

## **Himachal Pradesh Home Guards Act, 1968**

**20 of 1968**

**[18 October 1969]**

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## **Himachal Pradesh Home Guards Act, 1968**

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Amended, repealed or otherwise affected by,- (i) A.O. 1973, published in R.H.P. Extra., dated 20th January, 1973 at pp. 91-112. An Act to provide for the constitution of Home Guards for use in emergency and for other purposes connected therewith in Himachal Pradesh. BE it enacted by the Legislative Assembly of Himachal Pradesh in the Nineteenth Year of the Republic of India as follows:- 1. For statement of Objects and Reasons see R.H.P. Extra., dated the 22nd July, 1968 p. 673. For its Authoritative English Text see R.H.P. Extra. dated

## **1. Short Title, Extent And Commencement :-**

- (1) This Act may be called the Himachal Pradesh Home Guards Act, 1968.
- (2) It extends to the whole of Himachal Pradesh.
- (3) It shall come into force at once.

## **2. Exclusion Of Any District Or Area From Operation Of This Act :-**

The Government may, by notification, exclude any district or area from the operation of this Act.

## **3. Definitions :-**

In this Act, unless the context otherwise requires , -

- (a) "Form" means a Form in the Schedule to this Act;
- (b) "Government" means the Government of Himachal Pradesh;
- (c) "Local authority" means a municipality, small town or notified area committee, zila parishad, gram panchayat or other authority legally entitled to, or entrusted by the Government with the control or management of the municipal or local fund;
- ( d ) "notification" means notification published under proper authority in the Official Gazette;
- (e) " Official Gazette" means the Rajpatra, Himachal Pradesh; and
- (f) "prescribed" means prescribed by rules made under this Act.

## **4. Constitution Of Home Guards And Appointment Of Commandant General And Commandant :-**

(1) The Government shall, by notification, constitute for the [State of Himachal Pradesh]<sup>1</sup> a volunteer body called the Home Guards, the members of which shall discharge such functions and duties in relation to the protection of persons, the security of property, the public safety and the maintenance of the essential services as may be assigned to them in accordance with the provisions of this Act and the rules made thereunder:

Provided that the Government may, by notification, divide the 1[State of Himachal Pradesh] into two or more areas and appoint a Commandant for each such area.

(2) The Administration and command of the Home Guards constituted under sub-section (1) for any area shall, under the overall command and control of the Commandant General, be

vested in the Commandant who shall be appointed by the Government:

Provided that the Commandant may, with the approval of the Commandant General, delegate such administrative and disciplinary functions as may be necessary for the efficient functioning of the organization, to any officer subordinate to him.

(3) The general supervision and control of the Home Guards throughout Himachal Pradesh shall vest in the Commandant General which shall be appointed by the Government.

(4) Until a Commandant is appointed in an area under sub-section (1) the Commandant General may also exercise the powers and perform the functions assigned to the Commandant by or under this Act.

1. Substituted. for "Union Territory of Himachal Pradesh" vide A.O., 1973.

## **5. Appointment Of Members Of Home Guards :-**

(1) Subject to the approval of the Commandant General, the Commandant may appoint as members of the Home Guards such number of persons, who are fit and willing to serve, as may, from time to time, be determined by the Government, and may appoint any such member to any office of command in the Home Guards under him..

(2) Notwithstanding anything contained in sub-section (1), the Commandant General may appoint any such member to any office of command under his immediate control.

(3) A member of the Home Guards shall, on appointment, make a declaration in Form I and receive a certificate of appointment in form II under the seal and signatures of such officer as may be prescribed.

(4) Subject to any rules made in this behalf, a member of the Home Guards shall be required to serve the Home Guards organization for a period of three years (including the period spent in training) which period may be extended by the Government to such further period as it may consider necessary, and the member of the Home Guards shall, thereafter, serve in the reserve force of the Home Guards constituted as hereinafter provided, for a period of three years and shall, while serving in such reserve force, be liable to be called out for duty at any time.

## **6. Power To Discharge A Member Of Home Guards :-**

Notwithstanding anything contained in sub-section (4) of section 5, the Commandant General or the Commandant shall have the authority to discharge any member of the Home Guards at any time subject to such conditions as may be prescribed, if, in his opinion, the services of such member are no longer required.

