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Extended to the UT of Delhi vide Govt Notification  
No. 189/73 dated 30.5.1939

## THE PUNJAB BORSTAL ACT, 1926

(Punjab Act No. 11 of 1926)<sup>1</sup>

(16th August, 1926)

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*An Act to make provision for the establishment and regulation of Borstal Institutions in the Punjab and for the detention and training of adolescent offenders therein.*

*Preamble.--* Whereas it is expedient to make provision for the establishment and regulation of Borstal Institution in the Punjab, and for the detention and training of adolescent offenders therein; and whereas the previous sanction of the Governor-General under sub-section (3) of section 80-A of the Government of India Act has been obtained, it is hereby enacted as follows:--

#### 1. Short title, extent and commencement.--

- (1) This Act may be called the Punjab Borstal Act, 1926.
- (2) It extends to the Union Territory of Delhi.

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#### CASE LAW

#### SECTION 1

#### Applicability of the Act

The benefit of the provisions of the Act cannot be denied to a minor boy simply on the ground that he associates with habitual criminals.

—Bhaina Ram v. Emperor AIR 1928 Lah. 496: 29 Cri.L.J. 350: 108 IC 169.

The provisions of the Act whenever applicable should be followed directly.

—Ashok Kumar v. Delhi Administration 34(1968) DLT 271.

1. Extended to the Union Territory of Delhi vide Govt. of India, Notification No. 189/73, dated the 30.5.1939.

(3) It shall come into force on such date as the Chief Commissioner may by notification appoint in this behalf.

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

(1) "Borstal Institution" means a place in which offenders may be detained under this Act and given such industrial training and other instruction and subject to such disciplinary and moral influences as will conduce to their reformation;

(2) "detained" means detained in and "detention" means detention in a Borstal Institution;

(3) "inmate" means any person ordered to be detained;

(4) "offence" means--

(i) an offence punishable with transportation or rigorous imprisonment under the Indian Penal Code (XLV of 1860) other than--

(a) an offence punishable with death;

(b) an offence punishable under Chapter V-A or Chapter VI of the said Code;

(ii) an offence punishable with imprisonment under the Public Gambling Act, 1867 (III of 1867);

(iii) an offence punishable with imprisonment under the Opium Act, 1878 (I of 1878);

(iv) an offence punishable with imprisonment under the Punjab Excise Act 1914 (Punjab Act I of 1914);

(5) "officer" means an officer of a Borstal Institution appointed in such manner as may be prescribed;

(6) "prescribed" means prescribed by rules made by the Chief Commissioner under the provisions of this Act;

(7) "security for good behaviour" means security for good behaviour otherwise than for political activities under section 109 or section 110 of the Code of Criminal Procedure, 1898;

(8) "Superintendent" means a Superintendent of a Borstal Institution appointed in such manner as may be prescribed.

## CASE LAW

## SECTION 2

From the definition of the words "Borstal institution", it appears that the aim of establishing these institutions is not only to subject them "to such disciplinary and moral influences as will conduce to their reformation."

--Ashok Kumar v. Delhi Administration 34(1988) DLT 271.

## SECTION 2(4)(i)(a)

### Conviction under Sec.302 IPC

One of the punishments for the offence of murder is death and, therefore, the offence of murder would be covered on within sec. 2(4)(i)(a) of the Act and to such a conviction the Punjab Borstal Act would have no application.

--Subhash Chand v. State of Haryana AIR 1988 SC 584; Hawa Singh v. State of Haryana AIR 1987 SC 2001 overruled. See also: Ashok Kumar v. Delhi Administration 34(1988) DLBT 271.

3. *Establishment of Borstal Institution.*-- The Borstal Institution in which orders of detention passed under this Act are to be served shall be the Borstal Institution  
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4. [Omitted].

