

Himachal Pradesh Restriction Of Habitual Offenders Act, 1973

(Act No. 9 Of 1974)

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For Statement of Objects and Reasons, see the Rajpatra, Himachal Pradesh (Extra-ordinary), dated 7th April, 1973, p. 523.

Received the assent of the Governor on the 27th February 1974, and was published in the Rajpatra, Himachal Pradesh (Extra-ordinary), dated the 13th April, 1974, pp. 700-704.

An Act to restrict the movements of habitual offenders in Himachal Pradesh and to require them to report themselves.

Himachal Pradesh Restriction Of Habitual Offenders Act, 1973

(Act No. 9 Of 1974)

BE it enacted by the legislative Assembly of Himachal Pradesh in the Twenty-fourth Year of the Republic of India as follows:-

1. Short title, extent and commencement.

(1) This Act may be called the Himachal Pradesh Restriction of Habitual Offenders Act, 1973.

(2) It extends to whole of Himachal Pradesh.

(3) It shall come into force at once.

2. Definitions.

In this Act, unless the context otherwise requires,-

(i) "Government" means the Government of Himachal Pradesh;

(ii) "Magistrate" shall include every person exercising all or any of the powers of a Magistrate under the Code of Criminal Procedure (5 of 1898) for the time being in force;

(iii) "Official Gazette" means Rajpatra, Himachal Pradesh;

(iv) "'Order of Restriction" means any order issued in pursuance of section 8 or other provisions of this Act.

3. Scope of order of restriction.

An order of restriction may either restrict a person in his movements to any areas specified in the order, or require a person to report himself at such time, at such place, and in such mode, as may be specified therein, or both.

4. Order of restriction against habitual offenders.

(1) In any case in which a Magistrate may, under the provisions of section 110 of the Code of Criminal Procedure, 1898 (5 of 1898), require a person to show cause why he should not be ordered to execute a bond for his good behaviour, the Magistrate may in lieu of or in addition to so doing require such person to show cause why an order of restriction should not be made against him.

(2) If the Magistrate in addition to requiring such person to show cause why he should not be ordered to execute a bond for his good behaviour, requires him to show cause why an order of restriction should not be made against him, the proceedings in respect of the order of restriction may be taken jointly with the proceedings in respect of security and may be entered in and form part of the same record.

5. Procedure for making order of restriction.

When a Magistrate deems it necessary to require a person to show cause why an order of restrictions should not be made against him, he shall follow, as nearly as may be, the procedure laid down in sections 112, 113, 114; 115 and 117 of the Code of Criminal Procedure, 1898 (5 of 1898) :

Provided that--

(a) the order in writing referred to in section 112 of the said Code (5 of 1898) 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, but it need not state whether the order of restriction shall be an order restricting the person to any area or requiring him to report himself or doing both; and

(b) for the purposes of sub-section (2) of section 117 of the said Code an order of restriction shall be deemed to be equivalent to an order requiring security for good behaviour.

6. Issue of warrant in lieu of or in addition to summons.

The provisions of section 90 of the Code of Criminal Procedure, 1898 (5 of 1898), shall be applicable to proceedings under this Act, as if they were proceedings under the said Code.

7. Discharge of person informed against.

If upon inquiry made in accordance with the preceding sections the Magistrate is of opinion that no order of restriction is necessary, the Magistrate shall make an entry to that effect on the record, and if he does not order the execution of a bond for good behaviour he shall, if such person is in custody only for purposes of the enquiry, release him, or if such person is not in custody, discharge him.

8. Making of order of restriction and specifying particulars therein.

(1) If upon inquiry, as aforesaid, the Magistrate is of opinion that an order of restriction should be made against any person in respect of whom the inquiry is being made, the Magistrate shall make an order accordingly.

(2) (a) In his order under this section the Magistrate shall state whether the said person shall be restricted in his movements, or shall be required to report himself, or both.

(b) The order under this section shall conform to any rules made by the Government under section 17 and shall specify the area and the nature of the restrictions to be imposed and the places and the times and mode of report, as the case may be.

(3) No order of restriction shall be for a term exceeding three years or for a term longer than that specified in the order under section 5.

9. Order of restriction under section 123 (3) and section 565 of the Code of Criminal procedure.

(1) An order passed by a Session Judge under sub-section (3) of section 123 of the

Code of Criminal Procedure, 1898 (5 of 1898) may be in addition to an order of restriction for the same or a less period.

