

Bengal Criminal Law Amendment Act, 1930

6 of 1930

[16 October 1930]

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An Act to supplement the ordinary criminal law in Bengal. Whereas it is expedient to supplement the ordinary criminal law in Bengal; AND WHEREAS the previous sanction of the Governor General has been obtained under sub-section (3) of section 80A of the Government of India Act to the passing of this Act:-- It is hereby enacted as follows:--

1. Short Title Commencement And Extent :-

(1) This Act may be called the Bengal Criminal Law Amendment Act, 1930. (2) It shall come into force on the nineteenth day of

October, 1930. (3) It extends to the whole of West Bengal.

2. Power Of State Government To Deal With Certain Suspects :-

(1) Where, in the opinion of the State Government, there are reasonable grounds for believing that any person-- (i) is a member of an association of which the objects and methods include the commission of any offence included in the First Schedule or the doing of any act with a view to interfere by violence or threat of violence, with the administration of justice; or (ii) has been or is being instigated or controlled by a member of any such association with a view to the commission or doing of any such offence or act; or (iii) has done or is doing any act to assist the operations of any such association; the State Government may, by order in writing, give all or any of the following directions, namely, that such person-- (a) shall notify his residence and any change of residence to such authority as may be specified in the order; (b) shall report himself to the police in such manner and at such periods as may be so specified; (c) shall conduct himself in such manner or abstain from such acts as may be so specified; (d) shall reside or remain in any area so specified; (e) shall not enter, reside in, or remain in any area so specified; (f) shall be committed to custody in jail; and may at any time add to, amend, vary or rescind any order made under this section: Provided that such order shall be reviewed by the State Government at the end of one year from the date of making of the order, and shall not remain in force for more than one year unless upon such review the State Government directs its continuance. (2) The State Government in its order under sub-section (1) may direct-- (a) the arrest without warrant of the person in respect of whom the order is made at any place where he may be found by any police officer or by any servant of the Government to whom the order may be directed or endorsed by or under the general or special authority of the State Government; (b) the search of any place specified in the order which in the opinion of the State Government has been, is being, or is about to be used by such person, for the purpose of doing any act, or committing any offence, of the nature described in sub-section (1). Section

2A

- Power of District Magistrate to deal with certain youthful persons

(1) Where, in the opinion of a District Magistrate, there are reasonable grounds for believing that any person within the district of which such Magistrate is in charge-- (i) is under the age of

twenty-one years, (ii) is ordinarily resident within the said district, and (iii) is consorting with a member of any association referred to in clause (i) of sub-section (1) of section 2, the District Magistrate may, in accordance with rules to be made in this behalf under section 13 and after consultation, where practicable, with the parent or guardian of such person, by order in writing, give such directions regulating the conduct or restricting the movements of such person or prescribing the place where he shall reside within the district, of such other directions, as the District Magistrate may consider necessary for the purpose of protecting such person from the influence of members of and persons connected with any association referred to in clause (i) of sub-section (1) of section 2 and may, at any time, add to, amend, vary or rescind any order made under this section: Provided that such order shall be reviewed by the District Magistrate within one year from the date of making the order, and shall not remain in force for more than one year unless upon such review the District Magistrate directs its continuance. (2) The District Magistrate in his order under sub-section (1) may, in order to secure compliance with the order, direct the arrest without warrant of the person in respect of whom the order is made at any place where he may be found by any police officer or by any servant of the Government to whom the order may be directed or endorsed under the general or special authority of the State Government. (3) The State Government may, at any time, cancel or revise any order made under this section. (4) When, in the opinion of the District Magistrate, a person in respect of whom an order under sub-section (1) has been made attains the age of twenty-one years the District Magistrate shall report the case to the State Government and the order shall be deemed to continue in force for six months from the date of such report unless it is cancelled in the meantime. Explanation 1.-- In this section the word "guardian" includes any person who, in the opinion of the District Magistrate, has, for the time being the charge of or control over the person in respect of whom the order is made. Explanation 2.--For the purpose of sub-section (1) a student of any educational institution shall be deemed to be ordinarily resident, not only within the district in which he ordinarily resides, but also within the district in which such institution is situated.

