

The U.P. Habitual Offenders' Restriction Act, 1952

UTTAR PRADESH

India

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Act 38 of 1952

- Published on 10 December 1952
- Commenced on 10 December 1952
- [This is the version of this document from 10 December 1952.]
- [Note: The original publication document is not available and this content could not be verified.]

The U.P. Habitual Offenders' Restriction Act, 1952(U.P. Act No. 38 of 1952)Statement of objects and reasons. - "It is considered necessary in general public interest to regulate the movements of all habitual offenders and to prevent them from relapsing into crime. The present Bill makes provision for imposing restrictions on their movement. The habitual offender has been defined as a person who has been sentenced to a substantive term of imprisonment, such sentence not having been set aside in appeal or revision, on not less than three different occasions for one or another of the offences set forth in the schedule. An order of restriction under the Act will require the habitual offender to keep the authorities informed of his movements. This order can be passed any time within three years of the expiry of last sentence passed against a habitual offender, provided he is more than 18 years of age. With a view to reforming habitual offenders and giving them an opportunity to take up some suitable employment, the State Government proposes to establish and maintain Settlements for imparting vocational training. Should a habitual offender repeatedly contravene the restriction order passed against him under the Act or the Rules framed thereunder, the Court will instead of sentencing him to imprisonment order his confinement in a settlement for his ultimate reformation." Vide Statement of Objects and Reasons published in U.P. Gazette Extraordinary, dated 19th August, 1952.[10th December, 1952]See U. P. Legislative Assembly proceedings dated 20th August, 1952. The Act was passed in Hindi by U.P. Legislative Assembly on 25th September, 1952, and by the U.P. Legislative Council on 16th October, 1952 and received the assent of the President on 10th December, 1952 under Article 201 of the Constitution of India, published in the Uttar Pradesh Gazette Extraordinary, dated 15th December, 1952. An Act to make provisions for imposing certain restrictions on habitual offenders in Uttar Pradesh Whereas it is expedient to impose certain restrictions on habitual offenders in Uttar Pradesh ;It is hereby enacted as follows :

1. Short title, extent and commencement.

(1)This Act may be called the Uttar Pradesh Habitual Offenders' Restriction Act, 1952.(2)It extends to the whole of Uttar Pradesh.(3)It shall come into force at once.

2. Definitions.

(1) In this Act, unless there is anything repugnant in the subject or context, - (a) "Code" means the [Code of Criminal Procedure, 1898] [Now Code of Criminal Procedure, 1973.]; (b) "District Magistrate" includes the Additional District Magistrate or any Magistrate of the first class specially empowered by the State Government to perform the functions of the District Magistrate under this Act; (c) "Habitual offender" means a person who before or after the commencement of this Act, has been sentenced to a substantive term of imprisonment, such sentence not having been set aside in appeal or revision, on not less than three different occasions for one or another of the offences set forth in the Schedule; (d) "order of restriction" means an order of the nature mentioned in Section 3; (e) "prescribed" means prescribed by rules made under this Act; (f) "settlement" means a settlement established or certified under Section 11; (g) "State Government" means the Government of Uttar Pradesh; (h) words and expressions used but not defined in this Act shall have the meaning assigned to them in the Code. (2) A person shall be deemed to be ordinarily residing at a place if he ordinarily lives there or maintains a house therein ready for occupation by him.

3. Order of restriction.

(1) An order of restriction shall be in writing and may require a person to do one or more of the following things, that is to say - (a) to restrict his movement to any specified area, within a district; (b) to intimate to such authority and in such manner, as may be prescribed, his place of residence, every change or intended change thereof or any absence or intended absence therefrom or; (c) to report himself at the time and the place and in the manner specified. (2) The order shall contain such other particulars as may be prescribed. (3) No order of restriction shall remain in force beyond three years from the date of its making.

4. Notice to receive the order of restriction.

(1) If the District Magistrate is, upon information received, satisfied that a person ordinarily residing in the district is an habitual offender and that an order of restriction should be passed against him, he may by notice require such person to appear at such time and place as may be specified in the notice to receive the order, provided that nothing hereinbefore contained shall be deemed to require the District Magistrate to specify in the notice the restriction sought to be imposed. (2) The person against whom notice has been issued under sub-section (1) may contest it on any of the following grounds and no other, namely, that - (i) he was less than 18 years of age on the date of notice; (ii) a period of more than three years has intervened between the date of notice and the expiry of the term of the last sentence of imprisonment passed against him; (iii) he is not an habitual offender. (3) It shall be lawful for the District Magistrate upon receipt of any additional information to rescind at any time the notice issued under subsection (1) but nothing in this sub-section will be construed to entitle the person against whom notice has been issued to contest it on any ground other than that mentioned in sub-section (2).

5. Procedure to compel attendance.

- Where a person against whom a notice has been issued under sub-section (1) of Section 4, is not traceable, or fails to receive the notice or after due service of the notice fails to appear before the District Magistrate concerned, the District Magistrate may proceed in accordance with the provisions of Chapter VI of the Code as if the notice were a warrant issued under the said Code.