## **7. Reserve Force Of Home Guards :-**

The Government shall, by notification, constitute a reserve force of the Home Guards consisting of members of the Home Guards who under sub-section (4) of section 5 are required to serve in the reserve force.

## **8. Training, Functions And Duties Of Members :-**

(1) The Commandant General, the Commandant, the District Magistrate or any other officer authorised by the Commandant may at any time call out a member of the Home Guards for training or to discharge any of the functions or duties assigned to the Home Guards in accordance with the provisions of this Act and the rules made thereunder.

(2) The Commandant General may, in an emergency, call out a member of the Home Guards for training or to discharge any of the said functions or duties in any part of Himachal Pradesh.

## **9. Powers, Protection And Control :-**

(1) A member of the Home Guards when called out under section 8 shall have the same powers, privileges and protection as an officer of police appointed under any law for the time being in force.

(2) No prosecution shall be instituted against a member of the Home Guards in respect of anything done or purporting to be done by him in the discharge of his functions or duties as such member except with the previous sanction of the District Magistrate.

## **10. Control By Officers Of Police Force :-**

The members of the Home Guards when called out under section 8 in aid of the police force shall be under the control of the officers of the police force in such manner, and to such extent, as may be prescribed.

## **11. Certificate, Arms, Etc. To Be Delivered By Person Ceasing To Be A Member Of The Home Guards :-**

(1) Every person who for any reason ceases to be a member of the Home Guards shall forthwith deliver up to the Commandant or to such person, and at such place, as the Commandant may direct, his certificate of appointment or of office, identity card and the arms, ammunition, accoutrements, clothing and other necessities which have been furnished to him as such member.

(2) Any Magistrate or, for special reasons which shall be recorded in writing, any police officer, not below the rank of an Assistant or Deputy Superintendent of Police, may issue a warrant to search for and seize, wherever they may be found, any certificate, identity card, arms, ammunition, accoutrements, clothing or other necessities not so delivered up. Every warrant so issued shall be executed in accordance with the provisions of the Code of Criminal Procedure, 1898 (5 of 1898), by a police officer or, if the Magistrate or the police officer issuing the warrant so directs, by any other person.

(3) Nothing in this section shall be deemed to apply to any article which under the orders of the Commandant General has become the property of the person to whom the same was furnished.

## **12. Punishment Of Members For Neglect Of Duty Etc. :-**

(1) The Commandant General or the Commandant shall have the authority to suspend, reduce in rank, or dismiss or fine to an amount not exceeding fifty rupees, any member of the Home Guards under his control, if such member, on being called out under section 8, without reasonable cause, neglects or refuses to obey such order or to discharge his functions and duties as a member of the Home Guards or to obey any other lawful order or direction given to him for the performance of his functions and duties, is guilty of any breach of discipline or misconduct. The Commandant General or the Commandant shall also have the authority to dismiss any member of the Home Guards on the ground of conduct which has led to his conviction on a criminal charge.

(2) When the Commandant General or the Commandant passes an order for suspending, reducing in rank, dismissing or fining any member of the Home Guards under sub-section (1), he shall record such order, or cause the same to be recorded, together with the reasons therefor and a note of the inquiry made, in writing and such order shall not be passed by the Commandant General or the

Commandant unless the person concerned is given an opportunity to be heard in his defence.

(3) Any member of the Home Guards aggrieved by an order of the Commandant may appeal against such order to the Commandant General and any such member aggrieved by an order of the Commandant General may appeal against such order to the Government, within thirty days of the date on which he was served with notice of such order. The Commandant General, or the Government, as the case may be, may pass such order as he or it thinks fit.

(4) The Commandant General, or the Government, may, at any time, call for and examine the record of any order passed by the Commandant or the Commandant General, respectively under sub-section (1) for the purpose of satisfying himself or itself as to the legality or propriety of such order passed by the Commandant or the Commandant General, as the case may be, and may pass such order with reference thereto as he or it thinks fit.

(5) Every order if no appeal is made therefrom as hereinbefore provided, and every order passed in appeal or revision under this section, shall be final.

