



**The Jammu and Kashmir Prevention of Illicit Traffic In Narcotic Drugs and
Psychotropic Substances Act, 1988**

Act 23 of 1988

Keyword(s):

Detention Order, Foreigner, Illicit Traffic

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**THE JAMMU AND KASHMIR PREVENTION OF ILLICIT
TRAFFIC IN NARCOTIC DRUGS AND PSYCHOTROPIC
SUBSTANCES ACT, 1988.**

(Act No. XXIII of 1988)

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SUBSTANCES ACT, 1988.**

(Act No. XXIII of 1988)

[Received the assent of the Governor on 31st August, 1988 and is hereby published for general information.]

An Act to provide for detention in certain cases for the purpose of preventing illicit traffic in narcotic drugs and psychotropic substances and combating abuse of such drugs and substances and for matters connected therewith.

Whereas illicit traffic in narcotic drugs and psychotropic substances poses a serious threat to the health and welfare of the people and activities of persons engaged in such illicit traffic have deleterious effect on the national economy ;

And whereas having regard to the persons by whom and the manner in which such illicit traffic is organised and carried on, and having regard to the fact that in certain areas which are highly vulnerable to such illicit traffic, such activities of a considerable magnitude are clandestinely organised and carried on, it is necessary for the effective prevention of such activities to provide for detention of persons concerned in any manner therewith.

Be it enacted by the Jammu and Kashmir State Legislature in the Thirty-ninth Year of the Republic of India as follows :--

1. *Short title and extent.*--(1) This Act may be called the Jammu and Kashmir Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988.

(2) It extends to the whole of the State of Jammu and Kashmir.

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

(a) "detention order" means an order made under section 3 :

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

(c) "illicit traffic" means--

- (i) cultivating any coca plant or gathering any portion of coca plant ;
- (ii) cultivating the opium, poppy or any cannabis plant ;
- (iii) engaging in the production, manufacture, possession, sale, purchase, transportation, warehousing, concealment, use or consumption, import inter-State, export inter-State or transshipment, of narcotic drugs or psychotropic substances ;
- (iv) dealing in narcotic drugs or psychotropic substances otherwise than as provided in sub-clauses (i) and (iii) ;
- (v) handling of letting any premises for use for any of the purposes referred to in sub-clauses (i) to (iv) ;
- (vi) financing any activity by himself or through any other person in the furtherance or in support of doing any of the aforesaid acts ;
- (vii) harbouring person engaged in any of the activities specified in sub-clauses (i) to (vi) ; or
- (viii) abetting or conspiring in the furtherance or in support of doing any of the aforesaid acts,

except to the extent permitted under the Narcotic Drugs and Psychotropic Substances Act, 1985, or any rule or order made, or any condition of any licence, permit or authorisation issued thereunder ;

(d) words and expressions used herein but not defined, and defined in the Narcotic Drugs and Psychotropic Substances Act, 1985, have the meanings respectively assigned to them in that Act.

3. *Powers to make orders detaining certain persons.*--(1) The Government or any officer of the Government, not below the rank of the Secretary to Government, specially empowered for the purposes of this section by the Government, may, if satisfied, with respect to any person (including a foreigner) that, with a view to preventing him from committing any of the acts within the meaning of "illicit traffic" as defined in clause (c) of section 2, it is necessary so to do, make an order directing that such person be detained.

(2) For the purpose of clause (5) of Article 22 of the Constitution, the communication to a person detained in pursuance of a detention order of the grounds on which the order has been made shall be made as soon as may be after the detention, 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.

4. *Execution of detention orders.*--A detention order may be executed at any place in the State of Jammu and Kashmir in the manner provided for the execution of warrant of arrest under the Code of Criminal Procedure, Samvat 1989.

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, interviews or communication with others, discipline and punishment for breach 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 State.

6. *Grounds of detention severable.*--Where a person has been detained in pursuance of an order of detention under sub-section (1) of 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 of such grounds 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 officer making such order would have been satisfied as provided in sub-section (1) of section 3 with reference to the remaining ground or grounds and, made the order of detention ;

- (b) the Government or officer making the order of detention shall be deemed to have made the order of detention under the said sub-section (1) after being satisfied as provided in that sub-section with reference to the remaining ground or grounds.

7. *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 territorial jurisdiction of the Government or the officer making the order of detention ; or
- (b) that the place of detention of such person is outside the said limits.

8. *Powers in relation to absconding persons.*--(1) If the Government 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 may--

- (a) make a report in writing of the fact to a Magistrate of the First Class having jurisdiction in the place where the said person ordinarily resides ; and thereupon the provisions of sections 87, 88 and 89 of the Code of Criminal Procedure, Samvat 1989 shall apply in respect of the said person and his property as if the detention order were a warrant issued by the Magistrate ;
- (b) by order notified in the Government 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 reasons 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 Code of Criminal Procedure Samvat 1989, every offence under clause (b) of section (1) shall be cognizable.

