RAJYA SABHA

UNSTARRED QUESTION NO.1199

(TO BE ANSWERED ON THE 14TH DECEMBER, 1994)

COMPLAINTS AGAINST TADA

1199. SHRI S.S. AHLUWALIA:

Will the Minister of Home Affairs be pleased to state:

(a) Whether it is a fact that detention of persons under the Terrorist and Disruptive Activities (Prevention) Act, 1987 (TADA) has been extensively resorted to by administration of several States.

(b) What are the State-wise details of persons who have been detained under TADA as on 31st December, 1991, 31st December, 1992, 31st December, 1993 and as on 31st October, 1994.

(c) Whether it is a fact that complaints of abuse of TADA by the administration have been received by Government from various sections of the society from different parts of the country.

(d) If so, state-wise details of the basic nature of the complaints that have been found to be common among them.

(e) The details of the steps, if any, taken by Government in response to those complaints of abuse of the provisions of the TADA; and

(f) The State-wise details of the TADA detenus died in custody during the last five years?

The Minister of State in the Ministry of Home Affairs (Shri Rajesh Pilot)

(a) No, Sir; the States have been requested to invoke the provisions of the Act only for those indulging in terrorist of disruptive activities.

(b) Based on available information received from the State Govts., a statement regarding persons detained under TADA as on 31st December 1991, 31st December 1992 and 31st December 1993 is appended.

(c) & (d): As and when complaints are received from the various sections, these are referred to the State Govts. For immediate appropriate action. However, State-wise compilation of complaints are not being maintained.

(e) The State Govts. Have been directed to constitute State Review Committees of the Chief Secretary, Home Secretary and DGP and to review individual cases and, redress the situation wherever there has been a miscarriage of justice.

(g) The State-wise details of TADA detenues died in custody is being collected and will be laid on the Table of the House.
RAJYA SABHA

STARRED QUESTION NO. 46

(TO BE ANSWERED ON THE 29TH NOVEMBER, 1995)

PERSONS DETAINED UNDER TADA

46. Shri Mohammed Afzal alias Meem Afzal

Will the Minister of Home Affairs be pleased to state:

(a) What is the State-wise number of persons arrested under TADA till the repeal of TADA Act; and

(b) What is the State-wise number of persons released under the review order as on 30th September, 1995?

The Minister of Home Affairs: (Shri S.B. Chavan)

(a) and (b) Statement as per available information is attached.
UNSTARRED QUESTION NO.1192

Statement referred to part b) of Rajya Sabha Unstarred Question No.1199 for answer on 14.12.94.

<table>
<thead>
<tr>
<th>S.No.</th>
<th>Name of the State/UT</th>
<th>Available information regarding persons detained under TADA as on Dec.'91</th>
<th>Dec.'92</th>
<th>Dec.'93</th>
<th>Oct.'94</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Andhra Pradesh</td>
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<td>2.</td>
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<td>50</td>
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<tr>
<td>3.</td>
<td>Assam</td>
<td>3919</td>
<td>4856</td>
<td>6104</td>
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</tr>
<tr>
<td>4.</td>
<td>Bihar</td>
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<td>90</td>
<td>93</td>
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</tr>
<tr>
<td>5.</td>
<td>Gujarat</td>
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</tr>
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<td>Haryana</td>
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<tr>
<td>7.</td>
<td>H.P.</td>
<td>2</td>
<td>11</td>
<td>20</td>
<td></td>
</tr>
<tr>
<td>8.</td>
<td>J&amp;K</td>
<td>2449</td>
<td>5026</td>
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</tr>
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<td>-</td>
<td>-</td>
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</tr>
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<td>M.P.</td>
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<tr>
<td>16.</td>
<td>Rajashthan</td>
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<td>158</td>
<td>188</td>
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<tr>
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<td>Tamil Nadu</td>
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<tr>
<td>18.</td>
<td>U.P.</td>
<td>277</td>
<td>620</td>
<td>829</td>
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<tr>
<td>19.</td>
<td>West Bengal</td>
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<td>Nil</td>
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</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>14408</strong></td>
<td><strong>238828</strong></td>
<td><strong>336538</strong></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

*Information is maintained only Quarterly and not monthly, and, hence the data for Oct, 1994 is not available.

@ 7975 persons, 17675 persons and 24554 persons were released on bail as on Dec.'91, Dec.'92 and Dec.'93 respectively.

Note: The provisions of TADA are invoked by 19 States at present.
Reply to part (a) and (b) of the Rajya Sabha Starred Question
No. 46 for 29.11.95.

**Appendix-I**

<table>
<thead>
<tr>
<th>S. No.</th>
<th>Name of States/UTs</th>
<th>No. of persons arrested under TADA till the repeal of the TADA Act.</th>
<th>No. of persons arrested &amp; under detention TADA till the repeal of the TADA Act as on 30.9.95</th>
<th>No. of persons discharged from the provisions of TADA by the review committees under the review order as on 30.9.95</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Andhra Pradesh</td>
<td>7485</td>
<td>5255</td>
<td>158</td>
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<tr>
<td>2.</td>
<td>Arunachal Pradesh</td>
<td>109</td>
<td>92</td>
<td>7</td>
</tr>
<tr>
<td>3.</td>
<td>Assam</td>
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<td>11507</td>
<td>427</td>
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<td>4.</td>
<td>Bihar</td>
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<td>85</td>
<td>91</td>
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<tr>
<td>5.</td>
<td>Goa</td>
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<td>2</td>
</tr>
<tr>
<td>6.</td>
<td>Gujarat</td>
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<td>828</td>
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<td>7.</td>
<td>Haryana</td>
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<td>100</td>
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<td>8.</td>
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<td>6</td>
</tr>
<tr>
<td>9.</td>
<td>J&amp;K</td>
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<td>9853</td>
<td>3049</td>
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<td>10.</td>
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<td>236</td>
<td>229</td>
<td>127</td>
</tr>
<tr>
<td>11.</td>
<td>Kerala</td>
<td>14</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>12.</td>
<td>Manipur</td>
<td>1694</td>
<td>1694</td>
<td>143</td>
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<tr>
<td>13.</td>
<td>Madhya Pradesh</td>
<td>731</td>
<td>716</td>
<td>32</td>
</tr>
<tr>
<td>14.</td>
<td>Maharashtra</td>
<td>2537</td>
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<td>635</td>
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<td>15.</td>
<td>Meghalaya</td>
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<td>21</td>
<td>12</td>
</tr>
<tr>
<td>16.</td>
<td>Punjab</td>
<td>15525</td>
<td>3659</td>
<td>286</td>
</tr>
<tr>
<td>17.</td>
<td>Rajasthan</td>
<td>477</td>
<td>285</td>
<td>192</td>
</tr>
<tr>
<td>18.</td>
<td>Tamil Nadu</td>
<td>384</td>
<td>323</td>
<td>91</td>
</tr>
<tr>
<td>19.</td>
<td>Uttar Pradesh</td>
<td>1137</td>
<td>79</td>
<td>21</td>
</tr>
<tr>
<td>20.</td>
<td>West Bengal</td>
<td>531</td>
<td>8</td>
<td>6</td>
</tr>
<tr>
<td>21.</td>
<td>Chandigarh Adm.</td>
<td>249</td>
<td>22</td>
<td>4</td>
</tr>
<tr>
<td>22.</td>
<td>NCT Delhi</td>
<td>1212</td>
<td>883</td>
<td>385</td>
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</table>

