

The Restriction of Habitual Offenders (Punjab) Act, 1918

HARYANA

India

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Act 5 of 1918

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The Restriction of Habitual Offenders (Punjab) Act, 1918 Punjab Act 5 of 1918. Statement of Objects and Reasons. - The question of measures to secure better control of bad characters and of men who have been previously convicted has from time to time been before the Punjab Government. Proposals were at one time received from the Inspector General of Police for the application of the Criminal Tribes Act to persons who have been twice convicted of offences against property, and it is understood that in the neighbouring provinces such action has been taken. Some hesitation was, however, felt in dealing with the matter on these lines, and it was deemed better to take it up separately. The subject was also brought prominently to the notice of the Lieutenant Governor in the opinions received on the draft Bill to amend the Code of Criminal Procedure which was circulated for opinion during 1913 and 1914. In his opinion the Commissioner of Jullundur Division wrote as follows :- 'I would however, very strongly recommend that the present opportunity be taken for securing increased power to deal adequately and effectively with habitual and professional bad characters, especially those of the classes specified in sub-section (a) and (b) of section 110. The comparative fruitfulness of mere security proceedings against such persons has been a frequent theme for comment and discussion in annual Criminal and police reports, and it is needless to labour the point here, I hold very strongly that in the interests of efficient Criminal Administration it is essential that the law should contain provisions for restricting the movements of confirmed habitual and professional criminals, of the classes to which I refer, on the lines allowed in the case of notified criminal tribes by Act III of 1911..... I see no logical reason against requiring a notorious thief or house-breaker to leave his village without permission for a defined period when that amount of restraint is applied to large numbers of persons because they happen to be members of proclaimed tribes, though individually they may be well-behaved. So far as I have been able to gauge the question, rural public opinion is certainly moving in the direction of supporting such a measure as I have suggested. Various clauses are, I think, contributing to deprive the provisions of section 110 of the Code of Criminal Procedure of the efficiency which they at one time possessed. The chances against a subsequent conviction are so great that the restraint arising from a fear that security will be forfeited if bad behaviour is continued is reduced to a minimum.' The Commissioner

of Multan wrote a similar letter. he said : It is quite impossible for the small thana staff to exercise more than nominal surveillance of large number of habituels resident in the average thana in a criminal district..... The extension proposed by Mr. Brayne that absence from a prescribed residence shall not be permitted and that the penalties of Criminal Tribes Act shall be applicable is one that is justified by the character of those whom it will affect and good result which it will secure. In commenting on these proposals the Financial Commissioner entirely agreed that security proceedings tended more and more every year to become a force and that measures which would secure a more effective control over the movements of bad characters should be undertaken. They pointed out that the person restrained should have sufficient means of subsistence notwithstanding the restrictions on his movements. In forwarding the questions to the Government of India the Punjab Government wrote :- 'His Honour regards the reform as one of pressing importance. The bankruptcy of the existing provisions of the law in regard to the control of bad characters has been the subject of frequent remark of the late not only in annual reports, but in Divisional Conferences of officers representing the magistracy and police, presided over by Commissioners.' During 1915 a tentative draft Bill was prepared on the above lines and was circulated to officials and non-officials for opinion and suggestions. As the result of suggestions received the Bill has been recast into its present shape. As indicated above the object of the Bill is to gain a greater hold over the habitual criminal by keeping a close control over his movements; either by confining him to a certain village area or by requiring him to report himself at stated times and places, or by doing both. It is proposed that when a Magistrate receives information which would justify action under section 110 of the Code of Criminal Procedure he may, in lieu of calling upon the accused person to show cause why he should not be required to execute a bond of good behaviour or in addition to so doing, require him to show cause against an 'order of restriction'. An 'order of restriction' may be an order restricting the movements of the accused person to a specified area or an order requiring him to report himself at specified times and places, or an order imposing both these disabilities, but the Magistrate need not in the initial stages of the proceedings state which of these forms the order shall take. The Magistrate will follow as nearly as may be the procedure laid down in sections 112, 113, 114, 115 and 117 of the Code of Criminal Procedure. After hearing the evidence for the prosecution and for the defence, the Magistrate will decide whether he will demand a bond for good behaviour or make an order for restriction, but he may not do both. If he makes an order for restriction, he will determine the form of the order, that is, whether it will be an order restricting the accused person to any area or an order requiring him to report himself or an order doing both. The Bill does not provide that these particulars should be stated in the notice given under clause 3 of the Bill as they are matters which may best be left for decision till evidence has been concluded and the Magistrate has been placed in possession of all the facts. The proposed duration of the order must, however, be stated in the notice as in the case of an order demanding a bond for good behaviour. By clause 12 power is given to the District Magistrate to cancel any order requiring security for good behaviour whether made before or after this Bill comes into force and to substitute an order of restriction therefore for the unexpired period of the security. Special provisions is also made that a person shall not be restricted to any area within which he has not sufficient means of livelihood, and it is recognised that the area originally specified may prove unsuitable, and accordingly power has been taken to vary the area. Ample powers, similar to those conferred by the Criminal Tribes Act, are given to the Local Government to frame rules and the penalties prescribed for the breach of an order of restriction or of the rules are the same as those prescribed for a similar offence committed by a