5. *Power of courts to pass a sentence of detention in a Borstal Institution in the case of a convict under twenty-one years of age in lieu of transportation or rigorous imprisonment.*--

(1) When any male person less than twenty-one years of age is convicted of an offence by a court of session, a Magistrate specially empowered under section 30 of the Code of Criminal Procedure, 1898, or a Magistrate of the first class, or is ordered to give security for good behaviour and fails to give such security, and when by reason of his criminal habits or tendencies or association with persons of bad character it is

#### CASE LAW

#### SECTION 5

Section 5 authorises detention in lieu of transportation or imprisonment. There is no provision, however, for further detention in default of payment of fees.

--Emperor v. Pannalal Bhikharilal AIR 1938 Nag. 131: 1938 N.L.J/ 8: 173 I.C. 899: 39 Cri.L.J. 427.

Before the provisions of the Act can be applied, it must appear to the Court that the offender should be reason of his criminal habits or tendencies or association with persons of bad character be subject to detention in a Borstal institution instead of having a sentence of imprisonment passed upon him. It is clear that the requisites are that the offender should be addicted to criminal habits or tendencies or be associated with persons of bad character. The mere fact that the offender is adolescent would not be sufficient.

--Sellappa v. Emperor AIR 1931 Mad. 771: (1931) 1 MLJ 222: ILR 54 Mad. 764: 32 Cri.L.J. 1044: See also 1964 J.L.J. (SN) 40.

#### Criminal Tendencies

The words "criminal tendencies" should not be given a narrow interpretation. If a boy had no criminal tendencies he would not be convicted of any crime at all. The fact that the boy is convicted for one offence or other shows in the view of the Court convicting him that he has criminal tendencies. The section should be interpreted to mean that whenever an adolescent was convicted of an offence ordinarily he should be given the advantage of being put in the Borstal school so that by long association and training he would come out after the termination of the stay as a useful citizen of the country.

--Public Prosecutor v. Nagappa Pujary. AIR 1964 Mad. 460: (1948) 2 M.L.J. 630: I.L.R. (1949) Mad. 840: 50 Cri.L.J. 656. (As per Subba Rao, J.)

A criminal tendency does not manifest itself only in acts involving dishonesty such as theft or cheating. A person who, owing to lack of self-control or as the result of his environment, is unable to restrain himself and commits an offence of either grievous hurt or homicide by using a deadly weapon without regard to the consequences exhibits a criminal tendency just as much as a person who steals.

--Public Prosecutor v. Nagappa Pujary. AIR 1964 Mad. 460: (1948) 2 M.L.J. 630: I.L.R. (1949) Mad. 840: 50 Cri.L.J. 656. (As per Mack J.) See also In re. K. Palani Moopan AIR 1952 Mad. 172: (1951) 1 M.L.J. 679: 1952. Cri.L.J. 333.

expedient, in the opinion of the Judge or Magistrate may, in lieu of passing a sentence of transportation or rigorous imprisonment, pass an order of detention for a term which shall not less than two years and shall not exceed seven years when the order is passed by a court of session or the Magistrate specially empowered under section 30 of the Code of Criminal Procedure, 1898, and shall not be less than two years nor exceed three years, when the order is passed by a Magistrate of the first class not so empowered.

(2) When any Magistrate, not empowered to pass such order, is of opinion that an offender convicted by him is a person in respect of whom such orders should be passed in accordance with the provisions of sub-section (1) he may, without passing any sentence, record such opinion and submit his proceedings and forward the accused

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## CASE LAW

### SECTION 5

#### Criminal Tendencies

When a boy picks a pocket in an open shandy during broad day light amidst a crowd of persons in a village away from his home and takes the defence that the police had concocted the case by placing stolen property in his hand, he would be held as having criminal tendencies.

-Atchi Sanjivagadu v. Emperor 1935 M.W.N. 1232.

Where the accused, aged 20 years, was convicted under Section 380 of the Penal Code and sentenced to "rigorous imprisonment for 15 months to be undergone in the Dharwan Juvenile Jail", it was held that the proper procedure would have been this: The Magistrate should have convicted the accused under Section 380, and that in lieu of sentence of imprisonment he should have sentenced him to be detained for a period of not less than two years and not more than the prescribed period in the Borstal school.

--Mathuradas v. Emperor AIR 1932 Bom. 489; 34 Bom.L.R. 299; 33 Cri.L.J. 395.

