

Jammu And Kashmir Public Safety Act, 1978

6 of 1978

CONTENTS

CHAPTER 1 :- PRELIMINARY

1. Short Title And Extent
2. Definitions

CHAPTER 2 :- ACCESS TO CERTAIN PREMISES AND AREAS

3. Prohibited Places
4. Protected Areas
5. Forcing Or Evading A Guard

CHAPTER 3 :- MAINTENANCE OF COMMUNAL AND REGIONAL HARMONY

6. Power To Prohibit Circulation Within The State Or Entry Into The State Of Certain Documents
7. Removal Of Doubts

CHAPTER 4 :- POWER TO MAKE ORDERS DETAINING CERTAIN PERSONS

8. Detention Of Certain Persons
9. Execution Of Detention Orders
10. Power To Regulate Place And Conditions Of Detention
11. Detention Orders Not To Be Invalid Or Inoperative, On Certain Grounds
12. Powers In Relation To Absconding Persons
13. Grounds Of Order Of Detention To Be Disclosed To Persons Affected By The Order
14. Constitution Of Advisory Board
15. Reference To Advisory Board
16. Procedure Of Advisory Board
17. Action Upon The Report Of Advisory Board
18. Maximum Period Of Detention
19. Revocation Of Detention Orders
20. Temporary Release Of Persons Detained

CHAPTER 5 :- MISCELLANEOUS

21. Cognizance Of Offences Under This Act
22. Protection Of Action Taken Under This Act

23. Power To Make Rules

24. Repeal And Saving

Jammu And Kashmir Public Safety Act, 1978

6 of 1978

Whereas it is necessary in the interest of the security of the State and public order to make law providing for the measures hereinafter appearing. Now, therefore, it is enacted by the Jammu and Kashmir State Legislature in the Twenty-ninth Year of the Republic of India as follows:-

CHAPTER 1 PRELIMINARY

1. Short Title And Extent :-

(1) This Act may be called the Jammu and Kashmir Public Safety Act, 1978.

(2) It extends to the whole of Jammu and Kashmir State

2. Definitions :-

In this Act, unless there is anything repugnant in the subject or context, -

(1) "the Code" means the Code of Criminal Procedure, 1973;

(2) "notified" and "notification" mean notified and notification respectively in the Government Gazette.

CHAPTER 2 ACCESS TO CERTAIN PREMISES AND AREAS

3. Prohibited Places :-

(1) If as respects any place the Government considers it necessary or expedient that special precautions should be taken to prevent the entry of unauthorised persons, the Government may, by notified order, declare that place to be a prohibited place.

(2) No person shall, without the permission of the Government or the authority specified by the Government, enter, or be on or in, or pass over, or loiter in the vicinity of, any prohibited place.

(3) Where in pursuance of sub-section (2) any person is granted permission to enter, or to be on or in, or to pass over, a prohibited place, that person shall, while acting under such permission comply with such orders for regulating his conduct as may be given by the Government or the authority specified by the Government.

(4) Any Police Officer, or any other person authorised in this behalf

by the Government, may search any person entering or seeking to enter or being on or in, or leaving a prohibited place, and any vehicle, aircraft or article brought in by such person, and may, for the purpose of the search, detain such person, vehicle, aircraft and article.

Provided that no female shall be searched in pursuance of this subsection except by a female.

(5) If any person is in a prohibited place in contravention of this section, then, without prejudice to any other proceedings which may be taken against him, he may be removed therefrom by any Police Officer not below the rank of a Sub Inspector or by any other person authorised in this behalf by the Government.

(6) If any person is in a prohibited place in contravention of any of the provisions of this section he shall be punishable with imprisonment for a term which may extend to one month, or with fine, or with both.

4. Protected Areas :-

(1) If the Government considers it necessary or expedient in the interests of the defence or security of the State to regulate the entry of person into any area, it may, by a notified order declare the area to be a protected area, and thereupon, for so long as the order is in force, such area shall be protected area for the purpose of this Act.

(2) The Government or the authority specified by the Government may regulate the entry of any person into a protected area.

(3) If any person is in a protected area in contravention of the provisions of any order passed under thin section then, without prejudice to any other proceedings which may be taken against him, he may be removed therefrom by or under the direction of any police officer not below the rank of a Sub-Inspector.

(4) If any person is in a protected area in contravention of any of provisions of this section, he shall be punishable with imprisonment for a term which may extend to two months, or with fine, or with both.

