

The Gujarat Home Guards Act, 1947

GUJARAT

India

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Act 3 of 1947

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The Bombay Home Guards Act, 1947 Bombay Act No. 3 of 1947 [Dated 22nd March 1947] For Statement of Objects and Reasons See Bombay Government Gazette, 1947, Part V, page 25; or proceedings in Assembly, see Bombay Legislative Assembly Debates, 1947, Vol. X; and for proceedings in Council, see Bombay Legislative Council Debates, 1947, Vol. XII. Section 8 of Bombay 75 of 1958, reads as under: - "8. The Central Provinces and Berar Home Guards Act, 1947 (C.P. and Berar XV of 1947), and the State of Saurashtra Home Guards Ordinance, 1948 (Saurashtra Ordinance XVII of 1948), are hereby repealed: Provided that such repeal shall not affect - (a) the previous operation of the laws so repealed, or (b) any penalty, forfeiture or punishment incurred in respect of any offence committed against any of the provisions of the laws so repealed, or (c) any investigation, legal proceeding or remedy in respect of such penalty, forfeiture or punishment as aforesaid; and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if this Act had not been passed. An Act to provide for the constitution of Home Guards Whereas it is expedient to provide a volunteer organisation for use in emergencies and for other purposes in the [State of Bombay] [These words were substituted for the words 'Province of Bombay' by Bombay 75 of 1958, section 3.]; It is hereby enacted as follows: -

1. Short title, extent and commencement.

(1) This Act may be called the Bombay Home Guards Act, 1947. (2) [It extends to the whole of the [State of Gujarat] [This sub-section was substituted for the original, by Bombay 75 of 1958, section 4(1).] (3) It shall come into force at once in the area of Greater Bombay and the area comprising limits of the municipal borough and the cantonment of Ahmedabad. [With effect from the date of commencement of the Bombay Home Guards (Extension and Amendment) Act, 1958 (Bombay LXXV of 1958), it shall come into force in the whole of Saurashtra area of the [State of Bombay] [This portion was inserted by Bombay 75 of 1958 section 4(2).] and those areas of the Vidarbha region in which the Central Provinces and Berar Home Guards Act, 1947 (C.P. and Berar XV of 1947), was immediately before such date, in force.] The [State] [This word was substituted for the

word 'Provincial' by the Adaptation of Laws, Order, 1950.] Government may by notification in the Official Gazette direct that it shall come into force in any other area [in the State of Gujarat] [These words were inserted by the Gujarat Adaptation of laws (State and Concurrent Subjects Order, 1960.) on such date as may be specified in such notification.

2. Constitution of Home Guards and appointment of [Commandant General and Commandant].

(1)The [State] [This word was substituted for the word 'Provincial' by the Adaptation of Laws, Order, 1950.] Government shall constitute for each of the areas specified in sub-section (3) of section 1 and for each of the areas notified under the said subsection (3) a volunteer body called the Home Guards, the members of which shall discharge such functions [and duties] [These words were inserted by Bombay 11 of 1950, section 2(1).] in relation to the protection of persons, [the security of property, the public safety and maintenance of essential Services] [These words were substituted for the words 'the security of property and the public safety' by Gujarat 23 of 1960.] as may be assigned to them in accordance with the provisions of this Act and the rules made thereunder.(1A)[In respect of the Saurashtra area and the Vidarbha region, the Home Guards raised or constituted, immediately before the commencement of the Bombay Home Guards (Extension and Amendment) Act, 1958 (Bombay LXXI of 1958), shall be deemed to be constituted under sub-section (1)] [This sub-section was inserted by Bombay 75 of 1958, section 5(1).](2)The [State] [This word was substituted for the word 'Provincial' by the Adaptation of Laws, Order, 1950.] Government shall appoint a Commandant of each of the Home Guards constituted under sub-section (1).(3)[The State Government shall also appoint a Commandant General of the Home Guards in whom shall vest the general supervision and control of the Home Guards throughout the [State of Gujarat] [This sub-section was inserted by Bombay 11 of 1950, section 2(2).],

3. [Appointment of members. [Section 3 was substituted for the original by Bombay 11 of 1950, section 3.]

