

BOMBAY HABITUAL OFFENDERS ACT, 1959

61 of 1959

[26th October, 1959]

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BOMBAY HABITUAL OFFENDERS ACT, 1959

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An Act to make better provision for the treatment and training of habitual offenders and for certain other matters. WHEREAS it is expedient to make better provision for the treatment and training of habitual offenders, and for certain other matters: It is hereby enacted in the Tenth Year of the Republic of India as follows:-

CHAPTER 1

Preliminary

1. Short title, extent and commencement :-

(1) This Act may be called the Bombay Habitual Offenders Act, 1959 .

(2) It extends to the whole of the ¹ [State of Gujarat].

(3) It shall come into force on such date as the State Government may, by notification in the Official Gazette, appoint.

1. Substituted by Gujarat A.O. 1960.

2. Definitions :-

in this Act. unless the context otherwise requires,-

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

(b) "corrective settlement" means any place established, approved or certified as a corrective settlement under Section 14 :

(c) ¹[x x x].

(d) ²[x x x].

(e) "habitual offender" means any person who, since his attaining

the age of eighteen years,-

(i) during any consecutive period (whether before or after the commencement of this Act, or partly before and partly after such commencement) of five years, has been sentenced on conviction, on not less than three occasions, to a substantive term of Imprisonment for one or more of the schedule offences committed on separate occasions, being offences which are not so connected together as to form parts of the same transaction, and

(ii) such sentence has not been reversed in appeal or revision: Provided that in computing the consecutive period of five years aforesaid, any period spent in jail either under a sentence of imprisonment or under detention shall not be taken into account.

(f) "prescribed" means prescribed by rules made under this Act:

(g) "registered offender" means a habitual offender registered or re-registered under this Act:

(h) "scheduled offence" means an offence specified in the Schedule or an offence analogous thereto;

(i) **3**

[x x x].

1. Delete by Gujarat A.O. 1960.

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CHAPTER 2

Registration of Habitual Offenders and Restriction of their Movements.

3. Power of State Government to direct registration of habitual offenders :-

The State Government may direct the District Magistrate to make a register of habitual offenders within his district, by entering therein the names and other prescribed particulars of such offenders.

4. Procedure for preparing a register of habitual offenders :-

For the purpose of carrying out the direction given under Section 3 , the District Magistrate or any officer appointed by him in this behalf shall, by notice in the prescribed form to be served in the prescribed manner, call upon every habitual offenders in the district-

(a) to appear before him at a time and place specified In the

notice:

(b) to furnish such information as may be necessary to enable him to enter the name and other prescribed particulars of the habitual offender in the register: and

(c) to allow the finger and palm impressions, foot-prints and photographs of the habitual offender to be taken:

Provided that the name and other prescribed particulars of a habitual offender shall not be entered in the register, unless he has been given reasonable opportunity of showing cause why such entry should not be made.

5. Charge of register and alterations therein :-

(1) The register shall be placed in the keeping of the Superintendent of Police of the district who shall, from time to time, report to the District Magistrate any alterations which ought, in his opinion, to be made therein.

(2) After the register has been placed in the keeping of the Superintendent of Police, no fresh entry shall be made in the register, nor shall any entry be cancelled except by or under, an order in writing of the District Magistrate.

6. Power to take finger and palm impressions, foot-prints and photographs at any time :-

The District Magistrate or any officer appointed by him in this behalf may at any time order the finger and palm impressions, foot-prints and photographs, of any registered offender to be taken.

7. Registered offenders to notify change of residence and to report themselves :-

(1) Every registered offender shall notify to such authority and in such manner as may be prescribed, any change or intended change of his ordinary residence:

Provided that where such offender changes or intends to change, his ordinary residence to another district (whether within the State or not) he shall notify the change or intended change to the District Magistrate.

(2) The District Magistrate may, by order in writing, direct that any registered offender shall-

(a) report himself once in each month, or where the District Magistrate for reasons specified in the order so directs, more frequently, to such authority, and in such manner, as may be specified in the order, and

(b) notify any absence or intended absence from his ordinary residence to the authority:

Provided that the District: Magistrate may exempt any such offender from notifying any absence or intended absence from his ordinary residence for such period, and under such conditions, as appear to him reasonable.

8. Procedure by District Magistrates on change of residence of habitual offender to ether district :-

(1) When any registered offender changes his ordinary residence to another district within the State, the District Magistrate of the district in which the offender is registered shall inform the District Magistrate of the other district of such change, and at the same time furnish him with the name and other particulars relating to the registered offender in the register.