3. Service Of Orders Under Section 2 And 2A :-

(1) An order made under sub-section (1) of section 2 or sub-section (1) of section 2A shall be served on the person in respect of whom it is made in the manner provided in the Code of Criminal Procedure, 1898, (Act V of 1898) for service of a summons, and upon such service such person shall be deemed to have had due notice thereof. (2) If an order made under sub-section (1) of section 2 is not served personally on the person in respect of whom it is made, and due diligence has, in the opinion of the State

Government, been exercised to effect such service, the State Government may, by a notification published in the Official Gazette and in such newspapers it thinks fit, direct the said person to appear before such servant of the Government at such place and within such period as may be specified in the notification for the purpose of receiving the order.

4. Power To Arrest Without Warrant :-

(1) Any servant of the Government authorized in this behalf by general or special order of the State Government may arrest without warrant any person against whom a reasonable suspicion exists that he is a person in respect of whom an order might lawfully be made under sub-section (1) of section 2. (2) Any officer exercising the power conferred by sub-section (1) may, at the time of making the arrest, search any place and seize any property which is, or is reasonably suspected of being, used by such person for the purpose of doing any act, or committing any offence, of the nature described in sub-section (1) of section 2, and may require in writing any police officer subordinate to him and not below the rank of a Sub-Inspector or any officer in charge of a police-station as defined in the Code of Criminal Procedure, 1898, (Act V of 1998) whether in the same or a different district or jurisdiction to search any such place and seize any such property. The officer to whom such requisition is addressed shall thereupon search the place or places specified in the requisition and forward the property found, if any, to the officer at whose request the search was made. The provisions of the Code of Criminal Procedure, 1898, so far as they can be made applicable, shall apply to any search made under this sub-section. (3) Any officer making an arrest under sub-section (1) shall forthwith report the fact to the State Government, and may, by order in writing, commit any person so arrested to custody pending receipt of the orders of the State Government; and the State Government may by general or special order specify the custody to which such person shall be committed: Provided that no person shall be detained in custody under this section for a period exceeding fifteen days save under a special order of the State Government, and no person shall in any case be detained in custody under this section for a period exceeding two months.

5. Enforcement Of Orders :-

(1) The State Government and every servant of the Government to whom any copy of any order made under section 2 has been directed or endorsed by or under the general or special authority of

the State Government may use any and every means necessary to enforce compliance with such order. (2) Any officer exercising any of the powers conferred by section 4 may use any and every means necessary to the full exercise of such powers.

6. Penalties For Breaches Of Orders Under Section 2, 2A And 3 :-

(1) Whoever knowingly and wilfully disobeys any direction in an order made under sub-section (1) of section 2 shall be punishable with imprisonment for a term which may extend to seven years and shall also be liable to fine. (2) Whoever knowingly and wilfully disobeys any direction in an order made under sub-section (1) of section 2A shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees or with both. (3) Whoever fails to comply with any direction in a notification published under sub-section (2) of section 3 shall, unless he proves that he had no knowledge of the notification, or that it was not possible for him to comply therewith and that he has taken all reasonable steps to make known to the officer before whom he was directed to appear the place where he may be found and the cause which rendered it not possible for him to comply therewith, be punishable with imprisonment for a term which may extend to seven years and shall also be liable to fine. (4) Notwithstanding anything contained in the Code of Criminal Procedure, 1898, (Act V of 1898) an offence under this section shall be a cognizable and non-bailable offence for which a warrant shall ordinarily issue in the first instance. Section

6A

- Realisation of fine from parent or guardian (1) Where a person sentenced to fine under sub-section (2) of section 6 is, in the opinion of the Court, ordinarily resident with his parent or guardian, the Court may order that the fine shall be paid by such parent or guardian as if it had been a fine imposed upon the parent or guardian. (2) Before making an order under sub-section (1), the Court shall give the parent or guardian an opportunity to appear and be heard, and no such order shall be made if the parent or guardian satisfies the Court that he has not condoned to the commission of the offence by neglecting to control the offender. (3) Where a parent or guardian is ordered to pay a fine under this section, the amount may be recovered in accordance with the provisions of the Code of Criminal Procedure, 1898. Explanation.-- In this section the word "guardian" includes any person who, in the opinion of the Court, has for the time being the charge of or control over the offender.

