

NATIONAL SECURITY ACT, 1980

65 of 1980

[27th December, 1980]

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In the prevailing situation of communal disharmony, social tensions, extremist activities industrial unrest and increasing tendency on the part of various interested parties to engineer agitation on different issues, it was considered necessary that the law and order situation in the country is tackled in a most

determined and effective way. The anti-social and anti-national elements including secessionists, communal and pro-caste elements and also other elements who adversely influence and affect the services essential to the community pose a grave challenge to the lawful authority and sometimes even hold the society to ransom. 2. Considering the complexity and nature of the problems, particularly in respect of defence, security, public order and services essential to the community, it is the considered view of the Government that the administration would be greatly handicapped in dealing effectively with the same in the absence of powers of preventive detention. The National Security Ordinance, 1980, was therefore, promulgated by the President on the 22nd September, 1980. 3. Subject to a modification the Bill seeks to replace the aforesaid ordinance. The modification relates to the composition of Advisory Boards, and is for providing that the Chairman of an Advisory Board shall be a person who is, or has been, a Judge of a High Court and the other members of the Advisory Board may be persons who are, or have been, or are qualified to be appointed as. Judges of a High Court.-S.O.R. Gaz. of Ind., 4-12-1980, Pt. II, S. 2, Ext. p. 1196. Act 24 of 1984.- The activities of the extremist and terrorist elements in the "disturbed areas" of Punjab and Chandigarh have been a matter of serious concern. These persons have been indulging in violent activities and terrorist methods, including threats to persons involved in the investigation and prosecution of cases. To enable the Administration to deal effectively with such elements in these "disturbed areas" and to enable them to take preventive action, the President promulgated on the 5th April, 1984, the National Security (Amendment) Ordinance, 1984 (5 of 1984). 2. The Ordinance amended the National Security Act, 1980 in its application to the State of Punjab and the Union territory of Chandigarh- (a) to increase from ten days to fifteen days the maximum period within which grounds of detention may in exceptional circumstances be communicated to the detainee, (b) to provide in certain cases for detention of persons without obtaining the opinion of the Advisory Board for a period of more than three months but not exceeding six months from the date of their detention and to provide also in such cases for a longer maximum period of detention, and (c) to make the necessary consequential amendments in the Act. 3. The Bill seeks to replace the above Ordinance. Gaz. of Ind., 23-4-1984, Pt. II.S. 2, Ext..p. 4 (No. 24). Act 60 of 1984.- The extraordinary situation which has arisen in some parts of the country has necessitated the review of certain

provisions of the National Security Act, 1980 (65 of 1980). Difficulties had been encountered in implementing the provisions of the Act, especially in areas where conditions are generally disturbed. The State Governments have also been asking for amendments to the Act to remove these difficulties, with a view to streamlining the working of the Act and making it more effective by enabling Government to deal stringently with anti-national, extremist and terrorist elements in the country, as also for enabling the concerned authorities to take preventive action which is required in the prevailing circumstances and larger interests of India, the President promulgated the National Security (Second Amendment) Ordinance, 1984 on the 21st June 1984. 2. The Ordinance amended the National Security Act, 1980- (a) to provide that the different grounds of detention shall be severable from each other so that the detention order is not vitiated simply because some of the grounds are considered vague, non-existent, not relevant, invalid or not connected or not proximately connected with the person detained. Such a provision already exists in the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (52 of 1974); (b) to provide that the expiry or revocation of an earlier detention order shall not bar the making of a subsequent detention order against the same person subject to the condition that, where no fresh facts have arisen after the expiry or revocation of the earlier detention order, the maximum period for which a person may be detained in pursuance of the subsequent detention order shall not exceed the existing limit of the maximum period of detention of twelve months from the date of earlier detention order. In the case of the application of the Act to the State of Punjab and the Union territory of Chandigarh, the said maximum period of detention will be two years. . 3. The Bill seeks to replace the aforesaid Ordinance. Gar. of Ind., 6-8-1984. Pt. II, S. 2, Ext., p. 22 (No. 41) Act 23 of 1985.- The activities of the extremist and terrorist elements in the "disturbed areas" of Punjab and Chandigarh continue to be a matter of serious concern. To enable the Administration to deal effectively with such elements in these "disturbed areas", the National Security Act, 1980 (65 of 1980), in its application to the State of Punjab and the Union territory of Chandigarh was amended in 1984 by the National Security (Amendment) Act, 1984. 2. Section 14A, as inserted by the said amendment Act, specifies the circumstances under which and the classes of cases in which a person may be detained, for a period longer than three months but not exceeding six months from

