

The Jammu And Kashmir Criminal Law (Amendment) Act, 1983

JAMMU & KASHMIR

India

The Jammu And Kashmir Criminal Law (Amendment) Act, 1983

Act 10 of 1983

- Published in Gazette 10 on 23 March 1983
- Assented to on 23 March 1983
- Commenced on 23 March 1983
- [This is the version of this document from 23 March 1983.]
- [Note: The original publication document is not available and this content could not be verified.]

Jammu And Kashmir Criminal Law (Amendment) Act, 1983[Act No. 10 of 1983][23rd March, 1983]An Act to amend the Criminal Law and to provide for more effective prevention of certain unlawful activities of individuals and associations and for matters connected therewith.Be it enacted by the Jammu and Kashmir State Legislature in the Thirty-fourth Year of the Republic of India as follows:—

1. Short title and extent

(1)This Act may be called the Jammu and Kashmir Criminal Law (Amendment) Act, 1983.(2)It extends to the whole of the State of Jammu and Kashmir.

2. Definitions

In this Act, unless the context otherwise requires,—(a)'association' means any combination or body of individuals, whether known by any distinctive name or not;(b)'unlawful activity' in relation to an individual or association means any action taken by such individual or association (whether by committing an act or by words, either spoken or written, or by signs or by visible representation or otherwise),—(i)which is punishable under section 153-A or section 153-B of the State Ranbir Penal Code or which is intended to encourage or which encourages or aids or incites any person or persons to undertake any such activity; or(ii)which is intended, or which is part of scheme intended, to threaten or likely to threaten or disrupt, or likely to disrupt harmony between different religious, racial language or regional group or caste or community; or(iii)which is intended or which is part of a scheme intended, to propagate hatred or hostility against any religious, racial, language or regional group; or(iv)which is for any reason whatsoever, intended, or which is part of a scheme intended, to cause or likely to cause fear or alarm of feeling of insecurity amongst members of different religious,

racial, language or regional groups, or caste or community; or(v)which interferes or has for its object interference with the public administration or the maintenance of supplies and services essential to the life of the community or the administration of the law or the maintenance of law and order or that which constitutes a danger to the public peace;(c)'unlawful association' means any association which has for its object any unlawful activity, or which encourages or aids persons to undertake any unlawful activity, or of which the members undertake such activity.

3. Power to declare association unlawful

(1)If the Government is of the opinion that any association is, or has become, an unlawful association, it may, by notification in the Government Gazette, declare such association to be unlawful.(2)A notification issued under sub-section (1) shall—(a)specify the grounds on which it is issued and such other particulars as the Government may consider necessary; and(b)fix a reasonable period for any office bearer or member of the association or any other person, interested to make a representation to the Government in respect of the issue of the notification.(3)Nothing in sub-section (2) of this section shall require the Government to disclose any fact which it considers to be against the public interest to disclose.(4)Every notification issued under sub-section (1) shall in addition to its publication in the Government Gazette, be published in not less than one daily newspaper having circulation in the area in which the principal office, if any, of the association affected is situated and shall also be served on such association in all or any of the following modes, namely:—(a)by affixing a copy of the notification to some conspicuous part of the office, if any, of the association; or(b)by serving copy of the notification, where possible, on the principal office-bearers, if any, of the association; or(c)by proclaiming by beat of drum or by means of loudspeakers the contents of the notification in the area in which the activities of the association are ordinarily carried on.

4. Reference to Tribunal

(1)Where any association has been declared unlawful under section 3, the Government shall after the expiry of the period fixed in the notification for making representation but within thirty days after the expiry of the said period, refer the notification and the representation, if any, received from the association, to the Tribunal constituted under section 5 for the purpose as adjudicating whether or not there is sufficient cause for declaring the association unlawful.(2)On receipt of a reference under sub-section (1), the Tribunal shall call upon the association affected by notice in writing to show cause within thirty days from the date of service of such notice, why the notification issued under sub-section (1) of section 3 should not be confirmed.(3)After considering the cause, if any, shown by the association or office-bearers or members thereof, the Tribunal shall hold an inquiry in the manner specified in section 9 and after calling for such further information as it may consider necessary from the Government or from any office-bearer or member of the association, it shall decide whether or not there is sufficient cause for declaring the association as unlawful and make as expeditiously as possible and in any case within a period of one year and six months from the date of receipt of reference under section 4, such order as it may deem fit either confirming the declaration made in the notification or cancelling the same.(4)The order of the Tribunal made under sub-section (3) shall be published in the Government Gazette.

