

Bihar Control Of Crimes Act, 1981

7 of 1981

[11 August 1981]

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AN ACT To make special provisions for the control and suppression of antisocial elements with a view to maintenance of public order. Be it enacted by the legislature of the State of Bihar in the thirty-second year of the Republic of India as follows: 1. Published in the Bihar Gazette (Extra-ordinary) dated 12.8.1981.

CHAPTER 1

Chapter I

1. Short Title And Extent :-

- (1) This Act may be called the Bihar Control of Crimes Act, 1981.
- (2) It extends to the whole of the State of Bihar.

2. Definition :-

In this Act, unless the context otherwise requires,-- (a) "Commissioner" means the Commissioner of a Division and includes any officer specially empowered by the State Government to exercise all or any of the powers of Commissioner under this Act; (b) "District Magistrate" includes an Additional District Magistrate or Sub-Divisional Officer specially empowered by the State Government in this behalf; (c) "Detention order" means an order made under section 12; (d) "Anti-Social element" means a person who-- (i) either by himself or as a member of or leader of a gang, habitually commits or attempts to commit or abets the commission of offences punishable under Chapter XVI or Chapter XVII of the Indian Penal Code; or (ii) habitually commits or abets the commission of offences under the Suppression of Immoral Traffic in Women and Girls Act, 1956: (iii) who by words or otherwise promotes or attempts to promote, on grounds of religion, race, language, caste or community or other grounds whatsoever, feelings of enmity or hatred between different religions, racial or language groups or castes or communities; or (iv) has been found habitually passing indecent remarks to, or teasing women or girls; or (v) who was been convicted of an offence under sections 25, 26, 27, 28 or 29 of the Arms Act of 1959.

3. Externment, Etc. Of Anti-Social Elements :-

(1) Where it appears to the District Magistrate that-- (a) any person is an anti-social element, and (b) (i) that his movements or acts in the district or any part thereof are causing or calculated to cause alarm, danger or harm to persons or property; or (ii) that there are reasonable grounds for believing that he is engaged or about to engage, in the district or any part thereof, in the commission of any offence punishable under Chapter XVI or Chapter XVII of the Indian Penal Code, or under the Suppression of Immoral Traffic in Women and Girls Act, 1956, or abetment of such offence; The District Magistrate shall by notice in writing inform him of the general nature of the material allegation against him in respect of clauses (a) and (b) and shall give him a reasonable opportunity of tendering an explanation regarding them. (2) The person against whom an order under this section is proposed to be made shall have the right to consult and be defended by a counsel of his choice and shall be given a reasonable opportunity of examining himself, if he so desires and also of examining any other witnesses that he may wish to produce in support of his explanation, unless for reasons to be recorded in writing the District Magistrate is of opinion that the request is made for the purpose of vexation or delay. (3) The District Magistrate on being satisfied that the conditions specified in clauses (a) and (b) of sub-section (1) exist, may by order in writing-- (a) direct him to remove himself outside the district or part thereof, as the case may be, by such route, if any, and within such time as may be specified in the order and to resist from entering the district or the specified part thereof, until, the expiry of such period, not exceeding six months as may be specified in the order; (b) (i) require such person to notify his movement, or to report himself, or to do both, in such manner, at such time and to such authority or person as may be specified in the order; (ii) prohibit or restrict possession or use by him of such article as may be specified in the order; (iii) direct him otherwise to conduct himself in such manner as may be specified in the order; until the expiry of such period, not exceeding six months, as may be specified in the order.