the date of his detention, without obtaining the opinion of an Advisory Board. The provisions of the section apply at present only in the case of persons detained before the 3rd day of April, 1985, Since the circumstances in which the section was inserted in the Act, by and large, continue to exist, it is considered necessary to amend the section so as to bring within its purview persons who may be detained on or after the 3rd day of April, 1985 but before the 3rd day of April, 1986. 3. The Bill seeks to achieve the above objective. -Gaz. of Ind.. 23-3-1985. Pt. II, S. 2, Ext., p. 2 (No. 14). Act 27 of 1987.- During the last few months the activities of the extremist and terrorist elements in the State of Punjab and the Union territory of Chandigarh have been a matter of serious concern. These elements indulged in violent activities and terrorist methods, including threats to persons involved in the investigation and prosecution of cases. Although the entire State of Punjab and the whole of the Union territory of Chandigarh had been declared as "disturbed areas" under the relevant Disturbed Areas Act, there had been no improvement in the effective prevention of these activities. While the deteriorating law and order situation had necessitated the imposition of the President's rule in the State of Punjab, further strong action was found necessary to prevent the terrorists from indulging in activities prejudicial to the security of the State and the maintenance of public order. The State Government had also requested the taking of suitable measures to enable it to take preventive action. Accordingly, the President promulgated on the 9th June, 1987 the National Security (Amendment) Ordinance, 1987 to provide for certain modifications in the application of the National Security Act, 1980 to the State of Punjab and the Union territory of Chandigarh. 2. The ordinance provided for the following, among other things, namely :- (a) to increase from 10 days to 15 days the maximum period within which grounds of detention may in exceptional circumstances, be communicated to the detenu and to increase from 15 days to 20 days up to which the orders made by the officers referred to in subsection (1) of Section 3 of the Act shall remain in force without the approval of the State Government. (b) to provide in certain cases for detention of persons without obtaining the opinion of the Advisory Board for a period of more than three months but not exceeding six months from the date of their detention and to provide also in such cases for a longer maximum period of detention; and (c) to make the necessary consequential amendments in the Act. 3. The Bill seeks to replace the aforesaid

Ordinance. -Gaz. of India, 31-7-1987, Pt. U.S. 2 Ext., p. 4 (No. 28) Act 43 of 1988.- The activities of the extremist and terrorist elements in the "disturbed areas" of Punjab and Chandigarh continue to be a matter of serious concern. To enable Government to deal effectively with such elements in these "disturbed areas", the National Security Act, 1980 was in its application to the State of Punjab and the Union territory of Chandigarh, amended in 1987. by the National Security (Amendment) Act, 1987. 2. Section 14A, as inserted by the said Amendment Act, specifies the circumstances under which, and classes of cases in which a person may be detained for a period longer than three months, but not exceeding six months from the date of his detention, without obtaining the opinion of an Advisory Board. The provision of the above mentioned section were applied only in the case of persons detained before the 8th June, 1988, Since the circumstances in which the section was inserted in the Act, by and large, continue to exist, it was considered necessary to amend the section so as to bring within its purview person who may be detained on or after the 8th day of June, 1988, but before the 8th day of June, 1989. Accordingly, the President promulgated the National Security (Amendment) Ordinance, 1988 on the 26th May, 1988. 3. The Bill seeks to replace the aforesaid Ordinance. -Gaz. of Ind., 1-8-1988, Pt. II, S. 2, Ext., p. I I (No. 36)

1. Short title and extent :-

- (1) This Act may be called The National Security Act, 1980.
- (2) It extends to the whole of India except the State of Jammu and Kashmir.

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;
- (d) "person" includes a Foreigner;
- (e) "State Government", in relation to a Union territory means the administrator thereof.

3. Power to make orders detaining certain persons :-

(2) The Central Government or the State Government may, if satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to the security of the State or from acting in any manner prejudicial to the maintenance of public order or from acting in any manner prejudicial to the maintenance of supplies and services essential to the community it is necessary so to do, make an order directing that such person be detained.

(3) 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 or a Commissioner of Police, the State Government is satisfied that it is necessary so to do, it may, by order in writing, direct, that during such period as may be specified in the order, such District Magistrate or Commissioner of Police may also, if satisfied as provided in sub-section (2) exercise the powers conferred by the said sub-section : Provided that the period specified in an order made by the State Government under this sub-section shall not, in the First instance, exceed three months, but the State Government may, if satisfied as aforesaid that it is necessary so to do, amend such order to extend such period from time to time by any period not exceeding three months at any one time.

(5) 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. [For modifications to S. 3, See S. 14A.]

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 Code of Criminal Procedure, 1973.

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.

5A. Grounds of detention severable :-

"- Where a person has been detained in pursuance of an order of detention [whether made before or after the commencement of the National Security (Second Amendment) Act, 1984] 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 of such grounds and accordingly-

(b) the Government or 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."]

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 the place of detention of such person is outside the said limits.

7. Powers in relation to absconding persons :-

(3) If any person fails to comply with an order issued under clause (b) of sub-section (1), 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.

(4) Notwithstanding anything contained in the Code of Criminal

Procedure, 1973, every offence under sub-section (3) shall be cognizable.

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 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 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. [For modifications to S. 8, See S. 14A.]

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. Judges of a High Court, and such persons shall be appointed by the appropriate Government.

(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 three weeks from the date of detention of a person 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 mentioned in sub-section (3) of section 3 , also the report by such officer under sub-section (4) of that section.

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 seven week 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 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. [For modifications to S. 11, See S. 14A.]

12. Action upon the report of the 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, not sufficient cause for the detention of a person, the appropriate Government shall revoke the detention order and cause the person concerned to be released forthwith. [For modifications to S. 12, See S. 19A.]

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 : 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. [For modifications to S. 13, See S. 14A.]

14. Revocation of detention orders :-

14A. Circumstances in which persons may be detained for periods longer than three months without obtaining the opinion of Advisory boards :-

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 maybe.

(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.

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 proceeding shall lie against any person, for anything in good faith done or intended to be done in pursuance of this Act.

17. Act not to have effect with respect to detentions under State laws :-

18. Repeal and saving :-

(1) The National Security Ordinance, 1980, is hereby repealed.