(1)Subject to the approval of the Commandant General, the Commandant may appoint as members of the Home Guards such number of persons, who are fit and willing to serve, as may from time to time be determined by the State Government, and may appoint any such member to any office of command in the Home Guards.(2)Notwithstanding anything contained in sub-section (1) the Commandant General may, subject to the approval of the State Government, appoint any such member to any post under his immediate control.(3)[Every person who immediately before the commencement of the Bombay Home Guards (Extension and Amendment) Act, 1958 (Bombay LXXV of 1958) was a member of the Home Guards raised or constituted under the Central Provinces and Berar Home Guards Act, 1947 (C.P. and Berar XV of 1947), or the State of Saurashtra Home Guards-Ordinance, 1948 (Saurashtra Ordinance XVII of 1948), shall be deemed to be appointed under this section and the certificate of appointment and uniform issued to him shall be valid accordingly.]

4. [Functions and duties of members. [Section 4 was substituted for the original by Bombay 11 of 1950, section 4.]

(1)The Commandant may at any time call out a member of the Home Guards for training or to discharge any of the functions or duties assigned to the Home Guards in accordance with the provisions of this Act and the rules made thereunder.(2)The Commandant General may in an emergency call out a member of the Home Guards for training or to discharge any of the said functions or duties in any part of the [State of Gujarat].]

5. Powers, protection and control.

(1)A member of the Home Guards when called out under section 4 shall have the same powers, privileges and protection as an officer of police appointed under any Act for the time being in force.(2)No prosecution shall be instituted against a member of the Home Guards in respect of anything done or purporting to be done by him in the discharge of his functions [or duties] [These words were inserted by bombay 11 of 1950, section 5] as such member except with the previous sanction of the Commissioner of Police [in any area for which a Commissioner of Police has been appointed] [These words were substituted for the words 'in Greater Bombay' by the Gujarat Adaptation of Laws (State and Concurrent Subjects) Order, 1960.] and of the District Magistrate, elsewhere.

6. Control by officers of Police force.

- The members of the Home Guards when called out under section 4 in aid of the police force shall be under the control of the officers of the police force in such manner and to such extent as may be prescribed by rules made under section 8.

6A. [Certificate, arms, etc., to be delivered up by person ceasing to be member. [Section 6A and 6B were inserted by Bombay 11 of 1950, section 6.]

(1)Every person who for any reason ceases to be a member of the Home Guards shall forthwith deliver upto the Commandant or to such person and at such place as the Commandant may direct, his certificate of appointment or of office and the arms, accoutrements, clothing and other necessities which have been furnished to him as such member.(2)Any Magistrate, and for special reasons which shall be recorded in writing at the time, any police officer not below the rank of a Deputy Commissioner for Police [in any area for which a Commissioner of Police has been appointed] and Assistant or Deputy Superintendent of Police elsewhere, may issue a warrant to search for and seize, wherever they may be found, any certificate, arms, accoutrements, clothing or other necessities not so delivered up. Every warrant so issued shall be executed in accordance with the provisions of the Code of Criminal Procedure, 1898 (V of 1898), by a police officer or if the Magistrate or the police officer issuing the warrant so directs by any other person.(3)Nothing in this section shall be deemed to apply to any article which under the orders of the Commandant General has become the property of the person to whom the same was furnished.

6B. Punishment of members for neglect of duty, etc.

(1)The Commandant shall have the authority to suspend, reduce or dismiss or fine, to an amount not exceeding fifty rupees, any member of the Home Guards, under his control, if such member, without reasonable cause, on being called out under section 4 neglects or refuses to obey such order or to discharge his functions and duties as a member of Home Guards or to obey any lawful order or direction given to him for the performance of his functions and duties or is guilty of any breach of discipline or misconduct. [The Commandant shall also have the authority to dismiss any member of the Home Guards on the ground of conduct which has led to his conviction on a criminal charge.] [These words were inserted by Bombay 4 of 1954, section 2(i).] The Commandant General shall have the like authority in respect of any member of the Home Guards appointed to a post under his immediate control.(1A)[Notwithstanding anything contained in this Act, the Commandant shall have the authority to discharge any member of the Home Guards at any time subject to such conditions as may be prescribed if, in the opinion of the Commandant, the services of such members are no longer required. The Commandant General shall have the like authority in respect of any member of the Home Guards appointed to a post under his immediate control.] [Sub-section (IA) was inserted by Bombay 4 of 1954, section 2(ii).](2)When the Commandant General or the Commandant passes an order for suspending, reducing, dismissing or fining any member of the Home Guards under subsection (1), he shall record such order or cause the same to be recorded, together with the reasons therefor and a note of the inquiry made, in writing, and no such order shall be passed by the Commandant General or the Commandant unless the person concerned is given an opportunity to be heard in his defence.(3)Any member of the Home Guards aggrieved by an order of the Commandant may appeal against such order to the Commandant General and any such member aggrieved by an order of the Commandant General may appeal against such order to the State Government, within thirty days of the date on which he was served with notice of such order. The Commandant General or the State Government, as the case may be, may pass such order as he or it thinks fit.(4)The Commandant General of the State Government may at any time call for and examine the record of any order passed by the Commandant or Commandant General, respectively, under sub-section (1) [or (1A)] [This word, brackets, figures and letter were inserted, by Bombay 4 of 1954, section 2(iii).] for the purpose of satisfying himself or itself as to the legality or propriety of such order passed by the Commandant or the Commandant General, as the case may be and may pass such order with reference thereto as he or it thinks fit.(5)Every order if no appeal is made therefrom as hereinbefore provided and every order passed in appeal or revision under this section shall be final.(6)Any fine imposed under this section may be recovered in the manner provided by the Code of Criminal Procedure, 1898 (V of 1898), for the recovery of fines imposed by a Court as if such fine were imposed by a Court.(7)Any punishment inflicted on a member of the Home Guards under this section shall be in addition to the penalty to which such member is liable under section 7 or any other law for the time being in force.]