**TOTAL** 79332 37748 5998 8184
LOK SABHA
UNSTARRED QUESTION NO. 3608

(To be answered on the 17th December, 1996)

3608 Shri Iliyas Azmi
Shri Madhavrao Scindia

Will the Minister of Home Affairs be pleased to state:

(a) the number of persons detained under TADA since the enforcement of the Act, State-wise.

(b) The number of persons found guilty alongwith the number of persons acquitted by the courts.

(c) Whether any action has been taken against the officials responsible for booking the persons and keeping them in detention under TADA for long periods; and

(d) If not, the reasons therefore?

ANSWER

The Minister of State in the Ministry of Home Affairs (Shri Mohd. Maqbool Dar)

(a) A Statement as per available information attached.

(b) This Ministry does not maintain information regarding persons found guilty and persons acquitted.

(c) & (d) Since Law and order is a State subject, the provisions of the Act are invoked by States/UTs in the light of public order and internal security conditions prevailing over thee. As such Central Govt. is not concerned.
### Appendix I

USO No. 3608

<table>
<thead>
<tr>
<th>S. No.</th>
<th>Name of States/UTs</th>
<th>No. of persons arrested under TADA till the repeal of the TADA Act/Cumulative from 1985 to May 1995</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Andhra Pradesh</td>
<td>7485</td>
</tr>
<tr>
<td>2.</td>
<td>Arunachal Pradesh</td>
<td>109</td>
</tr>
<tr>
<td>3.</td>
<td>Assam</td>
<td>13637</td>
</tr>
<tr>
<td>4.</td>
<td>Bihar</td>
<td>359</td>
</tr>
<tr>
<td>5.</td>
<td>Goa</td>
<td>4</td>
</tr>
<tr>
<td>6.</td>
<td>Gujarat</td>
<td>18686</td>
</tr>
<tr>
<td>7.</td>
<td>Haryana</td>
<td>2658</td>
</tr>
<tr>
<td>8.</td>
<td>Himachal Pradesh</td>
<td>30</td>
</tr>
<tr>
<td>9.</td>
<td>Jammu &amp; Kashmir</td>
<td>11616</td>
</tr>
<tr>
<td>10.</td>
<td>Karnataka</td>
<td>236</td>
</tr>
<tr>
<td>11.</td>
<td>Kerala</td>
<td>14</td>
</tr>
<tr>
<td>12.</td>
<td>Manipur</td>
<td>1694</td>
</tr>
<tr>
<td>13.</td>
<td>Madhya Pradesh</td>
<td>731</td>
</tr>
<tr>
<td>14.</td>
<td>Maharashtra</td>
<td>2537</td>
</tr>
<tr>
<td>15.</td>
<td>Meghalaya</td>
<td>21</td>
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<tr>
<td>16.</td>
<td>Punjab</td>
<td>15525</td>
</tr>
<tr>
<td>17.</td>
<td>Rajasthan</td>
<td>477</td>
</tr>
<tr>
<td>18.</td>
<td>Tamil Nadu</td>
<td>384</td>
</tr>
<tr>
<td>19.</td>
<td>Uttar Pradesh</td>
<td>1137</td>
</tr>
<tr>
<td>20.</td>
<td>West Bengal</td>
<td>531</td>
</tr>
<tr>
<td>21.</td>
<td>Chandigarh Administration</td>
<td>249</td>
</tr>
<tr>
<td>22.</td>
<td>NCT Delhi</td>
<td>1212</td>
</tr>
<tr>
<td></td>
<td><strong>Total</strong></td>
<td><strong>79332</strong></td>
</tr>
</tbody>
</table>


2555. SHRI RAJENDRA AGNIHOTRI:

Will the Minister of HOME AFFAIRS be pleased to state

(a) the number of occasions on which the National Security Act (NSA) was put into use by the Government during 1992 and 1993 so far;

(b) whether complaints regarding misuse of the provisions of NSA by State Governments have been received by the Union Government;

(c) if so, the details thereof; and

(d) the action taken thereon?

ANSWER

THE MINISTER OF STATE IN THE MINISTRY OF HOME AFFAIRS (SHRI RAJESH PILOT)

(a) The Central Govt. has not ordered any detention since the promulgation of the National Security Ordinance/Act, though empowered to do so. Actual detentions under the Act are made by the State Govts./Union Territory Admns. Who are mainly responsible for maintenance of law and order and to the maintenance of supplies and services essential to the community etc. A statement showing the number of persons ordered to be detained under the provisions of the National Security Act, 1980 during 1992 & 1993 (upto May) by various State Govts./U.T. Admns., is attached herewith.

