

CHAPTER 22

Youth Offenders

PART A.—GENERAL

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.

Introductory

2. 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.

Commitment to prisons of children should be avoided.

3. Even for the purposes 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.

Remand to prison pending inquiry or trial not desirable.

4. . 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 Ilqa, and it was suggested that

Police not empowered to release children on bail, but it should produce them at once before nearest Magistrate for grant of bail.

police officers 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 Magistrate themselves, by having children cases brought up to the nearest Magistrate instead of the Ilqa Magistrate.

5. When a Magistrate is called upon to sentence a juvenile offender, he has the following alternatives before him. He may order :

Sentence against juvenile offenders, alternatives. Imprisonment and detention in Reformatory School to be avoided.

- (a) fine,
- (b) security under section 562 of the Code of Criminal Procedure,
- (c) treatment under section 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.

Cases should be sent to Courts exercising powers of whipping and under Section 562. Criminal Procedure Code.

6. Courts not empowered to pass orders under Section 562 of the Code of Criminal Procedure 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.

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.

7. 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 Magistrates, as soon as judgment is passed. They shall also submit to the District Magistrate at the end of every month returns of all cases 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 these 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 subordinate 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, on such parent, guardian or relative executing a bond, with or without sureties, and 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 proceeding and forward the youthful offender to the Magistrate to whom such Court is subordinate.

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

Youthful offenders defined. "Youthful Offender" in the above section means a person under the age of 15 years at the time of conviction. The other instructions 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 (Section 360 of 1973 Code) of the Code of Criminal Procedure and the Judges hope that these recommendations will be borne in mind.