfully detained or when working outside or being otherwise beyond the limits thereof in or under the lawful custody or control of an officer of such Borstal Institution shall be deemed to be under detention and shall be subject to same incidents as if he were actually in a Borstal Institution.

Penalty for introduction or removal of prohibited articles. 22. Whoever, contrary to any rule made under section 31, introduces or removes, or attempts by any means whatever to introduce or remove, into or from any Borstal Institution or supplies or attempts to supply to any inmate outside the limits of such Institution any prohibited articles, and every Officer of a Borstal Institution who, contrary to such rule, knowingly permits any such articles to be introduced into or removed from any Borstal Institution to be possessed by any inmate, or to be supplied to any inmate outside the limits of a Borstal Institution, and whoever, contrary to any such rule, communicates or attempts to communicate with any inmate, and whoever abets the commission of any of the aforesaid Act, shall, on conviction before a Magistrate, be liable to imprisonment for a term not exceeding six months or to a fine not exceeding two hundred rupees or to both.

Power to
arrest for
offences un-
der section
22.

23. When any person in the presence of any officer commits any offence specified in the last preceding section and refuses on demand of such officer to give his name and address or gives a name or address which such officer knows, or has reason to believe, to be false, such officer may arrest him or cause him to be arrested, and shall without unnecessary delay make him over to police officer, and thereupon such police officer shall proceed as if the offence had been committed in his presence.

Publication
of penalties.

24. The Superintendent shall cause to be affixed, in a conspicuous place outside the Borstal Institution a notice setting forth the acts prohibited under section 22 and the penalties which may be incurred by their commission.

Superinten-
dent to
detain per-
sons duly
committed
to their cus-
tody.

25. The Superintendent shall receive and detain all persons duly committed to his custody under this Act according to the directions contained in the order by which such person has been committed until such person is discharged or removed in accordance with law.

Explanation.—For the purpose of this section and sections 26, 27 and 29 the expression "Superintendent" shall include any person who is for the time being in charge of the Borstal Institution.

Superinten-
dent to return
orders, etc.,
after execu-
tion or dis-
charge.

26. The Superintendent shall forthwith, after the execution of every such order as aforesaid or after the discharge of the person committed thereby, return such order to the Magistrate or the Sessions Judge or Court by which the same was issued or made, together with a certificate endorsed thereon and signed by him showing how the same has been executed or why the person committed thereby has been discharged from detention before the execution thereof.

Power of
Superinten-
dent to give
effect to or-
der of cer-
tain Courts.

27. The Superintendent shall give effect to any order for the detention of any person passed or issued by any Court or Tribunal in any part of India.

Warrant of
officers of
certain
Courts to be
sufficient
authority.

28. An order under the official signature of an officer of such Court or Tribunal as is referred to in section 27 shall be sufficient authority for detaining any person, in pursuance of the order passed upon him.

Procedure where Superintendent entertains doubt about the legality of order sent to him for execution.

29. (1) Where the Superintendent entertains any doubt about the legality of an order sent to him for execution or the competency of the person whose official seal or signature is affixed thereto to pass the order, he shall refer the matter to the State Government by whose order on the case he and all other public officers shall be guided as to the future disposal of the inmates.

(2) Pending a reference under sub-section (1), the inmate shall be detained in accordance with the directions specified in the order of detention.

Lunatic inmate, how to be dealt with.

30. (1) Where it appears to the State Government that an inmate of a Borstal Institution is of unsound mind, the State Government may order him to be removed to a mental hospital or other place of safe custody within the State, to be kept there and treated during the remainder of the term for which he has been ordered to be detained, and if on the expiration of that term it is certified by a medical officer that it is necessary for the safety of the inmate or others that he should be further detained under medical care or treatment, then he shall be so detained until he is discharged according to law.

(2) Where it appears to the State Government that an inmate so kept and treated has become of sound mind, the State Government shall, by a warrant directed to the person having charge of the inmate, remand him, if still liable to be detained, to the Borstal Institution from which he was removed, or to another Borstal Institution within the State, or order him to be discharged on a certificate or otherwise, or, if he is no longer liable to be detained order him to be discharged.