5. Constitution of Tribunal

(1)The Government may, by notification in the Government Gazette, constitute, as and when necessary, a tribunal for the purposes of section 4 consisting of one person, to be appointed by the Government:Provided that no person shall be so appointed unless he is, or is qualified to be appointed as, a Judge of the High Court.(2)If, for any reason a vacancy (other than a temporary absence) occurs in the office of the Presiding Officer of the Tribunal, then, the Government shall appoint another person in accordance with the provisions of this section to fill the vacancy and the proceedings may be continued before the Tribunal from the stage at which the vacancy is filled.(3)The Government shall make available to the Tribunal such staff as may be necessary for the discharge of its functions under this Act.(4)All expenses incurred in connection with the Tribunal shall be defrayed out of the Consolidated Fund of the State.(5)Subject to the provisions of section 9, the Tribunal shall have power to regulate its own procedure in all matters arising out of the discharge of its functions including the place or places at which it will hold its sittings.(6)The Tribunal shall, for the purpose of making an inquiry under this Act have the same powers as are vested in a civil Court under the Code of Civil Procedure, Samvat 1977 while trying a suit, in respect of the following matters, namely:—(a)the summoning and enforcing the attendance of any witness and examining him on oath;(b)the discovery and production of any documents or other material object producible as evidence;(c)the reception of evidence on affidavits;(d)the requisitioning of any public record from any Court or office;(e)the issuing of any commission for the examination of witnesses.(7)Any proceeding before the Tribunal shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Ranbir Penal Code and Tribunal shall be deemed to be a Civil Court for the purposes of section 196 and Chapter XXXV of the Code of Criminal Procedure, Samvat 1989.

6. Period of operation and cancellation of notification

(1)subject to the provisions of sub-section (2), a notification issued under section 3 shall; if the declaration made therein is confirmed by the Tribunal by an order made under section 4 remain in force for a period of two years from the date of its confirmation by the Tribunal.(2)Notwithstanding anything contained in sub-section (1), the Government may, either on its motion or on the application of any person aggrieved, at any time, cancel the notification issued under section 3 whether or not the declaration made therein has been confirmed by the Tribunal.

7. Power to prohibit the use of funds of an unlawful association

(1)Where an association has been declared unlawful by a notification issued under section 3 which has been confirmed by the Tribunal and the Government is satisfied, after such inquiry as it may think fit, that any person has custody of any moneys, securities or credits which are being used or are intended to be used for the purpose of the unlawful association, the Government may, by order in writing prohibit such person from paying, delivering, transferring or otherwise dealing in any manner whatsoever with such moneys, securities or credits or with any other moneys, securities or credits which may come into his custody after the making of the order save in accordance with the written orders of the Government and a copy of such orders shall be served upon the person so

prohibited in the manner specified in sub-section (3).(2)The Government may endorse a copy of prohibitory order made under sub-section (1) for investigation to any gazetted officer of the Government it may select, and such copy shall be a warrant where under such officer may enter in or upon any premises of the person to whom the order is directed, examine the books of such person, search for moneys, securities or credits, and make inquiries from such person or any officer, agent or servant of such person, touching the origin of any dealings in any moneys, securities or credits which the investigating officer may suspect are being used or are intended to be used for the purpose of the unlawful association.(3)A copy of an order made under this section shall be served in the manner provided in the Code of Criminal Procedure, 1989 for the service of summons or, where the person to be served is a corporation, company, bank or other association, it shall be served on any secretary, director or other officer or person concerned with the management thereof or by leaving it or sending it by post addressed to the corporation, company, bank or other association at its registered office, or where there is no registered office, at the place where it carries on business.(4)Any person aggrieved by a prohibitory order made under sub-section (1) may, within fifteen days from the date of the service of such order, make an application to the Court of District Judge within the local limits of whose jurisdiction such person voluntarily resides or carries on business or personally works for gain, to establish that the moneys, securities or credits in respect of which the prohibitory order has been made are not being used or are not intended to be used for the purpose of the unlawful association and the Court of the District Judge shall decide the question.(5)Except so far as it is necessary for the purposes of any proceedings under this section, no information obtained in the course of any investigation made under sub-section (2) shall be divulged by any gazetted officer of the Government, without the consent of the Government.(6)In this section "security" includes a document whereby any person acknowledges that he is under a legal liability to pay money, or where under any person obtains a legal right to the payment of money.

