

# The Assam Preventive Detention Act, 1980

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[Received the assent of the President on 19th July, 1980]

Enacted by the President in the Thirty-first Year of the Republic of India

An Act to provide for preventive detention in certain cases and matters connected therewith

In exercise of the Powers conferred by section 3 of the Assam State Legislature (Delegation of Powers) Act.

1980 (38 of 1980) the President is pleased to enact as follows:-

Short title and extent

1.

(1) This Act may be called the Assam Preventive Detention Act, 1980.

(2) It extends to the whole of the State of Assam.

Definitions

2.

In this Act, unless the context otherwise requires,-

(a) "Advisory Board" means the Board constituted under section 9;

(b) "Detention order" means an order made under section 3;

(c) "State" means the State of Assam;

(d) "State Government" means the State Government of Assam.

Power to make orders detaining a certain persons

3.

(1) The State Government or any officer of the State Government not below the rank of a Secretary to the State Government or a District Magistrate may if satisfied with respect to any persons that with a view to preventing him from acting in any manner prejudicial to the security of the State, the maintenance of public order or the maintenance of supplies and service essential to the community, it is necessary so to do, make an order directing that such person be detained:

Provided that no order of detention shall be made under this Sub-section with respect to any person with a view to preventing him from acting in any manner prejudicial to the maintenance of supplies of commodities essential to the community, and for the purposes of the proviso the expression "acting in any manner prejudicial to the maintenance of supplies of commodities essential to the community" shall have the same meaning as in the Explanation to Sub-section (1) of section 3 of the Prevention of Black marketing and Maintenance of Supplies of Essential Commodities Act, 1980. Central Act of 1980.

(2) When any order is made under the preceding Sub-section by any officer mentioned herein, 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:

Provided that where under section 8 the grounds of detention are communicated by the officer making the order after five days but not later than ten days from the date of detention this sub-section shall apply subject to the modification that for the words "twelve days", the words "fifteen days" shall be substituted Central Act 2 of 1974;

Execution of detention order

4 .

A detention order may be executed at any place in India in the manner provided for the execution of warrants of arrest under the Code of Criminal Procedure, 1973. Central Act 2 of 1974.

Powers 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 State Government may, by general or special order, specify; and

(b) To be removed from one place of detention to another place of detention, whether within the State of Assam or in another State, by order of the State Government;

Provided that no order shall be made by the State Government under clause (b) for the removal of a person from the State to another State except with the consent of the Government of that other State.

Detention order not to be invalid or in-operative on certain grounds

6.

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

(a) That the person to be detained thereunder is outside the limits of the territorial jurisdiction of the State Government or the officer making the order, or

(b) That the place of detention of such person is outside the said limits.

Power in relation to absconding persons

7.

(1) If the State Government or the officer making an order under sub-section (1) of section 3 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 State Government or the officer making the order may-

(a) Make a report in writing of the fact to a Judicial Magistrate of the first class having jurisdiction in the place where the said person ordinarily resides, and thereupon the provisions of section 82, 83, 84 and 85 of the Code of Criminal Procedure, 1973, shall apply in respect of the said person and his property as if the order directing that he be detained were a warrant issued by the Magistrate.

(b) 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; and if the said person fails to comply with such direction he shall, 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 reason which rendered compliance

therewith impossible and of his whereabouts, be punishable with imprisonment for a term which may extend to one year, or with fine or with both.

(2) Notwithstanding anything contained in the Central Act Code of Criminal Procedure, 1973, every offence under clause (b) of sub-section (1) shall be cognizable.

Grounds of order of detention to be disclosed to person effected by the order

8.

(1) When a person is detained in pursuance a detention order, the authority making the order shall as soon as may be, but ordinarily not later than five days and in exceptional circumstances and for reasons to be recorded in writing not later than ten 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.

Constitution of Advisory Board

9.

(1) The State Government shall constitute one or more Advisory Boards for the purposes of this Act in accordance with the recommendation of the Chief Justice of the Gauhati High Court.

(2) Every such Board shall consist of a Chairman who shall be a serving Judge of the Gauhati High Court and of not less than two other members who shall be serving or retired Judges of any high Court.

Reference to Advisory Board

10.

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, the grounds on which the order has been made and the representation, if any, made by the person affected by the order, and in case where the order has been made by an officer referred to in sub-section (1) of section 3, also the report by such officer under sub-section (2) of that section.

Procedure of Advisory Board

11.

(1) The Advisory Board shall after considering the materials placed before it and 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 person concerned and if in any particular case, it considers it essential so to do or if the person concerned desires to be heard after hearing him in person, submit its report to the State Government within seven weeks from the date of detention of the person concerned.

(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 person concerned.

(3) When there is a difference of opinion among the members of the Advisory Board, the opinion of the majority of such members shall be deemed to be the opinion of the Board.

(4) 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.

(5) The proceedings of the Advisory Board and the report of the Advisory Board excepting that part of the report in which the opinion of the Advisory Board is specified shall be confidential.

#### Action upon the report of Advisory Board

12.

(1) In any case where the Advisory Board has reported that there is in its opinion sufficient cause for the detention of a person, the State Government may confirm the detention order and continue the detention of the person concerned for such period 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 person to be released forthwith.

#### Maximum period of detention

13.

The maximum period for which any person may be detained in pursuance of any detention order which has been confirmed under section 12 shall be six months from the date of detention but in no case shall exceed the period fixed by law of Parliament, if any:

Provided that nothing contained in this section shall affect the power of the State Government to revoke or modify the detention order at any earlier time.

#### Revocation or modification of detention order

14.

Without prejudice to the provision of section 23 of the Assam General Clauses Act, 1915 a detention order made by any officer may, at any time, be revoked or modified by the State Government.

(2) The revocation or expiry of a detention order shall not bar the making of a fresh detention order under section 3 against the same person in any case where fresh facts have arisen after the date of revocation or expiry on which the State Government or an officer, as the case may be, is satisfied that such an order should be made.

#### Temporary release of persons detained

15.

(1) The State Government may, at any time, 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 person under sub-section 91), 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 person 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 canceling his release, as the case may be.

(4) If any person fails without sufficient cause to surrender himself in the manner specified in sub-section (3), he shall be punishable with imprisonment for a term which may extend to two years, or with fine or with both.

(5) If any person 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

16.

No suit, prosecution or other legal proceedings shall be against the State Government or any officer of the State Government or any other person, for anything in good faith done or intended to be done in pursuance of this Act.

Procedure of Advisory Board

17.

(1) The Assam Preventive Detention Ordinance, 1980, is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under the corresponding provisions of this Act as if this Act had come into force on the 18th day of April, 1980.

N. SANJIVA REDDY,

President.

R.V.S. PERI SASTRI

Secy. to the Govt. of India.