

ACT 026 OF 1971 : MAINTENANCE OF INTERNAL SECURITY ACT, 1971

2 Jul 1971

[Act 26 of 1971]¹

[2nd July, 1971]

[Repealed by Act 27 of 1978]

[2nd July, 1971]

An Act to provide for detention in certain cases for the purpose of maintenance of internal security and matters connected therewith

Be it enacted by Parliament in the Twenty-second Year of the Republic of India as follows:-

¹ Repealed by Act 27 of 1978.

1. Short title and extent.-(1) This Act may be called the Maintenance of Internal Security Act, 1971.

(2) It extends to the whole India [* * *]:¹

[Provided that every person in respect of whom an order of detention made under the Jammu and Kashmir Preventive Detention Act, 1964 (J&K Act XIII of 1964), is in force immediately before the commencement of the ²[Defence and Internal Security of India Act, 1971], shall continue to be governed by the provisions of that Act in respect of such detention as if this Act had not been extended to the State of Jammu Kashmir.]

¹ The words "except the State of Jammu and Kashmir" shall remain omitted and a proviso inserted at the end of the section till the continuation in force of the Defence and Internal Security of India Act, 1971 vide its Section 6(6).

² Inserted by the Defence of India (Amendment) Act, 1975 (32 of 1975), S. 7 (w.e.f. 31-7-1975).

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

(a) "appropriate Government" means, as respects a detention order made by the Central Government or a person detained under such order, the Central Government, and as respects a detention order made by a State Government or by an officer subordinate to a State Government or as respects a person detained under such order, the State Government;

(b) "detention order" means an order made under Section 3;

(c) "foreigner" has the same meaning as in the Foreigners Act, 1946;

[50]

(d) "State Government", in relation to a Union Territory, means the administrator thereof;

¹[(e) any reference in this Act to a law which is not in force in the State of Jammu and Kashmir shall, in relation to that State, be construed as a reference to the corresponding law, if any, in force in that State.]

¹ A new clause (e) shall remain inserted during the continuation in force of the Defence and Internal Security of India Act, 1971, vide its Section 6(6).

3. Power to make orders detaining certain persons.-(1) The Central Government or the State Government may,-

(a) if satisfied with respect of any person (including a foreigner) that with a view to preventing him from acting in any manner prejudicial to-

(i) the defence of India, the relations of India with foreign powers, or the security of India, or

(ii) the security of the State or the maintenance of public order, or

(iii) the maintenance of supplies and services essential to the community, or

(b) if satisfied with respect to any foreigner that with a view to regulating his continued presence in India or with a view to making arrangements for his expulsion from India,

it is necessary so to do, make an order directing that such person be detained.

(2) Any of the following officers, namely-

(a) District Magistrates,

(b) Additional District Magistrates specially empowered in this behalf by the State Government,

(c) Commissioner of Police, for Bombay, Calcutta, Madras or Hyderabad,

¹[may also, if satisfied as provided in sub-section (1)], exercise the power conferred by the said sub-section.

(3) When any order is made under this section by an officer mentioned in sub-section (2), he shall forthwith report the fact to the State Government to which he is subordinate 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 ²[twenty 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 authority making the order after five days but not

later than fifteen days from the date of detention, this sub-section shall apply subject to the modification that for the words ["twenty days"], the words ["twenty-five days"] shall be substituted.

(4) When any order is made or approved by the State Government under this section, the State 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 State Government have a bearing on the necessity for the order.

1 The words in brackets shall remain substituted for the words "may, if satisfied as provided in sub-clauses (ii) and (iii) of clause (a) of sub-section (1) during the continuance in force of the Defence and Internal Security of India Act, 1971, vide its Section 6(6).

2 Substituted by Act 14 of 1976 (w.e.f. 25-6-1975).

4. Execution of detention orders.-A detention order may be executed at any place in India in the manner provided for the execution of warrants of arrest under the ¹[Code of Criminal Procedure, 1973].

1 Substituted by MISA Amendment Act, 1975 (39 of 1975), S. 2 (w.e.f. 29-6-1975).

5. Power to regulate place and conditions of detention.-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 appropriate 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 same State or in another State, by order of the appropriate Government:

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

6. Detention orders not to be invalid or inoperative on certain grounds.- 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 Government or officer making the order, or

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

7. Powers in relation to absconding persons.-(1) If the Central Government or the State Government or an officer specified in sub-section (2) of Section 3, as the case may be, 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, that Government or officer may-

(a) make a report in writing of the fact to a ¹[Metropolitan Magistrate or a Judicial Magistrate of the first class having jurisdiction in the place where the said person ordinarily resides, and thereupon the provisions of Sections 82 to 86 (both inclusive) 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 ²[Code of Criminal Procedure, 1973], every offence under clause (b) of sub-section (1) shall be cognizable.

