

THE KHYBER PAKHTUNKHWA BORSTAL INSTITUTIONS ACT, 2012.

(KHYBER PAKHTUNKHWA ACT NO. XIV OF 2012)

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(KHYBER PAKHTUNKHWA ACT NO. XIV OF 2012)

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AN
ACT

to provide for the establishment and regulation of Borstal Institutions in the Province of the Khyber Pakhtunkhwa.

Preamble.—WHEREAS it is expedient to provide for the establishment and regulation of Borstal Institutions in the Province of the Khyber Pakhtunkhwa for detention of juveniles, for giving them basic education and training for their mental, moral and psychological development;

It is hereby enacted as follows:

1. Short title, extent and commencement.—(1) This Act may be called the Khyber Pakhtunkhwa Borstal Institutions Act, 2012.

(2) It extends to the whole of the Province of the Khyber Pakhtunkhwa.

(3) It shall come into force at once.

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

(a) "Borstal Institution" means the Borstal Institution established under section 3;

(b) "Code" means the Code of Criminal Procedure, 1898 (V of 1898);

(c) "Court" means the Juvenile Court established under the Ordinance;

(d) "detained" means a Juvenile committed to Borstal Institution under this Act;

(e) "Director" means Director of Borstal Institutions;

(f) "Government" means the Government of the Khyber Pakhtunkhwa;

(g) "inmate" means any Juvenile ordered to be detained in a Borstal Institution;

(h) "Juvenile" means a Juvenile who at the time of commission of an offence has not attained the age of eighteen years;

(i) "Magistrate" means a Judicial Magistrate appointed under the provisions of the Code;

(j) "offence" means an offence punishable under any law for the time being in force;

(k) "Ordinance" means the Juvenile Justice System Ordinance, 2000 (XXII of 2000);

(l) "prescribed" means prescribed by rules made under this Act;

(m) "Principal" means a Principal of a Borstal Institution;

(n) "Province" means the Province of the Khyber Pakhtunkhwa;

(o) "section" means a section of this Act;

(p) "security" means security for good behavior other than the political activities under section 109 or section 110 of the Code;

(q) "society" means a society registered under the Societies

Registration Act, 1860 (Act XXX of 1860); and

(x) "Visiting Committee" means a Visiting Committee constituted under section 9.

3. Establishment of Borstal Institutions.---(1) For the purpose of this Act, Government shall establish one or more Borstal Institutions at such place or places in the Province as it may determine.

(2) A Borstal Institution shall provide to the inmates the facilities of basic education and training for their mental, moral and psychological development, and make proper arrangement for their health, hygiene, medical care, accommodation, food and facility of meetings with their relatives, in such manner as may be prescribed.

4. Director.---(1) Government shall appoint any person to be Director, who shall not be an officer or employee of jail or police force, on such terms and conditions, as may be prescribed.

(2) The Director shall be the Officer-In-Charge and Principal Accounting Officer of all Borstal Institutions in the Province, and shall be responsible for the smooth running of the affairs of the Borstal Institutions.

(3) In the performance of his functions, the Director shall be assisted by the Principals and staff of the Borstal Institutions.

5. Powers and functions of Director.---The Director shall-

(a)

exercise, subject to the order of the Government, general control and superintendence of all Borstal Institutions in the Province;

(b) supervise, inspect and exercise general control over the working of Principals; and

(c) exercise such other powers and functions as may be entrusted to him by Government.

6. Principal of Borstal Institution.---The Principal shall be appointed by Government,

on such terms and conditions, as may be prescribed.

7. Powers and Functions.---The Principal shall-

(a)

(b)

(d)

exercise overall control and supervision over the Borstal Institution under his charge;

be responsible for providing basic education, technical and vocational training, courses for mental, moral and psychological development, make proper arrangement for health, hygiene, accommodation, schedule of meetings of inmates and provision of food to the inmates subject to the special or general order of Government;

be responsible to distribute such work among his subordinate officers and staff as he may deem fit; and

perform such functions as may be assigned to him by the Director from time to time.

8. Appointment of other officers and employees.---For the purpose of this Act, Government may appoint for each Borstal Institution such officers and employees, on such terms and conditions, as may be prescribed.

9. Visiting Committee.---As soon as may be after commencement of this Act, Government shall, for each Borstal Institution, by notification in the official Gazette, set up

a Visiting Committee consisting of a Chairman and such other members as Government may determine from time to time.