(b) (b) to (d) - The Act contains sufficient inbuilt safeguards against its possible misuse. From time to time, it has been impressed on the State Govts./U.T. Admns. To use this Act very sparingly, judiciously and only when it is absolutely necessary. Whenever, complaints regarding the misuse of the provisions of the Act whenever received, are forwarded to the concerned State Governments/Union Territory Administrations for appropriate action.
STATEMENT REFERRED TO IN REPLY TO PART (a) OF LOk SAGHA UNSTARRED QUESTION NO.2555 DUE FOR ANSWER ON 12.8.1993

Statement showing the Number of persons ordered to be detained under the provisions of the National Security Act, 1980 during 1992 and 1993 (Upto May):

<table>
<thead>
<tr>
<th>S.No.</th>
<th>NAME OF STATE/ U.T.ADMN.</th>
<th>NO. OF PERSONS ORDERED TO BE DETAINED</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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<td>1992</td>
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<td>3.</td>
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<tr>
<td>4.</td>
<td>Gujarat</td>
<td>36</td>
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<td>5.</td>
<td>Haryana</td>
<td>-</td>
</tr>
<tr>
<td>6.</td>
<td>Himachal Pradesh</td>
<td>-</td>
</tr>
<tr>
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<tr>
<td>12.</td>
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<td>13.</td>
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<td>103</td>
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<td>14.</td>
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<td>2</td>
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<tr>
<td>15.</td>
<td>Rajasthan</td>
<td>26</td>
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<tr>
<td>16.</td>
<td>Tamil Nadu</td>
<td>9</td>
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<tr>
<td>17.</td>
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<tr>
<td>18.</td>
<td>Uttar Pradesh</td>
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<tr>
<td>19.</td>
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<td>20.</td>
<td>Goa</td>
<td>-</td>
</tr>
<tr>
<td>21.</td>
<td>Mizoram</td>
<td>-</td>
</tr>
<tr>
<td>22.</td>
<td>Andaman &amp; Nicobar</td>
<td>-</td>
</tr>
<tr>
<td>23.</td>
<td>Chandigarh</td>
<td>-</td>
</tr>
<tr>
<td>24.</td>
<td>Delhi</td>
<td>15</td>
</tr>
<tr>
<td></td>
<td>Total</td>
<td>1074</td>
</tr>
</tbody>
</table>

Note: - 1. The National Security Act, 1980 is not applicable to Jammu and Kashmir.
2. The State Governments of Kerala, West Bengal, Arunachal Pradesh, and U.T.Admnistrations of Dadra and Nagar Haveli, Lakshadweep, Pondicherry, and Daman and Diu have not invoked the provisions of NSA.
LOK SABHA

UNSTARRED QUESTION No. 1741

(TO BE ANSWERED ON THE 5TH AUGUST, 1993)

Persons arrested/Detained under TADA and NSA

1741: Shri Satya Deo Singh  
Shri Brij Bhushan Sharan Singh  
Shrimati Bhavna Chikhalia  
Dr. Ramesh Chand Tomar

Will the Minister of Home Affairs be pleased to state:

(a) the number of persons arrested/detained under TADA and NSA during each of the last three years and the current year so far, State-wise and Union Territory-Wise.
(b) Whether complaints regarding misuse of provisions of TADA by State Governments have been received by the Union Government.
(c) If so, the details thereof including the name of such states/Union Territories; and
(d) The reaction of the Government thereto?

ANSWER

The Minister of State in the Ministry of Home Affairs (Shri Rajesh Pilot)

(a) Statement showing the number of persons arrested/detained under TADA/NSA is attached.

(b) (c) & (d): Some complaints were received regarding alleged misuse of TADA by the States of Bihar, Gujarat, Haryana, Maharashtra, Rajasthan, Uttar Pradesh and Tamil Nadu. Since law and order is a State subject, the matter was referred to the state Governments concerned with the request that the provisions of TADA be invoked with utmost care and caution.
STATEMENT REFERRED TO IN REPLY TO PART (A) OF LOK SABHA UNSTARRED QUESTION NO. 1741 FOR ANSWER ON 5.8.1993.

<table>
<thead>
<tr>
<th>S. No.</th>
<th>Name of the State/U.T.</th>
<th>No. of persons detained under NSA</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Andhra Pradesh</td>
<td>-</td>
</tr>
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<td>2.</td>
<td>Assam</td>
<td>-</td>
</tr>
<tr>
<td>3.</td>
<td>Bihar</td>
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<tr>
<td>4.</td>
<td>Gujarat</td>
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<tr>
<td>5.</td>
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<td>-</td>
</tr>
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<td>6.</td>
<td>Himachal Pradesh</td>
<td>-</td>
</tr>
<tr>
<td>7.</td>
<td>Karnataka</td>
<td>-</td>
</tr>
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<td>8.</td>
<td>Madhya Pradesh</td>
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<tr>
<td>10.</td>
<td>Manipur</td>
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<tr>
<td>11.</td>
<td>Meghalaya</td>
<td>-</td>
</tr>
<tr>
<td>12.</td>
<td>Nagalanad</td>
<td>-</td>
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<tr>
<td>13.</td>
<td>Orissa</td>
<td>11</td>
</tr>
<tr>
<td>14.</td>
<td>Punjab</td>
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<tr>
<td>15.</td>
<td>Rajasthan</td>
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<tr>
<td>16.</td>
<td>Tamil Nadu</td>
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<td>17.</td>
<td>Tripura</td>
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<td>18.</td>
<td>Uttar Pradesh</td>
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<tr>
<td>19.</td>
<td>Sikkim</td>
<td>-</td>
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<td>20.</td>
<td>Goa</td>
<td>1</td>
</tr>
<tr>
<td>21.</td>
<td>Misoram</td>
<td>-</td>
</tr>
<tr>
<td>22.</td>
<td>Andaman &amp; Nikobar</td>
<td>-</td>
</tr>
<tr>
<td>23.</td>
<td>Chandigarh</td>
<td>-</td>
</tr>
<tr>
<td>24.</td>
<td>Delhi</td>
<td>10</td>
</tr>
</tbody>
</table>
STATEMENT REFERRED TO REPLY TO PART (A) OF
LOK SABHA UNSTARRED QUESTION NO.1741 FOR
ANSWER ON 5.8.93