5. Forcing Or Evading A Guard :-

Any person who effects or attempts to effect entry into a prohibited place or a protected area after taking precautions to conceal his entry or attempted entry from any person posted for the purpose of protecting or of preventing or controlling access to such place or

area shall be punishable with imprisonment for term which may extend to three months, or with fine, or with both

CHAPTER 3 MAINTENANCE OF COMMUNAL AND REGIONAL HARMONY

6. Power To Prohibit Circulation Within The State Or Entry Into The State Of Certain Documents :-

(1) The Government, or any authority authorised by it in this behalf, if satisfied that such action is necessary for the purposes of preventing or combating any activity prejudicial to the maintenance of communal or sectarian, or regional harmony effecting or likely to affect public order, may, by notified order, regulate or restrict the circulation within the State, or prohibit or restrict the importation into the State, of any document:

Provided that no such order shall remain in force for more than three months from the making thereof unless before the expiry of such period, and in case the High Court does not otherwise direct, the Government, by an order made in the like manner, extend it by any period not exceeding three months at a time as it thinks fit, so however, that the total period of the original order does not exceed one year

Provided further that a person aggrieved by such order may, within ten days of the passing thereof, make a representation to the Government which may, on consideration, confirm, modify or rescind the order within 21 days of the making of the representations, after giving the aggrieved party an opportunity of being heard

Provided also that in case the representation is rejected by the Government, the aggrieved person may within a period of two months from the date of the order rejecting the representation, apply to the High Court to set aside the order. Every such application shall be heard and determined by a Special Bench of the High Court composed of three Judges.

(2) Any person who contravenes an order made under this section shall be punishable with imprisonment for a term which may extend to three months or with fine or with both.

(3) In the event of disobedience of an order made under sub-section (1), the Government or the authority issuing the order, may without prejudice to the penalty to which the person guilty of the disobedience is liable under sub-section (2), order the seizure of all copies of, any such document.

7. Removal Of Doubts :-

For the removal of doubts it is hereby declared that the restrictions imposed by section 6 on the rights conferred by clause (1) of Article 19 of the Constitution of India shall be deemed to be reasonable restrictions.

CHAPTER 4 POWER TO MAKE ORDERS DETAINING CERTAIN PERSONS

8. Detention Of Certain Persons :-

(1) The Government may -

(a) if satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to

(i) the security of the State or the maintenance of the public order, or

(ii) [deleted by J & K Act XII of 1988]

(b) if satisfied with respect to any person who is -

(i) a foreigner within the meaning of the Foreigners Act, 1946, or

(ii) a person residing in the area of the State under the occupation of Pakistan,

that with a view to regulating his continued presence in the state or with a view to making arrangements for his expulsion from the State,

it is necessary so to do, make an order directing that such person be detained.

(2) any of the following officers, namely -

(i) Divisional Commissioners,

(ii) District Magistrates,

may, if satisfied as provided in sub-clauses (i) and (ii) of clause (a) of sub-section (1), exercise the powers conferred by the said sub-section.

(3) For the purposes of sub-section (1), -

(a) [deleted by J & K Act XII of 1988]

(b) "acting in any manner prejudicial to the maintenance of public order" means

(i) promoting, propagating, or attempting to create, feelings of enmity or hatred or disharmony on grounds of religion, race, caste, community, or region;

(ii) making preparations for using, or attempting its use, or using, or instigating, inciting, or otherwise abetting the use of force where such preparation, using, attempting, instigating, inciting, provoking

or abetting, disturbs or is likely to disturb public order;

(iii) attempting to commit, or committing, or instigating, inciting, provoking or otherwise abetting the commission of mischief within the meaning of section 425 of the Ranbir Penal Code where the commission of such mischief disturbs, or is likely to disturb public order;

(iv) attempting to commit, or committing, or instigating, inciting, provoking or otherwise abetting the commission of an offence punishable with death or imprisonment for life or imprisonment for a term extending to seven years or more, where the commission of such offence disturbs, or is likely to disturb public order.

(4) When any order is made under this section by an officer mentioned in sub-section (2), he shall forthwith report the fact to the 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 twelve days after the making thereof unless in the meantime it has been approved by the Government.

9. Execution Of Detention Orders :-

A detention order may be executed at any place in the manner provided for the execution of warrants of arrest under the Code.

10. Power To Regulate Place And Conditions Of Detention :-

Any person in respect of whom a detention order has been made under section 8 shall be liable -

(a) to be detained in such place and under such conditions including conditions as to the maintenance of discipline and punishment for breaches of discipline as the Government may, by general or, special order, specify and,

(b) to be removed from one place of detention to another place of detention in the State by order of the Government.

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

No detention order shall be invalid or inoperative merely on the ground -

(a) that the person to be detained thereunder is outside the limits of the territorial jurisdiction of the officer making the order; or

(b) that the place of detention of such person is outside the said

limits.

