

# **The Jammu and Kashmir Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1988**

JAMMU & KASHMIR

India

## **The Jammu and Kashmir Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1988**

### **Act 25 of 1988**

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The Jammu and Kashmir Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1988(Act No. 25 of 1988)[Received the assent of the Governor on 31 August, 1988 and is hereby published for general information]An Act to provide for detention in certain cases for the purpose of prevention of black marketing and maintenance of supplies of commodities essential to the community and for matters connected therewith Be it enacted by the Jammu and Kashmir state Legislature in the Thirty-ninth year of the Republic of India as follows:-

#### **1. Short title, extent and commencement.**

(1)This Act may be called the Jammu and Kashmir Prevention of Black marketing and Maintenance of Supplies of Essential Commodities Act, 1988.

#### **2. It extends to the whole of the State of Jammu and Kashmir.**

#### **3. It shall be deemed to have come into force with effect from 29th day of May, 1986.**

#### **2. Power to make orders detaining certain persons.**

(1)The Government may, if satisfied, with respect to any person that [with a view to preventing him from indulging in adulteration, hoarding and profiteering, storing transporting adulterated goods or selling underweight or sub-standard or spurious or expired goods or drugs not conforming to BIS/ AGMARK specification/ pharmacopeial standards or] [Substituted by Act No. IX of 2003 (section

2)] acting in any manner prejudicial to the maintenance of supplies of commodities essential to the community it is necessary so to do, make an order directing that such person be detained. Explanation. - For the purposes of this sub-section the expression "acting in any manner prejudicial to the maintenance of supplies of commodities essential to the Community" means (a) committing or instigating any person to commit any offence punishable under the essential Commodities Act, 1955, or under any other law for the time being in force relating to the control of the production, supply or distribution of, trade and commerce in, any Commodity essential to the community; or (b) dealing in any commodity (i) which is an essential commodity as defined in the Essential Commodities Act, 1955, or (ii) with respect to which provisions have been made in any such other law as is referred to in clause (a) with a view to making gain in any manner which may directly or indirectly defeat the provisions of that Act or other law's aforesaid. (2) Any of the following officers, namely (a) Divisional Commissioners, (b) District Magistrates; 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 Government together with the 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 Government: Provided that where under section 8 the grounds of detention are communicated by the authority making the order after five days but not later than ten days from the date of detention, this sub-section shall apply subject to the modification that for words "twelve days" the words "fifteen days" shall be substituted.

### **3. 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, Samvat 1989.

### **4. 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 breach of discipline, as the Government may, by general or special order, specify; and (b) to be removed from one place of detention to another place of detention by order of the Government

### **5. Grounds of detention severable.**

- Where a place has been detained in pursuance of an order of detention under section which has been made on two or more grounds, such order of detention shall be deemed to have been made separately on each of such grounds and accordingly. -(a) such order shall not be deemed to be invalid or inoperative merely because one or some of the grounds is or are (i) vague, (ii) non-existent, (iii) non-relevant, (iv) not connected or not proximately connected with such person, or (v) invalid for any other reasons whatsoever, and it is not, therefore, possible to hold that the Government or officer making such order would have been satisfied as provided in section 2

with reference to the remaining ground or grounds and made the order of detention.(b)the Government or officer making the order of detention shall be deemed to have made the order of detention under the said section after being satisfied as provided in that section with reference to the remaining ground or grounds.

## **6. Detention orders not to be invalid or inoperative on certain grounds.**

- No detention order shall be valid or inoperative merely by reason. -(a)that the person to be detained thereunder is outside the limits of the territorial jurisdiction of the officer making the order, or(b)that the place of detention of such person is outside the said limits.

## **7. Powers in relation to absconding persons.**

(1)If the Government or an officer specified in sub-section (2) of section 2, as the case may be, has reason to believe that a person in respect whom a detention order has been made has absconded or is concealing himself so that the order cannot be executed, the Government or the officer may -(a)make a report in writing of the fact to a Magistrate of the First class having jurisdiction in the place where the said person ordinarily resides and thereupon the provisions of the sections 87, 88, and 89 of the Code of criminal Procedure, Samvat 1989 shall apply respect of the said person and his property as if the order directing that he be detained were a warrant issued by the Magistrate;(b)by notified order direct the said person to appear before such office, 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, he shall, 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 be punishable with imprisonment for a term which may extend to one year or with fine or with both.Notwithstanding anything contained in the Code of Criminal Procedure, Samvat 1989, every offence under clause (b) of sub-section (1) shall be cognizable.