<table>
<thead>
<tr>
<th>S. No.</th>
<th>Name of the State/U.T.</th>
<th>No. of persons arrested under TADA</th>
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<tr>
<td>1.</td>
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<td>2.</td>
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<td>3.</td>
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<td>5.</td>
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<tr>
<td>7.</td>
<td>J &amp; K</td>
<td>372</td>
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<td>8.</td>
<td>Maharashtra</td>
<td>101</td>
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<tr>
<td>9.</td>
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<td>West Bengal</td>
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<td>16.</td>
<td>Chandigarh Adms.</td>
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<td>17.</td>
<td>Delhi</td>
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<tr>
<td>18.</td>
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<tr>
<td>19.</td>
<td>Tripura</td>
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<tr>
<td>20.</td>
<td>Karnataka</td>
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### ARRESTS AND DETENTION IN VARIOUS STATES/UNION TERRITORIES DURING EMERGENCY

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<tr>
<th>S. No.</th>
<th>Name of State/Union Territory</th>
<th>Detentions under MISA</th>
<th>Arrests under DISIR</th>
<th>Detention under COFEPOSA</th>
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<td>J &amp; K</td>
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<td>26.</td>
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<td>Delhi</td>
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<td>28.</td>
<td>Goa, Daman &amp; Div</td>
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<td>29.</td>
<td>Lakshadweep</td>
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<td>-</td>
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<td>30.</td>
<td>Mizoram</td>
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<td>75818</td>
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</tbody>
</table>

Appendix - II
Be it enacted by Parliament in the Thirty-first year of the Republic of India as follows:—

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 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 (31 of 1946);

   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.—

   (1) The Central Government or the State Government may—

       a) if satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to the defence of India, the relations of India with foreign powers, of the security of India, 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) 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 to the community it is necessary so to do, make an order directing that such person be detained.

   Explanation—For the purposes of this sub-section, "acting in any manner prejudicial to the maintenance of supplies services essential to the community" does not include "acting".

In any manner prejudicial to the maintenance of supplies of essential to the community as defined in the to sub-section (1) of Section 3 of the Prevention of and Maintenance of Supplies of Essential Act, 1980 (7 of 1980), and
Accordingly, no order of detention shall be made under this Act, on any ground on an order of detention may be made under this Act, (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 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 (2), exercise the powers conferred by the said subsection. Provided that the period specified in an order made by the State Government under this subsection shall not, in the first instance, exceed three months, but the State Government may, if as aforesaid that it is necessary so to do from time to time by any period not exceeding three months at any one time.

(4) When any order is made under this section by an officer mentioned in subsection (3), 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 twelve 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 officer making the order after five days but not later than ten days from the date of detention, this subsection shall apply subject to the modification that, for the words "twelve days", the words "fifteen days" shall be substituted.

(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 with the grounds on which the order has been made and other particulars as, in the opinion of the State Government, have a bearing on the necessity for the order.

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 (2, of 1974).

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.

Grounds of detention severable— Where a person has been detained in pursuance of an order of detention [whether made or 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 —
(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 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 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 —

(1) If the Central Government or the State Government or an officer mentioned in sub-section (3) 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 Metropolitan Magistrate or a Judicial Magistrate of the first class having jurisdiction in the place where the said person ordinarily resides;

(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 and 85 of the Code of Criminal Procedure, 1973 (2 of 1974), 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 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 (2 of 1974), every offence under subsection (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 in exceptional circumstances and for reasons to be recorded in writing, 
not later than ten days from the date of detention, to him the grounds on 
which the order has been made and shall afford him the earliest opportunity 
of making a 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 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 territory, the appointment to the Advisory 
Board of any 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 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.
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, no 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.

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.

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 (3) of Section 3, by the State Government to which the officer is subordinate or by the Central Government;

(b) Notwithstanding that the order has been made by a State Government, by the Central Government.

(2) The expiry or revocation of a detention order (hereafter in this subsection referred to as the earlier detention order) shall not [whether such earlier detention order has been made before or after the commencement* of the National Security (Second Amendment) Act, 1984] 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.

Note: Punjab and Chandigarh — In its application to Punjab and Chandigarh add the following provision vide Act 27 of 1987, Section 3 (w.e.f. 9-6-1987).

14-A. Circumstances in which persons may be detained for periods longer than three months without obtaining the opinion of Advisory Boards — (1) Notwithstanding anything in the foregoing provisions of this Act, or in any judgement, decree or order of any court or other authority, any person in respect of whom an order of detention has been made under Act at any time before the 8th day of June, 1988 may be without obtaining the opinion of the Advisory Board for a longer than three months, but not exceeding six months, the date of his detention where such person had been with a view to preventing him, in any disturbed area —

(1) from interfering with the efforts of Government in coping with the terrorist and disruptive activities; and from acting in any manner prejudicial to —
the defence of India; or
(b) the security of India; or
(c) the security of the State; or
(d) the maintenance of public order; or
(e) the maintenance of supplies and services essential to the community.

Explanation 1 - The provisions of the Explanation to sub-section (2) of Section 3 shall apply for the purposes of this sub-section as they apply for the purposes of that sub-section.

Explanation 2 - In this sub-section, "disturbed area" means an area which is for the time being - declared by notification under Section 3 -of the Punjab Disturbed Areas Act, 1983 (32 of 1983), or under Section 3 of the Chandigarh Disturbed Areas Act, 1983 (33 of 1983), to be a disturbed area.

Explanation 3 - In this sub-section, “terrorist and disruptive activities” means “terrorist acts” and “disruptive activities” within the meaning of the Terrorist, and Disruptive Activities (Prevention) Ordinance, 1987 (Ord. 2 of 1987).