registered member of a criminal tribe. It will be seen that while the Bill in no way interferes with a Magistrate's power to demand security for good behaviour from the habitual criminal, it permits him in the alternative to pass an order of restriction whenever such an order appears to him preferable. The Bill further permits the District Magistrate, after opportunity for showing cause has been given, to substitute an order of restriction for an order requiring security for good behaviours for the unexpired period of the security. Persons in jail for failure to furnish security may in this way be released and others may be relieved of their obligation to find sureties. The Bill should thus provide a more humane and at the same time, it is hoped, a more efficient means of dealing with habitual criminals than the security sections of the Criminal Procedure Code." Punjab Gazette, 1918, Part V, pages 53 to 55. Received the assent of the Lieutenant-Governor of the Punjab on the 14th March, 1918, and that of the Governor-General on the 2nd April, 1918, and was first published in the Punjab Gazette, of the 26th April, 1918. An act for restricting the movements of habitual offenders in [Punjab and for requiring them to report themselves.] [Substituted for the words 'East Punjab' [which had been inserted for the word 'The Punjab' by the Indian Independence (Adaption of Bengal and Punjab Acts) Orders, 1948], by the Adaptation of Laws (Third Amendment) Order, 1951.] Whereas it is expedient to make provision for restricting the movements of habitual offenders in [Haryana] [Substituted for the words 'Punjab' by the Adaptation of Laws Order, 1968.], and requiring habitual offenders in [Haryana] [Substituted for the words 'Punjab' by the Adaptation of Laws Order, 1968.] to report themselves, and whereas the previous sanction of the Governor-General in Council has been obtained under section 79(2) of the Government of India Act, 1915, to the passing of this Act : It is hereby enacted as follows :-

1. Title and extent.

(a) This Act may be called the Restriction of Habitual Offenders (Punjab) Act, 1918. (b) It extends to [Haryana] [Adaptation of Laws Order, 1968.].

2. Scope of order of restriction.

- An "Order of restriction" passed under this Act may restrict a person in his movements to any area prescribed in the order; or it may require a person to report himself at times, and places and in the mode prescribed in the order; or it may do both.

3. Order of restriction against habitual offenders.

(a) In any case in which a Magistrate may under the provisions of Section 110 of the Code of Criminal Procedure, 1898, as it is at present enacted or as it may from time to time be amended, 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. (b) Joint proceedings and records. - 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.

4. Procedure in making order of restriction.

- When a Magistrate deems it necessary to require a person to show cause why an order of restriction 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 :Provided that - (1) the order of writing referred to in section 112 of the said Code 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 (2) for the purposes of section 117(2) of the said Code an order of restriction shall be deemed to be equivalent to an order requiring security for good behaviour.

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

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

6. Discharge of person informed against.

- If upon enquiry 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.

7. Making of order of restriction.

- If upon enquiry as aforesaid the Magistrate is of opinion that an order of restriction should be made against the person in respect of whom the enquiry is being made, the Magistrate shall make an order accordingly. [* * * * *] [Proviso omitted by East Punjab Act 21 of 1949, section 2.] Particulars to be specified in order of restriction. - 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. The order shall conform to any rules made by the [State] [Substituted for the word 'Provincial' by the Adaption of Laws Order, 1950.] Government under section 16 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. 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 4.

8. Order of restriction under section 123(3) of Criminal Procedure Code.

(1) An order passed by a Sessions Judge under section 123(3) of the Code of Criminal Procedure, 1898, may [be in addition to] [Substituted for the words 'substitute for an order requiring security' by East Punjab Act 21 of 1949, section 3.] an order of restriction for the same or a less

period.(2)Order of restriction against convicted offender. - 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, 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.

9. Means of livelihood within area of restriction.

(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)Change of area where means of livelihood are insufficient. - 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 had no sufficient means of earning his livelihood within the area to which he is restricted the Court or Magistrate shall change the area.

10. 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 restriction passed by any Court having jurisdiction in his district.

11. 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 change should not be made.

12. Power to add order of restriction to bond 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, 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] [Substituted for the words 'substitute therefor' by East Punjab Act 21 of 1949, section 4.] 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.[13. Appeal. - Any person against whom an order of restriction has been passed under this Act, may prefer an appeal. -(a)to the District Magistrate, if such order has been made by an Executing Magistrate subordinate to him.(b)to the Chief Judicial Magistrate, if such order has been made by a Judicial Magistrate subordinate to him;(c)to the court of Session, if such

order has been made by the District Magistrate, or the Chief Judicial Magistrate;(d)to the High Court, in any other case.]

14. 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.

15. Arrest of person 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, zaildar, inamdar, 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.

16. Power to make rules.

- The [State] [Substituted for the word 'Provincial' by the Adaptation of Laws Order, 1950.] 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;(iv)the conditions to be inserted in any such pass in regard to -(a)the places 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(c)the time during which he may be absent.

17. 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 Judicial Magistrate] [Substituted for the words 'a Magistrate' by Punjab Act 25 of 1964.] 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)Period of imprisonment to be excluded from period of order of restriction. - 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) of this Section shall be excluded.[Section 13 substituted by Punjab Act

25 of 1964.]