9. *Advisory Boards.*—(1) For the purposes of sub-clause (a) of clause (4) and sub-clause (c) of clause (7) of Article 22 of the Constitution---

- (a) the Government shall, whenever necessary, constitute an Advisory Board which shall consist of a Chairman and two other persons possessing the qualifications specified in sub-clause (a) of clause (4) of Article 22 of the Constitution ;
- (b) save as otherwise provided in section 10, the Government shall within five weeks from the date of detention of a person under a detention order, make a reference in respect thereof to the Advisory Board constituted under clause (a) to enable the Advisory Board to make the report under sub-clause (a) of clause (4) of Article 22 of the Constitution ;
- (c) the Advisory Board to which a reference is made under clause (b) shall after considering the reference and the material 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 person concerned, and if, in any particular case, it considers it essential so to do or if the person concerned desires to be heard in person after hearing him in person, prepare its report specifying in a separate paragraph thereof its opinion as to whether or not there is sufficient cause for the detention of the person concerned and submit the same within eleven weeks from the date of detention of the person concerned ;
- (d) 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 ;
- (e) a person against whom an order of detention has been made under this Act shall not be entitled 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, except that part of the report in which the opinion of the Advisory Board is specified, shall be confidential.
- (f) in every case where the Advisory Board has reported that there is in its opinion sufficient cause for the detention of a person, the Government may confirm the detention order and continue the detention of the person concerned for such period as it thinks fit and in every 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 person to be released forthwith.

10. *Cases in which and circumstances under which persons may be detained for periods longer than three months without obtaining the opinion of Advisory Board.*—(1) Notwithstanding anything contained in this Act, any person (including foreigner) in respect of whom an order of detention is made under this Act at any time before the 15th day of August, 1988 may be detained without obtaining in accordance with the provision of sub-clause (a) of clause (1) of Article 22 of the Constitution, the opinion of an Advisory Board for a period longer than three months but not exceeding six months from the date of his detention, where the order of detention has been made against such person with a view to preventing him from engaging in illicit traffic in narcotic drugs and psychotropic substances, the Government or any officer of the Government not below the rank of Secretary to Government, specially empowered for the purpose of this section by the Government, is satisfied that such person engages or is likely to engage in illicit traffic in narcotic drugs and psychotropic substances into, out of or through any area highly vulnerable to such illicit traffic and makes a declaration to that effect within five weeks of the detention of such person.

Explanation.—In this sub-section, “area highly vulnerable to such illicit traffic” means the inland area 100 kilometres in width from the India-Pakistan border in the State of Jammu and Kashmir.

(2) In the case of any person detained under a detention order to which the provisions of sub-section (1) apply, section 9 shall have effect subject to the following modifications, namely :—

- (i) in clause (b), for the words “shall, within five weeks,” the words “shall within four months and two weeks” shall be substituted ;
- (ii) in clause (c),--
 - (a) for the words “detention of the person concerned”, the words “the continued detention of the person concerned” shall be substituted ;
 - (b) for the words “eleven weeks” the words “five months and three weeks” shall be substituted ;
- (iii) in clause (f), for the words “for the detention at both the places where they occur” the words “for the continued detention” shall be substituted.

11. *Maximum period of detention.*--The maximum period for which any person may be detained in pursuance of any detention order to which the provisions of section 10 do not apply and which has been confirmed under clause (f) of section 9, shall be one year from the date of detention, and maximum period for which any person may be detained in pursuance of any detention order to which the provisions of section 10 apply which has been confirmed under clause (f) of section 9, read with sub-section (2) of section 10 shall be a period of two years from the date of detention :

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

12. *Revocation of detention order.*--(1) Without prejudice of section 21 of General Clauses Act, Samvat 1977, a detention order may, at any time, be revoked or modified notwithstanding that the order has been made by an officer of the Government, by Government.

(2) The revocation of a detention order shall not bar the making of another order under section 3 against the same person.

13. *Temporary release of persons detained.*--(1) The Government may, at any time, direct that any person detained in pursuance of a detention order made by the Government or by an officer subordinate to it, may be released for any specified period either without condition or upon such conditions specified in the direction as the person accepts, and may, at any time, cancel his release.

(2) In directing the release of any person under sub-section (1), the Government may require him to enter a bond with 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.

(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.

(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.

14. *Protection of action taken in good faith.*--No suit or other legal proceeding shall lie against the Government and no suit, prosecution or legal proceeding shall lie against any person for anything in good faith done or intended to be done in pursuance of this Act.

15. *Repeal and saving.*--(1) The Jammu and Kashmir Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Ordinance, 1988 (Ordinance No. I of 1988) is hereby repealed.

(2) Notwithstanding such repeal, anything done, any action taken, any order or notification issued, under any of the provisions of law repealed under sub-section (1) shall be deemed to have been done, taken or issued under the corresponding provisions of this Act as if such provisions of this Act were in force on the day such thing was done, action was taken or order or notification was issued.
