

Maharashtra Prevention of Communal, Anti-Social and Other Dangerous Activities Act, 1980

MAHARASHTRA

India

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Act 7 of 1980

- Published on 22 January 1981
- Not commenced
- [This is the version of this document from 22 January 1981.]
- [Note: The original publication document is not available and this content could not be verified.]

For Statement of Objects and Reasons, See Maharashtra Government Gazette, 1980, Part V, Page 328.[This Act received the assent of the President on the 22nd January, 1981; assent was first published in the Maharashtra Government Gazette, Part IV, on the 23rd January 1981.]An Act to provide for prevention of communal, anti-social and other dangerous activities in Maharashtra and for matters connected therewith.Whereas both Houses of the State Legislature were not in session;And Whereas the Governor of Maharashtra was satisfied that circumstances existed which rendered it necessary for him to take immediate action to make a law to provide for the prevention of communal, anti-social and other dangerous activities in the State of Maharashtra and for matters connected therewith; and, therefore, promulgated the Maharashtra Prevention of Communal, Anti-social and other Dangerous Activities Ordinance, 1980 on the 27th August 1980;And Whereas it is expedient to replace the said Ordinance by an Act of the State Legislature, with modifications on account of certain corresponding provisions in the National Security Ordinance, 1980, promulgated by the President of India, which has come into force on the 23rd September 1980; It is hereby enacted in the Thirty-first Year of Republic of India, as follows

1. Short title, extent, commencement and application.-

(1)This Act may be called the Maharashtra Prevention of Communal, Anti-social and other dangerous Activities Act, 1980.(2)It extends to the whole of the State of Maharashtra.(3)It shall be deemed to have come into force on the 27th August 1980.(4)Sections 2 to 16 of this Act shall, from the commencement of the National Security Ordinance, 1980, on the 23rd September 1980, apply, and shall be deemed to have applied, only to the orders of detention made or deemed to have been made under this Act before the 23rd September, 1980.

2. Definition.-

In this Act, unless the context otherwise requires, -(a)"acting in any manner prejudicial to the maintenance of public order" means-(i)propagating, promoting, or attempting to create, or otherwise functioning in such a manner as to create, feelings of enmity or hatred or disharmony on grounds of religion, race, caste, community or language of any persons or class of persons;(ii)making preparations for using, or attempting to use, or using, or instigating, inciting or otherwise abetting the use of any lethal weapons (including firearms and explosives, inflammable or corrosive substances), where such preparations, using, attempting, instigating, inciting or abetting, disturbs, or is likely to disturb, public order;(iii)attempting to commit, or committing, or instigating, inciting or otherwise abetting the commission of, mischief within the meaning of section 425 of the Indian Penal Code in respect of public property or means of public transportation, where the commission of such mischief disturbs, or is likely to disturb, public order;(iv)committing offences punishable with death or imprisonment for life or imprisonment for a term extending to seven years or more, where the commission of such offences disturbs, or is likely to disturb, public order.Explanation. - In this clause, -(A)"firearms" shall have the same meaning as in the Arms Act, 1959;(B)"explosive substances" shall have the same meaning as in the Explosive substances Act, 1908;(C)"public property" means any property owned or controlled by the Government or by a Corporation owned or controlled by the Government or by a society financed wholly or substantially by the Government;(b)"detention order"-means an order made under section 3;(c)"detenu" means a person detained under a detention order.

3. Power to make orders detaining certain persons.-

(1)The State Government may, if satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, 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)Commissioners of Police,may also, if satisfied as provided in sub-section (1), exercise the powers conferred by the said sub-section.(3)When any order is made under this section by an officer mentioned in sub-section (2), he shall forthwith report the fact to the State Government, together with 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 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. Execution of detention orders.-

A detention order may be executed at any place in the State in the manner provided for the execution of warrants of arrest under the Code of Criminal Procedure, 1973.

5. 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 and under such conditions, including conditions as to maintenance, discipline and punishment for breaches of discipline, as the State Government may, by general or special order, specify; and(b)to be removed from one place of detention to another place of detention, within the State, by order of the State Government.

6. Detention order 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 though within the State is outside the limits of the territorial jurisdiction of the officer making the order, or(b)that the place of detention of such person though within the State is outside the said limits.

7. Powers in relation to absconding persons.-

(1)If the State Government or an officer mentioned in sub-section (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 Metropolitan Magistrate or a Judicial Magistrate of the first class having jurisdiction in the place where the said person ordinarily resides; and thereupon the provisions of sections 82 to 86 (both inclusive) of the Code of Criminal Procedure, 1973, shall apply in respect of such person and his property as if the order directing that he be detained were a warrant issued by the Magistrate;(b)by order notified in the Official Gazette direct 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, 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 or proves that it was not possible for him to so inform the officer mentioned in the order, he shall, on conviction, be punished 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, 1973, every offence under clause (b) of sub-section (1) shall be cognizable.