## **8. Grounds of orders 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 ordinarily not later than five days and in exceptional circumstances and for reasons to be recorded in writing, not later than ten 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 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 Board.

(1)The Government shall, whenever necessary, constitute an Advisory Board for the purposes of this Act.(2)Such Board shall consist of the Chairman, who is or has been a judge of the Court, and two other members who are or have been qualified to be appointed as judges of High Court.(3)[ The Chairman and the other Members of the Board shall be appointed by the Government on the recommendations of the Search-cum- Selection Committee consisting of the following : -

(a) Chief Secretary ..... Chairman

(b) Administrative Secretary, Home Department..... Member

(c) Administrative Secretary, Department of Law,Justice and Parliamentary Affairs ..... Member:

Provided that no sitting Judge of the High Court or the sitting District and Sessions Judge shall be appointed as Chairman or Member of the Board except in consultation with the Chief Justice of High Court.(4)Nothing in sub-section (3) shall prevent the Government from appointing Chairman and Members of the Advisory Board constituted under section 14 of the Jammu and Kashmir Public Safety Act, 1978 from being appointed as Chairman and Members under section 9 of this Act for discharging functions under the provisions of this Act.] [Substituted by Governor Act No. 33 of 2018, dated 7.12.2018.]

## 10. Reference to Advisory Board.

- Save as otherwise expressly provided in this Act, in every case where a detention order has been made under this Act, the Government shall, within three weeks from the date of detention of a person under the order, place before the Advisory Board constituted by it under section 9, the ground on which the order has been made and the representation, if any, made by the person affected by the order, and in case where the order has been made by an officer referred to in sub-section (2) of section 2 also the report by such officer under subsection (3) of that section.

## 11. Procedure of Advisory Board.

(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 Government or from any person called for the purpose through the Government or from the person concerned, and if, in any particular case, it 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 Government within seven weeks from the date of detention of the person concerned.(2)Notwithstanding anything contained in sub-section (1), the Board may, if the person detained so demands, at any time before submitting its report, after affording an opportunity to the person detained and the Government or the officer, as the case may be, of being heard, determine whether the disclosure of facts, not disclosed under sub-section (2) of section 8 to the person detained is or is not against public interest. Such finding of the Board shall be binding on the Government.(3)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 of the detention of the persons concerned.(4)When there is a difference of opinion among the members forming the

Advisory Board, the opinion the majority of such members shall be deemed to be the opinion of the Board.(5)Nothing in this section shall entitle any person against whom detention order has been made to appear by any legal practitioner in any matter connected with the reference to the Advisory Board, and the proceedings of the Advisory Board, and its report, excepting the part of the report in which the opinion of the Advisory Board is specified, shall be confidential.

## **12. Action upon the report of the Advisory Board.**

- In any case where the advisory Board has reported that there is in its opinion sufficient cause for the detention of a person, the 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 Government shall revoke or modify 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 which has been confirmed under section 12 shall be twelve months from the date of detention:Provided that nothing contained in this section shall effect the power of the Government to revoke or modify the detention order at any earlier time.

## **14. Revocation of detention orders.**

(1)Without prejudice to the provisions of section 21 of General Clauses Act, Samvat 1977, a detention order may at any time, be revoked or modified by the Government notwithstanding that the order has been made by an officer referred to in sub-section (2) of section 2.(2)There shall be no bar to making of a fresh order of detention against a person on the same facts as an earlier order of detention made against such person in any case where-(a)the earlier order of detention or its continuance is not legal on account of any technical defect; or(b)the earlier order of detention has been revoked by reason of any apprehension, or for avoiding any challenge that such order or its continuance is not legal on account of any technical defect; orProvided that in computing the maximum period for which a person against whom such fresh order of detention has been issued, may be detained, the period during which such person was under detention under the earlier order of detention shall be excluded

## **15. Temporary release of persons detained.**

(1)The 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 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 person under sub-section (1) the 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 be punishable 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.(6)The period of release under section shall not count towards the period of detention undergone by the person.

## **16. Protection of action taken in good faith.**

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

## **17. Repeal.**

- The Jammu and Kashmir Prevention of Black marketing and Maintenance of Supplies of Essential Commodities Act, 1986 (Governor's Act No. XII of 1986) is hereby repealed.