

The Egress and Internal Movement (Control) Ordinance, 2005

JAMMU & KASHMIR

India

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Act 5 of 2005

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The Egress and Internal Movement (Control) Ordinance, 2005 Ordinance No. 5 of 2005 [Promulgated by His Highness under section 5 of the Jammu and Kashmir Constitution Act, 1996 and published in Government Gazette dated 9th Poh, 2005 and 12th Magh, 2005 (Extraordinary).] An Ordinance to control egress from or movement within the State of persons for the time being in the State. Preamble. - Whereas an emergency has arisen which makes it necessary to control egress from or movement within the State of persons for the time being in the State ; Now, therefore, in exercise of the powers reserved under section 5 of the Jammu and Kashmir Constitution Act, 1996, His Highness has been pleased to make and promulgate the following Ordinance

1. Short title, extent and commencement.

(1) This Ordinance may be called the Egress and Internal Movement (Control) Ordinance, 2005. (2) It extends to the whole of the State. (3) It shall come into force at once.

2. Control of egress from or movement within the State.

- The Government may, by notifying in the Government Gazette, order that any person for the time being in the State or any class of such persons shall not proceed to a destination outside the State or more within the State from one place to another, except under the authority of a written permit granted in such form and manner and by such authority or person as may be specified in the order.

3. [Penalty for contravention of order under section 2. [Substitution for section 3 and 3-A by Act XXIV of 1967.]

- Whoever contravenes the provisions of any order made under section 2, shall be punishable with imprisonment for a term which in the absence of special reasons to be record in writing by the Court, shall not be less than one year but may extend to two years and shall also be liable to fine.

3A. Penalty for possessing arms and explosive.

- Whoever contravenes the provision of any order made under section 2 and is found to be in possession of arms, explosives or any equipment capable of being used for espionage or sabotage, he shall be punishable with imprisonment for a term which, in the absence of special reasons to be recorded in writing by the Court, shall not be less than five years but may extend to seven years and shall also be liable to fine.

3B. Aiding the offender.

- Whoever, knowing any person to be an offender under this Ordinance, -(a) offers any support or maintenance to such offender with the intention of facilitating the pursuit of any unlawful object by him ;(b) harbours or conceals such offender with the intention of screening him from legal punishment; or (c) fails without any reasonable excuse, burden of proving which shall lie upon the person so knowing, forth-with to give information to the nearest Magistrate or Police Officer of such offender; Shall be liable to be proceeded against, tried and punished as a principal offender.

3C. Offences non-bailable.

- Notwithstanding anything contained in the Code of Criminal Procedure, 1989, any offence punishable under sections 3, 3-A or 3-B shall be non-bailable.]

4. Abetment by pilot.

- The pilot of any air-craft by means of which any person leaves the State in contravention of any order made under section 2 shall, unless he proves that he exercised all diligence to prevent the said contravention, be deemed to have abetted the contravention.

5. Power of arrest.

(1) Any officer of police, not below the rank of a Sub-inspector, any officer of the Customs Department and any other officer of the Government empowered by a general or special order of the Government on this behalf, may arrest without warrant any person who has contravened or against whom a reasonable suspicion exists that he has contravened the provisions of order made under section 2. (2) Every officer making an arrest under this section shall, without unnecessary delay, take or send the person arrested before a Magistrate [x x x] [Words 'having Jurisdiction in the case' omitted by Act XL of 1966.] or to the officer-in-charge of the nearest police station and the provisions of section 61 of the Code of Criminal Procedure, 1989, shall apply in the case of any such arrest.

6. Power to prevent departure.

(1) Where any Police Officer, not below the rank of Inspector, or any other public servant authorised by a general or special order of the Government in this behalf, has reason to suspect that any person who is about to depart from the State is attempting so to depart for purposes prejudicial to the public safety or to the defence of the State, he may, notwithstanding the fact that such departure does not contravene any order made under section 2, prevent the departure of that person. (2) Any Police Officer or other public servant who prevents the departure of any person under sub-section (1) shall forthwith report the fact of such prevention to the District Magistrate and the District Magistrate may, if he thinks fit, by order, take such action so as to prevent his leaving the State so long as the order under section 2 is in force.

7. Protection.

- 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 Ordinance or an order made under it.

