

The Gujarat Prevention of Anti-Social Activities Act, 1985

GUJARAT

India

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Act 16 of 1985

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The Gujarat Prevention Of Anti-Social Activities Act, 1985[2nd August 1985]Act No. 16 of 1985An Act to provide for preventive detention of bootleggers, dangerous persons, drug offenders, immoral traffic offenders and property grabbers for preventing their anti- social and dangerous activities prejudicial to the maintenance of public order.It is hereby enacted in the Thirty-sixth Year of the Republic of India as follows :—

1. Short title, extent and commencement.

(1)This Act may be called the Gujarat Prevention of Anti-Social Activities Act, 1985.(2)It extends to the whole of the State of Gujarat.(3)It shall be deemed to have come into force on the 27th May, 1985.

2. Definitions

In this Act, unless the context otherwise requires,—(a)"authorised officer" means a District Magistrate or a Commissioner of Police authorised under sub-section (2) of section 3 to exercise the powers conferred under sub-section (I) of that section;(b)"bootlegger" means a person who distills, manufactures, stores, transports, imports, exports, sells or distributes any liquor, intoxicating drug or other intoxicant in contravention of any provision of the Bombay Prohibition Act, 1949 and the rules and orders made thereunder, or of any other law for the time being in force or who knowingly expends or applies any money or supplies any animal, vehicle, vessel or other conveyance or any receptacle or any other material whatsoever in furtherance or support of the doing of any of the things described above by or through any other person, or who abets in any other manner the doing of any such thing;(bb)"common gaming house keeper" means a person who, having been convicted of an offence punishable under section 4 of the Bombay Prevention of Gambling Act, 1887, within a

period of three years from the date of such conviction either by himself or as a member or leader of a gang habitually commits or attempts to commit or abets me commission of an offence punishable under that section;(bbb)"cruel person" means a person, who either by himself or as a member or leader of a gang, habitually commits or attempts to commit or abets the commission of an offence punishable under section 8 of the Bombay Animal Preservation Act, 1954;".(c)"dangerous person" means a person, who either by himself or as a member or leader of a gang, habitually commits, or attempts to commit or abets the commission of any of the offences punishable under Chapter XVI or Chapter XVII of the Indian Penal Code or any of the offences punishable under chapter V of the Arms Act, 1959;(d)"detention order" means an order made under section 3;(e)"detenu" means a person detained under a detention order;(f)"drug offender" means a person who—(i)imports any drug in contravention of section 10 of the Drugs and Cosmetics Act, 1940 (hereinafter in this definition referred to as "the Drugs Act"),(ii)manufactures for sale, or sells, or stocks or exhibits for sale, or distributes any drug in contravention of section 18 of the Drugs Act,(iii)manufactures for sale any Ayurvedic (including Siddha) or Unani drug in contravention of section 33D of the Drugs Act,(iv)sells, or stocks or exhibits for sale or distributes any Ayurvedic (including Siddha) or Unani drug other than that manufactured by a manufacturer licensed under Chapter IV-A, in contravention of section 33E of the Drugs Act,(v)cultivates any coca plant, opium poppy, or cannabis plant or produce, manufactures, possesses, sells, purchases, transports, ware- houses, imports inter-State, exports inter-State, imports into India, exports from India or tranships any narcotic drug or psychotropic substance in contravention of section 8 of the Narcotic Drugs and Psychotropic Substances Act, 1985,(vi)knowingly expends or supplies any money in furtherance or support of the doing of any of the things mentioned in any of the sub-clauses (i) to (v) by or through any other person, or(vii)abets in any manner the doing of any of the things mentioned in any of the sub-clauses (i) to (vi);(g)"immoral traffic offender "means a person who habitually commits or abets the commission of any offence under the Suppression of Immoral Traffic in Women and Girls Act, 1956;(h)"property grabber" means a person who illegally takes possession of any lands not belonging to himself but belonging to Government, local authority or any other person or enters into or creates illegal tenancies or leave and licence agreements or any other agreements in respect of such lands or who constructs unauthorised structures thereon for sale or hire or gives such lands to any person on rental or leave and licence basis for construction or use and occupation of unauthorised structures or who knowingly gives financial aid to any person for taking illegal possession of such lands or for construction of unauthorised structures thereon or who collects or attempts to collect from any occupiers of suchlands rent, compensation or other charges by criminal intimidation or who evicts or attempts to evict any such occupiers by force without resorting to the lawful procedure or who abets in any manner the doing of any of the above mentioned things;(i)"unauthorised structure" means-any structure constructed in any area without express permission in writing of the officer or authority having jurisdiction in such area requited under the Bombay Land Revenue Code, 1879 and the Gujarat Town Planning and Urban Development Act, 1976 and the Bombay Provincial Municipal Corporations Act, 1949, the Gujarat Municipalities Act, 1963 or, as the case may be, the Gujarat Panchayats Act, 1961 or except in accordance with any other law for the time being in force in such area.

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)If, having regard to the circumstances prevailing or likely to prevail in any area within the local limits of the jurisdiction of a District Magistrate or a Commissioner of Police, the State Government is satisfied that it is necessary so to do, it may, by order in writing, direct that the District Magistrate or the Commissioner 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 authorised officer he shall forthwith report the fact to the State 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 State Government.(4)For the purpose of this section, a person shall be deemed to be "acting in any manner prejudicial to the maintenance of public order" when such person is engaged in or is making preparation for engaging in any activities whether 5[as a bootlegger or common gambling house paper or and person or dangerous person or drug offender or immoral traffic offender or property grabber, which affect adversely or are likely to affect adversely the maintenance of public order.Explanation.-For the purpose of this sub-section, public order shall be deemed to have been affected adversely or shall be deemed likely to be affected adversely inter alia if any of the activities of any person referred to in this sub-section directly or indirectly, is causing or is likely to cause any harm, danger or alarm or feeling of insecurity among the general public or any section thereof or a grave or widespread danger to life, property or public health.