(2) In the case of any person to whom sub-section (1) applies, Sections 3, 8 and 10 to 14 shall have effect subject to the following modifications, namely:—

(a) in Section 3, —
   (i) in sub-section (4), in the proviso,
      (A) for the words “ten days”, the words “fifteen days” shall be substituted;
      (B) for the words “fifteen days”, the words “twenty days” shall be substituted;
   (ii) in sub-section (5), for the words "seven days", the words "fifteen days" shall be substituted;

(b) in Section 8, in sub-section (1), for the words "ten days", the words "fifteen days" shall be substituted;

(c) in Section 10, for the words "shall, within three weeks", the words "shall, within four months and two weeks" shall be substituted;

(d) in Section 11,—
   (i) in sub-section (1), for the words "seven weeks", the words "five months and three weeks" shall be substituted;
   (ii) in sub-section (2), for the words "detention of the person concerned", the words "continued detention of the person concerned" shall be substituted;

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

(f) in Section 13, for the words "twelve months" the words "two years" shall be substituted;

(g) in Section 14, in the proviso to sub-section (2), for the words "twelve months", the words "two years" shall be substituted.
1. The appropriate Government at 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 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 subsection (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 (1) fails to fulfill 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 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 effect with respect to detentions under state laws—

(1) Nothing in this Act shall apply or have any effect with respect to of detention, made under any State law, which are in force immediately before the commencement of the National Ordinance, 1980 (11 of 1980), and accordingly every person in respect of whom an order of detention made under any State law is in force immediately before such commencement, shall be governed with respect to such detention by the provisions of such State law or where the State law under which such order of detention is made is an Ordinance (hereinafter referred to as the State Ordinance) promulgated by the Governor of State and the State Ordinance has been replaced -

(i) before such commencement by an enactment passed by the Legislature of that State, by such enactment, or

(ii) after such commencement, by an enactment which is passed by the Legislature of the State and the application of which is confirmed to orders of detention made before such commencement under the State Ordinance, by such enactment, as if this Act had not been enacted.

(2) Nothing in this section shall be deemed to bar the making under section 3, of a detention order against any person referred to in sub-section (1) after the detention order in force in respect of him as aforesaid immediately before the commencement of the National Security Ordinance, 1980 (11 of 1980), ceases to have effect for any reason whatsoever.
Explanation — For the purposes of this section, "State law" means any law providing for preventive detention on all or any of the grounds on which an order of detention may be made under sub-section(2) of Section 3 and in force in State immediately before the commencement of the said Ordinance.

18. Repel and saving —


(2) Notwithstanding such repel, 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 23rd day of September 1980, and, in particular, any reference made under section 10 of the said Ordinance and pending before any Advisory Board immediately before the date on which this Act receives the assent of the President may continue to be dealt with by date Board after that date as if such Board had been constituted under section 9 of this Act.

References:

1. Received the assent of the President on December 27, 1980, published in the Gazette of India, Extra, Part II, Section 1, dated 27th December, 1980, pp. 697-703.

2. Ins. by NSA (Second Amendment) Act, 1984, S. 2 (w.e.f. 21-6-1984).

1. *June 21, 1984

2. Subs. By NS (Second Amendment) Act, 1984, S. 3 (w.e.f. 21-6-1984).

3. †June 21,

Whereas violations of foreign exchange regulations and smuggling activities are having an increasingly deleterious effect on the national economy and thereby a serious adverse effect, on the security of the State;

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

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

1. Short title, extent and commencement—(1) This Act may be called the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974.

(2) It extends to the whole of India.

(3) It shall come into force on such date (being a date not later than the twentieth day of December, 1974), as the Central Government may, by notification in the Official Gazette, appoint.

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

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

(b) “detention order” means an order under Section 3;

(c) "foreigner" has the same meaning as in the Foreigners Act, 1946 (31 of 1946);

(d) Indian customs waters" has the same meaning as in clause (28) of Section 2 of the Customs Act, 1962 (52 of 1962);

(e) “smuggling” has the same meaning as in clause (39) of section 2 of the Customs Act, 1962 (52 of 1962), and all its grammatical variations and cognate expressions shall be construed accordingly;

(f) "State Government", In relation to a Union territory, means the administrator thereof; (g) any reference in this Act to a law which is not in force in the State of Jammu Kashmir shall, in relation to the State be construed as a reference to the corresponding law, if any, in force in that State.

3. Power to make orders detaining certain persons -

(1) The Central Government or the State Government or any officer of the Central Government, not below the rank of Joint Secretary to that Government, specially empowered for the purposes of this section by that Government, or any officer of a Government, not below the rank of a Secretary to that
Government, specially empowered for the purposes of this section by that Government may, if satisfied, with respect to any (including a foreigner), that, with a view to preventing him from acting in any manner prejudicial to the conservation or augmentation of foreign exchange or with a view to him from-

(i) smuggling goods, or
(ii) abetting the smuggling of goods, or
(iii) engaging in transporting or concealing or keeping smuggled goods, or
(iv) dealing in smuggled goods otherwise than by engaging in transporting or concealing or keeping smuggled goods, or
(v) harbouring persons engaged in smuggling goods or in abetting the smuggling of goods.

It is necessary so to do, make an order directing that person, be detained:

2a ["Provided that no order of detention shall be made on any of the grounds specified in this subsection on which an of detention may be made under Sec 3 of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Act, 1988 or under Sec 3 of the Jammu and Kashmir of Illicit Traffic in Narcotic Drugs and Psychotropic Ordinance, 1988." (J&K' Ordinance 1 of 1988).]

(2) When any order of detention is made by a State Government or by an officer empowered by a State Government, the State Government shall, within ten days, forward to the Central Government a report in respect of the order.

(3) For the purposes 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 India in the manner provided for the execution of warrants of arrest under the Code of Criminal Procedure, 1973 (2 of 1974).

(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 lions including conditions as to maintenance, interviews or communication with others, 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,

3[5-A. 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 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 of 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 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

6. Detention orders not to be invalid or inoperative on 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 the officer making the order of detention, or
(b) that the piece of detention of such person is outside the said limits.

7. Powers in relation to absconding persons— (1) If the appropriate 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, that
Government may—
(a) make a report in writing of the fact to a Metropolitan Magistrate or a 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 of
Criminal Procedure, 1973 (2 of 1974), 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 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 code of Criminal Procedure, 1973 (2
of 1974), every offence under clause (b) of subsection (1) shall be cognisable.

8. Advisory Boards— 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 Central Government and each State Government shall, wherever necessary,
constitute one or more Advisory Boards each of which shall consists of a
Chairman and two other persons possessing the qualification specified in such
clause (a) of clause (4) of Article 22 of the constitution.
(b) as otherwise provided in Section 9, the appropriate 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 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 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 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, excepting 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 appropriate 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 appropriate Government shall revoke the detention order and cause the person to be released forthwith.

