CHAPTER 22

Youthful Offenders

Part A
GENERAL

1. Introductory—The question of the proper treatment of youthful offenders was considered by the Indian Jails Committee, 1919-20, in Chapter XV of their report, principally with a view to the prevention of their committal to prison. The instructions given below are chiefly based on the recommendations of the Committee, as approved by the Central Government.

2. Commitment to prisons of children should be avoided—It is now generally accepted that commitment of children to prison is against public policy, as it exposes them to the evils resulting from association with hardened criminals. In the case of children *(i.e.,* persons under fourteen), the Central Government has approved of the principle that commitment to prison should be avoided as far as possible.

3. Remand to prison pending enquiry or trial not desirable—Even for the purpose of remand pending enquiry or trial, the committal of Children and young persons to prison should be avoided. In England special places of detention are provided for children and young persons under trial and it was suggested by the committee that remand homes for children should be provided in India. Unfortunately there are at present financial difficulties in the way of the solution. Courts should, however, make suitable arrangements when practicable for the detention of children (excepting those belonging to a criminal tribe) under remand, so long as no remand-homes are provided.

4. Police not empowered to release children on bail, but it should produce them at once before nearest Magistrate for grant of bail—Subsequent to the publication of the Committee's report, it was represented that at present the police have no power to release offenders on bail, with the result that child-offenders must remain in police custody until such time as they can be brought before the Magistrate of the *Ilaqua*; and it was suggested that police officer should be allowed the discretion of taking bail for appearance before a Magistrate in non-bailable cases. This suggestion was considered by the Judges; and while they held that it was impossible for them to issue instructions overriding the provisions of the Code of Criminal Procedure, they were of opinion that executive action might be taken by District Magistrates themselves, by having children cases brought up to the nearest Magistrate instead of the *Ilaqua* Magistrate.

5. Sentence against juvenile offenders, alternatives. Imprisonment and detention in Reformatory School to be avoided—When a Magistrate is called upon to sentence a juvenile offender, he has the following alternatives before him. He may order:

(a) fine,

(b) security under Section 562 of the Code of Criminal Procedure, [Section 360 of new Code].

(c) treatment under Section 31 of the Reformatory Schools Act, which is similar to (b),

(d) detention in a Reformatory School,

(e) Imprisonment.

The subject of detention in a Reformatory School is dealt with separately in part C. Before ordering imprisonment, Magistrates should make free use of the other alternatives and should refrain from sending boys to the Reformatory School in cases where they can be suitably dealt with otherwise.

6. Cases should be sent to Courts exercising powers of whipping and under Section 562, Criminal Procedure Code—Courts not empowered to pass orders under Section 562 of the Code of Criminal Procedure [Section 360 of new Code] should be encouraged to refer cases suitable to the application of this provision of law to Courts which have been invested with the necessary powers.

7. Age of the offender to be noted in the judgment Sentence of youthful offenders to imprisonment to be reported to District Magistrate. Monthly return of offenders under 24 years of age to be sent. Duty of District Magistrate—The failure of Magistrates to impose suitable sentences on youthful offenders is possibly due to inadvertence, the age of the accused not being prominently in the mind of the Magistrate at the time of passing the sentence. In order to minimise and, if possible, to abolish the infliction of sentences which are likely to have prejudicial effect on the character of a youthful offender, when other suitable methods of punishment are available, the Judges are also pleased to direct that all Criminal Courts should in future enter the ages of the convicts in the body of their judgments, with a view to being directly seized with the question of age when deciding the sentence to be imposed on a juvenile or adolescent. They have also been pleased to direct that in future all Magistrates shall report the cases of convictions of youthful offenders under 18 years of age where a sentence of imprisonment has been awarded, to the District Magistrate, as soon as judgment is passed. They shall also submit to the District Magistrate at the end of every month returns of all case in which persons under the age of 24 years are sentenced to imprisonment. The District Magistrates will scrutinize these cases and returns, and will take action on the revision side in all suitable cases in general, and in particular in all cases in which casual offenders under 24 years of age have been sent to jail for short terms.