6. Hearing of the notice and service of the order.

(1) If, after considering the objections, if any, of the person concerned and holding such other enquiry as he may think fit, the District Magistrate finds that he was less than 18 years of age on the date of notice or that a period of more than three years as aforesaid, had intervened, or that he is not an habitual offender, he shall discharge the notice, and if such person is in custody in accordance with any proceeding under Section 5 direct him to be released forthwith. (2) If the notice is not discharged under sub-section (1), the District Magistrate shall pass an order of restriction against him.

7. Factors to be taken into consideration in making order of restriction.

- In making an order of restriction, the District Magistrate shall take into consideration-(i) the nature of the offences of which the habitual offender was convicted and the circumstances in which they were committed, (ii) the present employment or occupation of the habitual offender, (iii) the suitability of the area to which his movements are to be restricted, and (iv) the manner, circumstances and the conditions in which the State Government shall make provision for the employment of an habitual offender against whom an order of restriction has been passed under sub-section (2) of Section 6.

8. Amendment of the order of restriction.

(1) The District Magistrate may, from time to time, vary or amend the order of restriction made by him; and he may also, on the application of the habitual offender allow him to change his residence to another district with the concurrence of the District Magistrate of such other district. (2) Where an habitual offender has been allowed to change his residence to another district under sub-section (1), the District Magistrate of such other district may vary or amend the order of restriction, as he may deem necessary but all such variations or amendments shall take effect from the movement of change of residence and not earlier.

9. Migration of habitual offender.

- If an habitual offender against whom an order of restriction has been made under Section 6, changes his residence to another district in pursuance of an order under subsection (1) of Section 8, the District Magistrate of such other district shall have the same power in regard to the habitual offender as the District Magistrate who originally made the order.

10. Review.

- The District Magistrate may, in the prescribed manner and at prescribed intervals, review with the aid of two assessors, the cases of all habitual offenders upon whom orders of restriction have been served under Section 6, for ascertaining the desirability of removing the restrictions imposed upon them; provided that the first review shall be held not later than three months from the date of the order of restriction.

11. Establishment of reformatory settlements etc.

(1)The State Government may establish and maintain industrial, agricultural or other settlement for the purpose of reforming of habitual offenders.(2)The State Government may also certify any privately managed settlement to be fit for the reception of habitual offenders.

12. Extension of the period of restriction etc. or stay in settlement.

(1)If at any time before the expiry of the period, for which an order of restriction has been made under Section 6, the District Magistrate is of the opinion that it is necessary to extend it, he may, after giving an opportunity to the person concerned to show cause, extend the same, from time to time, so however, that the total period does not exceed in the aggregate three years.(2)The proceedings under sub-section (1) shall be with the aid of two assessors.

13. Opinion of assessors.

(1)The District Magistrate shall, before making an order removing or otherwise modifying or continuing any restriction under Section 10 or extending the period under Section 12, require each of the assessors to state his opinion orally and for that purpose may ask the assessors such questions as are necessary to ascertain what their opinions are. All such questions and the answers to them shall be recorded.(2)The District Magistrate shall then make his order but in doing so, he shall not be bound to conform to the opinion of the assessors.

14. Qualification and appointment of assessors.

- The assessors shall hold such qualification and be selected and appointed in such manner as may be prescribed.

15. Penalties for breach of restriction, order or rules.

(1)Whoever, being a person against whom an order of restriction has been passed and such order is in force, contravenes any of the provisions of the order or the rules shall, over and above any action that may be taken against him under Section 16, be punishable with confinement in settlement for 12 months or such larger term not exceeding three years as the Magistrate may fix.(2)notwithstanding anything contained in the Code, a Magistrate of the first class may pass a

sentence of confinement in settlement under sub-section (1) for a term up to three years.

16. [Arrest of habitual offenders found beyond prescribed limits or settlement. [Substituted by U. P. Act No. XLII of 1958, Section 3.]

- Whoever, being a person against whom an order of restriction or an order of confinement in settlement under Section 15 has been made,-(a)is found, beyond the limits of the settlement or area to which his movements have been restricted, without leave or pass, as may be prescribed, or in a place or at a time not permitted by the conditions of his pass, or(b)escapes or departs, from a settlement, may be arrested without warrant by any Police Officer or any official of the settlement empowered in this behalf by a general or special order of the State Government, and may be taken before a Magistrate of the first class, who shall order him to be removed to such area or settlement, as the case may be, to be dealt with in accordance with this Act.]

17. Transfer of habitual offender.

- An habitual offender may with the previous sanction of the State Government be transferred from one settlement to another by the District Magistrate.

18. Procedure.

- The provisions of Chapter XX of the Code shall apply, as far as may be to the proceedings under Sections 4, 6 and 12 of this Act as they apply to a summons case.

19. Jurisdiction of Court barred.

- No appeal shall lie from an order passed in any proceeding under-(a)Section 6, or(b)Sub-section (1) or (2) of Section 8, or(c)Sections 9, 10 and 12, or(d)Section 16 for the removal of the habitual offender to the area to which his movements have been restricted or to a settlement in which he has been ordered to be placed, and the same shall be final and shall not be questioned in any court.

