

# The United Provinces Borstal Act, 1938

UTTAR PRADESH

India

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### Act 7 of 1938

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The United Provinces Borstal Act, 1938 ACT No. 7 of 1938 [31st December, 1938] An Act to make provision for the establishment and regulation of Borstal Institution in the United Provinces and for the detention and training of adolescent offenders therein. Whereas it is expedient to make provision for the establishment and regulation of Borstal Institutions in the United Provinces and for the detention and training of adolescent offenders therein, it is hereby enacted as follows :

### 1. Short title extent and commencement

(1) This Act may be called the United Provinces Borstal Act, 1938. (2) It extends to the whole of Uttar Pradesh. (3) It shall come into force on such date as the State Government 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 subjected to such disciplinary and moral influence as will conduce to their reformation ; (2) "Detained" means detained 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 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, 1877, the Opium Act, 1878, or the United Provinces Excise Act, 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 State Government under this Act; (7) "Security for good behaviour" means security for good behaviour taken under section 109 or section 110 of the Code of Criminal Procedure, 1898; (8) "Superintendent" means Superintendent of Borstal Institution appointed in such manner as may be prescribed.

### **3. Establishment of Borstal Institutions**

For the purpose of this Act the State Government may establish one or more Borstal Institutions.

### **4. Appointment of Director of Borstal Institutions, officers and visiting committee**

(1)The State Government shall appoint a Director of Borstal institutions who shall exercise, subject to the orders of the State Government general control and superintendent of all Borstal Institutions.(2)For every Borstal Institution the State Government shall appoint a superintendent, and such other officers as may be necessary.(3)For every Borstal Institution a visiting committee shall be appointed in such manner as may be prescribed.

### **5. Power of Courts to pass a sentence of detention in a Borstal institution in the case of a conviction under twenty-one years of age in lieu of transportation or rigorous imprisonment**

(1)When any male person not less than fifteen or more than twenty-one years of age is convicted of an offence by a court of session or a magistrate of the first class or is ordered by such court or magistrate 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 expedient, in the opinion of such court or magistrate, that he should be detained, such court 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 be less than two years or more than five years when the order is passed by a court of session, and shall not be less than two years or more than three years when the order is passed by a magistrate :Provided that the State Government may by rule declare that persons belonging to such criminal tribes as may be prescribed shall not be eligible to be detained and no person belonging to any such class shall be ordered to be detained.(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 an order should be passed in accordance with the provisions of sub-section (1) he shall without passing any sentence, record such opinion and submit his proceedings and forward the accused to the District Magistrate to whom he is subordinate. The District Magistrate to whom the proceedings are so submitted may make such further inquiry (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 the commencement.

### **6. Special powers of District Magistrates**

When any person not less than fifteen or more than twenty-one years of age has been sentenced for an offence by a magistrate to rigorous imprisonment, or having ordered by 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 persons, 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 and not exceeding three years: Provided that the total period of confinement in prison together with detention shall not exceed three years.

## **7. 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 Prison that any male person who is 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 prison is situated, and if the District Magistrate, after making such inquiry 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 prison 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: Provided that in no case shall he be detained more than for five years.

## **8. When action may not be taken under section 7**

No order shall be made under the provisions of section 7--(i) until 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 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; or (iv) if the unexpired term of the transportation or imprisonment to which the prisoner was sentenced, or of the period for which security was required from him is less than one year.

## **9. Application of the Code of Criminal Procedure, 1898 and the Indian Limitation Act, 1908 and provisions of appeal and revision**

(1) Subject to the provisions of sub-section (2) of this section the provisions of the Code of Criminal Procedure, 1898, relating to appeal, reference and revision Article 154 of the Indian Limitation Act, 1908, 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. (2) Notwithstanding anything contained in section 423 of the Code of Criminal Procedure, 1898, when a person who at the time of his conviction was not less than fifteen or more 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 prison, 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 alteration expedient, and may alter an order of detention to a sentence of imprisonment or 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, or 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 provision of sub-section (5) 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 the residue of imprisonment to which the offender 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, 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 court might have passed.(5)An appeal shall not be under sub-section (3) or sub-section (4) against any finding of fact but only on the ground that the order appealed against is illegal, or unduly severe.

## **10. No person who has been detained to be detained again**

No person who has been previously detained for the whole period prescribed in an order of detention or who has been transferred to prison under section 19 of this Act, shall again be ordered to be detained.