8. Short sentences to be avoided—With regard to short sentences of imprisonment the Indian Jails Committee was of opinion that sentences of imprisonment less than 28 days should be

altogether prohibited. While the Government of India were unwilling to lay down any rigid rule on this point they agreed with the Committee in deprecating short sentences of imprisonment, and suggested that suitable executive instructions should be issued. The Judges have been unable to agree to the issue of any such definite instructions which would fetter the statutory judicial discretion of the Courts, but they consider that the recommendations of the Committee deserve careful consideration by all Magistrates dealing with youthful offenders. They also wish to draw the attention of sub-ordinate Courts to the desirability of making free use of the provisions of Section 31 of the Reformatory Schools Act, 1897, where these can be applied. This section runs as follows:

(1) *Power to deal in other ways with youthful offenders, including girls*—Notwithstanding anything contained in this Act or in any other enactment for the time being in force, any Court may, if it shall think fit, instead of sentencing any youthful offender to imprisonment or directing him to be detained in a Reformatory School, order him to be—

(a) discharged after due admonition, or

(b) delivered to his parent or to his guardian or nearest adult relative or such parent, guardian or relative executing a bond, with or without sureties, as the Court may require, to be responsible for the good behaviour of the youthful offender for any period not exceeding twelve months.

(2) For the purposes of this section the term 'youthful offender' shall include a girl.

(3) The powers conferred on the Court by this section shall be exercised only by Courts empowered by or under Section 8.

(4) When any youthful offender is convicted, by a Court not empowered to act under this section and the Court is of opinion that the powers conferred by this section should be exercised in respect of such youthful offender it may record such opinion and submit the proceedings and forward the youthful offender to the District Magistrate to whom such Court is subordinate.

(5) The District Magistrate to whom the proceedings are so submitted may there upon make such order or pass such sentences as he might have made or passed if the case had originally been tried by him."

"Youthful offender" in the above section means a person under the age of 15 years at the time of conviction. The other instruction given above relate both to "children" and "young persons." With regard to children the State Government was in agreement with the Central Government that as far as possible child-offenders should be released under Section 562 of the Code of Criminal Procedure, and the Judges hope that these recommendations will be borne in mind.

Part B
CHILDREN'S COURTS

1. Children's Courts—One of the most important recommendations of the Indian Jails Committee was that special Children's Courts should be opened on the lines of those existing in

other countries. The State Government agreed that the creation of Children's Courts was distinctly desirable; but they were of opinion that the number of children accused of offences in any one station of the Punjab was not sufficient to justify the appointment of a special Magistrate to deal with children cases only.

2. Section of Magistrate to try children cases: Trial to be held at a different place—Government has accordingly decided that each District Magistrate should be left to select one of the Magistrates subordinate to him, before whom all cases concerning children should be brought. The trial of children should be held, if possible, at a different place from the Court in which cases are generally heard. If this is impossible these cases should be heard at a different time from other cases. In the case of outlying sub-divisions and tahsils, children will normally be brought before the Magistrate having jurisdiction in the place, who will hear their cases in the same way as the Magistrate selected at headquarters.

3. Simple language of trial—The language used at the trial of youthful offender should be as simple as possible, and legal phraseology should be reduced to the bare necessities.

4. Outsiders should not be allowed at the trial—If the case has to be heard in the Magistrates Court room (no other place being available), then the room should be cleared of all outsiders, only those actually concerned with the particular case being admitted.

Part C
REFORMATORY SCHOOLS

1. Courts empowered to direct youthful offenders to the Reformatory School—Procedure for a Magistrate not so empowered—It should be noted that the only Courts empowered to direct youthful offenders to be sent to the Reformatory Schools are—

(a) the High Court;

(b) the Court of Session;

(c) a District Magistrate; and

(d) any Magistrate specially empowered by the State Government in this behalf.

The State Government has empowered Magistrates of the 1st class only with powers mentioned in Section 8(i) of the Reformatory Schools Act *(vide Punjab Government Notification No.* 578-*Jails, dated the 7th January, 1924*); but any Magistrate who has not been so empowered may, under Section 9 of the Act, refer the case of any youthful offender to the District Magistrate to whom he is subordinate, and all Magistrates should do so in suitable cases.

2. Court should record a finding as to age, definition of youthful offender—A youthful offender is defined as meaning any boy who has been convicted of any offence punishable with imprisonment, and, who at the time of such conviction, was under the age of 15 years; and it is

incumbent on all Courts and Magistrates dealing with cases of youthful offenders (whether specially empowered or not), to make a preliminary inquiry and to record a finding as to the age of the offender before directing the offender to be sent to a Reformatory School or making a reference to the District Magistrate under Section 9 for that purpose. In taking the medical evidence mentioned in paragraph 4(a) of this chapter, the opinion of the Medical Officer as to the age of the boy should invariably be recorded.

