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Kerala Anti-Social Activities (Prevention) Act, 2007**34 of 2007**

An Act specifically to provide for the effective prevention and control of certain kind of anti-social activities in the State of Kerala. WHEREAS, it is expedient specifically to provide for the effective prevention and control of certain kind of anti-social activities in the State of Kerala; BE it enacted in the Fifty-eighth Year of the Republic of India as follows:-

1. Short Title And Commencement :-

(1) This Act may be called the Kerala Anti-Social Activities (Prevention) Act, 2007.

(2) It shall be deemed to have come into force on the 13th day of December, 2006.

2. Definitions :-

In this Act, unless the context otherwise requires,--

(a) anti-social activity means acting in such manner as to cause or is likely to cause, directly or indirectly, any feeling of insecurity, danger or fear among the general public or any section thereof, or any danger to the safety of individuals, safety of public, public health or the ecological system or any loss or damage to public exchequer or to any public or private property or indulges in any activities referred in clauses (c), (e), (g), (h), (i), (l), (m),(n),(q) and (s) of this section;

(aa) "advisory board" means an advisory board constituted under section 8 by the Government;

(b) authorised officer means any officer authorised by the Government under sub-section (2) of section 3;

(c) bootlegger means a person who distils, manufactures, stores, transports or takes away, imports, exports, sells or distributes any liquor, intoxicating drug or other intoxicating substances in contravention of the Abkari Act (1 of 1077) and the Rules and Orders issued thereunder or any of the provisions contained in any other law for the time being in force, or knowingly spent or utilises money or give support or give aid to do any of the matters mentioned above, by any person or through any person by providing any animal, vehicle, vessel other conveyances or any tank, any other articles whatever it may be, or the person who abets to do any such matter in any manner;

(d) close relative means spouse, parent, children or sibling and first degree blood-relatives of such spouse, parent or sibling and includes the children or spouses of such persons;

(e) counterfeiter means any person who knowingly and wilfully makes, stocks or distributes counterfeit coins or currency or valuable security defined in section 30 of the Indian Penal Code (Central Act 45 of 1860) and includes a person who knowingly abets any such activities;

(f) detention order means an order made under section 3;

(g) depredator of environment means a person who, by any direct

act by which he derives pecuniary or commercial benefit, commits an offence under any law relating to protection of environment or rivers or under any law relating to sand mining from any place or under any law relating to quarrying or mining, or who commits or abets the commission of offences punishable under any law relating to conservation of forests or wild life;

(h) digital data and copyright pirate means any person who knowingly and deliberately violates, for commercial purposes, any copyright law in relation to any book, music, film, software, artistic or scientific work and includes any person who illegally enters through the identity of the user and illegally uses any computer or digital network for any illegal personal profit by deceiving any person or any computer system;

(i) drug-offender means a person who illegally cultivates, manufactures, stocks, transports, sells or distributes any drug in contravention of the Narcotic Drugs and Psychotropic Substances Act, 1985 (Central Act 61 of 1985) or in contravention of any other law for the time being in force, or who knowingly does anything abetting or facilitating any such activity;

(j) goonda means a person who indulges in any anti-social activity or promotes or abets any illegal activity which are harmful for the maintenance of the public order directly or indirectly and includes a bootlegger, a counterfeiter, a depredator of environment, a digital data and copy right pirate, a drug offender, a hawala racketeer, a hired ruffian, rowdy, an immoral traffic offender, a loan shark or a property grabber;

(k) Government means the Government of Kerala;

(l) hawala racketeer means any person who illegally buys or sells or deals in Indian currency or foreign currency under circumstances from which it can be reasonably inferred that he is doing so as a member of any organised group;

(m) hired ruffian means any person who receives pecuniary consideration in cash or kind for use of unlawful force either by himself or through any person for causing injury to any person or for criminally intimidating any person or for damaging any property belonging to any other person or for illegally dispossessing any person from any movable or immovable property in his possession;

(n) immoral traffic offender means a person who commits or abets the commission of any offence under the Immoral Traffic (Prevention) Act, 1956 (Central Act 104 of 1956);

(o) known goonda means a goonda who had been, for acts done within the previous seven years as calculated from the date of the

order imposing any restriction or detention under this Act,--

(i) found guilty, by a competent court or authority at least once for an offence within the meaning of the term goonda as defined in clause (j) of section 2; or

(ii) found in any investigation or enquiry by a competent police officer, or other authority or competent court on complaints initiated by persons other than police officers, in two separate instances not forming part of the same transaction, to have committed any act within the meaning of the term goonda as defined in clause (j) of section 2.