1 Substituted by MISA Amendment Act, 1975 (39 of 1975), S. 3 (w.e.f. 29-6-1975).

2 Substituted by MISA Amendment Act, 1975 (39 of 1975), S. 3 (w.e.f. 29-6-1975).

8. Grounds of order of detention to be disclosed to persons affected by the order.-

(1) When a person is detained in pursuance of 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 fifteen 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 appropriate 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.

9. Constitution of Advisory Boards.-(1) The Central Government and each State Government shall, whenever necessary, constitute one or more Advisory Boards for the purposes of this Act.

(2) Every such Board shall consist of three persons who are, or have been, or are qualified to be appointed as, Judge of a High Court, and such

persons shall be appointed by the Central Government or the State Government, as the case may be.

(3) The appropriate Government shall appoint one of the members of the Advisory Board who is, or has been, a Judge of a High Court to be its Chairman, and in the case of a Union Territory the appointment to the Advisory Board, of any person who is a Judge of the High Court of a State shall be with the previous approval of the State Government concerned.

10. Reference to Advisory Boards.- Save as otherwise expressly provided in this Act, in every case where a detention order has been made under this Act, the appropriate Government shall, within thirty days from the date of detention under the order, place before the Advisory Board constituted by it under Section 9 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, also the report by such officer under sub-section (3) of Section 3.

11. Procedure of Advisory Boards.-(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 appropriate Government or from any person called for the purpose through the appropriate 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 appropriate Government within ten weeks from the date of detention.

(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 forming 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, and 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.

12. Action upon the report of Advisory Board.-(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 appropriate 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 appropriate Government shall revoke the detention order and cause the person to be released forthwith.

13. Maximum period of detention.- 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 twelve months from the date of detention ¹[or until the expiry of the Defence and Internal Security of India Act, 1971, whichever is later]:

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

¹ It shall remain inserted till the expiry of the Defence and Internal Security of India Act, 1971, vide its S. 6(c).

14. Revocation of detention orders.-(1) Without prejudice to the provisions of Section 21 of the General Clauses Act, 1897 (10 of 1897), a detention order may, at any time, be revoked or modified-

(a) notwithstanding that the order has been made by an officer mentioned in sub-section (2) of Section 3, by the State Government to which that officer is subordinate or by the Central Government;

(b) notwithstanding that the order has been made by the State Government or by the Central Government.

¹[(2) The expiry or revocation of a detention order (hereafter in this sub-section referred to as the earlier detention order) shall not bar the making of another detention order (hereafter in this sub-section referred to as the subsequent detention order) under Section 3 against the same person:

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 or the expiry of the Defence and Internal Security of India Act, 1971 (42 of 1971), whichever is later.]

¹ Substituted by Act 14 of 1976, S. 3 (w.e.f. 29-6-1975).

15. Temporary release of persons detained.-(1) The appropriate 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 (1), the appropriate 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 cancelling his release, as the case may be.

¹[(3-A) If the appropriate Government has reason to believe that any person who has failed to surrender himself in the manner specified in sub-section (3) has absconded or is concealing himself, that Government may make a report in writing of the fact to a Metropolitan Magistrate or a Judicial Magistrate of the first class having jurisdiction in the place where the said person ordinarily resides and thereupon the provisions of Sections 82 to 86 (both inclusive) of the Code of Criminal Procedure, 1973, shall apply in relation to such person as they apply in relation to a person who has absconded or is concealing himself so that a warrant issued by the Magistrate cannot be executed.]

(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 fulfil 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.

²[(6) Notwithstanding anything contained in any other law and save as otherwise provided in this section, no person against whom a detention order made under this Act is in force shall be released whether on bail or bail bond or otherwise.]

1 Inserted by MISA Amendment Act, 1975 (39 of 1975), S. 5 (w.e.f. 29-6-1975).

2 Inserted by MISA Amendment Act, 1975 (39 of 1975), S. 5 (w.e.f. 29-6-1975).

16. Protection of action taken in good faith.- No suit or other legal proceeding shall lie against the Central Government or a State Government, and 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 Act.

¹[**16-A. Special provisions for dealing with emergency.**-(1) Notwithstanding anything contained in this Act or any rules of natural justice, the provisions of this section shall have effect during the period of operation of the Proclamation of Emergency issued under clause (1) of Article 352 of the Constitution on the 3rd day of December, 1971, or the Proclamation of Emergency issued under that clause on the 25th day of June, 1975, or a period of ²[twenty-four months] from the 25th day of June, 1975, whichever period is the shortest.