(2) In any case in which a court or Magistrate is empowered to take action against any convicted person under section 565 of the Code of Criminal Procedure, 1898 (5 of 1898), such court or Magistrate may, if it or he thinks fit at the time of passing sentence on such person and in lieu of passing an order under the said section, make an order of restriction against such person for a period not exceeding three years from the date of the expiry of such sentence.

(3) If such conviction is set aside on appeal or otherwise, such order shall become void.

10. Means of livelihood within area of restriction and change of area where means of livelihood are insufficient.

(1) No order shall be made restricting any person to any area unless the court or Magistrate making the order is satisfied that such person has adequate means of earning his livelihood within the area of restriction :

Provided that before making such order the court or Magistrate shall record and consider any objection which such person may urge in regard to the area proposed.

(2) If at any time any person against whom an order of restriction has been passed under this Act satisfies the court or Magistrate passing the order or the District Magistrate that he has no sufficient means of earning his livelihood within the area to which he is restricted, the court or Magistrate shall change the area.

11. Power to cancel order of restriction.

The District Magistrate may, at any time, for sufficient reasons to be recorded in writing, cancel any order of restrictions passed by any court having jurisdiction in his district.

12. Power to vary area of restriction.

The District Magistrate may, at any time, change the area to which the movements of any person have been restricted by an order of restriction passed under this Act:

Provided that such person shall be given an opportunity of showing cause why such changes should not be made.

13, Power to add order of restriction to bound for good behaviour.

When an order requiring security for good behaviour has been made against any person under section 118 of the Code of Criminal Procedure, 1898 (5 of 1898), by any court whether before or after this Act comes into force, the District Magistrate may, at any time before the period of security has expired make in addition an order of restriction :

Provided that-

(a) the period of the order of restriction shall not exceed the unexpired period of security; and

(b) no order of restriction shall be passed against any person under this section until he has been given an opportunity of showing cause why such order should not be passed.

14. Appeal.

Any person against whom an order of restriction has been passed under this Act may appeal against such order to the Court of Sessions to have the order set aside.

15. Applicability of the Code of Criminal Procedure to appeals and revisions.

The provisions of the Code of Criminal Procedure, 1898, shall be applicable to appeals and petitions of revision under this Act as if they were appeals and petitions of revision presented under the said Code.

16. Arrest of persons found beyond prescribed Limits.

(1) If any person against whom an order of restriction under this Act has been passed is found in any place beyond the area to which his movements have been restricted, without the pass prescribed by the rules made under this Act, or at a time or in a place not permitted by the conditions of his pass, he may be arrested without warrant by any police officer, member Panchayat, village headman or village watchman.

(2) Any person, not being a police officer, making an arrest under this section shall without unnecessary delay make over the person so arrested to a police officer or in the absence of a police officer take or send such person to the nearest police station.

17. Power to make rules.

(1) The State Government may make rules for the purpose of carrying into effect the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power the Government may make rules to provide for and regulate,-

(i) the areas to which persons may be restricted under this Act and the nature of the restrictions to be observed by them;

(ii) the times and places at which and the mode in which persons shall report themselves when required to do so under this Act;

(iii) the conditions as to holding passes under which persons may be permitted to leave the area to which their movements have been restricted; and

(iv) the conditions to be inserted in any such pass in regard to-

(a) the place to which the holder of the pass may or may not go;

(b) the persons before whom from time to time he shall be bound to present himself; and

(v) the time during which he may be absent.

(3) All rules made under this section shall be published in the Official Gazette.

(4) Every rule under this section 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.

18. Penalties.

(1) Whoever being a person against whom an order of restriction under this Act has been passed, violates such order or any rule made under this Act, shall on conviction by a Magistrate of the first class be punished-

(a) on a first conviction, with imprisonment of either description for a term which may extend to one year, or with fine or with both;

(b) on a second conviction, with imprisonment of either description for a term which may extend to two years;

(c) on any subsequent conviction, with imprisonment of either description for a term which may extend to three years.

(2) In computing the period for which an order of restriction shall remain in force, any period of imprisonment undergone in execution of a sentence passed under sub-section (1) shall be excluded.

19. Repeal and savings.

The Restriction of Habitual Offenders (Punjab) Act, 1918 (5 of 1918)) as in force in the areas added to Himachal Pradesh, under section 5 of the Punjab Re-organisation Act, 1966, is hereby repealed :

Provided that any order made, notification or direction issued, anything done or any action taken or any proceedings commenced or continued under the said Act, shall be deemed to have been made, issued, done, taken, commenced or continued under the corresponding provisions of this Act.