20. Rules.

(1)The State Government, may, by notification in the Official Gazette, and subject to the condition in the rules for carrying into effect the purposes of this Act.(2)In particular and without prejudice to the generality of the foregoing power, such rules may provide for,-(i)form of the notice under Section 4;(ii)the areas to which the movements of any habitual offender may be restricted and the nature of the restrictions to be observed by such person;(iii)the conditions of leave and the form and conditions of passes under which habitual offenders may be permitted to leave the area to which their movements have been restricted of the settlement in which they have been placed;(iv)the grant of certificate of identity to habitual offenders against whom an order of restriction has been made, and the circumstances in which they shall produce such certificates for inspection;(v)the working, management, control and supervision of settlements;(vi)the conditions and the manner of certifying

privately managed settlements;(vii)the admission of habitual offenders to the settlement, their discharge therefrom and the procedure to be followed;(viii)the conditions and the circumstances under which the members of family of the habitual offenders may be permitted to stay with him the settlement;(ix)the discipline to which persons endeavouring to escape from any settlement or otherwise offending against the rules for the time being in force, shall be subject;(x)the summoning of assessors and payment of travelling and daily allowances to them;(xi)maintenance of the register for keeping a record of the orders of restriction;(xii)the manner of taking finger impressions; and(xiii)the matters which are to be and may be prescribed.

21. Savings.

- Nothing in this Act shall affect the powers of any competent authority under any other law for the time being in force, to make an order of restriction or detention and any order of restriction or of settlement passed under this Act, in so far as it may be inconsistent with any order made by a competent authority under such other law shall be deemed to be inoperative while the order under the other law remains in force.The Schedule[See clause (c) of sub-section (1) of Section 2]Offences under the Indian Penal Code

Sections

- 231 ... Counterfeiting coin.
- 232 ... Counterfeiting Indian coin.
- 233 ... Making, buying or selling instrument for counterfeiting coin.
- 234 ... Making, buying or selling instrument for counterfeiting Indian coin.
- 235 ... Possession of instrument or material for the purpose of using the same for counterfeiting coin.
- 239 ... Delivery of coin, possessed with the knowledge that it is counterfeit.
- 240 ... Delivery of Indian coin possessed with the knowledge that it is counterfeit.
- 242 ... Possession of counterfeit coin by person who knew it to be counterfeit when he became possessed thereof.
- 243 ... Possession of Indian coin by person who knew it to be counterfeit when he became possessed thereof.
- 302 ... Murder.
- 304 ... Culpable homicide not amounting to murder.
- 307 ... Attempt to murder.
- 308 ... Attempt to commit culpable homicide.
- 311 ... Being a thug.
- 326 ... Voluntary causing grievous hurt by dangerous weapons or means.
- 327 ... Voluntarily causing hurt to extort property, or to constrain to an illegal act.
- 328 ... Causing hurt by means of poison, etc. with intent to commit an offence.
- 329 ... Voluntarily causing grievous hurt to extort property or to constrain to an illegal act.

- 333 ... Voluntarily causing grievous hurt to deter public servant from his duty.
- 363 ... Punishment for kidnapping.
- 364 ... Kidnapping or abducting in order to murder.
- 365 ... Kidnapping or abducting with intent secretly and wrongfully to confine a person.
- 369 ... Kidnapping or abducting a child under ten years with intent to steal from its person.
- 376 ... Rape.
- 377 ... Unnatural offences.
- 380 ... Theft in dwelling-house, etc.
- 382 ... Theft after preparation made for causing death, hurt or restraint in order to the committing of the theft.
- 384 ... Extortion.
- 385 ... Putting person in fear of injury in order to commit extortion.
- 386 ... Extortion by putting a person in fear of death or grievous hurt in order to commit extortion.
- 392 ... Robbery.
- 393 ... Attempt to commit robbery.
- 394 ... Voluntarily causing hurt in committing robbery.
- 395 ... Dacoity.
- 396 ... Dacoity with murder.
- 397 ... Robbery or dacoity, with attempt to cause death or grievous hurt.
- 398 ... Attempt to commit robbery or dacoity when armed with deadly weapons.
- 399 ... Making preparation to commit dacoity.
- 400 ... Belonging to gang of dacoits.
- 402 ... Assembling for purpose of committing dacoity.
- 411 ... Dishonestly receiving stolen property.
- 412 ... Dishonestly receiving property stolen in the commission of a dacoity.
- 436 ... Mischief by fire or explosive substance with intent to destroy house, etc.
- 457 ... Lurking house-trespass or house-breaking by night in order to the commission of an offence punishable with imprisonment.
- 458 ... Lurking house-trespass or house-breaking by night after preparation for hurt, assault, or wrongful restraint.
- 459 ... Grievous hurt caused whilst committing lurking house-trespass or house breaking.
- 460 ... Death or grievous hurt caused by one of several persons jointly concerned in house breaking by night, etc.