10. Powers and functions of the Visiting Committee.---Subject to the provisions of this Act, the Visiting Committee shall have the powers to-

- (a) visit the Borstal Institution at least once a month to hear the complaints of inmates;
- (b) report to the Director, about abuses observed by it in such Borstal Institution;
- (c) report to the Director with respect to any measure, requiring to be urgently taken;
- (d) visit Borstal institutions anytime and to have free access to every part thereof subject to the provisions of this Act and general or special orders/instructions, as may be issued by Government, from time to time;
- (e) comply with orders or standing instructions of Government;
- (f) make recommendations to Government through Director for bringing improvement in each sphere of the Borstal Institution; and
- (g) submit quarterly progress report to Government.

11. Powers of Superintendent of jail to present a Juvenile before the Court for detention in a Borstal Institution.---Whenever it appears to Superintendent of jail that any Juvenile sentenced to imprisonment for an offence or committed to or confined in prison for failing to give security for good behavior shall be produced before the Court in whose jurisdiction the jail is situate, and such Court after making enquiry may order the prisoner to be removed from jail and detained in Borstal Institution for a period equal to the un-expired term of the imprisonment to which he was sentenced or of the period for which security was required from him, as the case may be.

12. Juveniles to be admitted in Borstal Institution.---(1) No Juvenile shall be admitted into a Borstal Institution, unless under a lawful order issued by a Court addressed to the Principal to admit such Juvenile in the Borstal Institution.

(2) On admission to a Borstal Institution, the Principal shall be responsible to receive the Juvenile maintain a register to record all requisite information about him such as his name, parentage, complete address, education, section of law under which he is convicted, First Information Report number, name of Police Station where the First Information Report was lodged, address of the Court concerned, date of production in Court, if any, and the term of detention.

(3) On admission to a Borstal Institution, Juvenile shall be examined by District Health Officer for diagnostic purposes of any present or future disease and for this purpose, relevant medical tests of the juvenile, shall be conducted. The District Health Officer shall also record age, weight, height, identification marks and shall maintain or cause to be maintained a health report of such Juvenile. The diagnostic report along with reports of medical tests shall also be made part of the health report.

(4) The District Health Officer shall take appropriate steps for treatment of sick inmates for the purposes of any present and future disease.

(5) On admission to Borstal Institution, a female juvenile shall be dealt with by only a female staff member in all related matters.

13. Detention of female Juvenile.---(1) Female Juveniles shall be detained in separate enclosure of the Borstal Institution exclusively established for this purpose.

(2) In case, there is no such enclosure, they shall immediately be transferred to any care home as the Court may deem fit.

(3) Female Juveniles shall in no case be kept in a police lockup or prison.

14. No Juvenile who has been sent to jail to be detained again in Borstal Institution.---No Juvenile, who has been previously detained for the whole period prescribed in an order of detention or who has been transferred to jail under section 18 of this Act, shall again be ordered to detain in Borstal Institution, unless the Court is satisfied with his undertaking that he will restrain from committing offences as specified in section 21.

15. Release and transfer of Inmate.---(1) On receipt of written release order from the Court, the inmate shall immediately be released from the legal custody of the Borstal Institution, after due satisfaction of the validity of the release order.

(2) On release of inmate, he shall be provided with a certificate by the Principal which may be helpful in his adjustment in the society, this, or other educational certificates, and certificates of any other accomplishment obtained during stay at Borstal Institution, shall not disclose the fact of any conviction or detention of the inmate.

(3) On attaining age of 18 years, the inmate shall immediately be transferred to prison for detention to complete the unexpired or remaining period of the sentence of imprisonment.

16. Release on furnishing security.---Any inmate detained for failure to furnish security shall be released on furnishing such security.

17. Extent of remissions.---All kinds of remissions granted under the relevant laws to the convicted prisoners confined in the jails of the Province may also be extended to the inmates.

18. Power to release on Probation or Parole.---The provisions of the Good Conduct Prisoners and Probational Release Act, 1926 and the Pakistan Probation of Offenders Ordinance, 1960 shall be applicable to the detained inmates.