8. Power to notify places used for the purpose of an unlawful association

(1)Where an association has been declared unlawful by a notification issued under section 3 which has been confirmed by the Tribunal, the Government may, by notification in the Government Gazette, notify any place which in its opinion is used for the purpose of such unlawful association.Explanation.—For the purpose of this sub-section, "place" includes a house or building or part thereof, or a tent or vessel.(2)On the issue of a notification under sub-section (1) the District Magistrate within the local limits of whose jurisdiction such notified place is situate or any officer authorised by him in writing in this behalf shall make a list of all movable properties (other than wearing apparel, cooking vessels, beds and beddings, tools of artisans, implements of husbandry, cattle, grain and food stuffs and such other articles as he considers to be of a trivial nature) found in the notified place in the presence of two respectable witnesses,(3)If, in the opinion of the District Magistrate, any articles specified in the list are or may be used for the purpose of the unlawful association, he may make an order prohibiting any person from using the articles save in accordance with the written orders of the District Magistrate.(4)The District Magistrate may thereupon make an order that no person who at the date of the notification was not a resident in the notified place shall, without the permission of the District Magistrate, enter, or be on, or in the notified place:Provided that nothing in this sub-section shall apply to any near relative of any person who was a resident in

the notified place at the date of the notification.(5)Where in pursuance of sub-section (4), any person is granted permission to enter, or to be on, or in, the notified place, that person shall, while acting under such permission, comply with such orders for regulating his conduct as may be given by the District Magistrate.(6)Any police officer, not below the rank of a sub-inspector 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 the notified place and may detain any such person for the purpose of searching him:Provided that no female shall be searched in pursuance of this sub-section except by a female.(7)If any person is in the notified place in contravention of an order made under sub-section (4) then, without prejudice to any other proceedings which may be taken against him, he may be removed therefrom by any officer or by any other person authorised in this behalf by the Government.(8)Any person aggrieved by a notification issued in respect of a place under sub-section (1) or by order made under sub-section (3) or sub-section (4) may within thirty days from the date of the notification or order, as the case may be, make an application to the Court of the District Judge within the local limits of whose jurisdiction such notified place is situate —(a)for declaration that the place has not been used for the purpose of the unlawful association; or(b)for setting aside the order made under sub-section (3) or sub-section (4), and on receipt of the application the Court of the District Judge shall, after giving the parties any opportunity of being heard, decide the question.

9. Procedure to be followed in the disposal of application under this Act

Subject to any rules that may be made under this Act, the procedure to be followed by the Tribunal in holding any inquiry under sub-section (3) of section 4 or by a Court of the District Judge in disposing of any application under sub-section (4) of the section 7 or sub-section (8) of section 8 shall so far as may be, be the procedure laid down in the Code of the Civil Procedure, Samvat 1977 for the investigation of claims and the decision of the Tribunal or the Court of the District Judge, as the case may be, shall be final.

10. Punishment for unlawful activity

(1)Whoever—(a)takes part in or commits, or(b)advocates, abets, advises or in cities the commission of, any-unlawful activity shall be punished with imprisonment which shall not be less than four years but may extend to ten years and shall also be liable to fine,(2)Whoever, in any way, assist any unlawful activity of any association declared unlawful under section 3 shall be punished with imprisonment for a term which shall not be less than two years but may extend to seven years and shall also be liable to fine.

