

The Madhya Bharat Vagrants, Habitual Offenders and Criminals (Restrictions and Settlement) Act, 1952

MADHYA BHARAT

India

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Act 35 of 1952

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The Madhya Bharat Vagrants, Habitual Offenders and Criminals (Restrictions and Settlement) Act, 1952 Act No. 35 of 1952 PREAMBLE, -An Act to make provision for restricting the movements of Vagrants, Habitual Offenders and Criminals in Madhya Bharat, for requiring them to report themselves and for placing them in settlements. Be it enacted as follows:-

1. Short title and extent.-

(1) This Act may be called "The Madhya Bharat Vagrants, Habitual Offenders and Criminals (Restrictions and Settlement) Act, Samvat 2009." (2) It extends to the whole of Madhya Bharat. (3) It shall come into force immediately on its publication in the Gazette.

2. Definitions.-

In this Act unless there is anything repugnant in the subject or context, - (1) "Code" means the Code of Criminal Procedure, 1898; (2) "Order of Restriction" means an order made under this Act requiring a person not below the age of 18, - (a) to restrict his movements to any area specified in the order; or (b) to report himself at the times and at the places and in the manner specified in the order; or (c) to do both; (3) "Order of settlement" means an order made under section 17 or 18 placing a person in a settlement established under the said sections; (4) "Habitual criminal" 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 occasions for one or another of the offences under the Indian Penal Code set forth in the schedule, each of the subsequent sentences having been passed in respect of an offence committed after the passing of the sentence on the previous occasion; Explanation: The passing of an order requiring a person to give

security for good behavior with reference to section 110 of the Code of Criminal Procedure, 1898, shall be deemed to amount to the passing of a sentence of substantive imprisonment within the meaning of this clause.(5)"Prescribed" means prescribed by rules made under this Act;(6)"Government" means Government of the State of Madhya Bharat;(7)Words and expressions used but not defined in the Act shall have the meanings assigned to them in the Code;

3. Order of restriction.-

(1)In any case in which a Magistrate may under the provisions of section 109 or 110 of the Code require a person to show cause why he should not be ordered to execute a bond for his good behaviour, the Magistrate may in lieu of or in addition to so doing, require such person to show cause why an order of restriction should not be made against him.Joint proceedings and record(2)If the Magistrate in addition to requiring such person to show cause why he should not be ordered to execute a bond for his good behavior requires him to show cause why an order of restriction should not be made against him, the proceedings in respect of the order of restriction may be taken jointly with the proceedings in respect of security and may be included in and form part of the same record.

4. Procedure in making order of restriction.-

Whenever a Magistrate acting under section 3 deems it necessary to require a person to show cause why an order of restriction should not be made against him, he shall follow, as nearly as may be, the procedure laid down in sections 112, 113, 114, 115 and 117 of the Code for an order requiring security for good behaviour.Provided that the order in writing referred to in section 112 of the Code shall, in addition to setting forth the substance of the information received, state the term not exceeding three years during which the order of restriction shall be in force, although it need not state whether the order of restriction shall be an order requiring him to restrict his movements to any area or requiring him to report himself or requiring him to do both.

5. Issue of warrant in lieu of or in addition to summons.-

The provisions of section 90 of the Code shall be applicable in respect of any proceedings under this Act as if they were proceedings under the Code.

6. Discharge of person informed against.-

If upon an enquiry made in accordance with the preceding sections, the Magistrate is of opinion that it is not necessary to make an order of restriction against the person in respect of whom the enquiry is made, he shall make an entry to that effect on the record, and if he does not order the execution of a bond for good behavior he shall, if such person is in custody for the purposes of such enquiry only, release him or if such person is not in custody, discharge him.

7. Making of order of restriction.-

If upon an enquiry as aforesaid, the Magistrate is of opinion that in the interest of the general public it is necessary to make an order of restriction against the person in respect of whom the enquiry is made, the Magistrate shall make an order accordingly. Provided that the Magistrate shall not make an order of restriction against any person against whom he makes an order under section 118 of the Code requiring such person to execute a bond for his good behaviour. Provided further that no order of restriction shall be made for a term exceeding three years or for a term longer than that specified in the order referred to in the proviso to section 4.