4. Permission To Return Temporarily :-

The District Magistrate may by an order, permit any person in respect of whom an order has been made under clause (a) of sub-section (3) of section 3 to enter or return, for temporary period, into or to the area from which he was directed to remove himself,

subject to such conditions as the District Magistrate may specify and may at any time rescind any such permission. Under this section the District Magistrate is empowered to permit any person against whom an order of externment has been made under Section 3 (3) (a) to enter or return into the area temporarily from which he was ordered to be externed. It is provided that while passing such an order the District Magistrate may lay down conditions as he thinks fit. He may rescind at any time the permission granted to the externee to return. Under rule 8 of the Rules framed under the Act, certain circumstances are enumerated in which the District Magistrate may make order under this section. Some of these circumstances are death or serious illness of parent, wife, child, brother or sister of the externee or the marriage of his child, brother or sister. Under the circumstances aforementioned the District Magistrate may permit the externee to enter or return, for temporary period, into the area from which he was directed to remove himself. An order under this section may also be made in pursuance of notice, summons or warrant of a Court to enable the externee to appear before such Court. Rule 8 further lays down that the District Magistrate may also pass an order "for other compelling reasons". This expression has neither been defined in the Act nor in the Rules and therefore it must be read as ejusdem generis to the several circumstances enumerated therein. While making an order under this section the authority may also impose conditions. Such conditions as can be validly imposed by the authority are enumerated in rule 9, namely-- (i) that he shall maintain good behaviour during the period of the order, (ii) that he shall report his arrivals and departures from the city, town or village to the officer-in-charge of the police station, within whose area he is allowed to return.

5. Extension Of Period Of Order :-

The District Magistrate may, after giving except where for reasons to be recorded in writing he is satisfied that it is impracticable so to do to the person concerned an opportunity of making a representation in that behalf, extend from time to time, in the interest of the general public, the period specified in the order made under section 3, but the period so extended shall in no case exceed two years in the aggregate.

6. Appeal :-

(1) Any person aggrieved by an order made under sections 3, 4, or 5 may appeal to the Commissioner within fifteen days from the

date of such order. (2) The Commissioner may either confirm the order, with or without modification or set it aside, and may, pending disposal of the appeal, stay the operation of the order subject to such terms, if any, as he thinks fit.

7. Recognizance For Certain Purposes :-

(1) The District Magistrate or the Commissioner may, for the purpose of-- (a) securing the attendance of any person against whom an order is proposed to be made under section 3, or has been made and its operation has been stayed under section 6; or (b) securing the due observance of any direction, requirement, prohibition, restriction or condition specified in an order made in respect of any person under sections 3, 4, 5, or 6 require such person to enter into a bond, with or without sureties, and the provisions of the Code of Criminal Procedure, 1973 shall mutatis mutandis apply in relation to bonds executed or required to be executed under the said Code. (2) In particular and without prejudice to the generality of the forgoing provisions-- (a) the District Magistrate while issuing notice to any person under sub-section (1) of section 3, may issue a warrant for his arrest with endorsement thereon of a direction in terms of the provisions of section 71 of the said Code and the provisions of sections 70 to 89 of the said Code shall, so far as may be, apply in relation to such warrant as if the District Magistrate were a Court; (b) if any person who is required to execute a bond for the observance of any direction, requirement, prohibition, restriction or condition fails to do so, he shall be committed to prison or if he is already in prison be detained in prison until the period for which the direction, requirement, prohibition, restriction or condition is to operate or until the time he executes the bond with or without sureties, as the case may be, in terms of the order, and the provisions of sections 119, 120, 121, 123 and 124 of the said Code shall mutatis mutandis apply as if the District Magistrate were a Court; (c) sections 445, 447 and 448 of the said Code shall mutatis mutandis apply in relation to all bonds executed under this section as if the District Magistrate or Commissioner were a Court.

8. Nature Of Evidence :-

The District Magistrate or the Commissioner may for the purpose of satisfying himself as to whether the conditions necessary for the making or confirmation of an order under section 3 or section 5 exist or not take into consideration any evidence which he considers to have probative value and the provisions of the Indian Evidence

Act, 1872, shall not apply thereto.

9. Rescission Of Order :-

The District Magistrate or the Commissioner may at any time rescind an order made under section 3, whether or not such order was confirmed on appeal under section 6.