(2) On the receipt of such information, the District Magistrate of the other district shall enter in his register the name and other particulars of the registered offender furnished to him, and inform the District Magistrate of the first district of such registration, and thereupon such District Magistrate shall cancel from his register the entry relating to that offender:

Provided that where a registered offender changes his ordinary residence to another district outside the State, the District Magistrate of the first district shall, while furnishing the District Magistrate of the other district with the name and other particulars of the registered offender, make a request to that District Magistrate that he may be informed of the steps if any, which may have been taken in relation to the offender under any law for the time being In force in that other district: and upon the receipt of such information the District Magistrate of the first district shall cancel from his register the entry relating to that offender.

(3) Upon the entry of the name and other particulars of a registered offender in any register in the State under sub- section (2), the provisions of this Act and the rules made there under shall apply to him as if he has been registered, in pursuance of a

direction given under Section 3 , in the register of the district to which he has changed his ordinary residence.

9. Duration of registration and re-registration of habitual offenders :-

(1) Subject to the provision of sub-section (3), the registration of a habitual offender under this Act shall, unless earlier cancelled, cease to be in force on the expiry of five years from the date of such registration, and on such cancellation or expiry the habitual offender shall cease to be a registered offender.

(2) Notwithstanding the cancellation, or expiry of duration, of registration a habitual offender may be re-registered In accordance with the provisions of this Act relating to registration, as often as he is convicted of one or more of the scheduled offences at any time after such cancellation, or expiry, and subject to the provisions of sub-section (3), the re- registration shall, unless earlier cancelled, cease to be in force on the expiry of five years from the date of such re- registration.

(3) Where a registered offender is, during the period of registration or re-registration, convicted of one or more of the scheduled offences and sentenced to a substantive term of imprisonment, the duration of registration or re-registration shall be extended for a period of five years from the date of his release from such imprisonment.

10. Right to make representations against re-registration, etc. :-

(1) Any person aggrieved by the registration or re-registration of his name under Section 4 , or as the case may be, Section 9 or by an order under sub-section (2) of Section 7 . may within prescribed period make a representation to the State Government against such registration, re-registration or order.

(2) The State Government shall, after considering the representation, and giving the aggrieved person an opportunity of being heard, either conform or cancel the registration, re-registration or order, as the case may be, and shall in the case of confirmation record a brief statement of reasons there for.

11. Power to restrict movements of registered of Tenders :-

(1) If in the opinion of the State Government it is necessary or

expedient in the interests of the general public so to do, the State Government may, subject to the provisions of sub-section (4), by order direct that any registered offender shall be restricted In his movements to such area, and for such period not exceeding three years, as may be specified In the order.

(2) Before making any such order the State Government shall take into consideration the following matters, that is to say,-

(a) the nature of the offences of which the registered offender has been convicted, and the circumstances in which the offences were committed:

(b) whether the registered offender follows any lawful occupation, and whether such occupation is conducive to an honest and settled way of life and is not merely a pretense for the purpose of facilitating the commission of crime;

(c) the suitability of the area to which his movements are to be restricted: and

(d) the manner in which the registered offender may earn his living within the restriction area, and the adequacy of arrangements which are, or are likely to be, available there for.

(3) A copy of the order shall be served on the registered offender in the prescribed manner.

(4) The period specified in an order under sub-section (1) shall in no case extend beyond the period of registration or re- registration, as the case may be. referred to in Section 9 .

12. Power to cancel or alter restrictions of movements :-

The State Government may, by order, cancel any order made under Section 11 , or alter any area specified in an order under that section:

Provided that before making such order, the State Government shall consider the matters referred to in sub-section (2) of Section 11 , in so far as they may be applicable.

13. Powers under sections 11 and 12 also exercisable by certain Magistrates :-

(1) Subject to the provisions of sub-section (3). the powers of the State Government under Section 11 and Section 12 may be exercised also by a Magistrate having power to act under Section

110 of the Code, but without prejudice to the exercise of his powers under that section of the Code

.

(2) A Magistrate acting under Section 11 or Section 12 shall follow, as nearly as may be, the procedure laid down in Section 112 of the Code of Criminal Procedure, 1973 , Section 113 of the Income Tax Act, 1961 , Section 114 of the Transfer of Property Act, 1882 , Section 115 of the Transfer of Property Act, 1882 and S.117(both inclusive) of the Representation of the People Act, 1951 of the Code for an order requiring security for good behavior:

Provided that the order in writing referred to in Section 112 of the Code shall. In addition to setting forth the substance of the information received, state the term, not exceeding three years, during which the order of restriction shall be in force.

(3) Where the State Government has already made an order under section 11 in respect of a habitual offender, the Magistrate shall not exercise any powers conferred by this section in respect of the same habitual offender, during any period in which the order of the State Government is in force.

CHAPTER 3

Corrective Training of Habitual Offenders

14. Establishment of corrective settlements :-

(1) For the purposes of placing therein such habitual offenders as are directed to receive corrective training under this Act, the State Government may, by notification in the Official Gazette, establish and maintain In the State as many corrective settlements as it thinks fit.