## **11. Release on furnishing security**

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

## **12. Inquiry 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, district magistrate or court as the case may be, shall inquire, or cause inquiry to be made into the question of the age 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 inquiry 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 sub-section (2) of section 5 of this Act.

### **13. Magistrate to give of his opinion before ordering detention**

When any magistrate, district magistrate or court of session orders an offender to be detained, he or it, as the case may be, shall record the ground of his or its opinion that it is expedient that the offender be detained.

### **13A. Detention for the first time not to be regarded as a disqualification**

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

### **14. Power to release on licence**

Subject to any general or special directions of the State Government the Visiting Committee with the sanction of Director of Borstal Institution, may at any time after the expiration of six months, or in the case of females three months from the commencement of the term of detention, if 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 servant of the Government or such secular institution or such person or religious society belonging to the same religion as the inmate named in the licence who may be willing to take charge of him. A licence granted under this section shall be in force until the term for which the inmate was ordered to be detained has expired unless sooner suspended, revoked or forfeited.

### **15. Absence under licence to be counted towards period of detention**

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

### **16. Form of licence**

Every licence granted under the provisions of section 14 shall be in such form and shall contain such conditions as the State Government may, by general or special order, direct.

### **17. Suspension and revocation of licence**

Subject to any general or special directions of the State Government a licence granted under section 14 may be suspended for a period not exceeding three months by the Superintendent of a Borstal Institution or may be suspended or revoked at any time by the Visiting Committee. Where the licence of any inmate has been suspended or revoked, he shall return to the Borstal Institution, and if he fails to do so, he may be arrested without warrant and taken to the Institution.

## **18. Penalty for escape**

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 absent on hence from a Borstal Institution escapes from the supervision or authority of any servant of the Government 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 term which may extend to two years or with fine or with both, and his licence, in any, shall be forfeited with effect from date of his escape or failure to return as the case may be. An offence under the section shall be deemed to be a cognizable offence within the meaning of the Code of Criminal Procedure, 1898.

## **19. Incurrigibles**

Where an inmate is reported to the State Government by the Visiting Committee to be incurrigible or to be exercising a bad influence on the other inmates of the institution or is convicted under section 18, or is reported by the Superintendent to have committed an offence which has been declared to be a major Borstal Institution offence by rules made by the State Government in pursuance of the provisions of clause (14) of section 32 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 Uttar Pradesh in order to complete the said term of imprisonment.

## **20. Inmates appointed officers to be public servants**

Inmates who have been appointed as officers shall be deemed to be public servants within the meaning of the Indian Penal Code.

## **21. Extra-mural custody, control and employment of inmates**

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 of any such Borstal Institution in or under the lawful custody or control of an officer belonging to 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.

## **22. Penalty for introduction or removal of prohibited articles**

Whoever contrary to any rule under section 32 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, suffers 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 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 acts, 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.

### **23. Powers to arrest for offences under section 22**

When any person in the presence of any officer of a Borstal Institution commits any offence specified in the last foregoing 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, and shall without unnecessary delay make him over to a police officer, and thereupon such police officer proceed as if the offence had been committed in his presence.

### **24. Publication of penalties**

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

### **25. Officers-in-charge of Borstal Institution to detain persons duly committed to their custody**

The Officer-in-charge of Borstal Institution shall receive in detail 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 or until such person discharged, removed in due course of law.

### **26. Officer-in-charge of Borstal Institutions to return orders, etc. after execution or discharge**

The Officer-in-charge of a Borstal Institution 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, district magistrate 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.

### **27. Power of Officer-in-charge to give effect to orders of certain courts**

Officer-in-charge of Borstal Institutions may give effect to any order for the detention of any person passed or issued--(a)by any Court or Tribunal in a Part A State or Part C State ; or(b)by any Court or Tribunal outside India acting under the authority of the Central Government, or(c)by any court or Tribunal in a Part B State, if the reception and detention in Uttar Pradesh of the persons ordered to be detained by such court or Tribunal is authorised by general or special order of the State

Government.

## **28. Warrant of officers of such courts to be sufficient authority**

An order under the official signatures 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.

## **29. Procedure where officer-in-charge of Borstal Institutions doubts the legality of order sent to him for execution**

(1)Where an officer-in-charge of a Borstal Institution doubts the legality of an order sent to him for execution of 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 such manner and with such restrictions or mitigations as may be specified in the warrant order.