4. Execution of detention order

A detention order may be executed at any place in the State in the manner provided for the execution of warrant 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 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. Grounds of detention severable

Where a person 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 ground 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)not-relevant,(iv)not connected or not proximately connected with such person, or(v)invalid for any other reason whatsoever,and it is not, therefore, possible to hold that the Government or the officer making such order would have been satisfied as provided in section 3 with reference to the remaining ground or grounds and made the order of detention;(b)the Government or the 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.

7. Detention orders not to be invalid or inoperative on certain geounds

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

8. Powers in relation to absconding persons

(1)If the State Government or any authorised officer 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, than 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, subject to the modifications mentioned in this sub-section and, irrespective of the place where such person ordinarily resides, the detention order made against him shall be deemed to be a warrant issued by a competent Court. Where the detention order is made by the State Government, and officer, not below the rank of a District Magistrate or a Commissioner of Police authorised by the State Government in this behalf, or where the detention order is made by an authorised officer, the authorised officer, as the case may be, shall, irrespective of his ordinary jurisdiction, be deemed to be empowered to exercise all the powers of the competent Court under sections 82, 83, 84 and 85 of the said Code for issuing a proclamation for such person and for attachment and sale of his property situated in any part of the State and for taking any other action under the said sections. An appeal from any order made by any such officer rejecting an application for restoration of attached property shall lie to the Court of Sessions having jurisdiction in the place where the said person ordinarily resides, as provided in section 86 of the said Code.(2)(a)Notwithstanding anything contained in sub-section (1), if the State Government or an authorised officer has reason to believe that person in respect of whom a detention order has been made has absconded or is con- cealing himself so that the order cannot be executed, the State Government or the officer, as the case may be, may 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.(b)Where such person fails to comply with such order, then 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 reasons 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.(c)Notwithstanding anything contained in the said Code, every offence under clause (b) shall be cognizable.

9. Grounds of order of detention to be disclosed to detenu

(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 seven 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.

10. Constitution of advisory Board

(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 any High Court or who are qualified under the Constitution of India to be appointed as Judges of a High Court :Provided that the Chairman of such Board shall be a person who is, or has been, a Judge of a High Court.

11. Reference to Advisory Board

In every case where a detention order has been made under this Act the State 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 10 the grounds on which the order has been made and the representation, if any, made by the person affected by the order, and where the order has been made by an authorised officer, also the report made by such officer under sub-section (3) of section 3.

12. 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 State Government or from any person called for the purpose through the State Government or from the detenu and if, in any particular case, the Advisory Board considers it essential so to do or if the detenu desires to be heard, after hearing the detenu in person, submit its report to the State Government, within seven weeks from the date of detention of the detenu.(2)The report of the Advisory Board shall specify in a separate part there- of the opinion of the Advisory Board as to whether or not there is sufficient cause for the detention of the detenu.(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.

13. Action upon 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 the detenu, the State Government may confirm the detention order and continue the detention of the detenu for a period, not exceeding the maximum period prescribed by section 14 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 detenu to be released forthwith.

14. 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 13, shall be one year from the date of detention.

15. 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 for reasons to be recorded in writing, be revoked or modified by the State Government, notwithstanding that the order has been made by an authorised officer. (2) The expiry or revocation of a detention order (hereinafter in this sub-section referred to as "the earlier detention order") shall not bar the making of Another detention order (hereinafter in this sub-section referred to as "the sub-sequent detention order") under section 3 against the same person: Provided that in a case where no fresh facts have arisen after the expiry or revocation of the earlier detention order made against such person, the maximum period for which such person may be detained in pursuance of the subsequent detention order shall in no case extend beyond the expiry of a period of twelve months from the date of detention under the earlier detention order.

16. Temporary release of persons detained

(1) The State Government may, at any time, for reasons to be recorded in writing, 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 detenu released under sub-section (2) 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 detenu 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 detenu 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.

17. Protection of action taken in good faith.

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.

18. Matters within the purview of the Act to be dealt with under this Act only

On and after the commencement of this Act, no order of detention under the National Security Act, 1980 shall be made by the State Government or any officer subordinate to it, in respect of any bootlegger, drug offender, dangerous person, immoral traffic offender, or property grabber in the State on the ground of preventing him from acting in any manner prejudicial to the maintenance of public order, in so far as an order under this Act, could be made for detention of such person.

19. Repeal and Saving

(1)The Gujarat Prevention of Anti-social Activities Ordinance, 1985 is hereby repealed.(2)Notwithstanding such repeal,—(a)anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under this Act;(b)every person in respect of whom an order of detention has been made under section 3 of the said Ordinance by reason of his being a dangerous person and is in force immediately before the date on which the assent to this Act of the President is first published in the Official Gazette, (hereinafter referred to as "the said date"), shall, notwithstanding that his detention has been rendered inconsistent with section 3 of this Act, continue to be under detention subject to the provisions of this Act;(c)(i)an Advisory Board constituted under section 10 of the said Ordinance and functioning immediately before the said date shall, notwithstanding that its constitution has been rendered inconsistent with the provisions of section 10 of this Act, continue to so function after the said date subject to the provisions of this Act;(ii)any reference made under section 11 of the said Ordinance and pending before such Advisory Board immediately before the said date may continue to be dealt with by that Board after that date as if such Board had been constituted under section 10 of this Act.