There is no provision to direct an order of detention in a Borstal school to run consecutively with such a previous order of detention, as in the case of a sentence of imprisonment. In such a case, the detention directed in the later case should be allowed to be merged in the previous detention.

In re. Public Prosecutor AIR 1951 Mad. 607; (1951) 1 M.L.J. 14.

Offence has been defined in sec.2(4) to mean an offence punishable with transportation or rigorous imprisonment under the IPC but the offences excepted are an offence which is punishable with death, an offence punishable under Ch. V-A (Criminal Conspiracy) or Ch. VI (all offences against the State) of the IPC or those offences which are punishable with imprisonment under Public Gambling Act. The offences under the Opium Act and the Punjab Excise Act (now under Narcotic Drugs and Psychotropic Substances Act) also fall under this category. Apart from cases of conviction under those excepted offences, the provisions of the Act can be applied to all the convicts where the convict is less than 21 years of age, at the time of conviction. Under the Children Act, 1960, a "delinquent child" i.e. a boy who has not attained the age of 16 years or a girl who has not attained the age of 18 years is to be tried by the Children's Court and if found guilty, has to be lodged in special schools or homes as envisaged under the Act. A delinquent offender over the age of 16 years but less than 21 years is to be dealt with differently as per the object of this legislation.

--Ashok Kumar v. Delhi Administration 34(1988) DLT 271.

to the District Magistrate to whom he is subordinate.

(3) The District Magistrate to whom the proceedings are so submitted may make such further enquiry (if any) as he may deem fit and pass such order for the detention of the offender or such other sentence or order, as he might have passed if the trial had been held by him from its commencement.

*6. Special powers of District Magistrates.*-- When any male person less than twentyone years of age has been sentenced for an offence by a Magistrate to rigorous imprisonment, or when ordered by a Magistrate to give security for good behaviour has failed to give such security, and has been committed to or confined in prison and no appeal has been preferred against such sentence or order within the time prescribed by law and when by reason of such person's criminal habits or tendencies or association with persons of bad character it is expedient, in the opinion of the District Magistrate, that he should be detained, the District Magistrate may order that such person shall, in lieu of undergoing imprisonment, be detained for a period not less than two years nor more than three years.

*7. Detention of prisoners confined in the \*\*\* Borstal Jail.*-- If it appears to the Chief Commissioner that any male person less than twenty one years of age who having been sentenced to rigorous imprisonment for an offence or having been committed to or confined in prison for failing to give security for good behaviour is at the time of the commencement of this Act confined in the \*\*\* Borstal Jail, should for the reasons described in sub-section (1) of section 5 be detained, the Chief Commissioner may direct that he be detained for a period not exceeding the residue of sentence or of the period for which security was required, as the case may be, provided that such order shall be subject as regards the period of detention to any order passed on appeal against or revision of the sentence or order of commitment or confinement in prison.

*8. Power of Superintendent of Jail to present prisoner less than 21 years of age before District Magistrate for detention in a Borstal institution.*-- Whenever it appears to the Superintendent of a Jail that any male person less than twenty-one years of age sentenced to transportation or rigorous imprisonment for an offence or committed to or confined in prison for failing to give security for good behaviour should for the reasons described in sub-section (1) of section 5 be detained, he shall cause such prisoner to be produced before the District Magistrate in whose jurisdiction the Jail is situated, and if the District Magistrate after making such enquiry as he may deem proper or as may be prescribed is satisfied that the prisoner should for the reasons described in the said sub-section be detained, he may order the prisoner to be removed from Jail and detained for a period equal to the unexpired term of the transportation or imprisonment to which he was sentenced, or of the period for which security was required from him, as the case may be.

*9. When action may not be taken under section 8.*-- No order shall be made under the provisions of section 8.--

(i) until the time allowed by law for the prisoner to appeal has expired or if an appeal

has been preferred until such appeal has been finally decided; 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 (VI of 1897).