10. Revocation Or Modification Of Orders :-

Order under sections 3, 4, 5 and 6 may at any time be revoked or modified by the State Government provided that the revocation or modification shall not be a bar to the making of a fresh order under section 3 against the same person in any case where fresh facts have arisen after an order of revocation or modification of the order by the State Government.

11. Forcible Removal Of Externed Anti-Social Element In Case Of Contravention Of Order :-

(1) Where after an order is made against any person under section 4, section 5 or section 6 such person-- (a) has failed to remove himself from the district or part thereof as directed by the order; or (b) has re-entered the area, from which he was ordered to remove himself during the operation of that order, the District Magistrate may cause him to be rearrested and removed in police custody to such place outside the area specified in the said order as he may direct. (2) Any police officer may arrest without warrant any person reasonably suspected of an act or omission specified in sub-section (1), and shall forthwith forward the person so arrested to the nearest Executive Magistrate who shall cause him to be forwarded to the District Magistrate who may thereupon cause such person to be removed in police custody to such place outside the area specified in the said order as he may direct. (3) The provisions of this section shall be in addition to and not in derogation of provisions of section 24.

CHAPTER 2

CHAPTER II

12. Power To Make Order Detaining Certain Persons :-

(1) The State Government may, if satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to the maintenance of public order and there is reason to fear that the activities of anti-social elements can not be prevented otherwise than by the immediate arrest of such person, make an order directing that such anti-social element be detained. (2) If, having regard to the circumstances prevailing or likely to

prevail in any area within the local limits of the jurisdiction of a District Magistrate, the State Government is satisfied that it is necessary so to do, it may by an order in writing direct, that during such period as may be specified in the order, such District Magistrate may also, if satisfied as provided in sub-section (1) exercise the powers conferred upon by the said sub-section: Provided that the period specified in an order made by the State Government under this sub-section shall not, in the first instance exceed three months, but the State Government may, if satisfied as aforesaid that it is necessary so to do, amend such order to extend such period from time to time by any period not exceeding three months at any one time. (3) When any order is made by District Magistrate, he shall forthwith report, the fact to the State Government together with the grounds on which the order has been made and such other particulars as, in his opinion, have a bearing on the matter, and no such order shall remain in force for more than 12 days after the making thereof unless, in the meantime, it has been approved by the State Government: Provided that where under section 17 the grounds of detention are communicated by the officer making the order after five days but not later than ten days from the date of detention, this sub-section shall apply subject to the modification that, for the words "twelve days", the words "fifteen days" shall be substituted. Section

12A. Grounds Of Detention Severable :-

- 1[(1) Where a person has been detained in pursuance of an order of detention whether made before or after the commencement of the Bihar Control of Crimes Act, 1981 under section 12 which has been made on two or more grounds, such order of detention shall be deemed to have been made separately on each of such grounds and accordingly-- (a) such order shall not be deemed to be invalid or inoperative merely because one or some of the grounds is or are. (i) vague. (ii) non-existent (iii) non-relevant (iv) not connected or not proximately connected with such person or (v) invalid for any other reason whatsoever. and it is not therefore possible to hold that the Government or officer making such order would have been satisfied as provided in section 12 with reference to the remaining ground or grounds and made the order of detention. (b) The Government or officer making the order of detention shall be deemed to have made the order of detention under the said section after being satisfied as provided in that section with reference to the remaining ground or grounds". 1. Inserted by Act 9 of 1994.

13. Execution Of Detention Order :-

The detention order may be executed any place in India in the manner provided for the execution of warrants of arrest under the Code of Criminal Procedure, 1973 (2 of 1974).

14. Power To Regulate Place And Condition Of Detention :-

Every person in respect of whom a detention order has been made

shall be liable-- (a) to be detained in such place and under such conditions, including conditions as to maintenance of discipline and punishment for breaches or discipline as the State Government may, by general or special order, specify; and (b) to be removed from one place of detention to another place of detention, by order of the State Government.

