

The Jammu And Kashmir Habitual Offenders (Control And Reform) Act, 1956

JAMMU & KASHMIR

India

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Act 11 of 1956

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The Jammu And Kashmir Habitual Offenders (Control And Reform) Act, 1956[Act No. 11 of 1956]An Act to provide for the registration of habitual offenders in the State of Jammu and Kashmir and for imposing certain restrictions on them.Be it enacted by the Jammu and Kashmir State Legislature in the Seventh Year of the Republic of India as follows:-

1. Short title, extent and commencement

(1)This Act may be called the Jammu and Kashmir Habitual Offenders (Control and Reform) Act, 1956.(2)It shall extend to the whole of the Jammu and Kashmir State.(3)It shall come into force on 1st April, 1956.

2. Definitions

"Code" means the Code of Criminal Procedure (Act XXIII of 1989);(2)"Habitual offender" means a person -(a)who, during any continuous period of five years, whether before or after the commencement of this Act, has been convicted and sentenced to imprisonment more than twice on account of any one or more of the offences mentioned in the Schedule to this Act committed on different occasions and not constituting parts of same transaction; and(b)who has, as a result of such convictions, suffered imprisonments at least for a total period of twelve months.Explanation. - (1) A conviction which has been set aside in appeal or revision and any imprisonment suffered in connection there with shall not be taken into account for the above purpose.Explanation. - (2) In computing the period of five years, any periods spent in jail either under a sentence of imprisonment or under detention shall not be taken into account;(3)"Registered person" means a person registered under this Act, as a habitual offender;(4)"Prescribed" means prescribed by rules

made under this Act;(5)Words and expressions used but not defined in this Act shall have the meanings assigned to them in the Code.

3. Registration of habitual offenders

The Government may direct the District Magistrate to make or cause to be made a register of habitual offenders within his district.

4. Restriction on registration

No person shall be registered under this Act if more than six months have elapsed since the expiration of the sentence of imprisonment relating to his last conviction.

5. Procedure in making register

Upon receiving a direction under section 3, the District Magistrate shall publish a notice in the prescribed manner calling upon habitual offenders-(i)To appear at a time and place specified therein before the person appointed by him in this behalf,(ii)to give to that person such information as may be necessary to enable him to complete the register, and cause a register of habitual offenders to be prepared:Provided that before entering the name of any person in such register the District Magistrate or a Magistrate not below the rank of second class (Magistrate) appointed by him in this behalf shall give him a reasonable opportunity to show cause why such entry should not be made.

6. Charge of register

The register, when made, shall be placed in the keeping of the Superintendent of Police of the District, who may, from time to time, report to the District Magistrate such alterations as ought in his opinion to be made therein by way of addition or erasure.

7. Alterations in register

(1)After the register has been placed in the keeping of the Superintendent of Police and subject to the provisions of section 8, no person's name shall be added to the register, and no registration shall be cancelled except by, or under an order in writing of, the District Magistrate.(2)Before the name of any person is added to the register under this section, the District Magistrate shall give notice in the prescribed manner to the person concerned-(a)to appear before him or any authority appointed by him in this behalf at a time and place therein specified;(b)to give to him or such authority such information as may be necessary to enable the entry to be made: Provided that before adding the name of any person to such register, the District Magistrate or a person not below the rank of a Second Class Magistrate appointed by him in this behalf shall give him a reasonable opportunity to show cause why such addition should not be made.

8. Complaints of entry in register

Any person aggrieved by any entry made, or proposed to be made, in such register, either when the register is first made or subsequently, may represent to the Commissioner of the Province against such an entry, who shall retain such person's name on the register, or enter it therein or erase it therefrom as he may think fit: Provided that the Government shall be competent, either on its own motion, or on an application made in this behalf by the aggrieved person to confirm, alter or rescind any order passed by the Commissioner.

9. Power to take finger impressions, photographs and foot-prints at any time

The District Magistrate or any officer appointed by him in this behalf may at any time order the finger impressions, photographs and foot-prints of any registered person to be taken.

10. Registered persons to report themselves or notify their place of residence

(1) The District Magistrate may, in respect of any registered person, give either one, or both, of the following directions, namely that every such person shall in the prescribed manner—(a) Report himself at fixed intervals, and (b) Notify his place of residence and any change or intended change of residence, and any absence or intended absence from his residence: Provided that no such order shall be made for a term exceeding three years, nor shall it be made unless the necessity for making it has been established to the satisfaction of the District Magistrate, after an enquiry held by such authority and in such manner as may be prescribed. (2) Where a registered person in respect of whom the District Magistrate has issued a direction under sub-section (1) changes his place of residence to a district other than that in which he has been registered, the provisions of this Act shall apply to him as if he had been registered in that district in pursuance of a direction made under section 3. (3) Where any such registered person changes his place of the residence to a district other than that in which he has been registered, the relevant entry in the register shall be transferred to the Superintendent of Police of that District.