9. Cases in which and circumstances under which persons 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 a foreigner) in respect of whom an order of detention is made under this Act at any time before the 31st day of July, 1993, may be detained without obtaining, in accordance with the provisions of sub-clause (a) of clause (4) 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 smuggling goods or abetting the smuggling of goods or engaging in transporting or concealing or keeping smuggled goods and the Central Government or any officer of the Central Government, not below the rank of an Additional Secretary to that Government, specially empowered for the purposes of this section by that Government, is satisfied that such person—

(a) smuggles or is likely to smuggle goods into, out of or through any area highly vulnerable to smuggling; or

(b) abets or is likely to abet the smuggling of goods into, out of or through any area highly vulnerable to smuggling; or

(c) engages or is likely to engage in transporting or concealing or keeping smuggled goods in any highly vulnerable to smuggling, and makes a declaration to that effect within-five weeks of the detention of such person.

Explanation 1 — In this sub-section, "area highly vulnerable to smuggling" means—
(i) the Indian customs waters contiguous to the States of Goa, Gujarat, Karnataka, Kerala, Maharashtra and Tamil Nadu and the Union territories of Daman and Diu and Pondicherry;

(ii) the inland area fifty kilometres in width from the coast of India failing within the territories of the States of Goa, Gujarat, Karnataka, Kerala, Maharashtra and Tamil Nadu and the Union territories of Daman and Diu and Pondicherry;

(iii) the inland area fifty kilometres in width from the India-Pakistan border in the States of Gujarat, Jammu and Kashmir, Punjab and Rajasthan;

(iv) the customs airport of Delhi;

(v) and such further or other Indian customs waters, or inland area not exceeding one hundred kilometres in width from any other coast or border of India, or such other customs station, as the Central Government may, having regard to the vulnerability of such waters, area- or customs station, as the case may be, to smuggling, by notification in the Official Gazette, specify in this behalf.

Explanation 2.—For the purposes of Explanation 1, "customs airport" and "customs station" shall have the same meaning, as in clauses (10) and (13) of Section 2 of the Customs Act, 1962 (52 of 1962), respectively.

(2) In the case of any person detained under a detention order to which the provisions of sub-section (1) apply, Section 8 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),—

(1) for the words "the detention of the person concerned", the words "the continued detention of the person concerned" shall be substituted;

(2) 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.

10. 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 9 do not apply and which has been confirmed under clause (f) of Section 8 shall be [a period of one year from the date of detention or the specified period, whichever period expires later] and the maximum period for which any person may be detained in pursuance of any detention order to which the provisions of Section 9 apply and which has been confirmed under clause (f) of Section 8 read with sub-section (2) of Section 9 shall be [a period of two years from the date of detention or the specified period, whichever period expires later]:

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

7[Explanation.—In this section and in Section 10-A, "specified period" means the period during which the Proclamation of Emergency issued under clause (1) of Article 352 of the Constitution on the 3rd day of December, 1971 and the Proc-
lamination of Emergency issued under that clause on the 25th day of June, 1975, are both in operation.]

7[10-A. Extension of period of detention.—(1) Notwithstanding anything contained in any other provision of this Act, the detention of every person detained under a detention order which has been confirmed under clause (f) of Section 8 before the commencement of the Conservation of Foreign Exchange and Prevention of Smuggling Activities (Amendment) Act, 1976, and which is in force immediately before such commencement shall, unless his detention has been continued by the appropriate Government under the said clause for a period shorter than one year from the date of his detention, continue until the expiry of a period of one year from the date of his detention under such order or until the expiry of the specified period whichever period expires later:

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

(2) Notwithstanding anything contained in any other provision of this Act, the detention of every person detained under a detention order which has been confirmed under clause (f) of Section 8 read with sub-section (2) of Section 9 before the commencement of the Conservation of Foreign Exchange and Prevention of Smuggling Activities (Amendment) Act, 1976, and which is in force immediately before such commencement, shall, unless his detention has been continued by the appropriate Government under the said clause (f) read with the said sub-section (2), for a period shorter than two years from the date of his detention, continue until the expiry of a period of two years from the date of his detention under such order or until the expiry of the specified period, whichever period expires later:

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

11. 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 of a State Government, by that State Government or by the Central Government;

(b) notwithstanding that the order has been made by an officer of the Central Government or by a State Government, by the Central Government

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

12. Temporary release of persons detained.— 8[(1) The Central Government may, at any time, direct that any person detained in pursuance of a detention order made by that Government or an officer subordinate to that Government or by a State Government or by an officer subordinate to a State Government, may be released for any specified period either without condition or upon such conditions specified in the direction as that person accepts, and may, at any time, cancel his release.

(1-A) A State Government, may at any time, direct that person detained in pursuance of a detention order made by that Government or by an officer subordinate to that Government may be released for any specified period either without condition or upon such condition specified in the direction as person accepts, and may, at any time, cancel his release.]
(2) In directing the release of any person under sub-section (1) or sub-section (1-A), the Government directing the release, may require him to enter into a bond with sureties for the observance of the conditions specified in the direction.

(3) Any person released under sub-section (1) or sub-section (1-A) shall surrender himself at the time and place, and to the authority, specified in the order directing his release or canceling 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) or sub-section (1-A) fails to fulfill 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.

12-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 twenty-four months from the 25th day of June, 1975, whichever period is the shortest.

(2) When making an order, of detention under this Act against any person after the commencement of the Conservation of Foreign Exchange and Prevention of Smuggling Activities (Amendment) Act, 1975, 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 with the emergency in respect of which the referred to in sub-section (1) have been issued (hereafter in section referred to as 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 by the appropriate Government within fifteen days from the date of making of the declaration and such declaration shall cease to have effect unless it is confirmed by that Government, after such review, within the said period of fifteen days.

(3) The question whether the detention of any person in respect of whom a declaration has been made under sub-section (2) 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 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) In making any consideration, review or reconsideration under sub-section (2) or (3), the appropriate Government or officer may, if such Government or officer considers it to be against the public interest to do otherwise, act on the basis of the information and materials in its or his possession without disclosing the facts or giving an opportunity of making a representation to the person concerned.

(5) It shall not be necessary to disclose to any person detained under a detention order to which the provisions of sub-section (2) apply, the grounds on which the order has been made during the period the declaration made in respect of such person under that sub-section is in force, and, accordingly, such period shall not be taken into account for the purposes of sub-section (3) of Section 3.

