

ORISSA ACT 18 OF 1993

**THE ORISSA PREVENTION OF DANGEROUS ACTIVITIES OF COMMUNAL OFFENDERS
ACT, 1993**

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ORISSA ACT 18 OF 1993

*THE ORISSA PREVENTION OF DANGEROUS ACTIVITIES OF COMMUNAL OFFENDERS ACT, 1993

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AN ACT TO PROVIDE FOR PREVENTIVE DETENTION OF COMMUNAL OFFENDERS WITH A VIEW TO PREVENTING THEIR DANGEROUS ACTIVITIES PREJUDICIAL TO THE MAINTENANCE OF PUBLIC ORDER AND FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO.

BE it enacted by the Legislature of the State of Orissa in the Forty-fourth Year of the Republic of India as follows:—

Short title and extent.

1. (1) This Act may be called the Orissa Prevention of Dangerous Activities of Communal Offenders Act, 1993.

Definitions

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

2. In this Act, unless the context otherwise requires,—

(a) “acting in any manner prejudicial to the maintenance of public order” means engaging in or making preparations for engaging in any of the activities which affect adversely or is likely to affect adversely the maintenance of public order;

Explanation—For the purpose of this clause, public order shall be deemed to have been affected adversely or shall be deemed likely to be affected adversely *inter alia*, if any of the activities of the communal offenders directly or indirectly is causing or calculated to cause any harm, danger or alarm, or a feeling of insecurity among the general public or any section thereof or a grave or widespread danger to life.

(b) “communal offenders” means a person who, either by himself or as a member or as a leader of a gang or an organisation, commits or attempts to commit or abets or incites the commission of an offence punishable under Section 153-A or 153-B of the Indian Penal Code, or under 45 of 1860 Chapter-XV of the said Code, or under sub-section (2) of Section 505 thereof;

(c) “detention order” means an order of detention made under Section 3;

(d) “Government” means the State Government of Orissa.

Power to make an order detaining communal offenders.

3. (1) The Government may, if satisfied with respect to any communal offender that with a view to preventing him from acting in any manner prejudicial to the maintenance of public order it is necessary so to do, make an order directing that such person be detained.

(2) If, having regard to the circumstances prevailing or likely to prevail in any area within the local limits of the jurisdiction of the District Magistrate, the 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 may also, if satisfied as provided in sub-section (1), exercise the powers conferred by the said sub-section:

Provided that the period specified in an order made by the Government under this sub-section shall not, in the first instance, exceed three months, but the 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.

(3) When any detention order is made by a District Magistrate, he shall forthwith report the fact to the 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 fifteen days after the making thereof unless, in the meantime, it has been approved by the Government.

*For the Bill see *Orissa Gazette*, Extraordinary, dated the 7th April 1993 (No. 477)

Execution of detention order.

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

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 of discipline and punishment for breaches of discipline, at the Government may, by general or special order, specify; and
- (b) to be removed from one place of detention to another place of detention with the State by an order of the Government.

Detention orders not to be invalid or inoperative on certain grounds.

6. No detention order shall be invalid or inoperative merely by reason—

- (a) that the person to be detained thereunder, though within the State is outside the limits of the territorial jurisdiction of the District Magistrate making the order; or
- (b) that the place of detention of such person, though within the State, is outside the said limits.

Grounds of detention severable.

7. Where a person has been 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 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 the District Magistrate making such order, as the case may be, would have been satisfied as provided in Section 3 with reference to the remaining ground or grounds and made the order of detention;

(b) the Government or the District Magistrate making the order of detention, as the case may be, shall be deemed to have made the order of detention under the said section after being satisfied in that section with reference to the remaining ground or grounds.

Powers in relation to absconding persons.

8. (1) If the Government, or the District Magistrate mentioned in sub-section (2) ² of 1974 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, the Government or the District Magistrate may—

- (a) make 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; or
- (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.

(2) Upon the making of a report against any person under clause (a) of sub-section (1), the provisions of Sections 82, 83, 84, 85 and 86 of the Code of Criminal Procedure, 1973 shall apply in respect of such person and his property as if the detention order made against him were a warrant issued by the Magistrate.

(3) If any person fails to comply with an order 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 ² of 1974 every offence under sub-section (3) shall be cognizable.

Grounds of detention order to be disclosed to persons affected. 9. (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 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 Boards. 10. (1) The Government shall, whenever necessary, constitute, one or more Advisory Boards for the purposes of this Act.

(2) Every such Board shall consist of a Chairman and two other members, who are, or have been or are qualified to be appointed, as Judges of a High Court.

Reference to Advisory Board. 11. In every case where a detention order has been made under this Act, the Government shall, within three weeks from the date of detention of a person under the order place before the Advisory Board, constituted under Section 10, the grounds on which the order has been made and the representation, if any made by the person, affected by the order, and in the case where the order has been made by the District Magistrate mentioned in sub-section (2) of Section 3, also the report by such Magistrate under sub-section (3) of that Section.

Procedure of Advisory Board. 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 from any person called for the purpose through the Government or from the person concerned, and if, in any particular case, the Advisory Board 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 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 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.

Action upon report of Advisory Board. 13. (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 Government may confirm the detention order and continue the detention of the person concerned for such period, not exceeding the maximum period specified in section 14, as they think fit.

(2) In any case where the Advisory Board has reported that there is, in its opinion, sufficient cause for the detention of the person concerned, the 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 Section 13 shall be twelve months from the date of detention:

Provided that nothing contained in this Section shall affect 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 22 of the Orissa General Clauses Act, 1937, a detention order may, at any time, be revoked or modified by the Government, or any officer authorised in that behalf by the Government, notwithstanding that the order has been made by a District Magistrate of 1937-mentioned in sub-section (2) of Section 3 or by the Government. Orissa Act 1

(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 Government or the District Magistrate, as the case may be, is satisfied that such an order should be made.

Temporary
release of
persons
detained.

16. (1) The 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 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 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.

Protection
of action in
good faith.

17. No suit, prosecution or their legal proceeding shall lie against the Government or any officer or person, for anything done in good faith in pursuance of this Act.

Detention
orders
against
communal
offender
under this
Act and not
under National
Security
Act, 1980.

18. On and after the commencement of this Act no order of detention under the National Security Act, 1980 shall be made by the Government or any of its officers under that Act in respect of any communal offender in the State of Orissa on the ground of preventing him from acting in any manner prejudicial to the maintenance of public order, where an order of detention may be, or can be, made against such person under this Act. 65 of 1980