(2) The State Government may also approve or certify any privately managed institution (whether known as a settlement or otherwise) as a corrective settlement for the purposes of this Act.

15. Power to direct habitual offenders to receive corrective training :-

(1) Where the State Government is satisfied from the report of the District Magistrate or otherwise, that it is expedient with a view to the information of a registered offender and the prevention of crime, that the registered offender should receive training of a corrective character for a substantial period, the State Government

may by order in writing direct that the registered offender shall receive training of a corrective character for such period, not exceeding the duration of his registration or re-registration, as may be specified in the order.

(2) Where a habitual offender, who is not more than forty years of age,-

(a) is convicted of any offence punishable with imprisonment, or

(b) is required in pursuance of S.110 of the Code of Criminal Procedure, 1898 of the Code to execute a bond for his good behavior, and the court or the Magistrate is satisfied from the evidence in the case and other materials on record that it is expedient with a view to his reformation and the prevention of crime, that he should receive training of a corrective character for a substantial period, the Court or the Magistrate may, in lieu of sentencing him for such offence or, as the case may be. requiring him to execute such bond, direct that he shall receive corrective training for such term of not less than two not more than five years, as the Court or the Magistrate may determine.

(3) Before giving any direction under sub-section (1) or sub-section (2) the State Government, the court or the Magistrate, as the case may be, shall-

(a) consult the officer prescribed on the capacity of the corrective settlements to receive the habitual offender,

(b) take Into consideration the physical and mental condition of the offender, and his suitability for receiving corrective training In a corrective settlement, and

(c) give a reasonable opportunity to the offender to show cause why such direction should not be given.

(4) A habitual offender, in respect of whom a direction to receive corrective training has been made, shall be placed in a corrective settlement for the term of his training, and while in such settlement shall be treated in such manner and receive such training as may be prescribed.

16. Power to transfer or discharge from corrective settlement :-

The State Government, or any officer authorised by it In this behalf, may at any time by order in writing direct any habitual

offender who may be in a corrective settlement to be transferred to another corrective settlement or to be discharged there from: and accordingly he shall be so transferred or, as the case may be, discharged.

CHAPTER 4

Penalties and Procedure

17. Penalty for failure to comply with certain provisions of the Act :-

A habitual offender who without lawful excuse, the burden of proving which shall lie upon him,-

(a) falls to appear in compliance with a notice issued under section 4 or

(b) intentionally omits to furnish any information required under that section, or furnishes as true any information which he knows, or has reason to believe, to be false or does not believe to be true, or

(c) refuses to allow his finger and palm impressions, foot-prints and photographs to be taken by any person acting under an order passed under Section 6 , or

(d) fails to comply with the provisions of sub-section (1) of section 7 or with an order of the District Magistrate under sub- section (2) thereof or with an order under section 11, may be arrested without warrant, and shall be punished-

(i) on first conviction, with imprisonment for a term which may extend to six months or with fine which may extend to two hundred rupees, or with both, and

(ii) on a second or subsequent conviction, with imprisonment for a term which may extend to one year or with fine which may extend to five hundred rupees, or with both:

Provided that, if the court, after taking into consideration the offender's age and physical and mental condition and his suitability for receiving training of a corrective character in a corrective settlement, is satisfied that it is expedient with a view to his reformation and the prevention of crime, that he should receive training of a corrective character for a substantial period, the court may, in lieu of sentencing the offender to any punishment under this section, direct, after giving him an opportunity of showing

cause (and after consulting the officer prescribed on the capacity of the corrective settlements to receive him) that he shall receive corrective training In a corrective settlement for such term not exceeding three years, as it may determine.

18. Arrest of persons found outside restriction area or corrective settlement :-

If any person-

(a) is found outside the area to which his movements have been restricted in contravention of the conditions under which he is permitted to leave such area, or

(b) escapes from any corrective settlement in which he is placed, he may be arrested without warrant by a police officer, police patel or village watchmen and taken before a Magistrate who, on proof of the facts, may order him to be removed to such area or to such corrective settlement, there to be dealt with in accordance with this Act and the rules made there under.

19. Enhanced punishment for certain previously convicted persons :-

(1) Whoever, being a person in respect of whom a direction has been made under Section 11 or Section 15 , and having been convicted of any of the scheduled offences falling under Part I of the: Schedule is convicted of the same or of any other schedule offence falling in that Part shall, on conviction, be punished with imprisonment for life or with imprisonment for a term which may extend to ten years.

(2) Nothing in this section shall affect the liability of such person to any further or other punishment to which he may be liable under the Indian Penal Code (XLV of 1860) or any other law.