3. Rules framed by Government youthful offender to be sent to Reformatory School when Magistrate awards imprisonment—The rules framed by the Punjab Government under the Reformatory Schools Act studied. The effect of Punjab Government Notification No. 37, dated the 20th January, 1906, as supplemented by addendum No. 469, dated 6th November, 1914, under which these rules were published, appears to be this. A Court or Magistrate convicting any youthful offender of any of the offences noted below should act as follows. If the presiding officer considers that the offence committed is one in connection with which the offender should be—

(a) dealt with under Section 562 of the Code of Criminal Procedure [Section 360 of new Code].

(b) dealt with under Section 31 of the Reformatory Schools Act, the provisions of which are very similar to those of Section 562 of the Code of Criminal Procedure [Section 360 of new Code],

(c) fined

He should pass orders accordingly.

If, however, he considers that the case should not be so dealt with, he must pass an order of imprisonment commensurate with the offence and then send the offender to the Reformatory School.

Offences Specified

(1) Any offence except those described in Sections 302, 303, 304, 307, 308, 354, 376 and 377 of the Indian Penal Code.

(2) Any abetment or attempt in connection with any such offence.

4. Reformatory School intended for casual criminals and first offenders capable of reformation, Disqualifications preventing admission—It should be borne in mind that before recording an order directing the detention of a boy in the Reformatory Schools, Courts and Magistrates should satisfy themselves—

(a) after taking medical evidence; that he is not totally blind, insane, idiot, leprous, tuberculosis, epileptic, or suffering from any permanent physical incapacity for industrial employment; or

(b) that he has not been previously convinced under Section 377 of the Indian Penal Code.

A youthful offender with any of these disqualifications will not be admitted into the Reformatory School, and Courts or Magistrates must deal with such an offender in the ordinary course under the Indian Penal Code, or under Section 562 of the Code of Criminal Procedure.

These rules will, it is hoped, secure as inmates of the Reformatory School casual criminals and first offenders, capable of reformation, and will exclude the corrupting influence of incorrigible offenders, and of boys who have already learnt the evil that can be learnt in jail.

5. Further powers of Government and duty of District Magistrate to move Government— The more extended powers of the State Government under A, Rule II, Notification No. 37, of 20th January 1906, and the obligation on the part of the District Magistrate to move the State Government in special cases, should be borne in mind.

6. Period for which detention in the school is to be ordered—(i) Section 8, sub-section (1), of the Reformatory Schools Act, prescribes the period for which Magistrates must order detention in the Reformatory School. This period cannot be less than three or more than seven years. This section should be read in connection with *Punjab Government Notification No. 37, dated the 20th January,* 1906 which further limits the Magistrate's discretion as to the period of detention he can order. It should nevertheless be borne in mind that a boy ordered to the detained in the Reformatory School for seven years will not necessarily be kept in the school for so long. He will in any case be discharged when he attains the age of 18 years.

(ii) It has been noticed that Magistrates while convincing youthful offenders and ordering their being sent to the Reformatory Schools do not follow the provisions of Rules 3 and 4 of the rules framed by the State Government under Section 8(3) of the Reformatory Schools Act, in respect of the period for which youthful offender should be detained in the school, with the result that several references have to be made for the correction of these errors, the said rules are therefore reproduced for facility of reference:—

"(3) Every youthful offender sent to a Reformatory School who is found by the Magistrate to be thirteen years of age or more at the time of this conviction shall be sent to the School for a period that will expire on his attaining the age of eighteen; and

(4) Subject to the provisions of Rule 5, every youthful offender sent to a Reformatory School who is found by the Magistrate to be under thirteen years of age at the time of his conviction shall be sent to the School for five years."

7. District Magistrate should recommend to Government when he thinks that youthful offender though not admissible under the rules is a proper person for admission—Besides the case of youthful offenders convinced by a Court or Magistrate of one of the offences specified *(vide* paragraph 3 of this Chapter), Section 10 of the Reformatory Schools Act contemplates another case in which detention in the Reformatory School may be directed. This section gives the Superintendent of a Jail power to produce before the District Magistrate any boy who is under the age of 15 years. In deciding whether any youthful offender brought to his notice in this manner should be sent to the Reformatory School, the District Magistrate will, of course, be guided by the rules made by the State Government under Section 8, sub-section (3),

clause (a), of the Reformatory Schools Act published as *Punjab Government Notification No. 37, dated the 20th January, 1906*. Should the District Magistrate consider that the youthful offender, though not admissible to the Reformatory under those rules, is a proper person to be an inmate of the schools, he must refer the case to the State Government.