11. Power to restrict movements of or settle registered persons

(1) If the Government considers that it is expedient that any registered person should be—(a) Restricted to any specified area, or (b) Settled in any place of residence, the Government may, by notification in the Government Gazette, declare that such person shall be restricted to the area specified in the notification or shall be settled in the place of residence so specified, as the case may be: Provided that no such declaration shall have effect for a period in excess of three years. (2) Before making any such declaration, the Government shall consider the following matters in an inquiry held by such authority and in such manner as may be prescribed:—(i) The nature and the circumstances of the offences in which the registered person is believed to have been concerned; (ii) Whether the registered person follows any lawful occupation, and whether such occupation is a real occupation or merely a pretence for the purpose of facilitating the commission of crimes; (iii) The suitability of the restricted area or of the place of residence, as the case may be,

which it is proposed to specify in the notification;(iv)the manner in which it is proposed that the person to be restricted or settled shall earn his livelihood within the restricted area or in the place of residence, and the adequacy of the arrangements which are proposed therefor.

12. Power to vary specified area or place of residence

The Government may, by a like notification, vary the terms of notification issued by it under section 11 for the purposes of specifying another restricted area or another place of residence, as the case may be, and any officer empowered in this behalf by Government may, by order in writing, vary any notification made under section 11 or under this section for the purposes of specifying another restricted area, or, as the case may be, another place of residence in the same district.

13. Verification of presence of registered person within prescribed areas or place of residence

Every registered person whose movements have been restricted or who has been settled in a place of residence under the provisions of this Act shall attend at such place and at such time and before such person as may be directed in this behalf.

14. Power to place registered persons in settlements

(1)The Government may establish industrial, agricultural or reformatory settlements and schools and may order to be placed in such settlement or school any registered person:Provided that no such order shall be made unless the necessity for making it has been established to the satisfaction of the Government after an enquiry held by such authority and in such manner as may be prescribed.(2)No order under sub-section (1) shall be for a term exceeding five years.

15. Power to discharge or transfer persons from settlements or schools

The Government or any officer authorised by it in this behalf may, at any time, by general or special order, direct any person who may be in any industrial, agricultural, or reformatory settlement or school in the State.-(a)To be discharged, or(b)To be transferred to some other settlement or school in the State.

16. Power to make rules

(1)The Government may make rules to carry out the purposes and objects of this Act.(2)In particular and without prejudice to the generality of the foregoing power such rules may provide for or regulate-(a)The form and contents of the register referred to in section 3;(b)the manner in which the notice referred to in section 5 shall be published and the means by which the persons whom it concerns, and the village headman, village watchman and landowners and occupiers of the village in which such persons reside, and the agents of such landowners or occupiers, shall be informed of its publication;(c)The addition of names to the register and the erasure of names therein, and the mode

in which the notice referred to in sub-section (2) of section 7 shall be given;(d)the manner in which persons mentioned in section 10 shall report themselves, or notify their residence or any change or intended change of residence, or any absence or intended absence;(e)the nature of the restrictions to be observed by persons whose movements have been restricted by notifications under section 11 or section 12;(f)the circumstances in which registered persons shall be required to possess and produce, for inspection, certificates of identity and the manner in which such certificates shall be granted;(g)the conditions as to passes under which persons may be permitted to leave the place in which they are settled or restricted;(h)the conditions to be inserted in any such pass in regard to-(i)the places where the holders of the pass may go or reside;(ii)the persons before whom, from time to time, he shall be bound to report himself; and(iii)the time during which he may absent himself;(i)the place and time at which, and the person before whom, registered persons shall report in accordance with the provisions of section 13;(j)the authority by whom and the manner in which the inquiry referred to in section 14 shall be held;(k)the inspection of the residences and villages of any registered person;(l)the terms upon which registered persons may be discharged from the operation of this Act;(m)the management, control and supervision of industrial, agricultural or reformatory settlements and schools;(n)the works, on which, and the hours during which, persons placed in an industrial, agricultural or reformatory settlement shall be employed, the rate at which they shall be paid, and the disposal, for the benefit of such persons, of the surplus proceeds of their labour; and(o)the discipline to which persons endeavouring to escape from any industrial, agricultural, reformatory settlement or school, or Otherwise offending against the rules for the time being in force shall be subject, the periodical visiting of such settlement or school and the removal from it of such persons as are considered expedient to be removed.