(2) The case of every person (including a foreigner) against whom an order of detention was made under this Act on or after the 25th day of June, 1975, but before the commencement of this section, shall, unless such person is sooner released from detention, be reviewed within fifteen days from such commencement by the appropriate Government for the purpose

of determining whether the detention of such person under this Act is necessary for dealing effectively with the emergency in respect of which the Proclamations referred to in sub-section (1) have been issued (hereafter in this section referred to as the emergency) and if, on such review, the appropriate Government is satisfied that it is necessary to detain such person for effectively dealing with the emergency, that Government may make a declaration to that effect and communicate a copy of the declaration to the person concerned.

³[(2-A) If the State Government makes a declaration under sub-section (2) that the detention of any person in respect of whom a detention order is made by an officer subordinate to that Government is necessary for dealing effectively with the emergency, the State Government shall be deemed to have approved such detention order and the provisions of sub-section (3) of Section 3, in so far as they relate to the approval of the State Government, and of sub-section (4) of that section, shall not apply to such detention order.]

(3) When making an order of detention under this Act against any person (including a foreigner) after the commencement of this section, the Central Government or the State Government or, as the case may be, the officer making the order of detention shall consider whether the detention of such person under this Act is necessary for dealing effectively with the emergency and if, on such consideration, the Central Government or the State Government or, as the case may be, the officer is satisfied that it is necessary to detain such person for effectively dealing with the emergency, that Government or officer may make a declaration to that effect and communicate a copy of the declaration to the person concerned:

Provided that where such declaration is made by an officer, it shall be reviewed by the State Government to which such officer is subordinate within fifteen days from the date of making of the declaration and such declaration shall cease to have effect unless it is confirmed by the State Government, after such review, within the said period of fifteen days.

(4) The question whether the detention of any person in respect of whom a declaration has been made under sub-section (2) or sub-section (3) continues to be necessary for effectively dealing with the emergency shall be reconsidered by the appropriate Government within four months from the date of such declaration and thereafter at intervals not exceeding four months, and if, on such reconsideration, it appears to the appropriate Government that the detention of the person is no longer necessary for effectively dealing with the emergency, that Government may revoke the declaration.

⁴[(5) In making any review, consideration or reconsideration under sub-section (2), sub-section (3) or sub-section (4), the appropriate Government or officer may act on the basis of the information and materials in its or his possession without communicating or disclosing any such information or materials to the person concerned or affording him any opportunity of making any representation against the making under sub-section (2), or the making or confirming under sub-section (3), or the non-revocation under sub-section (4), of the declaration in respect of him.]

(6) In the case of every person detained under a detention order to which the provisions of sub-section (2) apply, being a person the review of whose case is pending under that sub-section or in respect of whom a declaration has been made under that sub-section,-

(i) Sections 8 to 12 shall not apply; and

(ii) Section 13 shall apply subject to the modification that the words and figures "which has been confirmed under Section 12" shall be *omitted*.

(7) In the case of every person detained under a detention order to which the provisions of sub-section (3) apply, being a person in respect of whom a declaration has been made under that sub-section,-

(i) Section 3 shall apply subject to the modification that for sub-sections (3) and (4) thereof, the following [* * *]⁵ shall be *substituted*, namely:-

"(3) When any order of detention is made by a State Government or by an officer subordinate to it, the State Government shall, within 20 days, ⁶[report the fact to the Central Government.]

⁷[(4) At any time after the receipt of a report under sub-section (3), the Central Government may require the State Government to furnish to the Central Government the grounds on which the order has been made and such other particulars as, in the opinion of the State Government, have a bearing on the necessity for the order.];

(ii) Sections 8 to 12 shall not apply; and

(iii) Section 13 shall apply subject to the modification that the words and figures "which has been confirmed under Section 12" shall be *omitted*.

⁸[(8) In the case of any person in respect of whom a declaration has been made by a State Government under sub-section (2) or a declaration has been made by a State Government or an officer subordinate to it or confirmed by the State Government under sub-section (3), or a declaration has not been revoked by a State Government under sub-section (4), the Central Government may, whenever it considers it necessary so to do,

require the State Government to furnish to the Central Government the information and materials on the basis of which such declaration has been made or confirmed, or not revoked, as the case may be, and such other information and materials as the Central Government may deem necessary.

(9) Notwithstanding anything contained in any other law or any rule having the force of law, -

(a) the grounds on which an order of detention is made or purported to be made under Section 3 against any person in respect of whom a declaration is made under sub-section (2) or sub-section (3) and any information or materials on which such grounds or a declaration under sub-section (2) or a declaration or confirmation under sub-section (3) or the non-revocation under sub-section (4) of a declaration are based, shall be treated as confidential and shall be deemed to refer to matters of a State and to be against the public interest to disclose and save as otherwise provided in this Act, no one shall communicate or disclose any such ground, information or material or any document containing such grounds, information or material;

(b) no person against whom an order of detention is made or purported to be made under Section 3 shall be entitled to the communication or disclosure of any such ground, information or material as is referred to in clause (a) or the production to him of any document containing such ground, information or material.]

