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## PART II

### GOVERNMENT OF MEGHALAYA LAW (B) DEPARTMENT ORDERS BY THE GOVERNOR

#### NOTIFICATION

The 12th May 1995

No.LL (B. 109/2/74— The Meghalaya Preventive Detention Act, 1995 ( Act 5 of 1995 ) is hereby published for general information

#### MEGHALAYA ACT No. 5 OF 1995

(Passed by the Meghalaya Legislative Assembly.) (Assented to by the Governor on the 10th May, 1995. Published in the Extra-ordinary issue of the *Gazette of Meghalaya* dated 12th May, 1995.

#### THE MEGHALAYA PREVENTIVE DETENTION ACT, 1995

An

Act

**to provide for preventive detention in certain cases and for matters connected therewith.**

Be it enacted by the Legislature of the State of Meghalaya in the Forty-sixth Year of the Republic of India a follows:—

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|---|---|
| Short title<br>extent and<br>commence-<br>ment, | 1. (1) This Act may be called the Meghalaya Preventive Detention Act, 1995. |
|   | (2) It extends to the whole of the State of Meghalaya.                      |
|   | (3) It shall be deemed to have come into force on the 6th October, 1994.    |

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

- (a) "Advisory Board" means the Advisory Board constituted under section 10;
- (b) "Code" means the Code of Criminal Procedure, 1973;
- (c) "detention order" means an order made under Section 3;
- (d) "Government" or "State Government" means the Government of the State of Meghalaya;
- (e) "Section" means a section of this Act; and
- (f) "State" means the State of Meghalaya.

Power to  
make deten-  
tion order

3. (1) The State Government or a District Magistrate may, if he is 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 to the maintenance of public order or of supplies and services essential to the community it is necessary so to do, make an order directing that such person be detained.
- (2) The powers under sub-section (1) may also be exercised by such officer of the State Government not below the rank of a Secretary (hereinafter referred to as empowered officer), as may be specially empowered by it in this behalf.
- (3) When a detention order is made under this section by a District Magistrate or by the empowered officer such District Magistrate or officer, as the case may be 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 the grounds of detention are communicated under section 8 to the person detained after five days not later than ten days from the date of detention, this sub-section shall apply subject to the modification that for words "twelve days" the words "fifteen days" shall be substituted.

Execution of  
detention  
order

4. A detention order may be executed at any place in India in the manner provided for execution of warrants of arrest under the code.

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 any breach of discipline, as the State Government may by general or special order specify; and
- (b) to be moved from one place of detention to another within the State or in another State by order of the State Government:

Provided that no order shall be made 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 orders not to be invalid or inoperative on certain ground.

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 authority making the order; or
- (b) that the place of detention of such persons is outside such limits.

*Explanation* :—In this section and Section 7, 8 and 9, the expression “authority making the order” means the State Government, the District Magistrate or, as the case may be, the empowered officer exercising powers under sub-section (1) or sub-section (2) of Section 3.

Powers in relation to absconding persons.

7. (1) If the authority making the order has reason to believe that the 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 authority may—

- (a) make a report in writing of the fact to Deputy Commissioner or the Chief Judicial 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, 83, 84 and 85 of the Code shall apply in respect of the said person and his property as if the detention order made against him was a warrant issued by a court;

(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 authority making the order of the reasons which rendered compliance 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 every offence under clause (b) of sub-section (1) shall be cognisable.

Ground of the detention order to be disclosed to the person detained

8. (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, communication to such person the grounds in 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 making the order to disclose facts which it considers to be against public interest to disclose.

Ground of detention severable.

9. Where a person is detained in pursuance of a detention order which has been made on two or more grounds such detention order 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 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 authority making the order would have been satisfied as provided in sub-section (1) of Section 3 with reference to the remaining ground or grounds for making the detention order; and

(b) the authority making the order shall be deemed to have made the detention order after being satisfied as provided in sub-section (1) of section 3, with reference to the remaining ground or grounds.

**Constitution of Advisory Boards,**

10. (1) The State Government shall, whenever necessary, constitute one or more Advisory Board for the purposes of this Act.

(2) An Advisory 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 State Government.

(3) The State 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 the appointment as such Chairman of any person who is a Judge of a High Court shall be with the previous approval of the Chief Justice of that High Court.

**Reference to Advisory Board.**

11. Save as otherwise expressly provided in this Act where a detention has been made the State Government shall within, three weeks from the date of detention of the person, place before the Advisory Board the report on which the order was made and the representation, if any, made by the person detained and, where the order has been made by a District Magistrate or by the empowered officer, also the report made by such District Magistrate or officer under sub-section (3) of section 3.

**Procedure of Advisory Boards.**

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 any person called for the purpose through the Government or from the person detained, and if in any particular case, it considers it necessary to do so or, if the person detained desires to be heard, after hearing him in person, submit its report to the Government within seven weeks from the date of detention of the 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.

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

- (4) Nothing in this section shall entitle any person against whom detention order has been made to appear by any legal practitioner in any matter connected with the reference to the Advisory Board.
- (5) The proceeding 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.
13. (1) In any case where the Advisory Board report there is in its opinion, sufficient cause for the detention of the persons, Government may confirm the detention order and continued, subject to the provision of section 14, the detention of the persons such period as it think fit.
- (2) In any case where the Advisory Board reports that there is, in its opinion, no sufficient cause for the detention of the persons, Government shall revoke the detention order and cause the person 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 which has been confirmed under sub-section (1) of section 13 shall be one year from the date of detention:
- Provided that nothing contained in this section shall effect the power of the Government to revoke or modify the detention order at any earlier time.
- Revocation of detention order. 15. (1) Without prejudice to the provisions of section 35 of the Meghalaya Interpretation and General Clauses Act, 1972 a detention order made by a District Magistrate or by empowered officer may, at any time, be revoked or modified by the State Government and, in case of a detention order made by the State Government, by the Central Government.
- (2) The revocation or expiry of detention order shall not bar making of a fresh detention order against same person in any case where fresh facts have arisen after the date of such revocation or expiry and on which the State Government or a District Magistrate or empowered officer, as the case may be, is satisfied that such an order should be made.
- Temporary release of detained 16. (1) Government may, at any time, direct the any person detained in pursuance of a detention order may be released for any specified period either without any condition or upon such conditions as may be specified in the direction and which that person accept and may also, at any time, cancel his release.

- (2) In directing the release of any person under sub-section (1) Government may require him to enter into a bond with or within sureties for the due observance of the conditions specified in the direction.
- (3) Any person released under sub-section (1) shall surrender himself at such time and place and to such authority as may be specified in the order directing his release or, as the case may be, cancelling his release.
- (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 fails to fulfil any of the conditions as may be specified in the direction releasing him under sub section (1) or in the bond entered into by him, the bond shall be declared to be forfeited and the person bound thereby shall be liable to pay penalty thereof.

Protection  
of action  
taken in  
good faith.

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

Repeal of  
Ordinance  
No. 1 of  
1994-

18. The Meghalaya Preventive Detention Ordinance, 1994 (Ordinance No. 1 of 1994) is hereby repealed.

S. DYKES,  
Under Secretary to the Govt. of Meghalaya,  
Law (B) Department.