20. Punishment for certain registered offenders found under suspicious circumstances :-

Whoever, being a person in respect of whom a direction has been made under Section 11 or Section 15 , is found in any place under such circumstances as to satisfy the court-

(a) that he was about to commit, or aid in the commission of, theft or robbery, or

(b) that he was making preparation for committing theft or robbery, shall, on conviction, be punished with imprisonment for a

term which may extend to three years, and shall also be liable to a fine which may extend to one thousand rupees.

21. Penalty for failure to arrest a habitual offenders :-

If a police patel or a village watchman having an opportunity to arrest any person under Section 18 , fails to arrest him in circumstances which are not beyond his control, he shall on conviction be punished with simple imprisonment for a term which may extend to one month or with fine which may extend to five hundred rupees, or with both.

CHAPTER 5

Miscellaneous

22. Bar of jurisdiction :-

No court shall question the validity of any direction or order issued under this Act.

23. Bar of legal proceedings :-

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

24. Power to delegate :-

The State Government may, by notification in the Official Gazette, direct that any power exercisable by it under this Act except the power under Section 25 may also be exercised subject to such conditions (if any) as may be specified in the notification, by such officer not below the rank of a District Magistrate as may be specified therein.

25. Power to make rules :-

(1) The State Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act

.

(2) In particular, and without prejudice to the generality of the foregoing power such rules may provide for all or any of the following matters, namely:-

(a) the form of notice under Section 4 and the manner in which such notice may be served:

(b) the form of the register of habitual offenders and the particulars to be entered therein:

(c) the authority to whom and the manner in which any change or intended change of ordinary residence shall be notified under sub-section (1) of Section 7 :

(d) the nature of restrictions to be observed by registered offenders whose movements have been restricted:

(e) the grant of certificate of Identity to registered offenders and inspection of such certificates:

(f) the conditions under which the offenders may be permitted to leave the area to which their movements have been restricted or the corrective settlements in which they have been placed:

(g) the terms upon which offenders may be discharged from corrective settlements;

(h) the working, management, control and supervision of corrective settlements including the discipline and conduct of persons placed therein;

(i) the conditions for, and the manner of approving or certifying privately managed settlements;

(j) the appointment of non-official visitors for corrective settlements;

(k) the conditions and circumstances under which members of the family of a habitual offender may be permitted to stay with him in a corrective settlement:

(l) the periodical review of the cases of all persons whose movements have been restricted or who are placed in corrective settlements under this Act:

(m) any other matter which is to be or may be prescribed under this Act.

(3) In making rules under this Act the State Government may provide that a contravention of any of the rules shall be punishable with fine which may extend to one hundred rupees.

(4) All rules made under this Act shall, as soon as may be after they are made, be laid before the State Legislature.

26. Savings :-

Nothing in this Act shall affect the powers of any competent authority under any other law for the time being in force to make

an order of restriction or detention, and any order passed or direction made under this Act in so far as it conflicts with any order made by a competent authority under such law shall be deemed to be inoperative while the order under such law remains in force.

27. Repeal and savings :-

On the commencement of this Act, the following Acts, that is to say,-

(1) the Bombay Habitual Offenders Restriction Act, 1947 (Bom. LI of 1947),

(2) the Hyderabad Habitual Offenders (Restriction and Settlement) Act, 1954 (Hyd. XXII of 1954), and

(3) the Saurashtra Habitual Offenders Restriction Act, 1951 (Sau. XXXI of 1951), shall stand repealed:

Provided that such repeal shall not affect-

(a) the previous operation of any Act so repealed, or anything duly done or suffered there under:

(b) any right, privilege, obligation or liability acquired, accrued or incurred under any Act so repealed:

(c) any penalty, forfeiture or punishment incurred in respect of any offence committed against any Act so repealed:

(d) any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid: and any such investigation, legal proceeding or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed, as if this Act had not been passed:

Provided further that, subject to the preceding proviso, anything done or any action taken (including orders or rules made, notices issued and settlements established or approved) under any Act so repealed shall, in so far as it is not inconsistent with the provisions of this act, be deemed to have been done or taken under the corresponding provisions of this Act, and shall continue in force accordingly unless and until superseded by anything done or any action taken under this Act

SCHEDULE 1

Offences under the Indian Penal Code (XLV of 1860)

CHAPTER 12

Sections

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325. Voluntarily causing grievous hurt :-

326. Voluntarily causing grievous hurt by dangerous weapons or means :-

327. Voluntarily causing grievous hurt to extort property, or to constrain to an illegal act :-

328. Causing hurt by means of poison, etc., with intent to commit an offence :-

329. Voluntarily causing grievous hurt to extort property, or to constrain to an illegal act :-

332. Voluntarily causing hurt to deter public servant from his duty :-

333. Voluntarily causing grievous hurt to deter public servant from his duty :-

347. Wrongful confinement to extort property, or constrain to illegal act :-

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SCHEDULE 2

Offence under the Suppression of Immoral Traffic in Women and Girls Act. 1956 (IV

of 1956).

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