

THE PUDUCHERRY PREVENTION OF ANTI-SOCIAL ACTIVITIES ACT, 2008(Act No. 10 of 2010)

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THE PUDUCHERRY PREVENTION OF ANTI-SOCIAL ACTIVITIES ACT, 2008

(Act No. 10 of 2010)

(5-12-2010)

An
Act

to provide for preventive detention of boot-leggers, dangerous persons, forest offenders, gamblers, goondas and property grabbers for prevention of their anti-social and dangerous activities prejudicial to the maintenance of public order.

BE it enacted by the Legislative Assembly of Puducherry in the Sixtieth Year of the Republic of India as follows:-

Short title, extent and commencement

1. (1) This Act may be called the Puducherry Prevention of Anti-social Activities Act, 2008
- (2) It extends to the whole of the Union territory of Puducherry.
- (3) It shall come into force at once.

Definitions

2. In this Act, unless the context otherwise requires,-

(a) “anti- social activities” means the activities of a boot-legger, a dangerous person, a forest offender, a gambler, a goonda or a property grabber which affect adversely or, are likely to affect adversely the maintenance of public order.

Explanation.- For the purpose of this clause 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 the persons referred to in this clause, directly or indirectly, is causing or calculated to cause any harm, danger or alarm or a feeling of insecurity, among the general public or any section thereof or a grave or widespread danger to life or public health;

(b) “boot-legger” means a person, who distils, manufactures, stores, transports, imports, exports, sells or distributes any liquor or other intoxicant in contravention of any of the provisions of the Puducherry Excise Act, 1970(Act No12 of 1970) and the rules, notifications and orders made thereunder, or in contravention of any other law for the time being in force, or who knowingly expends or applies any money or supplies any animal, vehicles, vessel or other conveyance or any receptacle or any other material whatsoever in furtherance or support of the doing of any of the above-mentioned things by or through any other person, or who abets in any other manner the doing of any such thing;

(c) “dangerous person” means a person, who either by himself or as a member of or leader of a gang, habitually commits or attempts to commit or abets, the commission of offences, punishable under Chapter-XVI or Chapter-XVII or Chapter-XXII of the Indian Penal Code (Central Act 45 of 1860) and includes a person who is hired to commit or abet or attempt to commit any such offences;

(d) “detention order” means an order made under section3;

(e) “detenu” means a person detained under a detention order;

(f) “forest offender” means a person, who commits or attempts to commit or abets the commission of offences, punishable under Chapter-VII of the Indian Forest Act, 1927 (Central Act 16 of 1927) or under Chapter-VI of the Wild Life (Protection) Act,1972 (Central Act 53 of 1972);

(g) “gambler” means one who indulges in gambling or unauthorized practice of gambling such as illegal lotteries or speculations or the ones who connive in gambling by providing facilities/premises for such gambling;

(h) “goonda” means one who by force, either alone or a part of a gang extorts money or attempts to or connives in extortion of money, without any cause including the ones who collect goonda tax and will include persons indulging in eve-teasing;

(i) “Government” means the Administrator of the Union territory of Puducherry appointed by the President under article 239 of the Constitution;

(j) “property grabber” means a person, who illegally takes possession of any immovable property (whether belonging to Government, local authority or any other person) or enters into, or creates illegal tenancies or lease or agreements or any other agreement in respect of such property; or who constructs unauthorized structures on such property for sale or hire, or gives such property to any person on rental or lease or license basis for construction or use and occupation of unauthorized structures or who knowingly gives financial aid to any person for taking illegal possession of such property, or for construction of unauthorized structures, or who collects or attempts to collect from any occupier of such property, rent, compensation or other charges by criminal intimidation or who evicts or attempts to evict any such occupier by force without resorting to the lawful procedure; or who abets in any manner the doing of any of the above-mentioned things;

(k) “unauthorized structure” means any structure constructed without express permission in writing of the officer or authority having jurisdiction in such area required under the Puducherry Town and Country Planning Act, 1969 (Act No 13 of 1970), the Puducherry Municipalities Act, 1973 (Act No.9 of 1973) and the Puducherry Village and Commune Panchayats Act, 1973 (Act No.10 of 1973) or except in accordance with any other law for the time being in force in such area.

Power to make orders detaining certain persons.