15. Detention Orders Not To Be Invalid Or Inoperative On Certain Grounds :-

No detention order shall be invalid or inoperative merely be reason--
- (a) that the person to be detained thereunder is outside the limits of the territorial jurisdiction of the State Government, or officer making the order, or (b) that the place of detention of such person is outside the said limits.

16. Powers In Relation To Absconding Person :-

(1) If the State Government or the District Magistrate mentioned in sub-section (2) of Section 12 has reason to believe that a person in respect of whom a detention order has been made, has absconded or is concealing himself so that the order cannot be executed, the Government or the District Magistrate may-- (a) make a report in writing of the fact to a Chief Judicial Magistrate or a Judicial Magistrate of the first class having jurisdiction in the place where the said person ordinarily resides; (b) by order notified in the official gazette direct the said person to appear before such officer, at such place and within such period as may be specified in the order. (2) Upon the making of a report against any person under clause (a) of sub-section (1), the provisions of sections 82, 83, 84 and 85 of the Code of Criminal Procedure, 1973 (2 of 1974) shall apply in respect of such person and his property as if the detention order against him were a warrant of arrest issued by the Magistrate. (3) If any person fails to comply with any order issued under clause (b) of sub-section (1), he shall, unless he proves that it was not possible for him to comply therewith and that he had, within the period specified in the order, informed the officer mentioned in the order of the reason which rendered compliance therewith impossible and of his whereabouts, be punishable with imprisonment for a term which may extend to one year, or with fine, or with both. (4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)) every offence under sub-section (3) shall be cognizable.

17. Grounds Of Order Of Detention To Be Disclosed To

Person Affected By The Order :-

(1) When a person is detained in pursuance of a detention order, the authority making the order shall, as soon as may be, but ordinarily not later than five days and in exceptional circumstances and for reasons to be recorded in writing, not later than ten days from the date of detention, communicate to him the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order to the State Government. (2) Nothing in sub-section (1) shall require the authority to disclose facts which it considers to be against the public interest to disclose.

18. Constitution Of Advisory Board :-

The State Government shall, whenever necessary, constitute Advisory Board for the purpose of this Act. (2) The Board shall consist of three persons who are or, have been, or are qualified to be appointed as Judges of High Court, and such persons shall be appointed by the Government. (3) The Government shall appoint one of the members of the Advisory Board, who is or has been, a Judge of a High Court to be its Chairman.

19. Reference To Advisory Board :-

Save as otherwise expressly provided in this Act, in every case where a detention order has been made under this Act, the Government shall, within three weeks from the date of detention of a person under the order, place before the Advisory Board constituted by it under section 18, the grounds on which the order has been made and the representation, if any, made by the person affected by the order, and in case where the order has been made by the District Magistrate mentioned in subsection (2) of section 12 also the report by such officer under sub-section (3) of that section.

20. Procedure Of Advisory Board :-

(1) The Advisory Board shall, after considering the materials placed before it and, after calling for such further information as it may deem necessary from the Government or from any person called for the purpose through the Government or from the person concerned, and if, in any particular case, it considers it essential so to do or if the person concerned desires to be heard, after hearing him in person, submit its report to the Government within seven weeks from the date of detention of the person concerned. (2) The report of the Advisory Board shall specify in a separate part thereof the opinion of the Advisory Board, as to whether or not there is

sufficient cause for the detention of the person concerned. (3) When there is difference of opinion among the members forming the Advisory Board, the opinion of the majority of such members shall be deemed to be the opinion of the Board. (4) Nothing in this section shall entitle any person against whom a detention order has been made to appear by any legal practitioner in any matter connected with the reference to the Advisory Board and the proceedings of the Advisory Board and its report, excepting that part of the report in which the opinion of the Advisory Board is specified, shall be confidential.