8. [Appointment and jurisdiction of Special Judges. [Section 9 to 20 substituted for section 8 and section renumbered as section 21 by Act No. XXIV of 1967, Section 8 and 9 were inserted by Ordinance X of 2007.]

(1) For the trial of offences punishable under section 3-A or section 3-B read with section 3-A, the Government may appoint as Special Judges having jurisdiction throughout the State, such persons who have for a period of not less than one year exercised the powers of a Sessions Judge under the Code of Criminal Procedure, 1989, or who have, for a period of not less than four years, exercised enhanced powers of [Judicial Magistrate] of the first class under section 30 of the said Code or who have, for a period of not less than ten years, practised at the Bar. (2) A Special Judge shall try any offence punishable under section 3-A or section 3-B read with section 3-A which the Government, by general or special order in writing, directs to be tried by him and may hold his sittings for the trial of any case in any place fixed by the Government.

9. Transfer of cases from one Special Judge to another.

(1) The Government may, at any stage of the proceedings before a Special Judge, transfer the case to another Special Judge. (2) Notwithstanding anything contained in the Code of Criminal Procedure, 1989, when a case is transferred under sub-section (1), the Special Judge to whom the case is transferred shall not be bound to resubmit or re-hear the witnesses or any of them unless he is satisfied that such a course is necessary in the interests of justice!

10. Procedure of Special Judges.

(1) A Special Judge may take cognizance of an offence without the accused being committed to this Court for trial, and, in trying accused persons, shall follow the procedure prescribed by, the Code of

Criminal Procedure, 1989, for the trial of warrant cases by [Judicial Magistrate] [Substituted by Act XX of 1968.]: Provided that a Special Judge shall ordinarily record a memorandum only of the substance of the evidence of each witness examined, may refuse to summon any witness if satisfied after examination of the accused that the evidence of such witness will not be material and shall not be bound to adjourn any trial for any purpose unless such adjournment is in his opinion necessary in the interest of justice. (2) In matters not coming within the scope of sub-section (1) the provision of the Code of Criminal Procedure 1989, so far as they are not inconsistent with this Ordinance, shall apply to the proceedings of a Special Judge; and for the purposes of the said provisions the court of the Special Judge; and for the purposes of the said provisions the court of the Special Judge shall be deemed to be a court of Sessions.

11. Sentences by Special Judges.

- A Special Judge may pass any sentence authorised by law.

12. Review of convictions.

(1) If, in any proceeding, the Special Judge certifies that in his opinion the case has involved questions of special difficulty, whether of law or fact or is one, which for any other reason ought properly to be reviewed, or when the person convicted by the Special Judge under section 3-A or section 3-B read with section 3-A so demands, the proceeding shall be submitted for review by a person chosen by the Government from the Judges of the High Court and the decision of that person shall be final. (2) Where any proceedings are so submitted for review the Judge reviewing the proceedings may exercise in his discretion any of the powers exercisable under section 439 of the Code of Criminal Procedure, 1989, by the High Court in the case of any proceedings which the section 439 refers: Provided that where in the exercise of these powers the Judge reviewing the proceedings directs a retrial of the accused, or directs further evidence to be taken, the reviewing Judge may direct the retrial to be held or further evidence to be taken by the Special Judge by whom the case was tried in the first instance or by any other Special Judge, or by a Special Judge to be appointed for the purpose by the Government. (3) The person appointed under sub-section (1) to review the proceedings of a Special Judge may call for and examine the record of any proceedings before the Special Judge for the purpose of satisfying himself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed and as to the regularity of any proceedings of the Special Judge, and may exercise in the case of proceedings the record of which has been so called for any of the powers which would have been exercisable by him in the case of such proceedings had they been submitted to him for review under sub-section (1).

13. Hearing of proceedings in camera.

- If, as respects any proceedings before a Special Judge or before a judge reviewing under section 12 of the proceedings of a Special Judge, the Special Judge or reviewing Judge, as the case may be, is satisfied that it is expedient in the interests of the public safety or the security of the State so to do, such Judge may give directions, that throughout or during any part of the proceedings such person or class of persons as the Judge may determine shall be excluded.