(3) The provisions of section 31 of the Indian Lunacy Act, 1912 shall apply to every person confined in a mental hospital under sub-section (1) after the expiration of the term for which he was ordered to be detained and the time during which an inmate is confined in a mental hospital under that sub-section shall be reckoned as part of the term of detention which he may have been ordered to undergo.

(4) In any case in which the State Government is competent under sub-section (1) to order the removal of an inmate to a mental hospital or other place of safe custody within the State, the

State Government may order his removal to any such hospital or place within any other State by agreement with the Government of such other State and the provisions of this section respecting the custody, detention, remand and discharge of an inmate removed under sub-section (1) shall, so far as they can be made applicable, apply to an inmate removed under this sub-section.

Power to
make rules,

31. (1) The State Government may, after previous publication in the official Gazette, make rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing powers such rules may provide for all or any of the following matters, namely:—

(i) the regulation, management and classification of Borstal Institutions established under this Act and the description and construction of wards, cells and other places of detention;

(ii) the regulation by number or otherwise of the inmates to be detained in each class of institution;

(iii) the defining of the powers and duties of the Director of Borstal Institutions;

(iv) the governance of Borstal Institutions, and the appointment, conditions of service, guidance, control, punishment and dismissal of Superintendents and other officers employed in Borstal Institutions, and for the defining of their responsibilities, duties, disabilities and powers;

(v) the maintenance of records and the preparation and submission of reports;

(vi) the selection and appointment of inmates as inmate officers and their reduction and dismissal and defining the responsibilities, duties and powers of such officers;

(vii) the temporary detention of inmates until arrangement can be made for their admission to a Borstal Institution;

(viii) the admission, removal and discharge of inmates, and the disposal of their effects during their detention;

(ix) feeding, clothing and bedding of inmates;

(x) the custody, discipline, grading, treatment, education, training and control of inmates ;

(xi) the employment, instruction and control of inmates within or without Borstal Institutions and the disposal of the proceeds of their labour ;

(xii) the treatment of sick inmates ;

(xiii) classifying and prescribing the forms of education, instruction, employment and labour and regulating the periods of rest ;

(xiv) defining the acts which shall constitute Borstal Institution offences ;

(xv) the classification of Borstal Institution offences into major and minor offences ;

(xvi) fixing the punishments admissible under this Act which shall be awardable for the commission of the various Borstal Institution offences or the classes thereof ;

(xvii) declaring the circumstances in which acts constituting both a Borstal Institution offences and an offence under Indian Penal Code, 1860 may or may not be dealt with as Borstal Institution offence ; XLV of 1860.

(xviii) awarding of marks and the shortening of periods of detention ;

(xix) regulating the use of arms against any inmate or body of inmates and the use of fetters in the case of an outbreak or attempt to escape ;

(xx) defining the circumstances and regulating conditions under which inmates in danger of death may be released ;

(xxi) regulating the transfer from one part of India to another part of inmates whose term of detention is about to expire ;

(xxii) defining articles the introduction or removal of which into or out of Borstal Institutions without due authority is prohibited ;

(xxiii) the classification and the separation of inmates ;

(xxiv) rewards for good conduct ;

(xxv) regulating the transfer of inmates from one Borstal Institution to another or to a hospital and from a Borstal Institution to a prison or from a prison to a Borstal Institution ;

(xxvi) the treatment, transfer and disposal of criminal lunatics confined in Borstal Institutions ;

(xxvii) regulating the transmission of appeals and petitions from inmates and their communications with their friends ;

(xxviii) the appointment and guidance of visitors of Borstal Institutions ;

(xxix) prescribing conditions on which certificate may be granted, suspended, revoked, or cancelled ;

(xxx) appointment, powers and control or servants of the Government referred to in Section 13 ;

(xxxi) defining the powers and duties of after-care societies and guardians and the condition on which financial assistance may be given to them ;

(xxxii) the appointment of visiting committees ;

(xxxiii) generally for the purpose of carrying out the provisions of this Act.

(3) Every rule made under this section shall be laid as soon as may be after it is made, before the Assam Legislative Assembly while it is in Session for a total period of fourteen days which may be comprised in one Session or in two successive Sessions, and if before the expiry of the Session in which it is so laid or the Sessions immediately following, the Assam Legislative Assembly agree in making any modification in the rule or the Assam Legislative Assembly agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

P. C. DAS,
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