(6) In the case of every person detained under a detention order to which the provisions of sub-section (2) apply, being a person in respect of whom a declaration has been made thereunder, the period during which such declaration is in force shall not be taken into account for the purpose of computing-

(i) the periods specified in clauses (b) and (c) of Section 8;

(ii) the periods of "one year" and "five weeks" specified in sub-section (1), the period of "one year" specified in sub-section (2) (f) and the period of "six months" specified in sub-section (3) of Section 9.

13. Protection of action taken in good faiths-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.

14. Repeal – The Maintenance of Internal Security (Amendment) Ordinance, 1974 (11 of 1974), shall, on the commencement of this Act, stand repealed and accordingly the amendments made in the Maintenance of Internal Security Act, 1971 (26 of 1971), by the said Ordinance shall, on such commencement, cease to have effect.
References:

1. Received the assent of the President on December 13, 1974, published in Gazette of India, Extra., Part II, Section 1, dated 13th December, 1974, pp. 761-767.


4a. Subs. by Act.23 of 1987, S. 2, (w.e.f. 2-7-1987),

* The COFEPOSA (Amendment) Ordinance, 1990.

4b. Subs by Act 23 of 1987, S.2 (w.e.f. 2.7.1987)

5. Subs. temporarily for the words "one year from the date of detention" for the duration of the Proclamation of Emergency of 3-12-1971 and 25-6-1975 by S. 3, ibid.

6. Subs. temporarily for the words "two years from the date of detention", ibid.


9. Subs. by ibid.

10. Subs. by ibid.


12. Ins, by ibid, S. 4.

APPENDIX-III

The Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act, 1980

[No. 7 of 1980]

(12th February, 1980)

Be it enacted by Parliament in the Thirtieth Year of the Republic of India as follows:—

1. Short title, extent and commencement. — (1) This Act be called the Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act, 1980.

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

(3) It shall be deemed to have come into force on the 5th day, of October, 1979.

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

(a) "appropriate Government" means, as respects a Retention order made by the Central Government or by an officer of 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 of 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) "State Government", in relation to a Union Territory, means the administrator thereof.

3. Power to make orders detaining certain persons. — (1) The Central Government or a State Government or any officer of the Central Government, not below the rank of a Joint Secretary to that Government specially empowered for the purposes of this section by that Government, or any officer of a State Government, not below the rank of a Secretary to that Government specially empowered for the purposes of this section by that Government, may, if satisfied, with respect to any person that with a view to preventing him from acting in any manner prejudicial to the maintenance of supplies of commodities essential to the community it is necessary so to do, make an order directing that such person be detained.

Explanation — For the purposes of this sub-section, the expression "acting in any manner prejudicial to the maintenance of supplies of commodities essential to the community" means—

(a) committing or instigating any person to commit any offence punishable under the Essential Commodities Act, 1955 (10 of 1955), or under any other law for the time being in force relating to the control of the production, supply or distribution of, or trade commerce in, any commodity essential to the community; or

(b) dealing in any commodity—

(i) which is an essential commodity as defined in the Essential Commodities Act, 1955 (10 of 1955), or

(ii) with respect to which provisions have been made in any such other law as is referred to in clause (a), with a view to making gain in any manner which, directly or indirectly, defeat or tend to defeat the provisions of that Act or other law aforesaid.
(2) Any of the following officers, namely:—
(a) District Magistrates;
(b) Commissioners of Police, wherever they have been appointed, may also, if satisfied as provided in subsections (1), exercise the powers 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 twelve 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 ten days from the date of detention, this sub-section shall apply subject to the modification that for the words "twelve days", the words "fifteen days" shall be substituted.

(4) When any order is made or approved by the State Government under this section or when any order is made under this section by an officer of the State Government not below the rank of Secretary to that Government specially empowered under sub-section (1), 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.

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 (2 of 1974).

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

7. Powers in relation to absconding persons —

(1) if the appropriate Government or an officer mentioned in sub-section (2) of Section 3 or a 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 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 Section 82, 83, 84
and 85 of the Code of Criminal Procedure, 1973 (2 of 1974), 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 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, 1973 (2 of 1974), every offence under clause (b) of sub-section (1) shall be cognizable.

8. Grounds of order of detention to be disclosed to person 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.

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 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.]

Explanation - In this section “appropriate High Court” means-

(a) in the case of the detention of a person in pursuance of an order of detention made by the Central Government or the administration of the Union territory of Delhi or an officer subordinate to such administrator, the High Court for the Union territory of Delhi;

(b) in the case of the detention of a person in pursuance of an order of detention made by any State Government (other than the administrator of a Union territory) or an officer of such State Government, the High Court for that State; and

(c) in the case of the detention of a person in pursuance of an order of detention made by the administrator of a Union territory (other than the Union territory of Delhi) or an officer subordinate to such administrator, such High Court as the Central Government may, by order published in the Official Gazette, specify with respect to such Union territory.
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 referred to in sub-section (2) of Section 3, also the report by such officer under sub-section (3) 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 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.

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 six 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.

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 of a State Government, by that State Government or by the Central Government;

(b) notwithstanding that the order has been made by an officer of the Central Government or by a State Government, by the Central Government.

(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 Central Government or a State Government or an officer, as the case may be, is satisfied that such an order should be made.

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 canceling 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 fulfill 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. Repeal and Saving:

(1) The Prevention of Black-marketing and Maintenance of Supplies of Essential Commodities Ordinance, 1979 (10 of 1979), is hereby repealed.