12. Powers In Relation To Absconding Persons :-

If the Government, or an officer specified in sub-section (2) of section 8, as the case may be, 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 order cannot be executed, the Government or the officer may -

(a) make a report in writing of the fact to a Magistrate of the first class having jurisdiction in the place where the said person ordinarily resides, and thereupon the provisions of sections 87, 88 and 89 of the Code shall apply in respect of the said person and his property as if the order directing that he be detained were a warrant issued by the Magistrate

(b) by notified order direct the said person to appear before such officer, at such place and within such period as may be specified in the order, and if the person fails to comply with such direction, 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.

13. Grounds Of Order Of Detention To Be Disclosed To Persons 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 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.

14. Constitution Of Advisory Board :-

(1) The Government shall whenever necessary, constitute an Advisory Board for the purposes of this Act.

(2)Such Board shall consist of a Chairman, who is or has been a Judge of the High Court, and two other members who are, or have been, or are qualified to be appointed as Judges of the High Court.

(3)The Chairman and the other members of the Board shall be appointed by the Government in consultation with the Chief Justice of the High Court.

15. Reference To Advisory Board :-

In every case where a detention order has been made under this Act, the Government shall, within four weeks from the date of detention order, place before the Advisory Board constituted by it under section 14, the grounds on which the order has been made, the representation, if any, made by the person affected by the order and in case where the order as been made by an officer, also the report by such officer under sub-section (4) of section 8.

16. Procedure Of Advisory Board :-

(1)The Advisory Board shall, after considering the material placed before it and, after calling for such further information as it may deem necessary from the Government or from the person concerned and if in any particular case it considers it essential to do so or, if the person concerned desires to be heard, after hearing him in person, submit its report to the Government within eight weeks from the date of detention.

(2)Notwithstanding anything contained in sub-section (1), the Board may, if the person detained so demands, at any time before submitting its report, after affording an opportunity to the person detained and the Government or the officer, as the case may be, of being heard, determine whether the disclosure of facts, not disclosed under sub-section (2) of section 13 to the person detained, is or is not against public interest. Such finding of the Board shall be binding on the Government.

(3)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.

(4)When there is a 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.

(5)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.

17. Action Upon The Report Of 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 the person concerned, the Government shall revoke the detention order and cause the person to be released forthwith.

18. Maximum Period Of Detention :-

(1) The maximum period for which any person may be detained in pursuance of any detention order which has been confirmed under section 17, shall be -

(a) twelve months from the date of detention in the case of persons acting in any manner prejudicial to the maintenance of public order or indulging in smuggling of timber; and

(b) two years from the date of detention in the case of persons acting in any manner prejudicial to the security of the State.

(2) Nothing contained in this section shall affect the powers of the Government to revoke or modify the detention order at any earlier time, or extend the period of detention of a foreigner in case his expulsion from the State has not been made possible.

19. Revocation Of Detention Orders :-

(1) Without prejudice to the provisions of section 21 of the General Clauses Act, 1977, a detention order may, at any time, be revoked or modified by the Government, notwithstanding that the order has been made by any officer mentioned in sub-section (2) of section 8.

(2) There shall be no bar to making of a fresh order of detention against a person on the same facts as an earlier order of detention made against such person in any case where -

(i) the earlier order of detention or its continuance is not legal on account of any technical defect or

(ii) the earlier order of detention has been revoked by reason of any

apprehension, or for avoiding any challenge that such order or its continuance is not legal on account of any technical defect
Provided that in computing the maximum period for which a person against whom such fresh order of detention has been issued may be detained, the period during which such person was under detention under the earlier order of detention shall be excluded.

20. Temporary Release Of Persons Detained :-

(1)The Government may, at any time, order that a person detained in pursuance of detention order may be released for any specified period either without conditions or upon such conditions specified in the direction 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 subsection (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 the penalty thereof.

(6)The period of release shall not count towards the total period of detention undergone by the person released under this section.

CHAPTER 5 MISCELLANEOUS

21. Cognizance Of Offences Under This Act :-

(1)No Court shall take cognizance of any offence under this Act except on a report in writing made by a public servant.

(2)Notwithstanding anything contained in the Second Schedule to the Code, offences under this Act shall be cognizable and non-bailable.

22. Protection Of Action Taken Under This Act :-

No suit, prosecution or any other legal proceeding shall lie against any person for anything done or intended to be done in good faith in pursuance of the provisions of this Act.

23. Power To Make Rules :-

The Government may, by notification, make such rules consistent with the provisions of this Act, as may be necessary for carrying out the objects of this Act.

24. Repeal And Saving :-

(1)The Jammu and Kashmir Public Safety Ordinance, 1977 is hereby repealed.

(2)Notwithstanding such repeal, anything done or any action taken (including any rule or order made) under the said Ordinance shall, so far as consistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act.