1 Inserted by MISA Amendment Act, 1975 (39 of 1975), S. 6.

2 Substituted by Act 78 of 1976 for "twelve months" (w.e.f. 16-6-1976). See also S. 3 of that Act.

3 Inserted by Act 14 of 1976, S. 4 (w.e.f. 29-6-1975).

4 Substituted by Act 14 of 1976, S. 4 (w.e.f. 29-6-1975).

5 Omitted by Act 14 of 1976, S. 4 (w.e.f. 29-6-1975).

6 Substituted by Act 14 of 1976, S. 4 (w.e.f. 29-6-1975).

7 Inserted by Act 14 of 1976, S. 4 (w.e.f. 17-10-1975).

8 Inserted by Act 14 of 1976, S. 4 (w.e.f. 29-6-1975).

17. Duration of detention in certain cases of foreigners.-(1) Notwithstanding anything contained in this Act, any foreigner in respect of whom an order of detention has been made under this Act may be detained without obtaining the opinion of the Advisory Board for a period longer than three months, but not exceeding two years from the date of his detention, in any of the following classes of cases or under any of the following circumstances, namely-

(a) where such foreigner enters or attempts to enter the territory of India or is found therein with arms, ammunition or explosives, or

(b) where such foreigner enters or attempts to enter a notified area or is found therein in contravention of Section 3 of the Criminal Law Amendment Act, 1961, or

(c) where such foreigner enters or attempts to enter the local limits or is found within the local limits of such area adjoining the borders of India as may be specified in an order made under Section 139 of the Border Security Force Act, 1968, without a valid travel document, or

(d) where the Central Government has reason to believe that such foreigner commits or is likely to commit any offence under the Official Secrets Act, 1923.

(2) In the case of any foreigner to whom sub-section (1) applies, Sections 10 to 13 shall have effect subject to the following modifications, namely-

(a) in Section 10, for the words "shall, within thirty days", the words "may, at any time prior to but in no case later than three months before the expiration of two years" shall be *substituted*;

(b) in Section 11,-

(i) in sub-section (1), for the words "from the date of detention", the words "from the date on which reference is made to it" shall be *substituted*;

(ii) in sub-section (2), for the words "the detention of the person concerned" the words "the continued detention of the person concerned" shall be *substituted*;

(c) in Section 12, for the words "for the detention" in both the places where they occur, the words "for the continued detention" shall be *substituted*;

(d) in Section 13, for the words "twelve months" the words "three years" shall be *substituted*.

¹[17-A. Duration of detention in cases of detention on certain grounds.-(1) Notwithstanding anything contained in the foregoing provisions of this Act, during the period of operation of the Proclamation of Emergency issued on the 3rd day of December, 1971, any person (including a foreigner) in respect of whom an order of detention has been made under this Act, may be detained without obtaining the opinion of the Advisory Board for a period longer than three months, but not exceeding two years from the date of his

detention in any of the following classes of cases or under any of the following circumstances, namely-

(a) where such person had been detained with a view to preventing him from acting in any manner prejudicial to the defence of India, relations of India with foreign powers or security of India; or

(b) where such person had been detained with a view to preventing him from acting in any manner prejudicial to the security of the State or the maintenance of public order.

(2) In the case of any person to whom sub-section (1) applies, Sections 10 to 13 shall have effect subject to the following modifications, namely-

(a) in Section 10, for the words "shall, within thirty days", the words "may, at any time prior to but in no case later than three months before the expiration of two years" shall be *substituted*;

(b) In Section 11,-

(i) in sub-section (1), for the words "from the date of detention", the words "from the date on which reference is made to it" shall be *substituted*;

(ii) in sub-section (2), for the words "the detention of the person concerned", the words "the continued detention of the person concerned" shall be *substituted*;

(c) in Section 12, for the words "for the detention" in both the places where they occur, the words "for the continued detention" shall be *substituted*;

(d) In Section 13, for the words "twelve months", the words "three years" shall be *substituted*.]

1 S. 17-A shall remain inserted during the continuation in force of the Defence and Internal Security of India Act, 1971, vide its S. 6(6).

¹[**18. Exclusion of common law or natural law rights, if any.**-No person (including a foreigner) ²[in respect of whom an order is made or purported to be made under Section 3] shall have any right to personal liberty by virtue of natural law or common law, if any.]

1 Inserted by MISA Amendment Act, 1975 (39 of 1975), S. 7 (w.e.f. 25-6-1975).

2 Substituted by Act 14 of 1976, S. 5 (w.e.f. 25-6-1975).

¹[**19. Repeal and saving.**-(1) The Maintenance of Internal Security Ordinance, 1971, 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 7th day of May, 1971.

1 Renumbered by MISA (Amendment) Act, 1975 (39 of 1975), S. 7 (w.e.f. 25-6-1975)