8. Restriction order under section 123(3) of the Code.-

(1) A Court acting under subsection (3) of section 123, or an Appellate Court acting under section 406 of the Code, may in lieu of the order requiring any person to give security under section 109 or 110 of the Code make an order of restriction for any period not exceeding that for which the security was required to be given. Restriction order against convicted offenders. (2) In any case in which a Court or Magistrate is empowered to make an order against any convicted person under section 565 of the Code, such Court or Magistrate may, if it or he thinks fit, at the time of passing sentence on such person and in lieu of making an order as provided in the said section, make an order of restriction against such person for a period not exceeding three years from the date of expiration of such sentence. (3) If such conviction is set aside on appeal or otherwise, the order of restriction shall become void. (4) No order of restriction shall be made against any person under this section unless he has been given an opportunity of showing cause why such order should not be made.

9. Particulars to be specified in restriction order.-

Every order of restriction made under this Act shall state whether the person against whom the order is made, is required to restrict his movements or is required to report himself or is required to do both. The order shall also specify the area and nature of the restrictions imposed and the places, the times, and the manner of report, as the case may be. The order shall also contain such other particulars as may be prescribed.

10. Residence or means of livelihood within area of restriction.-

(1) No order shall be made restricting the movements of any person to any particular area unless the Court or Magistrate making the order is satisfied that such person has adequate means of earning his livelihood within such area or ordinarily resides in such area. (2) Before making an order restricting the movements of any person to any area, the Court or Magistrate shall record and consider any objection which such person may urge in regard to the area to which his movements are proposed to be restricted.

11. Power to cancel or modify order of restriction.-

(1)Where under an order of restriction made against him by a Court or Magistrate any person's movements have been restricted the Court or Magistrate may, at any time, on its or his own motion or on an application of such person and for sufficient reasons to be recorded in writing, make an order cancelling or modifying the order of restriction.(2)Such order of modification may provide,-(a)that the said person shall report himself at the times and at the places and in the manner specified in the order; or(b)that he shall restrict his movements either to the area in which he ordinarily resides or to any other area in which the Court or Magistrate is satisfied that he has reasonable prospects of earning his livelihood.

12. Power to substitute settlement order for bond for good behavior or for order for notifying address.-

Where an order requiring security for good behavior has been made against any person under the Code or an order has been made against any person under section 565 of the Code, whether before or after the coming into operation of this Act, the District Magistrate may, at any time, before the period of security or the term of the order under section 565, as the case may be, has expired, direct the person to be placed in a settlement established under section 17.Provided that,-(1)the period of the order of settlement shall not exceed the unexpired portion of the period of security or the term of the order under section 565; and(2)no order of settlement shall be made against any person under this section unless he has been given an opportunity of showing cause why such order should not be made.And provided further that before he passes an order of settlement under this section, the District Magistrate shall inform the Court or Magistrate, who made the order requiring security for good behavior or an order under section 565 of the Code, and such Court or Magistrate shall thereupon vacate its or his order.

13. Power of Government to notify habitual criminals.-

(1)The Government may, by notification,-(a)if they are satisfied that any person is a habitual criminal, declare that he shall be subject to the provisions of this Act to such extent and subject to such restrictions, if any, as may be specified in the notification (b)cancel or modify any such declaration.(2)Before any notification is issued in respect of any person under subsection (1), clause (a), or modified to his disadvantage under subsection (1), clause (b), a reasonable opportunity shall be given to him to show cause against such issue or modification.

14. Delegation of powers to District Magistrate.-

The Government may, by notification, delegate their powers under section 13 to a District Magistrate, in respect of persons ordinarily residing in his district, subject to such restrictions and conditions as may be specified in the notification and subject also to control and revision by them.

15. Habitual criminals to intimate residence and change of residence.-

Every person notified as habitual criminal under the foregoing section shall intimate to such authority and in such manner as may be prescribed, his place of residence, every change or intended change thereof, and every absence or intended absence therefrom. Provided that the District Magistrate or any officer authorised by him may exempt any such criminal from reporting any temporary absence or intended absence from his residence, not exceeding such limit as may be prescribed.