## **30. Lunatic inmates, how to be dealt with**

(1)Where it appears to the State Government that any person detained under any order is of unsound mind the State Government may order his removal to a lunatic asylum or other place of safe custody within State, there to be kept and treated as the State Government directs during the remainder of the term for which he has been ordered to be detained , or, if on the expiration of that term it is certified by a medical officer that it is necessary for the safety of the inmates or others than he should be further detained under medical care or treatment, then 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 licence or otherwise, or if he is no longer 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 lunatic asylum 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 lunatic asylum 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 a State Government is competent under sub-section (1) to order the removal of an inmate to lunatic asylum or other place of safe custody within the State the State Government may order his removal to any such asylum 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.



## **31. Application to Borstal Institution or certain provisions of the Prisons Act, 1894, and the Prisoners Act, 1900**

Subject to the rules made under section 32 of this Act, the provisions of section 12 and Chapter XI of the Prisons Act, 1894, and of sections 35 to 50 (inclusive), and the rules made by the State Government under section 51 of the Prisoners Act, 1900, shall apply so far as may be to Borstal Institutions established under this Act, and all references to prisoners, imprisonment or confinement in the said sections, chapters and rules shall be construed as referring to inmates, Borstal Institutions and detention :Provided that the punishment of whipping or the imposition of cross bar fetters shall not be awarded to an inmates.

## **32. Power to make rules under the Act**

The State Government after previous publication make rules consistent with this Act--(1)for the regulation, management and classification of Borstal Institution established under this Act and the description and construction of wards, cells and other places of detention;(2)for the regulation by number or otherwise of the inmates to be detained in each class of institution ;(3)for defining the powers and duties of the Director of Borstal Institution ;(4)for the Government Borstal Institution, 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 ;(5)for the maintenance of records and the preparation and submission of reports;(6)for the selection and appointment of inmates as inmate officers and their reduction and dismissal and for defining the responsibilities, duties and powers of such officers;(7)or the temporary detention of inmates until arrangements can be made for their admission to Borstal Institutions ;(8)for the admission, removal and discharge of inmates, and for the disposal of their effects during their detention;(9)for feeding, clothing and bedding of inmates ;(10)for the custody, discipline grading, treatment, education, training and control of inmates;(11)for the employment, instruction and control of inmates within or without Borstal Institutions, and the disposal of the proceeds of their labour;(12)for the treatment of sick inmates ;(13)for classifying and prescribing the forms of education, instruction, employment and labour and regulating the periods of rest;(14)(i)for defining the acts, which shall constitute Borstal Institution offences;(ii)for determining the classification of Borstal Institution offences into major and minor offences;(iii)for fixing the punishments admissible under this Act which shall be awardable for the commission of the various Borstal Institution offences or the classes thereof;(iv)for declaring the circumstances in which acts constituting both a Borstal Institution offence and an offence under the Indian Penal Code may or may not be dealt with as Borstal Institution offence;(v)for the award of marks and the shortening of periods for detention;(v)for regulating the use of arms against any inmate or body inmates and the use of fetters in the case of an outbreak or attempt to escape ;(vii)for defining the circumstances and regulating the conditions under which inmates in danger of death may be released;(viii)for regulating the transfer from one part of the whole of India except Part B States to another of inmates whose term of detention is about to expire:(15)for defining articles the introduction or removal of which into or out of Borstal Institution without the due authority is prohibited ;(16)for the classification and the separation of inmates;(17)for rewards for good conduct;(18)for regulating the transfer of inmates from one Borstal Institution to another or to

any hospital or asylum and from a Borstal Institution to a prison, or from a prison to a Borstal Institution ;(19)for the treatment, transfer and disposal of criminal lunatics or recovered criminal lunatics confined in Borstal Institutions ;(20)for regulating the transmissions of appeals and petitions from inmates and their communications with their friends;(21)for the appointment and guidance of visitors of Borstal Institutions ;(22)for prescribing conditions on which licences may be granted, suspended, revoked or cancelled;(23)for the appointment powers and control of servants of the Government referred to in section 14 ;(24)for defining the powers and duties of after care societies and guardians and the conditions on which financial assistance may be given to them ;(25)for the appointment committees; and(26)generally for the purpose of carrying out the provision of this Act.

### **33. Powers of the State Government to apply the Act of females**

The State Government after giving by notification in the official Gazette, not less than three months' notice of it to do so may, by like notification of its intention direct, that the provisions of sections 5, 6 and 7 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.