

The Jammu and Kashmir Home Guards Act, Svt. 2006

JAMMU & KASHMIR

India

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Act 03 of 1949

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Jammu And Kashmir Home Guards Act, Svt. 2006 (1949 A.D.)[Act No. 3 of 2006][10th Har, 2006]An Act to provide for the constitution of Home Guards. Whereas an emergency has arisen which makes it necessary to provide for the constitution of Home Guards:Now, therefore, in exercise of the powers reserved under section 5 of the Jammu and Kashmir Constitution Act, 1996, His Highness is pleased to enact as follows: -

1. Short title, extent and commencement

(1)This Act may be called the Jammu and Kashmir Home Guards Act, 2006.(2)It extends to the whole of the State.(3)It shall be deemed to have come into force from the first day of Assuj, 2005.

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

(1)The Government shall, by notification in the Government Gazette, constitute for each District a volunteer body called the Home Guards the members of which shall discharge such function in relation to the protection of persons, the security of property, the public order, the public safety and the maintenance of essential services as may be assigned to them in accordance with the provisions of this Act and rules made thereunder.(2)The Government shall appoint a Commandant for each of the Home Guards constituted under sub-section (1) and may also appoint Additional, Deputy or Assistant Commandants.(3)The administration of Home Guards constituted under subsection (1) for any District, shall, subject to the General superintendence, control and directions of the District Magistrate be vested in the Commandant appointed for each District.(4)The 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.(5)The Government may also appoint Additional Commandant General, Joint Commandant General, Divisional Commandant General or Assistant Commandant General.Explanation. - For the purposes of sub-section (1) the words "essential

services" means Motor Transport, Fire Brigade Nursing, First Aid, operation of water and power supply institutions and such other services as may be notified by the Government as being essential to the life of the community.

3. Appointment of members

(1) Subject to the approval of the Commandant General, the Commandant may appoint as member 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 Government and may appoint any such person to any office or command in the Home Guards. (2) Notwithstanding anything contained in sub-section (1) the Commandant General may subject to the approval of the Government appoint any such member to any post under his immediate control. (3) Subject to any rule made in this behalf, a Home Guard shall be required to serve as such for a period of six years including the period spent in training which period may be extended by the Government to such further period as it may consider necessary and a Home Guard shall thereafter serve in the Reserve Force of Home Guards constituted under section 3-A of the Act for a period of three years. (4) Notwithstanding anything contained in sub-section (3) the Commandant General or Commandant shall have the authority to discharge any Home Guards at any time subject to such conditions as may be prescribed if in his opinion the services of such Home Guards are no longer required.

3A. Constitution of Reserve Force of Home Guards

(1) The Government may constitute a Reserve Force of Home Guards consisting of persons appointed to it by the Government from among the Home Guards discharged from the service of the Home Guards under sub-section (3) of section 3. (2) A Home Guard shall while serving in the Reserve Force, be liable to be called out for duty at any time.

4. Powers, protection and control

(1) A member of the Home Guards shall, subject to any rules made by the Government under this Act, have the same powers, privileges and protection, be amenable to the same penalties and be liable to perform the same duties in connection with the protection of life and property, preservation of public peace and ensuring security and communal harmony in the district in which he is put on duty, as the regular officers of police. (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 as such member, except with the previous sanction of the Government. (5) Omitted

6. Control by officers of police force

The member of the Home Guards when employed directly in aid of the police force, shall be under the control of the officers of such force in such manner and to such extent as may be prescribed by rules made under section 8.

6A. Calling out of Home Guards

(1)An officer of the Home Guards especially empowered by the Government in this behalf may, at any time, call out the members of the Home Guards for training or to discharge within the state any of the functions or duties as may be assigned to them in accordance with the provisions of this Act and the rules made thereunder.(2)The District Magistrate may, in consultation with such officer of the Home Guards as is incharge of the Home Guards in his district, at any time, call out the members of the Home Guards to discharge any of the functions or duties within the district as may be assigned to them in accordance with the provisions of this Act and the rules made thereunder.

6B. Home Guards to be servants but not to be civil Servants

(1)Any member of the Home Guards acting in the discharge of his functions in accordance with the provisions of this Act and the rules made thereunder shall be deemed to be a public servant within the meaning of section 21 of the Ranbir Penal Code, 1989.Explanation. - A member of the Home Guards shall not be deemed to be a holder of a civil post merely by reasons of his enrolment as such member.(2)A member of the Home Guards shall not be disqualified for being chosen as and for being a member of the State Legislature merely by reasons of the fact that he is a member of the Home Guards.(3)Notwithstanding anything contained 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.

6C. Certificate, arms etc., to be delivered by persons ceasing to be Home Guards

(1)Every person, who for any reason ceases to be a Home Guard, shall forthwith deliver up to the Commandant or to such person and at such place as the Commandant may direct, his certificate of appointment or office and the arms, accoutrements, clothing and other necessities which have been furnished to him as such Home Guard.(2)Any Magistrate may issue a warrant to search for and seize, whenever they may be found, any certificate, arms, accoutrements, clothing or other necessities not so delivered up and every warrant so issued shall be executed in accordance with the provisions of the Code of Criminal Procedure, Samvat 1989, by a Police Officer if the Magistrate issuing the warrant so directs by any other person.(3)Nothing in this sub-section shall be deemed to apply to any article which under the orders of the Commandant General has become the property of the persons to whom the same was furnished.

7. Penalty

(1)If any member of the Home Guards shall, without lawful excuse, neglect or fail to obey such lawful order or direction as may be given to him for the performance of his duties, he shall be liable upon conviction before a Judicial Magistrate to imprisonment which may extend to seven years, or to a fine not exceeding one thousand rupees, or to both.(2)No prosecution shall be instituted under sub-section (1) without previous sanction of such officer as may be prescribed in this behalf.

7A. Dealing of charges without formal trial

When a member of the Home Guards commits an offence punishable under section 7, an officer of the Home Guards, especially empowered by the Government in this behalf, may direct that the charge shall be dealt with without formal trial and thereupon the said officer may in the prescribed manner award to such member any one or more of the following punishments, namely:

-(a)confinement in such place as may be considered suitable for a period not exceeding one week;(b)punishment drill or other duty not exceeding seven days in duration with or without confinement to quarters; and(c)forfeiture of allowance.

8. Rules making power

The Government may make rules consistent with this Act -(a)regulating the powers exercisable by the Commandant General, the District Magistrate and Commandant and providing for exercise by an officer of the Home Guards, of the said powers;(b)providing for the exercise of control by officers of the police force over members of the Home Guards when acting directly in aid of the police force;(c)regulating the organisation, appointment, training, conditions of service, duties, discipline, arms, accoutrements and clothing of members of the Home Guards and the manner in which they may be called out for service;(d)conferring on members of the Home Guards according to their office any powers, other than magisterial or judicial powers, exercisable by any person under any law for the time being in force;(e)prescribe the form of oath of allegiance to be administered to the members of the "Home Guards";(f)generally for giving effect to the provisions of this Act.