3. (1) The Government may, if satisfied with respect to any person that with a view to preventing him from engaging in or making preparations for engaging in any anti-social activity, 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, the Government is satisfied that it is necessary so to do, it may, by an order in writing, direct that the District Magistrate (hereinafter referred to as the authorized officer in this Act) 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 authorized officer, 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.

(4) When any order is made by the Government under sub-section (1) or by the authorized officer under sub-section (2) the Government shall within seven days, report the fact to the Central Government together with the grounds on which the order has been made and such other particulars as, in the opinion of the Government, have a bearing on the necessity for the order:

Provided that the Central Government may, after due consideration of the order made either under sub-section (1) or sub-section (2) and for reasons to be recorded in writing, modify or revoke any order made by the Government or the authorized officer, as the case may be and the said order shall thereafter have effect only in such modified form or be of no effect:

Provided further that any such modification or revocation shall be without prejudice to the validity of anything previously done in pursuance of such order.

Execution of detention orders

4. A detention order may be executed at any place in the Union territory of Puducherry in the manner provided for the execution of warrant of arrest under the Code of Criminal Procedure, 1973. (Central Act 2 of 1974)

Power to regulate place and conditions of detention

5. 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 Union territory of Puducherry by order of the Government.

Grounds of detention severable

6. Where a person has been detained in pursuance of an order of detention under section 3 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.

Detention orders not to be invalid or inoperative on certain grounds

7. No detention order shall be invalid or inoperative merely by reason-

(a) that the person to be detained thereunder, though within the Union territory of Puducherry, is outside the territorial jurisdiction of the authorized officer making the order, or

(b) that the place of detention of such person though within the Union territory of Puducherry, is outside the said limits.

Powers in relation to absconding persons

8. (1) If the Government or any authorized 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, then the provisions of section 82 to 86 (both inclusive) of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974), 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 Government, an officer, not below the rank of a District Magistrate authorized by the Government in this behalf, or where the detention order is made by an authorized officer, the authorized officer, as the case may be, shall, irrespective of his ordinary jurisdiction, be deemed to be empowered to exercise all 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 Union territory of Puducherry 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 Government or an authorized 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, the 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 cognisable.

Grounds of order of detention to be disclosed to detenu

9. (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 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.

Constitution of Advisory Boards

10. (1) The 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 who is or has been a Judge of a High Court and two other members who are or have been District Judges qualified under the Constitution to be appointed as Judges of a High Court.

Reference to Advisory Board

11. 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 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.

Procedure of Advisory Board

12. (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 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 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 thereof 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 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.

Action upon report of Advisory Board

13. (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 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 Government shall revoke the detention order and cause the detenu to be released forthwith.

Maximum period of detention

14. 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.

Revocation of detention orders

15. (1) Without prejudice to the provisions of section 21 of the General Clauses Act, 1897 (Central Act 10 of 1897), a detention order may, at any time for reasons to be recorded in writing, be revoked or modified by the Government, notwithstanding that the order has been made by an authorized 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 subsequent detention order) under section 3 against the same person:

(3) 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.

Temporary release of persons detained

16. (1) The 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 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 (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 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 fulfill 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.

Protection of action taken in good faith

17. No suit, prosecution, or other legal proceeding shall lie against the Government or any officer or persons, for anything in good faith done or intended to be done in pursuance of this Act.

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

18. On and after the commencement of this Act, no order of detention under the National Security Act, 1980 (Central Act 65 of 1980) shall be made by the Government or any officer subordinate to it, in respect of any boot-legger, dangerous person, forest offender, gambler, goonda or property grabber in the Union territory of Puducherry 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.

STATEMENT OF OBJECTS AND REASONS FOR ACT NO. 10 OF 2010

The Preventive detention laws enforced in the Union territory at present are the National Security Act, 1980, the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 and the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980. These enactments are not sufficient and effective to control anti-social activities of boot-leggers, persons who habitually commit or abet the commission of offences affecting human body and against property and of criminal intimidation, etc., forest offenders, gamblers, goondas, and property grabbers. It is, therefore, proposed to bring about a local legislation to provide for preventive detention of persons indulging in the above kinds of anti-social activities and for the purpose, the term “anti-social activities” is defined to encompass the above activities.

The Bill seeks to achieve the above objects.