21. Action Upon The Report Of The Advisory Board :-

(1) In any case where the Advisory Board has reported that there is, in its opinion sufficient cause for the detention of a person, the Government may confirm the detention order and continue the detention of the person concerned for such period as it thinks fit. (2) In any case where the Advisory Board has reported that there is, in its opinion, no sufficient cause for the detention of a person, the Government shall revoke the detention order and cause the person concerned to be released forth with.

22. Maximum Period Of Detention :-

The maximum period for which any person may be detained in pursuance of any detention order which has been confirmed under section 21 shall be twelve months from the date of detention: Provided that nothing contained in this section shall affect the power of the Government to revoke or modify the detention order at any earlier time.

23. Revocation Of Detention Orders :-

(1) Without prejudice to the provision of section 21 of the General Clauses Act, 1897 (10 of 1897), detention order may, at any time, be revoked or modified-- (i) notwithstanding that the order has been made by an officer mentioned in sub-section (2) of section 12, or by the State Government to which that officer is subordinate. (2) The revocation or expiry of a detention order shall not bar the making of a fresh detention order under section 12 against the same person in any case where fresh facts have arisen after the date of revocation or expiry on which the State Government or an officer mentioned in sub-section (2) section 12, as the case may be, is satisfied that such an order should be made.

24. Temporary Release Of Persons Detained :-

(1) The Government may, at any time, direct that any person

detained in pursuance of detention order may be released for any specified period either without conditions or upon such conditions specified in the detention as that person accepts and may, at any time, cancel his release. (2) In directing the release of any person under sub-section (1), the Government may require him to enter into a bond with or without sureties for the due observance of the conditions specified in the direction. (3) Any person released under sub-section (1) shall surrender himself at the time and place, and to the authority, specified in the order directing his release or cancelling his release as the case may be. (4) If any person fails without sufficient cause to surrender himself in the manner specified in sub-section (3), he shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both. (5) If any person released under sub-section (1) fails to fulfil any of the conditions imposed upon him under the said sub-section or in the bond entered into by him, the bond shall be declared to be forfeited and any person bound thereby shall be liable to pay the penalty thereof.

CHAPTER 3

CHAPTER III

25. Punishment For Contravention Of Orders Under Sections 3 To 6 :-

Whoever contravenes any order under section 3, section 4, section 5, or section 6 shall be punishable with rigorous imprisonment for a term which may extend to three years but in no case it shall be less than three months and shall also be liable to fine not exceeding Rs. 5,000.

26. Cognizance Of Offence :-

No Magistrate shall take cognizance of an offence punishable under the Act, except-- (a) upon a report in writing of the facts constituting such offences made by a Police Officer not below the rank of Deputy Superintendent of Police; or (b) upon information received from any person other than a police, or from any gazetted officer that such offence has been committed.

27. Saving As To Orders :-

No order made in exercise of any power conferred by or under this Act shall be called in question in any Court.

28. Protection Of Action Taken Under The Act :-

(1) No suit, prosecution or other legal proceeding shall lie against any person for anything in good faith done or intended to be done

in pursuance of this Act or of any order made thereunder. (2) No suit or other legal proceeding shall lie against the State Government or any officer of the State Government for any damage caused or likely to be caused by anything which is in good faith done or intended to be done in pursuance of this Act or of any order made thereunder.

29. Power To Make Rules :-

(1) The State Government may by notification in the Official Gazette make rules consistent with the provisions of this Act for carrying out the purposes of the Act. (2) Every rule made by the Government under this Act shall be laid, as soon as may be after it is made, before each House of the State Legislature while it is in session for a total period of thirty days which may be comprised in one session or in two successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following, both Houses agree in making any modification in the rule or such House agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be, so however that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

30. Repeal And Saving :-

(1) The Bihar Control of Crimes Second Ordinance, 1981 (Bihar Ordinance No. 115 of 1981) is hereby repealed. (2) Notwithstanding such repeal anything done or any action taken in exercise of any power conferred by or under the said Ordinance, shall be deemed to have been done in the exercise of power conferred by or under this Act, as if this Act, were in force on the day on which such thing or action was done or taken.