Provided that an offence in respect of which a report was filed by a police officer before a lawful authority consequent to the seizure, in the presence of witnesses, of alcohol, spirit, counterfeit notes, sand, forest produce, articles violating copyright, narcotic drugs, psychotropic substances, or currency involved in hawala racketeering may be included for consideration though the report had resulted from an action initiated by a police officer.

Explanation:- An instance of an offence involving a person, which satisfies the conditions specified in the definition of known rowdy referred to in clause (p) of section 2 can also be taken into consideration as an instance, along with other cases, for deciding whether the person is a known goonda or not.

(p) known rowdy means any person, who had been, by reason of acts done within the previous seven years as calculated from the date of the order imposing any restriction or detention under this Act,-

(i) made guilty, by a competent court at least once for an offence of the nature under item (i) of clause (t) of section 2 or any offence notified as such under the said clause; or

(ii) made guilty, by a competent court at least twice for any offence of the nature mentioned under item (ii) of clause (t) of section 2 or any offence notified as such under the said clause; or

(iii). found on investigation or enquiry by a competent police officer or other authority, on complaints initiated by persons other than police officers, in three separate instances not forming part of the same transaction to have committed any offence mentioned in clause (t) of section 2:

Provided that any offence committed by a person,-

(i) by virtue of his involvement as a member of the family or a close relative of the family in an incident which took place by reason of a family dispute or quarrel involving family members of close relatives on either side; or

- (ii) by virtue of his involvement as a neighbour or as a close relative of the neighbour in an incident which occurred due to a dispute between immediate neighbours; or
- (iii) by virtue of his involvement as an employee of any establishment in an incident which occurred in connection with a dispute between himself and the establishment with regard to the conditions of service; or
- (iv) as a member of the student community in a recognised educational institution, by virtue of his involvement, merely by his presence but without any overt act constituting the offence mentioned in clause (t) of section 2 without being involved in any criminal conspiracy facilitating the same, in an incident which occurred due to the general involvement of students of the institution in that particular incident; or
- (v) as a member of a recognised political party, by virtue of his involvement merely by his presence, but without any overt act constituting the offence mentioned in clause (t) of section 2 without being involved in any criminal conspiracy facilitating the same, in an incident which occurred due to the general involvement of the workers of that party in an agitation or protest or programme organised by the party with prior information given to the police officer or magistrate having jurisdiction; or
- (vi) by virtue of his involvement in a criminal act committed by him before he had attained the age of eighteen years, shall be omitted from the computation of the number of offences taken into account for deciding whether a person is a known rowdy;
- (q) loan shark means a money lender or any person engaged, by the money lender or someone acting on his behalf, who uses or threatens to use physical violence, directly or otherwise or through any person against any person for the purpose of collecting any part of the loan or interest thereon or any instalment thereof or for taking any movable or immovable property connected with the loan transaction or the realization of whole or part of the loan amount or interest thereon;
- (r) money lender means an individual money lender or any money lending institution of any type;
- (s) property grabber means a person who illegally takes possession, either for himself or on behalf of others, of any movable or immovable property belonging to Government or Government owned institutions or of any person and includes a person who creates illegal tenancies or lease or licence agreements or any other agreements, express or implied, in respect of such properties, or

who knowingly gives financial aid to any person for taking illegal possession of such properties or construction of unauthorised structures thereon or who attempts to collect from any possessors of such properties, rent, compensation or other charges by criminal intimidation or who evicts or attempts to evict any such possessor by force without resorting the lawful procedure or who abets in any manner or doing of any of the above mentioned acts;