16. Power to restrict movements of habitual criminals.-

(1) If in the opinion of the District Magistrate it is expedient to do so, he may pass an order of restriction against a habitual criminal, ordinarily residing in his District, for a term not exceeding three years at a time. (2) The provisions of Sections 9, 10 and 11 of this Act shall apply mutatis mutandis to an order passed under this section.

17. Power to establish settlements and place habitual criminals therein.-

(1) For the purposes of this Act, Government may establish industrial, agricultural or reformatory settlements. (2) Government or the District Magistrate, if authorised by Government in this behalf, may in lieu of an order of restriction made against any person under this Act make an order directing such a person to be placed in an appropriate settlement established under subsection (1) for a period not exceeding the period for which the order of restriction has been made. Provided that in the case of a habitual criminal this period may be up to seven years. (3) Government or the District Magistrate authorised by the Government in this behalf, may at any time, either on its or his own motion or on an application of such person, by general or special order, direct any person who may be in any settlement, - (a) to be discharged; or (b) to be transferred to some other settlement. (4) Every person directed to be placed in a settlement under this Act shall have the right, - (a) to live in the settlement with his wife and children, and other dependants, if any; and (b) to continue to live in the settlement on expiry of the period for which he is directed to be placed in the settlement. (5) Any person who resides in a settlement whether under an order of settlement or otherwise shall be subject to all or any such restrictions as may be prescribed.

18. Residence in a settlement voluntarily or in lieu of an order of restriction.-

(1) Any person may voluntarily offer to reside in a settlement established under section 17 of this Act. If Government or the District Magistrate authorised by Government in this behalf accepts such offer, an order of settlement under section 17 of the Act shall be deemed to have been passed in respect of such person for such period not exceeding 7 years as may be stipulated by Government or by the District Magistrate while accepting the offer, or if no period is stipulated, for 7 years. (2) It shall be competent for Government or the District Magistrate authorised by Government to cancel an order of restriction passed against a person under this Act who offers to reside in a settlement and to pass, in lieu thereof, an order of settlement under this section.

19. Review of cases.-

Whenever a person is placed in a settlement for a period exceeding three years, the Government shall, after the expiration of the period of three years, review his case to determine whether it is necessary to continue his restriction in the settlement.

20. Arrest of person contravening order of restriction or settlement.-

(1)Whoever being a person against whom an order of restriction or an order of settlement has been made,-(a)is found beyond the limits of the settlement or the area to which his movements have been restricted without the prescribed pass, of in a place or at a time not permitted by the conditions of his pass; or(b)escapes from a settlement;may be arrested without warrant by any Police Officer or Village Patel, and may be taken before a Magistrate, who, on proof of the facts, shall order him to be removed to such area or to such settlement, as the case may be, there to be dealt with in accordance with this Act or any rules made thereunder.(2)The rules for the time being in force for the removal of prisoners shall apply to all persons removed under this section.Provided that no order other than an order under this section shall be necessary for the removal of such person.

21. Duties of Patel, village watchman and owners or occupiers of land to give information in certain cases.-

(1)Every Patel and every watchman of a village in which any person, against whom an order of restriction or order of settlement has been made, and every owner or occupier of land on which any such person resides, and the agent of any such owner or occupier shall forthwith communicate to the officer-in-charge of the nearest police station any information which he may obtain of the departure of any person from such village or from such land, as the case may be.(2)Every Village Patel and village watchman and every owner or occupier of land and the agent of any such owner or occupier, shall forthwith communicate to the officer-in-charge of the nearest police station any information which he may obtain of the arrival at such village or on such land, as the case may be, of any person against whom an order of restriction or order of settlement is reasonably suspected of having been made.

22. Penalties for breach of rules.-

(1)Whoever, being a person against whom an order of restriction or an order of settlement has been made contravenes a rule made under clauses (i), (ii), (iii) and (iv) of subsection (2) of section 26 shall, on conviction, be punishable with imprisonment for a term which may extend,-(a)on a first conviction, to one year;(b)on a second conviction, to two years; and(c)on any subsequent conviction, to three years;or with fine which may extend to five hundred rupees, or with both;(2)Whoever, being a person against whom an order of restriction or an order of settlement has been made, contravenes any other rule made under section 26, or being a habitual criminal fails to comply with the provisions of section 15, shall be punishable,-(a)on a first conviction, with imprisonment for a term which may extend to six months, or with fine which may extend to two hundred rupees, or with

both; and(b)on any subsequent conviction, with imprisonment for a term which may extend to one year or with fine which may extend to five hundred rupees, or with both.(3)In computing the period for which an order of restriction or of settlement shall remain in force, any period of imprisonment undergone in execution of a sentence passed under subsection (1) or (2) shall be excluded.(4)Any person who commits or is reasonably suspected of having committed an offence made punishable by this section which is not cognisable offence as defined in the Code, may be arrested without a warrant by any officer-in-charge of a police station or by any Police Officer not below the rank of a Sub-Inspector.