14. Limitation on appearance of legal practitioners.

(1) In any proceedings before the Special Judge and in proceeding before a Judge reviewing under section 12 the proceedings of a Special Judge when the Special Judge or the reviewing Judge permission in this behalf, a person accused of an offence triable under section 3-A or section 3-B read with section 3-A may be defended by a legal practitioner. (2) A Special Judge, or a Judge reviewing under section 12 the proceedings of a Special Judge, may appoint a legal practitioner at any stage of the proceedings for a person accused of an offence triable under section 3-A or section 3-B read with section 3-A who has himself engaged a legal practitioner. (3) A Special Judge shall not be required to grant an adjournment for the purpose of securing the attendance of a legal practitioner, if in the opinion of the Special Judge such adjournment would cause unreasonable delay in the disposal of the case.

15. Special rule of evidence.

- Notwithstanding anything contained in the Evidence Act, 1977, when the statement of any person has been recorded by a [Judge Magistrate] [Substituted by Act XX of 1968.] such statement may be admitted in evidence in any trial before a Special Judge, if such person is dead or cannot be found or is incapable of giving evidence.

16. Special rule of procedure.

(1) When any accused, in a trial before a Special Judge, has by his voluntary act rendered himself incapable of appearing before the Court, or resists his production before it or behaves before it in a persistently disorderly manner, the Court may, at any stage of the trial, by order in writing, made after such enquiry as it may think fit, dispense with the attendance of such accused for such period as it may think fit, and proceed with the trial in his absence. (2) Where a plea is required in answer to a charge from an accused whose attendance has been dispensed with under sub-section (1) such accused shall be deemed not to plead guilty. (3) An order under sub-section (1) dispensing with the attendance of an accused shall not affect his right of being represented by a legal practitioner at any stage of the trial, or being present in person if he has become capable of appearing, or appears in Court and undertakes to behave in an orderly manner. (4) Notwithstanding anything contained in the Code of Criminal Procedure, 1989, no finding, sentence or order passed in a trial before a Special Judge shall be held to be illegal by reason of any omission or irregularity whatsoever arising from the absence of any or all of the accused whose attendance has been dispensed with under sub-section (1).

17. Exclusion of interference of other Courts.

- Notwithstanding the provisions of the Code of Criminal Procedure, 1989, or of any other law for the time being in force, or of anything having the force of law by whatsoever authority made or done, there shall be no appeal from any order or sentence made or passed by a Special Judge or reviewing Judge under section 3-A or section 3-B read with section 3-A of this Ordinance and save as provided

in this Ordinance, no Court shall have authority to revise such order or sentence or to transfer any case from the Court of a Special Judge or to make any order section 491 of the Code of Criminal Procedure, 1989 or have any jurisdiction of any kind in respect of any proceedings under aforesaid section of this Ordinance.

18. Accused only entitled to Copy of record.

(1)Notwithstanding the provisions of the Code of Criminal Procedure, 1989. or of any other law for the time being in force, or of anything having the force of law by whatsoever authority made or done, no person, other than the accused or his legal practitioner, shall be entitled to be furnished with a copy of any part of the records of, or of any document relating to. any proceedings under section 3-A or section 3-B read with section 3-A of this Ordinance.(2)Any such copy furnished to the accused or his legal practitioner shall be kept by the person whom it was furnished in his personal custody, and it shall be an offence punishable under section 20 for that person to show it to any person other than his legal practitioner or his client, as the case may be, or to divulge its contents except in the course on the proceeding for the purpose of which it was obtained.(3)Any such copy shall be returned to the authority from whom it was obtained within ten days of the conclusion of the proceedings for the purpose of which it was furnished and any failure so to do shall be punishable with the punishment provided for an offence under section 20.

19. Application of ordinary law.

(1)The provisions of the Code of Criminal Procedure, 1989, and of any other law for the time being in force in so far as they may be applicable and in so far as they are not inconsistent with the provisions of this Ordinance shall apply to all matters connected with, arising from or consequent upon, a trial under this Ordinance.

20. Disclosure of information relating to proceedings.

- Any person who, without the previous authorisation of the Government, discloses or publishes any information with respect to any proceedings or with respect to any person proceeded against under section 3-A or section 3-B read with section 3-A of this Ordinance, shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both.

21. Power of removal.

- Without prejudice to the provision contained in section 5, the Government may, by general or special order, direct the removal from the Indian side of the cease-fire Line to the other side of the said Line of any person who has committed, or against who a reasonable suspicion exists that he has committed, an offence under this Ordinance, and the thereupon any officer of Government shall have all reasonable powers necessary to enforce such direction.]