(t) rowdy means and includes a person who either by himself or as a member of a gang commits or attempts to commit, or abets the commission of any offences under sections 153A and 153B of Chapter VIII and Chapters XV, XVI, XVII, & XXII of the Indian Penal Code, 1860 (Central Act 45 of 1860), or any offences under the provisions of the Arms Act, 1959 (Central Act 54 of 1959), or the Explosives Substances Act, 1908 (Central Act 6 of 1908),--

(i). punishable with five or more years of imprisonment of any type, or;

(ii). with less than five years of imprisonment of any type, except those punishable with less than one year of imprisonment; or

(iii). such offences under any other law for the time being in force, coming under item (i) or (ii), as may be notified by the Government, from time to time.

(u) Secretary, Home Department means the Home Secretary to the Government of Kerala and includes any Government Secretary, Principal Secretary or Additional Chief Secretary appointed by the Government to discharge the duties of the Home Secretary.

3. Power To Make Orders For Detaining Known Goondas And Known Rowdies :-

(1) The Government or an officer authorised under sub-section (2), may, if satisfied on information received from a Police Officer not below the rank of a Superintendent of Police with regard to the activities of any Known Goonda or Known Rowdy, that, with a view to prevent such person from committing any anti-social activity within the State of Kerala in any manner, it is necessary so to do, make an order directing that such person be detained.

(2) If having regard to the circumstances prevailing, or likely to prevail in any area, the Government, if satisfied that it is necessary so to do, may, by order in writing, direct that during such period as may be specified in the said order, the District Magistrate having jurisdiction may exercise the powers under sub-section (1) in respect of such persons residing within his jurisdiction or in respect

of such persons not so resident who have been indulging in or about to indulge in or abet any anti-social activities within such jurisdiction.

(3) When any order is made under this section by the authorised officer under sub-section (2), he shall forthwith report the fact to the Government and the Director General of Police, Kerala, together with a copy of the order and supporting records which, in his opinion, have a bearing on the matter and no such order shall remain in force for more than 12 days, excluding public holidays, from the date of detention of such Known Goonda or Known Rowdy, unless, in the meantime, it has been approved by the Government or by the Secretary, Home Department if generally so authorised in this regard by the Government.

4. Execution Of Detention Orders :-

A detention order may be executed at any place in the State of Kerala in the manner provided for the execution of warrants of arrest under the Code of Criminal Procedure, 1973 (Central Act 2 of 1974).

5. Places Of Detention :-

Every person in respect of whom a detention order has been made shall be detained in Central Prisons or District Jails within the State of Kerala and a copy of the detention order bearing the signature and seal of the detaining authority shall be given to the Superintendent of the Jail concerned while admitting such person into the Jail.

6. Powers In Relation To Absconding Persons :-

(1) If the Government or an officer authorised mentioned in sub-section (2) of section 3 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 such officer 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) On making of a report against any person under clause (a) of sub-section(1), the provisions of sections 82, 83, 84, 85, and 86 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 made against him is a warrant issued by the Magistrate.

3) If any person fails to comply with an 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 reasons which rendered compliance therewith impossible and of his whereabouts, or failed to prove that he could not inform the officer mentioned in the order, be punishable with imprisonment for a term which may extend to two years, or with fine, or with both.

7. Grounds Of Order Of Detention To Be Disclosed :-

(1) When a person is arrested in pursuance of a detention order, the officer arresting him shall read out the detention order to him and give him a copy of such order.

(2) The grounds of detention, specifying the instances of offences, with copies of relevant documents, as far as practicable, on the basis of which he is considered as a "known goonda" or "known rowdy" and giving such materials relating to his activities on the basis of which his detention has been found necessary, shall be furnished to him as soon as possible nevertheless, in any case, within five days of detention and he shall also be informed in writing, under acknowledgement, of his right to represent to the Government and before the Advisory Board against his detention:

Provided that nothing in this section shall require any authority to disclose to the detained person any fact, the disclosure of which will reveal the identity of any confidential source or the disclosure of which will be against the interests of internal security or national security.