8. 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 State 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.

9. Constitution of Advisory Boards.-

(1)The State Government shall, whenever necessary, constitute one or more Advisory Boards for the purposes of this Act.(2)Every such Board shall consist of a Chairman and two other members, who are, or have been, Judges of the High Court or who are qualified under the Constitution of India to be appointed as Judges of the High Court.

10. Reference to Advisory Boards.-

In every case where a detention order has been made under this Act the State Government shall, within thirty days from the date of detention of a person under the order, place before the Advisory Board constituted by it under section 9 the grounds on which the order has been made and the representation, if any, made by the person affected by the order, and in the case where the order has been made by an officer, also the report by such officer under sub-section (3) of section 3.

11. 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 State Government or from the person called for the purpose through the State Government or from the person concerned, and if, in any particular case, the Advisory Board 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 State Government within seven weeks from the date of detention of the person concerned.(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.(3)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.(4)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.(5)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.

12. 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 State 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 person concerned, the State Government shall revoke the detention order and cause the person to be released forthwith.

13. Maximum period of detention.-

The maximum period for which any person may be detained in pursuance of any detention order made under this Act which has been confirmed under section 12 shall be six months from the date of detention.

14. Revocation of detention orders.-

(1) Without prejudice to the provisions of section 21 of the Bombay General Clauses Act, 1904, a detention order may, at any time, be revoked or modified by the State Government, notwithstanding that the order has been made by an officer mentioned in sub-section (2) of section 3. (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 State Government or an officer, as the case may be, is satisfied that such an order should be made.

15. Temporary release of persons detained.-

(1) The State 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 direction as that person accepts, and may, at any time, cancel his release. (2) In directing the release of any detenu under sub-section (1), the State 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 sub-section (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 sub-section (3), he shall, on conviction, be punished with imprisonment for a term which may extend to two years, or with fine, or with 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 pay the penalty thereof.

16. Protection of action taken under the Act.-

No suit, prosecution or other legal proceeding shall lie against the State Government or any officer or person for anything in good faith done or intended to be done in pursuance of this Act.

17. Amendment of section 56 of Bombay XXII of 1951.-

(Amendment has been carried out in section 56 of the Bombay Police Act, 1951.)

18. Amendment of section 151 of Act II of 1974.-

In section 151 of the Code of Criminal Procedure, 1973, in its application to the State of Maharashtra,-(a)in sub-section (2) after the words "required or authorised" the words brackets and figure "under sub-section (3) or" shall be inserted;(b)after sub-section (2), the following sub-section shall be inserted, namely:-"(3) (a) Where a person is arrested under this section and the officer making the arrest, or the officer-in-charge of the police station before whom the arrested person is produced, has reasonable grounds to believe that the detention of the arrested person for a period longer than twenty-four hours from the time of arrest (excluding the time required to take the arrested person from the place of arrest to the Court of a Judicial Magistrate) is necessary, by reason that-(i)the person is likely to continue the design to commit, or likely to commit the cognizable offence referred to in sub-section (1) after his release; and(ii)the circumstances of the case are such that his being at large is likely to be prejudicial to the maintenance of public order.the officer making the arrest, or the officer-in-charge of the police station, shall produce such arrested person before the nearest Judicial Magistrate, together with a report in writing stating the reasons for the continued detention of such person for a period longer than twenty-four hours.(b)Notwithstanding anything contained in this Code or any other law for the time being in force, where the Magistrate before whom such arrested person is produced is satisfied that there are reasonable grounds for the temporary detention of such person in custody beyond the period of twenty-four hours, he may, from time to time, by order remand such person to such custody as he may think fit:Provided that, no person shall be detained under this section for a period exceeding fifteen days at a time, and for a total period exceeding thirty days from the date of arrest of such person.(c)When any person is remanded to custody under clause (b), the Magistrate shall, as soon as may be, communicate to such person the grounds on which the order has been made and such person may make a representation against the order to the Court of Session. The Sessions Judge may, on receipt of such representation, after holding such inquiry as he deems fit, either reject the representation, or if he considers that further detention of the arrested person is not necessary, or that it is otherwise proper and just so to do, may vacate the order and the arrested person shall then be released forthwith."

19. Repeal Maharashtra VII of 1980 and saving.-

(1)The Maharashtra Prevention of Communal, Anti-social and other Dangerous Activities Ordinance, 1980 is hereby repealed.(2)Notwithstanding such repeal anything done or any action taken (including any order made) under the said Ordinance shall be deemed to have been done, taken or made as the case may be, under the corresponding provisions of this Act.