

Preventive Detention Act, 1950

JAMMU & KASHMIR

India

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Act 4 of 1950

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Preventive Detention Act, 1950(Act No. 4 of 1950)Last Updated 7th December, 2019[Dated 25.02.1950]An Act to provide for preventive detention in certain cases and matter connected therewith Be it enacted by Parliament as follows

1. Short Title, Extent and Duration.

(1)This Act may be called the Preventive Detention Act, 1950.(2)It extends to the whole of India except the State of Jammu and Kashmir.(3)It shall cease to have effect on the 31st day of December, 1969, save as respects things done or omitted to be done before that date.

2. Definitions.

- In this Act unless the context otherwise requires,-(a)"State Government" in relation to a Union Territory, means the Administrator thereof;(b)"detention order" means an order made under Section 3;and(c)"appropriate Government" means, as respects a detention order made by the Central Government, or a person detained under such order, the Central Government, and as respects a detention order made by a State Government or by an officer subordinate to a State Government or as respects a person detained under such order, the State Government-

3. Power to Make Orders Detaining Certain Persons.

(1)The Central Government or the State 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 defence of India, the relations of India with foreign persons, or the security of India, or(ii)the security of the State or the maintenance of public order, or(iii)the maintenance of supplies and services essential to the community; or(b)if satisfied with respect to any person who is a foreigner within the meaning of the Foreigners Act, 1946-(31 of 1946), that with a view to regulating his continued presence in India or with a view to making arrangements for his expulsion from India it is necessary so to do, make an

order directing that such person be detained.(2)Any of the following officers, namely : (a) District Magistrates, (b) Additional District Magistrates specially empowered in this behalf by the State Government, (c) the Commissioner of Police for Bombay, Calcutta, Madras or Hyderabad, (d) Collectors in the territories which immediately before the 1st November, 1956, were comprised in the State of Hyderabad, may if satisfied as provided in sub-clauses (ii) and (iii) of Cl. (a) of subsection (1), exercise the power conferred by the said subsection.(3)When any order is made under this section by any officer mentioned in sub-section (2) he shall forthwith report the fact to the State Government to which he is subordinate 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 made after the commencement of Preventive Detention (Second Amendment) Act, 1952 (61 of 1952), shall remain in force for more than twelve days after the making thereof unless in the meantime it has been approved by the State Government.(4)When any order is made or approved by the State Government under this section, the State Government shall, as soon as may be, report the fact to the Central Government together with the grounds on which the order has been made and such other particulars as in the opinion of the State Government has a bearing on the necessity for the order.

3A. Execution of Detention Orders.

- A detention order may be executed at any place in India in the manner provided for the execution of warrants of arrest under the Code of Criminal Procedure, 1898 (5 of 1898)¹³

4. Power to Regulate Place and Conditions of Detention.

- Every person in respect of whom a detention order has been made shall be liable- (a) to be detained in such place under such conditions, including conditions as to maintenance, discipline and punishment for breaches of discipline, as the appropriate Government, may by general or special order specify; and (b) to be removed from one place of detention to another place of detention whether within the same State or in another State, by order of the appropriate Government : Provided that no order shall be made by a State Government under Cl. (b) for the removal of a person from one State to another State except with the consent of the Government of that other State.

5. Detention Orders Not to Be Invalid Or Inoperative On Certain Grounds.

- No detention order shall be invalid or inoperative merely by reason- (a) that the person to be detained thereunder is outside the limits of the territorial jurisdiction of the Government or officer making the order, or (b) that the place of detention of such person is outside the said limits.

6. Powers In Relation to Absconding Persons.

(1) If the Central Government or the State Government or an officer specified in subsection (2) of Section 3, 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 the order cannot be executed, that Government or officer may-(a)make a report in writing of the fact to a Presidency Magistrate or a Magistrate of the first class having jurisdiction in the place where the said person ordinarily resides; and thereupon the provisions of Sees. 87, 88 and 89 of the Code of Criminal Procedure, 1898 (5 of 1898) shall apply in respect of the said person and his property as if the order directing that he be detained where a warrant issued by the Magistrate;(b)by order notified in the official Gazette directing 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 said 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.(2)Notwithstanding anything contained in the Code of Criminal Procedure 1898 (5 of 1898), every offence under Cl. (b) of sub -section (1) shall be cognizable.