(3) The Superintendent of the Jail where such person is detained shall afford him reasonable opportunity to consult a lawyer and reasonable assistance in making a representation against the detention order to the Government or to the Advisory Board.

(4) The order of detention shall not be deemed to be invalid merely because one or more of the facts or circumstances cited among the grounds are vague, non-existent, irrelevant or invalid for any reason whatsoever and such order shall be deemed to have been

made by the Government or the Authorised officer after having been satisfied about the need for detention with reference to the remaining facts and circumstances, provided that the minimum conditions for being classified as a known goonda or known rowdy are satisfied.

8. Constitution Of Advisory Board :-

(1) The Government shall, constitute one or such number of Advisory Boards as may be necessary for the purposes of this Act, with such territorial or functional jurisdiction, as may be specified.

(2) Every such Board shall consist of a Chairman who is, or had been Judge of a High Court and two members who are qualified under the Constitution of India to be appointed as a Judge of a High Court.

(3) The salary, allowances, tenure and service conditions of the Chairman and members of the Advisory Board may be such as may be prescribed.

9. Reference To Advisory Board :-

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, place before the Advisory Board, the grounds on which the order has been made and the representation, if any, made by the person affected, and, in the case where the order has been made by an authorised officer, the report by such officer under sub-section (3) of section 3.

10. Procedure Of Advisory Board And Further Action :-

(1) The Advisory Board to which a reference is made under the above section shall after considering the reference and 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 necessary so to do or if the person concerned desires to be heard in person, after hearing him in person, prepare its report specifying in a separate paragraph thereof its opinion as to whether or not there is sufficient cause for the detention of the person concerned and submit the same within nine weeks from the date of detention of the person concerned;

(2) 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. The absence of a member shall not invalidate the decision of the Board.

(3) A person against whom an order of detention has been made under this Act shall not be entitled 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 the part of the report in which the opinion of the Advisory Board is specified, shall be confidential:

Provided that the Board has power to permit legal practitioners in the cases deemed fit.

(4) In every 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 and in every 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.

11. Detention Orders Not Be Invalid Or Inoperative On Certain Matters :-

No detention order shall be invalid or inoperative merely by reason:--

(a) that the persons to be detained thereunder, though within the State, is outside the limits of the territorial jurisdiction of the officer making the order; or

(b) that the place of detention of such person, though within the State, is outside the said limits.

12. Maximum Period Of Detention :-

The maximum period for which any person may be detained in pursuance of any detention order made under this Act, which has been confirmed under section 10, shall not exceed six months from the date of detention.

13. Revocation Of Detention Order :-

(1) A detention order may, at any time, be revoked or modified by the Government.

(2) The revocation or expiry of a detention order shall not be a bar for the issuance of another detention order under section 3 against the same person, if he continues to be a person falling within the definition of known rowdy or known goonda as given in section 2 (o) or section 2 (p) and if,--

(i) after release, he is, found to have, again involved in an offence of the nature described in section 2(o) or section 2 (p); or at least one instance; or

(ii) the facts, which came to the notice of the Government or the authorised officer after the issuance of the earlier detention order, considered along with previously known facts are sufficient to cause a reasonable apprehension that he is likely to indulge in or promote or abet antisocial activities; or

(iii) the procedural errors or omissions, by reason of which the first order was revoked, are rectified in the procedure followed with regard to the subsequent order, even if the subsequent order is based on the very same facts as the first order.

14. Temporary Release Of Persons Detained :-

The Government may, at any time, direct that any person detained in pursuance of a detention order may be released for a period not exceeding one week either without any condition or under such conditions as may be specified in the direction, and may at any time, cancel such direction issued earlier.