(6) Any fine imposed under this section may be recovered in the manner provided by the Code of Criminal Procedure, 1898 (5 of 1898)<sup>1</sup> for the recovery of fines imposed by a court as if such fine were imposed by a court.

(7) Any punishment inflicted on a member of the Home Guards under this Section shall be in addition to the penalty to which such member is liable under section 13 or any other law for the time being in force.

Explanation .- When the Commandant General, while exercising the powers of the Commandant, passes any order under sub-section (1) or section 6,-

(a) the appeal from such order shall lie to the Government ;

(b) for the purposes of sub-section (4), the power of revision in respect of such order shall vest in the Government.

1. Now see Code of Criminal Procedure, 1973 (2 of 1974).

### **13. Penalty :-**

(1) If any member of the Home Guards, on being called out under section 8, without reasonable excuse, neglects or refuses to obey such order, or to discharge his functions as such member or to obey any lawful order or direction given to him for the performance of his

duties, he shall, on conviction, be punishable with simple imprisonment for a term which may extend to three months, or with fine which may extend to two hundred and fifty rupees, or with both.

(2) If any member of the Home Guards wilfully neglects or refuses to deliver up his certificate of appointment or of office or of any other article, in accordance with the provisions of sub-section (1) of section 11, he shall, on conviction, be punished with imprisonment for a term which may extend to one month, or with fine which may extend to one hundred rupees, or with both.

(3) No proceedings shall be instituted in any court under sub-section (1) or (2) without the previous sanction of the Commandant General.

(4) A police officer may arrest without warrant any person who commits an offence punishable under sub-section (1) or (2).

#### **14. Power To Make Rules :-**

(1) The Government may, by notification, make rules<sup>1</sup> consistent with this Act ,-

(a) regulating the powers exercisable by the Commandant General, the Commandant, the District Magistrate or other officers authorised by the Commandant under section 8;

(b) providing for exercise of control by officers of the police force over members of the Home Guards when acting in aid of the police force;

(c) regulating the organization, appointment, conditions of service, qualifications, functions, duties, discipline, arms, accoutrements and clothing of members of the Home Guards and the manner in which they may be called out for service or be required to undergo any training;

(d) regulating the exercise by members of the Home Guards of any of the powers exercisable under section 9 of this Act; and

(e) generally for giving effect to the provisions of this Act.

(2) Every rule made under this Act shall be laid, as soon as may be after it is made, before the Legislative Assembly while it is in session for a total period of not less than fourteen days which may be comprised in one session or in two or more successive sessions and if before the expiry of the session in which it is so laid or the sessions aforesaid, the Assembly makes any modification in the rule or decides 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.

1. The rules framed vide Not. No. HG.Misc. 6-16/66, dated the 8th February, 1972 (Appended).

### **15. Members Of The Home Guards To Be Public Servant :-**

Members of Home Guards acting under this Act shall be deemed to be public servants with the meaning of section 21 of the Indian Penal Code, (45 of 1860).

### **16. Home Guards Not Disqualified From Contesting Elections To Legislature Or Local Bodies :-**

(1) Notwithstanding anything contained to the contrary in any other law for the time being in force, a member of the Home Guards, shall not be disqualified for being chosen as, and for being, a member of any local authority or legislature merely by reason of the fact that he is a member of the Home Guards.

(2) For the removal of doubts, it is hereby declared that a Commandant General or Commandant appointed under section 4 shall not be member of the Home Guards and as such, he shall be disqualified for being chosen as, and for being, a member of any local authority or legislature.

### **17. Repeal And Savings :-**

The Bombay Home Guards Act, 1947, (3 of 1947) as applicable to the areas comprised in Himachal Pradesh immediately before the 1st November, 1966, and the East Punjab Volunteer Corps Act, 1947 (8 of 1947), as in force in the areas added to Himachal Pradesh under section 5 of the Punjab Re-organisation Act, 1966 (31 of 1966 ), are hereby repealed:

Provided that anything done or any action taken, including any rule, appointment, declaration, or delegation made, order, notification, certificate or notice issued, direction given, Home Guards or reserve force constituted, and any proceedings commenced or continued, under the provisions of any of the Acts hereby 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.