*10. Application of the Code of Criminal Procedure, 1898, and the Indian Limitation Act, 1908, and provisions for appeal and revision.--*

(1) Subject to the provision of sub-section (2) of this section the provisions of the Code of Criminal Procedure, 1898, relating to appeal, reference (VIII of 1898) and revision and Articles 154 and 155 of the Indian Limitation Act, 1908, shall apply in the case of an order of detention passed under section 5 as if the order had been a sentence of imprisonment for the same period as the period for which detention was ordered.

(2) Notwithstanding anything contained in section 23 of the Code of Criminal Procedure, 1898, when a person who at the time of the conviction was less than twenty-one years of age has been convicted of an offence, or when such person on being ordered to furnish security for good behaviour has failed to furnish such security, an appellate court or the high court in the exercise of its powers of revision, may in pursuance of sub-section (1) and the provisions of the Code of Criminal Procedure, 1898, and after making such inquiry as it may deem fit, alter a sentence of imprisonment or an order of commitment to a person under section 123 of the Code of Criminal Procedure to an order of detention, if for reasons described in sub-section (1) of section 5, it considers such alterations expedient, and may alter an order of commitment to prison under section 123 of the Code of Criminal Procedure, as the case may be, provided that the sentence of imprisonment, order of commitment, or order of detention, shall not be in excess of the powers of the trial Magistrate or court.

(3) Any person who has been ordered to be detained in a Borstal Institution under the provisions of section 6 for a period to expire after the term of imprisonment to which he was sentenced would expire had the order not been passed, may, subject to the provisions of sub-section (5) appeal to the Sessions Judge, and the Sessions Judge 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 the residue of imprisonment to which the offender was sentenced.

(4) Any person ordered by a Sessions Judge under the provisions 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 subject to the provisions of sub-section (5), appeal within thirty days of the order to the High Court and the High Court may pass any such order as the Sessions Judge might have passed.

(5) An appeal shall not lie under sub-section (3) or sub-section (4) against a conviction or on any finding of fact but only on the order appealed against as illegal, or unduly severe.

*11. No person who has been once detained to be detained again.--* The person who has been previously detained for the whole period prescribed in an order of detention or who has been transferred to jail under this Act, shall again be ordered to be detained.

12. *Release on furnishing security.*-- Any person detained for failure to furnish security shall be released on furnishing such security.

13. *Enquiry to be made regarding the age of the offender before the passing of an order of detention.*--

(1) Before passing an order of detention under this Act the Magistrate or Court, as the case may be, shall enquire or cause enquiry to be made into the question of the offender, and after taking such evidence (if any) as may be deemed necessary or proper shall record a finding thereon.

(2) A similar enquiry shall be made and finding recorded by every Magistrate not empowered to pass an order of detention under this Act before submitting his proceedings and forwarding the accused to the District Magistrate as required by subsection (2) of section 5 of this Act.

14. *Magistrate to give grounds of his opinion before ordering detention.*-- When any Magistrate, District Magistrate or Court orders an offender to be detained he or it, as the case may be, shall record the grounds of his or its opinion that it is expedient that the offender be detained

15-34. [Omitted]

35. *Powers of the Chief Commissioner to vary age limit and to apply the Act to females.*-- The Chief Commissioner after giving by notification in the official Gazette not less than three months' notice of his intention to do so may, by like notification--

(1) direct that the provisions of sections 5, 6 and 8 shall extend to persons under such age not less than twenty-one nor more than twenty-three as may be specified in the direction being notified; the said sections shall whilst the direction is in force have effect as if the specified age were substituted for twenty-one;

(2) direct that the provisions of section 5, 6, and 8 shall extend to females, and upon such direction being notified the said section shall whilst the direction is in force have effect as if the word "male" were omitted.

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#### CASE LAW

#### SECTION 13

It is incumbent upon the trial court to hold an enguilty regarding the age of the offender under sec. 13 of the Act and to give a definite finding about his age, specially of an offender who claims to be less than 21 years of age, and even in a case where it is not considered expedient to alter the rigorous imprisonment to detention under the Act.

--Ashok Kumar v. Delhi Administration 34(1988) DLT 271.