7. Penalty.

(1)If any member of the Home Guards, on being called out under section 4, without [reasonable excuse] [These words were substituted for the words 'sufficient excuse' by Bombay 11 of 1950, section 7(1).], neglects or refuses to obey such order, or to discharge his functions as a member of

the Home Guards, or to obey any lawful order or direction given to him for the performance of his duties, he shall, on conviction, be punishable with simple imprisonment for a term which may extend to three months or with fine which may extend to two hundred and fifty rupees or with both.(1A)[If any member of the Home Guards wilfully neglects or refuses to deliver up his certificate of appointment or of office or any other article, in accordance with the provisions of sub-section (1) of section 6A, he shall, on conviction, be punished with imprisonment for a term which may extend to one month or with fine which may extend to one hundred rupees or with both.] [Sub-section (1A) was inserted, by Bombay 11 of 1950, section 7(2).](2)No proceedings shall be instituted under sub-section (1) [or (1A)] [The word, brackets, figures and letters 'or (1 A)' were inserted by Bombay 11 of 1950, section 7(4).] without the previous sanction of the Commandant.(3)A police officer may arrest without warrant any person who commits an offence punishable under sub-section (1) [or (1A)] [The word, brackets, figures and letter' or (IA) were added, by Bombay 11 of 1950, Section 7(4).].

8. Rules.

- The [State] [This word was substituted for the word 'Provincial' by the Adaptation of Laws, Order, 1950.] Government may make rules consistent with this Act,(a)[providing for the exercise by any officer of the Home Guards of the powers conferred by section 4 on the Commandant and the Commandant General;] [This clause was substituted for the original by Bombay 11 of 1950, section 8.](b)providing for the exercise of control by officers of the police force over members of the Home Guards when acting in aid of the police force;(c)regulating the organisation, appointment, conditions of service, functions, discipline, arms, accoutrements and clothing of members of the Home Guards and the manner in which they may be called out for service;(d)regulating the exercise by such members of the Home Guard of any of the powers exercisable under section 5 of this Act;(e)generally for giving effect to the provisions of this Act.

9. Members of Home Guards to be Public servants.

- Members of the Home Guards acting under this Act shall be deemed to be public servants within the meaning of section 21 (XLV of 1860) of the Indian Penal Code.

9A. [Home Guards not disqualified from contesting elections to the State Legislature or local bodies. [Section 9A was inserted, by Bombay 11 of 1950, section 9.]

(1)A member of the Home Guards shall not be disqualified for being chosen as, and for being, a member of the [Gujarat Legislative Assembly] merely by reason of the fact that he is a member of the Home Guards.(2)Notwithstanding anything contained to the contrary in any other law for the time being in force, a member of the Home Guards shall not be disqualified for being chosen as, and for being, a member of any local authority merely by reason of the fact that he is a member of the Home Guards].

10. Repeal and Saving.

- The Bombay Home Guards Ordinance, 1946 (Bombay Ordinance No. 1 of 1946), is hereby repealed: Provided that the Home Guards constituted under the said Ordinance shall be deemed to be constituted under this Act; and all appointments and rules made under the said Ordinance and in force immediately before the coming into operation of this Act shall continue in force and be deemed to be made in pursuance of this Act.