19. Incorrigibles.---Where an inmate is reported to Government by the Visiting Committee to be incorrigible or to be exercising a bad influence on other inmates or is reported by the Principal, to have committed an offence again as specified in section 23, Government may convert the unexpired term of detention to such term of imprisonment of either description not exceeding such unexpired term as the Government may direct and may order the transfer of the inmate to any jail in the Province in order to complete the said term of imprisonment.

20. Penalty for introduction or removal of prohibited articles into or from Borstal Institutions and communication with inmates.---Whoever, contrary to any provision of this Act or rules made there under , 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 article, and every officer of a Borstal Institution who, contrary to any 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 any offence made punishable by this section, shall, on conviction before a Magistrate, be liable to imprisonment for a term not exceeding six months or to fine not exceeding

Rs. 2000/- or to both.

21. Powers to arrest for offences under section 20.---When any person, in the presence of any officer of a Borstal institution, commits any offence specified in section 20, and refuses on demand of such officer to state his name and residence, or gives a name or residence 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 shall proceed as if the offence had been committed in his presence.

22. Offences and Punishment.---(1) The following acts of the inmates of Borstal Institution are declared to be offences under this Act.

- (a) wilful breach of discipline of the Borstal Institution;
- (b) any assault or use of criminal force;
- (c) use of insulting or threatening language;

(d)
(e)
(f)
(g)
(h)
(i)
(j)

(k)
)
(m)

(n)

immoral or indecent or disorderly behavior;

wilfully absenting himself from courses;

refusing to take part in technical and vocational work;
wilful mismanagement of work;

wilful damage to the institution property;

removing, possessing or transferring any prohibited article;

conspiring to escape or to assist in escaping or commit any other act prohibited by law or rule;

quarrelling with any other inmates;
making groundless complaints;

disobeying any lawful order of the officer or staff of the Borstal Institution.

any other act contrary to discipline, harmful or immoral.

(2) An inmate, who commits an offence as mentioned in sub-section (1), shall be liable to punishment as follows:

(a)
(b)
(c)

(d)

formal warning;
change of trade;

increasing working hours upto 16 hours for not more than 10 days;
and

temporary reduction from higher to lower class' or grade.

(3) The Principal shall cause to be affixed, at a conspicuous place outside the

Borstal Institution, a notice in Urdu and English setting forth the offences and the punishment as mentioned above.

23. Principal to detain persons duly committed to his custody.---The Principal shall receive and detain all Juveniles duly committed to his custody under this Act according to

the direction contained in the order of the Court by which such Juvenile has been committed or until such Juvenile is discharged or removed in due course of time.

24. Principal to return orders, etc., after execution or discharge.---The Principal shall forthwith, after the execution of every such order as aforesaid or after the discharge of the Juvenile committed thereby, return such order to the 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 Juvenile committed thereby has been discharged from detention before the execution thereof.

25. Warrant of officers of Courts to be sufficient authority.---An order under the official signature of Presiding Officer of the Court shall be sufficient authority for detaining any Juvenile, in pursuance of the order passed upon him.

26. Procedure where Principal doubts the legality of order sent to him for execution.---(1) Where the Principal doubts the legality of any order sent to him for execution, or the competency of the person whose seal or signature is affixed thereto to pass the order, he shall refer the matter to the Court of District and Session Judge of the District concerned for necessary verification.

(2) Pending a reference made 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 or order.

27. Lunatic inmates, how to be dealt with.---(1) Where it appears to Government that any juvenile detained under any order is of unsound mind, Government may order his removal to lunatic psychiatric facilities established under sub-section (1) of section 6 of the Mental Health Ordinance, 2001 (Ordinance No. VIII of 2001), or other place of safe custody within the Province, where he to be kept and treated as Government directs during the remainder of the term for which he has been ordered to be detained or if on the expiry 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 until he is discharged according to law.

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

(3) The provisions of the Mental Health Ordinance, 2001 (Ordinance No. VIII of 2001), shall apply to every Juvenile detained in a lunatic asylum under sub-section (1), after the expiry 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 Government is competent under sub-section (1) to order the removal of an inmate to a lunatic asylum or other place of safe custody within the Province, it may order his removal to any asylum or place within any other Province by agreement with Government of such other Province and the provisions of this section regarding 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.

28. Powers to make rules.---Government may make rules for carrying out the purposes of this Act.

29. Act to override other laws.---The provisions of this Act shall have the overriding effect notwithstanding anything to the contrary contained in other law for the time being enforced.