7. Power Of Photographing, Etc., Persons In Respect Of Whom Order Has Been Made Under Section 2 Or Section 2A

:-

(1) Every person in respect of whom an order has been made under sub-section (1) of section 2 or sub-section (1) of section 2A shall, if so directed by any officer authorized in this behalf by general or special order of the State Government,-- (a) permit himself to be photographed; (b) allow his finger impression to be taken; (c) furnish such officer with specimens of his handwriting and signature; (d) attend at such times and places as such officer may direct for all or any of the foregoing purposes: Provided that a person in respect of whom an order has been made under sub-section (1) of section 2A shall not be directed to allow his finger impression to be taken. (2) If any person fails to comply with or attempts to avoid any direction given in accordance with the provisions of sub-section (1), he shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

8. Powers Of Search :-

The power to issue search warrants conferred by section 98 of the Code of Criminal Procedure, 1898, (Act of 1898) shall be deemed to include a power to issue warrants authorising the search of any place in which any Magistrate mentioned in that section has reason to believe that any offence specified in the Second Schedule has been, is being, or is about to be committed, and the seizure of anything found therein or thereon which the officer executing the warrant has reason to believe has been, is being, or is intended to be, used for the commission of any such offence; and the provisions of the said Code, so far as they can be made applicable, shall apply to searches made under the authority of any warrant issued under this section, and to the disposal of any property seized in any such search; and an order for search issued by the State Government under sub-section (2) of section 2 shall be deemed to be a search warrant issued by a Presidency Magistrate or the District Magistrate having jurisdiction in the place specified therein, and may be executed by the person to whom the order is addressed in the manner provided in this section.

9. Scrutiny Of Case By Two Judges :-

(1) Within one month from the date of an order by the State Government under sub-section (1) sub-section 2 or, if such order contains a direction under clause (a) of sub-section (2) of the said

section, within one month from the date of the arrest or surrender of the person in respect of whom the order has been made, the State Government shall place before two persons, who shall be either Sessions Judges or Additional Sessions Judges having in either case, exercised for at least five years, the powers of a Sessions Judge, or Additional Sessions Judge, the material facts and circumstances in its possession on which the order has been based or which are relevant to the inquiry, together with any such facts and circumstances relating to the case which may have subsequently come into its possession, and a statement of the allegations against the person in respect of whom the order has been made and his answers to them, if furnished by him. The said Judges shall consider the said material facts and circumstances and the allegations and answers and shall report to the State Government whether or not in their opinion there is lawful and sufficient cause for the order. (2) On receipt of the said report, the State Government shall consider the same and shall pass such order thereon as appears to the State Government to be just or proper. (3) Nothing in this section shall entitle any person against whom an order has been made under sub-section (1) of section 2 to attend in person or to appear by pleader in any matter connected with the reference to the said Judges, and the proceedings and report of the said Judges shall be confidential.

10. Power To Suspend Operation Of Orders Under Section 2

:-

(1) When an order under sub-section (1) or section 2 has been made against a person, the State Government may at any time, without conditions or upon any conditions which such person accepts, direct the suspension or cancellation of such order. (2) If any condition on which an order has been suspended or cancelled is in the opinion of the State Government not fulfilled, the State Government may revoke the suspension or cancellation, and thereupon the person in whose favour such suspension or cancellation was made may, if at large, be arrested by any police officer without warrant, and the order under sub-section (1) of section 2 shall be deemed to be in full force, (3) If the conditions on which such suspension or cancellation has been made include the execution of a bond with or without sureties, the State Government may at once proceed to recover the penalty of such bond. (4) A Presidency Magistrate or Magistrate of the first class shall in default of payment of such penalty issue, on application

made in this behalf by an officer of the State Government specially empowered, a warrant for the attachment and sale of the movable property belonging to the defaulter or his estate if he be dead. On the issue of such warrant the provisions of sub-sections (3) and (4) of section 514 of the Code of Criminal Procedure, 1898, (Act V of 1898) shall apply to such recovery. Section

10A

- Power to suspend operation of orders under section 2A (1) When an order under sub-section (1) of section 2A has been made against a person, the District Magistrate may at any time, without conditions which such person or the parent or guardian of such person accepts, direct the suspension or cancellation of such order. (2) If any conditions on which an order has been suspended or cancelled is in the opinion of the District Magistrate not fulfilled, the District Magistrate may, after giving such person or the parent or guardian of such person, as the case may be, an opportunity to appear and be heard, revoke the suspension or cancellation, and thereupon the order under sub-section (1) of section 2A shall be deemed to be in full force, and if the conditions on which such suspension or cancellation has been made include the execution of a bond with or without sureties by the parent or guardian of such person, the District Magistrate may at once proceed to recover the penalty of the bond. (3) In default of payment of such penalty, the District Magistrate may issue a warrant for the attachment and sale of the movable property belonging to the defaulter or his estate if he be dead. On the issue of such warrant the provisions of sub-sections (3) and (4) of section 514 of the Code of Criminal Procedure, 1898, shall apply to such recovery. Explanation.--In this section the word "guardian" has the same meaning as in section 2A.