7. 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 not later than five 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 appropriate 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.

8. Constitution of Advisory Boards.

(1)The Central Government and each State Government shall, whenever necessary constitute one or more Advisory Boards for the purposes of this Act.(2)Every such Board shall consist of three persons who are, or have been , or are qualified to be appointed as. Judges of a High Court, and such persons shall be appointed by the Central Government or the State Government, as the case may be.(3)The appropriate Government shall appoint one of the members of the Advisory Board who is or has been a Judge of a High Court to be its Chairman, and in the case of a Union territory the appointment to the Advisory Board, or any person who is Judge of the High Court of a State shall be with the previous approval of the State Government :Provided that nothing in this sub-section shall affect the power of any Advisory Board constituted before the commencement of the Preventive Detention (Second Amendment) Act, 1952 (61 of 1952), to dispose of any reference under Section 9 pending before it at such commencement.

9. Reference to Advisory Boards.

- In every case where a detention order has been made under this Act the appropriate Government shall, within thirty days from the date of detention under the order place before the Advisory Board

constituted by it under Section 8 the grounds on which the order has been made and the representation, if any, made by the person affected by the order and in case where the order has been made by an officer also the report by such officer under sub-section (5) of Section 3

10. Procedure of Advisory Boards.

(1)The Advisory Board shall after considering the materials placed before it and, after calling for such further information as it may deem necessary from the appropriate Government or from any person called for the purpose through the appropriate Government or from the person concerned, and if in any, particular case it considers it essential so to do or if the person concerned desires to be heard, after hearing him in person, submit its report to the appropriate Government within ten weeks from the date of detention.(2)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.(2A)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.(3)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

11. 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 appropriate 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 persons concerned, the appropriate Government shall revoke the detention order and cause the person to be released forthwith.

11A. 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 11 shall be twelve months from the date of detention.(2)Notwithstanding anything contained in sub-section (1), every detention order which has been confirmed under Section 11 before the commencement of the Preventive Detention (Second Amendment) Act, 1952 (61 of 1952), shall, unless a shorter period is specified in the order, continue to remain in force until the 1st day of April, 1953, or until the expiration of twelve months from the date of detention, whichever period of detention expires later.(3)The provisions of sub-section (2) shall have effect notwithstanding anything to the contrary contained in Section 3 of the Preventive Detention(Amendment) Act, 1952 (61 of 1952), but nothing contained in this section shall affect the power of the appropriate Government to revoke or modify the detention order at any earlier time.

12. Validity and Duration of Detention In Certain Cases.

- For the avoidance of doubt it is hereby declared that-(a)every detention order in force at the commencement of the Preventive Detention (Amendment) Act, 1951 (4 of 1951), shall continue in force and shall have effect as if it had been made under this Act as amended by the Preventive Detention (Amendment) Act, 1951 (4 of 1951); and(b)nothing contained in subjection (3) of Section 1 or sub-section (1) of Section 12 of this Act as originally enacted shall be deemed to affect the validity or duration of any such order.

13. Revocation of Detention Orders.

(1)Without prejudice to the provisions of Section 21 of the General Clauses Act, 1897-(10 of 1897), a detention order may at any time be revoked or modified-(a)notwithstanding that the order has been made by an officer mentioned to sub-section (2) of Section 3 by the State Government to which that officer is subordinate or by Central Government;(b)notwithstanding that the order has been made by a State Government, or by the Central Government, 33(2)The revocation or expiry of a detention order shall not bar the making of a fresh detention order under Section 3 against the same person in any case where fresh facts have arisen after the date of revocation or expiry on which the Central Government or a State Government or an officer, as the case may be, is satisfied that such an order should be made.

14. Temporary Release of Persons Detained.

(1)The appropriate Government may at any time direct that any person detained in pursuance of a detention order may be released for any specified period either without conditions or upon such conditions specified in the directions 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 appropriate 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 subjection (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 subjection (3), he shall be punishable with imprisonment for a term which may extend to two years, or with fine, or both.(5)If any person released under sub-section (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.

15. Protection of Action Taken Under The Act.

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

16. Repeal.

- The Preventive Detention (Extension of Duration) Order, 1950, is hereby repealed.