15. Power To Make Orders Restricting The Movements Of Certain Persons :-

(1) The District Magistrate or a police officer of and above the rank of Deputy Inspector General having jurisdiction, if satisfied on information received in respect of a known goonda or known rowdy, after having given him an opportunity to be heard by notice served on him or pasted at his ordinary place of residence, if any in Kerala, that he is indulging in or about to indulge in or likely to indulge in anti-social activities and with a view to prevent him from so acting at any place within the jurisdiction of such magistrate or officer, may make an order,--

(a) directing that, except in so far as he may be permitted by the conditions made in the order, he shall not visit any such area or place as may be specified in the order, for a period not exceeding one year;

(b) requiring him to report his movements within the State, in such

manner, at such times, and to such authority or person as may be specified in the order, for a period not exceeding one year:

Provided that a copy of the order along with the grounds for issuing such order shall be communicated to the Government through the Director General of Police.

(2) Any person aggrieved by an order issued under sub-section (1) may represent before the Advisory Board within fifteen days of the date of service of the order and the Board on receipt of such representation, consider the same, and after enquiring into the facts and circumstances in such manner as it may deem fit, shall within thirty days of the date of receipt of such representation, annul, amend or confirm the order, either in part or in full.

(3) The Government or the authority which issued the order under sub-section (1) may, on its own motion, annul or amend the order at any time either in part or in full.

(4) Any person violating an order under sub-section (1) shall be liable to be punished with imprisonment for a term which may extend to three years.

(5) If an order issued under sub-section (1) above has ceased to have effect for any reason, a new order under the said sub-section may be issued against the same person, if he continues to be a person falling within the definition of known rowdy or known goonda as given in section 2 (o) or section 2 (p) and if, after such cessation, he has again involved, in an offence of the nature described in section 2 (o) or section 2 (p) at least in one instance.

16. Punishment For Concealing Persons Ordered To Be Detained :-

Whoever, knows or has reason to believe that an order against any person has been made under section 3 or section 15, harbours or conceals such person, shall be punished with imprisonment for a term which shall not be less than three months but may extend to one year, and shall also be liable to fine which may extend to one thousand rupees.

17. Power To Search :-

(1) The Government or the authorised officer may, by general or special order, empower any police officer to search any place, stop and search any vessel, vehicle or animal, and may seize anything which he has reason to believe, has been, is being, or is about to be, used for committing any anti-social activity.

(2) Any officer empowered under sub-section (1) shall forthwith report to the Government or the authorised officer in detail any seizure made by him and till the receipt of their orders, may detain in custody anything so seized or take such other steps for its safe custody, as he may think fit.

(3) The Government or the authorised officer may make such order as they deem fit, for the disposal of anything seized under sub-section (1), by destruction, confiscation or in such other manner, as they may direct.

18. Protection Of Action Taken In Good Faith :-

(1) No suit, prosecution or other legal proceeding shall lie against any officer, authorised or not for anything done or intended to be done in good faith under this Act.

(2) No suit or other legal proceeding shall lie against the Government for any damage caused or deemed to have been caused by any action taken or intended to be taken in good faith in pursuance of any order made or deemed to be made under this Act.

(3) No public servant shall be penalised in any manner for any act or omission committed in good faith, in pursuance of official duty cast upon him or in preparing any material or document for the purpose of initiating action under this Act or for any omission or error in listing out or categorising any offence in which the detained person had been involved or convicted.

(4) If a public servant commits any act or omission deliberately or maliciously with the intention of falsely implicating any person under the provisions of this Act, in addition to the normal prosecution, if it is so ordered by the Government a sum not exceeding hundred rupees per day for each day of detention shall be realized from such Government officer and he paid to the person subjected to such detention.

19. Offences To Be Cognizable And Non-Bailable :-

Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (Central Act 2 of 1974), all offences and wilful violations of lawful orders made under this Act shall be cognizable and non-bailable.

20. Manner Of Issue Of Orders Of Government :-

All orders issued by the Government under this Act shall be under the seal and signature of the Secretary, Home Department.

21. Power To Make Rules :-

(1) The Government may make rules, not inconsistent with this Act, for carrying out the purposes 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 fourteen 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, the Legislative 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.

22. Repeal And Savings :-

(1) The Kerala Anti-Social Activities (Prevention) Ordinance, 2007 (44 of 2007), is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under this Act.