8. Classification of boys in the school. Magistrate should recommend the class—Under the rules made by the State Government for the classification, separated and daily employment of youthful offenders, boys detained in a Reformatory School will be classed in two divisions, a senior and a junior, and each division will be sub-divided into two sub-divisions, A and B. The senior division will consist of boys above 14, and the junior division of boys under 14 years of age. Sub-division A will contain boys not in sub-division B and sub-division B will contain (1) boys who by reason of previous offences, whether the subject of criminal prosecution or not, or of the character of their offence, or the circumstances under which it was committed (offences against/morals and serious or organized offences, whether against property or against the person) appear to have marked criminal propensities; (2) boys who have been in jail, except those sent to jail under the proviso to Section 12 of the Reformatory Schools Act temporarily, *i.e.*, detained in Jail for want of accommodation in the Reformatory Schools; (3) boys whose parents are habitual criminals, and boys who have been subjected to family influences and surroundings which are likely to prejudice to a life of crime. In directing the detention of a boy in the Reformatory School, Magistrates should, with reference to this rule, record their opinion as to the subdivision in which the boys should be placed while under detention.

9. **Duty of Magistrate to inquire about accommodation in school and to make arrangement if there is no accommodation**—When a Magistrate orders a boy to be detained in the Reformatory School, he should by telegram ascertain from the Superintendent thereof whether accommodation is available. If there is accommodation, the boy should be sent at once to the school; otherwise, he should be sent to the Jail prescribed by the State Government in Notification No. 426, dated 2nd October, 1903, and the Superintendent of the Reformatory Schools should be informed of the Jail to which he is sent, or to which he may thereafter be transferred.

10. Magistrates advised to visit the school—It has been noticed that as Magistrates seldom or never visit the Reformatory School they cannot see for themselves the benefits that are likely to accrue to juvenile offenders for a period to detention in this establishment. They thus acquire a tendency to send too many children to person. In order to minimise this tendency the Judges consider it desirable for as many first class Magistrates as possible to pay a visit of inspection to the Reformatory School.

11. Sanctioning authority for travelling allowance for the visit—Under travelling allowance Rules Nos. 2.48 and 4.3 (serial 7), read with paragraph 22.4 item (3), Chapter 22—Delegation Orders of Financial Handbook No. 2, volume II, commissioners are authorised in the case of all first class Magistrates within their division to declare absence from headquarters for the period necessary to visit the Reformatory to be absence on duty, and thus to sanction the travelling allowance for such journeys.

12. Second and Third Class Magistrates not required to visit—Magistrate should be encouraged to take advantage of these orders, and such visits should be facilitated, provided always that they do not interfere seriously with the routine of magisterial work. It is not proposed to grant this concession to Magistrates of the 2nd and 3rd class.

13. Sessions Judges may permit Sub-Judges exercising criminal powers to visit the school—The power granted above to Commissioners has been delegated to District and Sessions Judges, who may permit Sub-Judges, who are also Magistrates of the 1st class, to visit the Reformatory School but one visit only not exceeding two days, may be allowed in each case.

Part D
BORSTAL JAIL

Attention is drawn to the Punjab Government Circular No. 362-J.L. 39/621 (H.—Jails), dated the 4th February 1939 on the subject of Borstal Jail extracts from which are given below:—

1. Intended for the adolescent convicts of habitual type—Cases have come to the notice of Government which indicate that misunderstanding still exists in the minds of some Magistrates and officials in regard to the nature of Borstal training and the type of offender to be sent to the Borstal Institution. Some officials appear to believe that the Institution is no more than a jail in which conditions are easier than in the ordinary prison : that Borstal is merely an up-to-date term for a juvenile jail. In some quarters indeed it seems to be imagined that unless there is an order for Borstal treatment a juvenile convict will be made to serve his sentence in association with adult prisoners, the Punjab Borstal Act, 1926, the main lines of which follow those of the corresponding statute in the United Kingdom, provides a special kind of treatment for a particular class of offender; namely, the adolescent convict of habitual type or (to use the English prison phraseology) the young recidivist.

2. Sentences suitable for different kinds of youthful offenders—Speaking broadly the types of course overlap—there are three categories of young offenders for whom provision has to be made:—

(a) Casual offenders, other than those convicted of heinous crime.

(b) Juveniles sentenced for offences of a comparatively minor character, but who are former convicts or are otherwise known to be tending towards a life of Crime.

(c) Juveniles sentenced for murder and other flagrant offences.