11. Visiting Committees :-

(1) The State Government shall by order in writing, appoint such persons as it thinks fit to constitute Visiting Committees for the purposes of this Act, and shall by rules prescribe the functions which these committees shall exercise. (2) Such rules shall provide for periodical visits to persons under restraint by reason of an order made under sub-section (1) of section 2. (3) No person in respect of whom any such order has been made requiring him to notify his residence or change of residence or to report himself to the police or to abstain from any specified act, shall be deemed to be under restraint for the purpose of sub-section (2).

12. Allowances To Persons Under Restraint And Their Dependants :-

The State Government shall make a every person, who is placed under restraint by reason of an order made under sub-section (1) of section 2, such monthly allowance in cash or in kind or both for his support, as is, in the opinion of the State Government; having regard to his other sources of income, adequate for the supply of his wants, and may also make to any members of his family or near relatives who are dependants on him for support such allowance towards their maintenance as may seem to the State Government appropriate in all the circumstances of the case not exceeding such allowance as, in the opinion of the State Government such person would have been in a position to make if he had been placed under restraint. Explanation.--for the purpose of this section a person placed under restraint shall not include a person in respect of whom any order has been made under sub-section (1) of section 2 requiring him to notify his residence or change of residence to report himself to the police or to abstain from any specific act, other than an act which interferes with his normal trade, business or profession.

13. Power To Make Rules :-

(1) The State Government may make rules providing for the procedure to be followed regarding the notification of residence and report to the police by persons in respect of whom orders have been made under section 2, and for the directions which may be given in an order made under section 2A and for the place and manner of custody of all persons arrested or committed to or detained in custody under this Act. Publication of rules (2) Such rules shall be published in the Official Gazette, and on such publication shall have effect as if enacted in this Act.

14. Bar To Suits, Prosecutions And Other Legal Proceedings :-

No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under this Act.

15. Effect Of The Act :-

Anything done and any action taken under the provisions of the Bengal Criminal Law Amendment Ordinance, 1930. (Ord. I of 1930) shall be deemed to have been done or taken under the provisions of this Act as if this Act had commenced on the nineteenth day of April, 1930, and anything done and any action taken under the provisions of the Bengal Criminal Law Amendment Ordinance,

1931. (Ord. IX of 1931) shall be deemed to have been done or taken under the provisions of this Act as amended by the Bengal Criminal Law Amendment Act, 1932, (Ben. Act IV of 1932) as if this last Act had commenced on the twenty-ninth day of October, 1931

SCHEDULE 1

The First Schedule

[See section 2]

(1) Any offence punishable under any of the following sections of the Indian Penal Code, (Act XLV of 1860) namely, sections 121, 121A, 122, 123, 148, 216, 302, 304, 326, 327, 329, 332, 333, 392, 394, 395, 396, 397, 398, 399, 400, 401, 402, 431, 435, 436, 437, 438, 440, 457, and 506.

(2) Any offence under the Explosive Substances Act, 1908 (VI of 1908).

(3) Any offence under the Indian Arms Act, 1878 (XI of 1878).

(4) Any attempt or conspiracy to commit, or any abetment of, any of the above offences.

SCHEDULE 2

SECOND SCHEDULE

The Second Schedule

[See section 8]

(a) Any offence punishable under any of the following sections of the Indian Penal Code, namely, sections 121, 121A, 122, 123, 148, 216, 302, 304, 326, 327, 329, 332, 333, 385, 386, 387, 392, 394, 395, 396, 397, 398, 399, 400, 401, 402, 431, 435, 436, 437, 438, 440, 454, 455, 457, 458, 459, 460 and 506.

(b) Any offence under the Explosive Substances Act, 1908.

(c) Any offence under the Indian Arms Act, 1878.

(d) Any attempt or conspiracy to commit, or any abetment of, any of the above offences.