23. Enhanced punishment for certain offences by persons against whom order of restriction or order of settlement has been made after previous conviction.-

(1)Whoever, being a person against whom an order of restriction or an order of settlement has been made and having been convicted of any of the offences under the Indian Penal Code specified in the Schedule, is convicted of the same or of any other offence specified in the Schedule shall, on conviction be punishable with transportation for life, or with imprisonment of either description for a term which may extend to ten years.(2)Nothing in this section shall affect the liability of such person to any further or other punishment to which he may be liable under the Indian Penal Code or any other Law.

24. Punishment for persons against whom restriction order or settlement order has been made found under suspicious circumstances.-

Whoever, being a person against whom an order of restriction or an order of settlement has been made, is found in any place under such circumstances as to satisfy the Court,-(a)that he was about to commit, or aid in the commission of theft or robbery; or(b)that he was making preparation, for committing theft or robbery;shall on conviction be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine which may extend to one thousand rupees.

25. Penalty for breach of duties by Village Patel, village watchman, owners or occupiers of land or their agents.-

Any Village Patel, village watchman, owner or occupier of land, or the agent of any such owner or occupier, who fails to comply with the requirements of section 21, shall be deemed to have committed an offence punishable under the first part of section 176 of the Indian Penal Code.

26. Rules.-

(1)Government may, by notification in the Gazette, and subject to the condition of previous publication, make rules for the purpose of carrying into effect the provisions of this Act.(2)In particular and without prejudice to the generality of the foregoing provision, such rules may provide for,-(i)the areas to which the movements of any persons may be restricted and the nature of the

restrictions to be observed by such persons;(ii)the times and places at which and the manner in which such persons shall report themselves;(iii)the conditions as to holding passes under which such persons may be permitted to leave the area to which their movements have been restricted or the settlement in which they have been settled;(iv)the conditions to be inserted in any such pass in regard to,-(a)the place to which the holder of the pass may or may not go;(b)the persons before whom from time to time he shall be bound to present himself;(c)the period during which he may be absent;(v)any other particulars deemed necessary to be included in an order of restriction;(vi)the circumstances in which persons against whom an order of restriction or an order of settlement has been made, shall be required to possess and produce for inspection certificates of identity, and the manner in which such certificates shall be granted;(vii)the management, control and supervision of industrial, agricultural or reformatory settlements;(viii)the works on which, and the hours during which, persons, placed in an industrial, agricultural or reformatory settlement shall be employed, the rates at which they shall be paid, and the disposal for the benefit of such persons, of the surplus proceeds of their labour;(ix)the discipline to which persons endeavouring to escape from any industrial, agricultural or reformatory settlement or otherwise offending against the rules for the time being in force, shall be subject and the periodical visitation of such settlement;(x)the restrictions to which a person residing in settlement may be subjected under subsection (5) of section 17;(xi)all matters required or allowed by this Act to be prescribed;(xii)the inspection of residences of habitual criminals;(xiii)the terms upon which habitual criminals may be discharged from the operation of this Act.

27. Repeal and savings.-

As soon as this Act comes into force "The Madhya Bharat Vagrants, Habitual Offenders and Criminals (Restrictions and Settlement) Ordinance, Samvat 2009" shall stand repealed. Provided that all orders made, actions taken and repeals effected under the said Ordinance shall be deemed to have been made, taken or effected under this Act. Provided further that all settlements established under any law relating to criminal tribes in force in any Covenanting State of Madhya Bharat and existing at the commencement of this Act shall be deemed to have been established under section 17 of this Act and all rules made in respect of them shall until they are superseded by rules made under this Act be deemed to have been made under section 26 of this Act.