Juvenile offenders of type (a) should normally be released on probation of good conduct or after admonition. In more serious cases where such treatment appears unsuitable there will perhaps be a sentence of fine. As has been repeatedly emphasized, short sentences of imprisonment are always to be avoided, and the juvenile offender should never be sent to jail, even for a second offence, if his case can be adequately dealt with in some other way. Offenders of type (c) present a special problem, to which reference will be made later in this chapter. There remains type (b). It is for this class of convict that the Borstal Institution is intended—the young hooligan or

waster on whom perhaps a previous warning has had no effect and who appears likely unless reformative treatment is quickly applied, to develop into a professional criminal. It is not essential, before an order is passed for detention in a Borstal Institution, that a previous conviction should be established but in the language of Section 6 of the Punjab Act there must be "criminal habits or tendencies or association with persons of bad character." In view of this wording it would be permissible to order Borstal detention, for instance, in the case of a lad of sixteen or seventeen who had been associated with older men in a burglary or dacoity, provided that he had not been personally concerned in murder or some similar offence. But it would not be proper to use the Act in a rape case, unless there was reason to believe that the offender had been responsible for similar outrages before, or had been misled by bad companionship.

3. Distinguishing features of Borstal treatment, Relecence—The characteristics which distinguish Borstal treatment from ordinary imprisonment are two:—

(i) An order of Borstal detention must always be for an extended period—a period longer than for which the offender would have been sent to jail if he had been sentenced in the ordinary way. In the Punjab Act a minimum of two years is prescribed. The period must be sufficient to enable the good influences which it is hoped to bring to bear on the convict to have their effect.

(ii) After a certain period in the Borstal Institution the offender will normally be released to serve the balance of his term on probation outside. Other classes of prisoners can, of course be released on probation by order of the State Government under the Good Conduct Prisoners Probational Release Act, Government under Section 401 of the Code of Criminal Procedure [Section 432(1)(6) of new Code]. In the case of the Borstal detenue, however, release on probation can be ordered by the Visiting Committee, subject to the sanction of the Director of Borstal Institutions,[1] without reference to Government.

Release on licence is thus an integral feature of Borstal treatment. The young criminal is to be subjected for an extended period to reformative influences : first within the walls of the institution, where he will be in contact with a housemaster, taking a close personal interest in his character and development; and afterwards on licence outside, where a probation officer will fulfil a similar function.

4. Primary object of keeping such offenders in Borstal Jail—Such an automatic system of probational release would clearly be unsuitable for prisoners of type (c) mentioned above juveniles sentenced for homicide or other flagrant offences, for the most part of the offenders in this class have brought themselves within the reach of the law by a single violent act. They have no tendency towards crime in general, and if it were possible to concentrate exclusively on the reformation of the individual, disregarding all other considerations, the most suitable treatment in many cases would be immediate release. The primary object in keeping them in confinement is, in the words of an Ex-Lord Justice of Appeal in a recent letter to *The Times,* "to satisfy the public indignation with regard to the serious character of the crime which calls for punishment." The need for bringing good influences to bear should always be kept in mind, but with offenders of this type the reformative aspect of imprisonment must be secondary. In some cases it may be possible to release the prisoner on probation after a certain period in jail, but this is permitted only under the orders of the State Government. Adolescent prisoners of this type are thus

radically different from those for whom the Borstal system has been devised. They must of course be kept separate from adult convicts, but their sentences are to be served in Jail, not in a Borstal Institution.

5. When offenders should be sent to the Borstal Institution and when to the Reformatory Schools—To complete this chapter a reference should perhaps be made to the Reformatory Schools. Magistrates may at times feel a doubt whether a particular offender should be sent to the Borstal Institution or to the Reformatory School. Such doubts can generally be resolved by considering the age of the offender. The Schools established under the Reformatory Schools Act, 1897, are intended for younger type of offender than that for which the Borstal Institutions cater. To be sent to the Reformatory School the offender must at the time of conviction be under fifteen : the corresponding age in the case of the Borstal Institution is twenty-one. Cases sometimes occur in which it is necessary to sentence boys of only ten or twelve years of age to imprisonment. In such cases the Reformatory School is always to be preferred: children of this age would be quite out of place in the Borstal Institution. The School also differs from the Borstal in the character of the training given to the inmates. The Borstal Institution has of course its school, as well as the factories in which the lands are given vocational training, but the educational arrangements at a Reformatory School are generally much more elaborate. The boys there are of ordinary school age, and an education is provided for them which would hardly be suitable for the older adolescents in the Borstal. It may be mentioned here that in the case of admission to the Reformatory School there is no such distinction between casual and habitual offenders as there is in the case of the Borstal Institution. Where as there is an absolute bar against the use of Borstal Act in the case of juveniles convicted of offences punishable with death, a Reformatory School will receive even this type of juvenile offender, with the special permission of the State Government.

1. In Inspector-General of Prisons has been appointed Director of Borstal Institutions, *ex-officio.*