17. Penalties for failure to comply with terms of notice under section 5 or 7

Whoever without lawful excuse, the burden of proving which shall lie upon him.-(a)fails to appear in compliance with a notice issued under section 5 or section 7, or(b)intentionally omits to furnish any information required under either of those sections, or(c)when required to furnish information under either of those sections, furnishes as true any information which he knows or has reasons to believe to be false, or(d)refuses to allow his finger impressions, photographs and foot-prints to be taken by any person acting under an order passed under section 9,may be arrested without warrant, and shall, on conviction, be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to two hundred rupees, or with both.

18. Penalties for breach of rules

(1)Any registered person who contravenes any rule, notice, direction or order made under this Act, the breach of which is not otherwise provided for, shall be punishable with imprisonment for a term which may extend,-(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.(2)Any person who commits an offence made punishable by this section which is not a cognizable 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.

19. Arrest of registered persons beyond prescribed limits

(1) If a registered person is found outside the area or place of residence to which his movements have been restricted or in which he has been settled, in contravention of the conditions, under which he is permitted to leave such area, or who escapes from an industrial, agricultural or reformatory settlement or school in which he has been placed may be arrested without warrant by any police officer, village headman or village watchman, and shall be taken before a Magistrate, within 24 hours of such arrest, and the Magistrate, on proof of the facts, shall order him to be removed to such area or place or to such settlement or school, 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 or under any other provisions of this Act: Provided that an order from the Government or from the Inspector General of Prisons shall not be necessary for the removal of such persons.

20. Duties to report arrival and departure

Any person, authorised or appointed in this behalf, shall forthwith report to the officer-in-charge of the nearest police station the arrival or departure of—(a) a person who has failed to give information in answer to a notice under section 5 of this Act, (b) a registered person under this Act.

21. Penalty for breach of such duties

Any person who fails to comply with the requirements of section 20 shall be deemed to have committed an offence punishable under the first part of section 176 of the Ranbir Penal Code (Act XII of 1989).

22. Repeal and saving

(1) The Jammu and Kashmir Criminal Tribes Act, 1976 (II of 1976) is hereby repealed. (2) Notwithstanding such repeal, every person who stood registered under that Act at the commencement of this Act and who is habitual offender as defined in sub-section (2) of section 2 of this Act shall be deemed to be a registered person under this Act; provided that more than six months have not elapsed since the expiration of the sentence of imprisonment relating to his last conviction at the time of the commencement of this Act. (3) With respect to such persons as are referred to in the next preceding sub-section, all orders passed under sections 10, 12 and 16 of the Criminal Tribes Act (Act II of 1976) shall be deemed to have been passed under sections 10, 11 and 14 of this Act, respectively.

23. Bar of Jurisdiction of Courts in questions relating to certain notifications

No Court shall question the competence of any authority making or issuing any notification, order or direction, under this Act.

24. Saving of certain orders

(1) Nothing in this Act shall empower any authority to pass an order under section 10 or section 11 of this Act in respect of a person against whom an order under section 565 of the Code is in force. (2) No Court shall be competent to pass an order under section 565 of the Code in regard to a person against whom any order under this Act is in force.

25. Saving of existing rules

The rules framed under the Criminal Tribes Act, 1976 (II of 1976), shall continue in force in so far as they are not inconsistent with the provisions of this Act, and shall so remain in force until they are replaced by rules framed under this Act.

(1) All offences mentioned in Chapter XII of the Ranbir Penal Code (Act XII of 1989). (2) All offences punishable under the following sections of the Ranbir Penal Code (Act XII of 1989):- ' 302, 303, 304, 307, 326, 327, 328, 329, 363, 364, 365, 366, 366-A, 366-B, 367, 368, 369, 376, 377, 379, 380, 381, 382, 384, 385, 386, 387, 392, 393, 394, 395, 396, 397, 398, 399, 400, 402, 409, 411, 412, 413, 414, 420, 449, 450, 454, 455, 456, 457, 458, 459 and 460. (3) An offence under section 3 of the Public Gambling Act, 1977 (XVIII of 1977). (4) Any offence under Essential Supplies (Temporary Powers) Ordinance (Ordinance No. 1 of 2003) and orders issued thereunder.