11. Penalty for being members of an unlawful association

Whoever is and continues to be a member of an association, declared unlawful by a notification issued under section 3 which has been confirmed by the Tribunal, or takes part in meetings of any such unlawful association or contributes to, or receives or solicits any contribution, for the purpose of, any such unlawful association, or in any way assists the operations of any such unlawful association, shall be punished with imprisonment for the term which shall not be less than two years but may extend to seven years, and shall also be liable to fine.

12. Penalty for dealing with funds of an unlawful association

If any person on whom a prohibitory order has been served under sub-section (1) of section 7 in respect of any money, securities or credits pays, delivers, transfers or otherwise deals in any manner whatsoever with the same in contravention of the prohibitory order, he shall be punishable with imprisonment for a term which may extend to three years, or with fine or with both, and notwithstanding anything contained in the Code of Criminal Procedure, Samvat 1989 the Court trying such contravention may also impose on the person convicted an additional fine to recover from him the amount of the money or credits or the market value of the securities in respect of which the prohibitory order has been contravened or such part thereof as the court may deem fit.

13. Penalty for contravention of an order made in respect of a notified place

(1)Whoever uses any article in contravention of a prohibitory order in respect thereof made under sub-section (3) of section 8 shall be punishable with imprisonment for a term which may extend to one year, and shall also be liable to fine.(2)Whoever knowingly and wilfully is in, or effects or attempts to effect entry into a notified place in contravention of an order made under sub-section (4) of section 8 shall be punishable with imprisonment for a term which may extend to one year and shall also be liable to fine.

14. Offence to be cognizable

Notwithstanding anything contained in the Code of Criminal Procedure, Samvat 1989 an offence punishable under this Act shall be cognizable.

15. Continuance of association

An association shall not be deemed to have ceased to exist by reason only of any formal act of its dissolution or change of name but shall be deemed to continue so long as any actual combination for the purpose of such association continues between any members thereof.

16. Bar of jurisdiction

Save as otherwise expressly provided in this Act, no proceeding taken under this Act by the Government or the District Magistrate or any officer authorised in this behalf by the Government or the District Magistrate shall be called in question in any Court in any suit or application or by way of appeal or revision, and no injunction shall be granted by the Court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under the Act.

17. Prosecution for offences under this Act

No court shall take cognizance of any offence punishable under this Act except with the previous sanction of the Government or any officer authorised by the Government in this behalf.

18. Protection of action taken in good faith

(1) No suit or other legal proceeding shall lie against the Government in respect of any loss or damage caused or likely to be caused by anything which is in good faith done or intended to be done in pursuance of this Act or any rules or orders made thereunder. (2) No suit, prosecution or other legal proceeding shall lie against the District Magistrate or any officer authorised in this behalf by the Government or the District Magistrate in respect of anything which in good faith done or intended to be done in pursuance of this Act or any rules or orders made thereunder.

19. Effect of Act and rules, etc., inconsistent with other enactments

The provisions of this Act or any rule or order made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or any instruments having effect by virtue of any enactment other than this Act.

20. Power to make rules

(1) The Government may, by notification in the Government Gazette, make rules to carry 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 service of notices or order issued or made under this Act and the manner in which such notices or orders may be served where the person to be served is a corporation, company, bank or other association; (b) any other matter which has to be or may be, prescribed. (3) Every rule under this Act shall be laid, as soon as may be after it is made, before each House of the State Legislature, while it is in session for a total period of thirty days which may be comprised in one session or more successive sessions and if before the expiry of the said period both Houses agree in making any modification in the rule or both Houses agree that 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.

21. Omitted

22. Omitted

23. Omitted

24. Omitted

25. Omitted

26. Repeal of the Jammu and Kashmir State Criminal Law Amendment Act, Samvat 1971

The Jammu and Kashmir State Criminal Law Amendment Act, Samvat 1971 is hereby repealed.

27. Repeal and saving

(1)The Jammu and Kashmir Criminal Law Amendment Ordinance, 1983, (III of 1983) is hereby repealed.(2)Notwithstanding such repeal, anything done, any action taken including any rule or order made, notification issued under the said Ordinance, shall be deemed to have been done, taken, made or issued under this Act as if this Act had come into force on the 21st day of January, 1983.