(2) Notwithstanding such repeal anything done or any action taken under the Ordinance so repealed shall be deemed to have been done or taken under the corresponding provisions of this Act.
References:
1. Received the assent of the President on February 12, 1980, published in the Gazette of India, Extra., Part II, Section 1, dated 12th February, 1980, pp. 21-27.
4. Subs. by Act 19 of 1981. Section 3 of Act 19 of 1981 in this regard provides:
   “3. Saving as to pending references under Section 10 - Any reference made under Section 10 of the principal Act and pending before any Advisory Board immediately before the commencement of this Act may, notwithstanding anything contained in this Act, continue to be dealt with by that Board after such commencement as if this Act had not been enacted.”
APPENDIX-IV

The Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976

Whereas for the effective prevention of smuggling activities and foreign exchange manipulations which are having a deleterious effect on the national economy it is necessary to deprive persons engaged in such activities and manipulations of their ill-gotten gains;

And whereas such persons have been augmenting such gains by violations of wealth-tax, income-tax or other laws or by other means and have thereby been increasing their resources for operating in a clandestine manner;

And whereas such persons have in many cases been holding the properties acquired by them through such gains in the names of their relatives, associated and confidants;

Bet it enacted by Parliament in the Twenty-sixth Year of the Republic of India as follows:-

1. Short title, extent and commencement – (1) This Act may be called the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976.

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

(3) It shall be deemed to have come into forced on the 5th day of November, 1975.

2. Application – (1) The provisions of this Act shall apply only to the persons specified in sub-section (2).

(2) The persons referred to in sub-section (1) are the following, namely:-

(a) every person-

(i) who has been convicted under the Sea Customs Act, 1878 (8 of 1878), or the Customs Act, 1962 (52 of 1962), of an offence in relation to goods of a value exceeding one lakh of rupees; or

(ii) who has been convicted under the Foreign Exchange Regulation Act, 1947 (7 of 1947), or the Foreign Exchange Regulation Act, 1973 (46 of 1973), of an offence, the amount or value involved in which exceeds one lakh of rupees; or

(iii) who having been convicted under the Sea Customs Act, 1878 (8 of 1878), or the Customs Act, 1962 (52 of 1962), has been convicted subsequently under either of those Acts; or

(iv) who having been convicted under the Foreign Exchange Regulation Act, 1947 (7 of 1947), or the Foreign Exchange Regulation Act, 1973 (46 of 1973), has been convicted subsequently under either of those Acts;

(b) every person in respect of whom an order of detention has been made under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (52 of 1974):

1. Received the assent of the President on January 25, 1976, published in Gazette of India, Extra., Part II, Section 1, dated 25th January, 1976, pp. 95-105.
Provided that -

(i) such order of detention, being an order to which the provisions of Section 9 or Section 12-A of the said Act do not apply, has not been revoked on the report of the Advisory Board under Section 8 of the said Act or before the receipt of the report of the Advisory Board or before making a reference to the Advisory Board; or

(ii) such order of detention, being an order to which the provisions of Section 9 of the said Act apply, has not been revoked before the expiry of the time for, or on the basis of, the review under sub-section (3) of Section 9, or on the report of the Advisory Board under Section 8, read with sub-section (2) of Section 9, of the said Act; or

(iii) such order of detention, being an order to which the provisions of Section 12-A of the said Act apply, has not been revoked before the expiry of the time for, or on the basis of, the first review under sub-section (3) of that section, or on the basis of the report of the Advisory Board under Section 8, read with sub-section (6) of Section 12-A, of that Act; or

(iv) such order of detention has not been set aside by a court of competent jurisdiction;

(c) every person who is a relation of a person referred to in clause (a) or clause (b);

(d) every associate of a person referred to in clause (a) or clause (b);

(e) any holder (hereafter in this clause referred to as the present holder) of any property which was at any time previously held by a person referred to in clause (a) or clause (b) unless the present holder or, as the case may be, any one who held such property after such person and before the present holder, is or was a transferee in good faith for consideration.

Explanation 1- For the purposes of sub-clause (i) of clause (a), the value of any goods in relation to which a person has been convicted of an offence shall be the wholesale price of the goods in the ordinary course of trade in India as on the date of the commission of the offence.

Explanation 2- For the purposes of clause (c), "relative", in relation to a person, means-

(i) spouse of the person;

(ii) brother or sister of the person;

(iii) brother or sister of the spouse of the person;

(iv) any lineal ascendant or descendant of the person;

(v) any lineal ascendant or descendant of the spouse of the person;

(vi) spouse of a person referred to in clause (ii), clause (iii), clause (iv) or clause (v);

(vii) any lineal descendant of a person referred to in clause (ii) or clause (iii).

Explanation 3- For the purposes of clause (d), "associate", in relation to a person, means-

(i) any individual who had been or is residing in the residential premises (including outhouses) of such person;
(ii) any individual who had been or is managing the affairs or keeping the accounts of such person;

(iii) any association of persons, body of individuals, partnership firm, or private company within the meaning of the Companies Act, 1956 (1 of 1956), of which such person had been or is a member, partner or director;

(iv) any individual who had been or is a member, partner or director of an association of persons, body of individuals, partnership firm or private company referred to in clause (iii) at anytime when such person had been or is a member, partner or director of such association, body, partnership firm or private company;

(v) any person who had been or is managing the affairs, or keeping the accounts, of any association of persons, body of individuals, partnership firm or private company referred to in clause (iii);

(vi) the trustee of any trust, where,–

(a) the trust has been created by such person; or

(b) the value of the assets contributed by such person (including the value of the assets, if any, contributed by him earlier) to the trust amounts, on the date on which the contribution is made, to not less than twenty per cent of the value of the assets of the trust on that date;

(vii) where the competent authority, for reasons to be recorded in writing, considers that any properties of such person are held on his behalf by any other person, such other person.

Explanation 4. — For the avoidance of doubt, it is hereby provided that the question whether any person is a person to whom the provisions of this Act apply may be determined with reference to any facts, circumstances or events (including any conviction or detention) which occurred or took place before the commencement of this Act.

Definitions— (1) In this Act, unless the context otherwise requires-

(a) “Appellate Tribunal” means the Appellate Tribunal for Forfeited Property constituted under Section 12;

(b) “competent authority” means an officer of the Central Government authorised by it under subsection (1) of Section 5 to perform the functions of a competent authority under this Act;

(c) “illegally acquired property”, in relation to any person to whom this Act applies means—

(i) any property acquired by such person, whether before or after the commencement of this Act, wholly or partly out of or by means of any income, earnings or assets derived or obtained from or attributable to any activity prohibited by or under any law for the time being in force relating to any matter in respect of which Parliament has power to make laws; or

(ii) any property acquired by such person, whether before or after the commencement of this Act, wholly or partly out of or by means of any income, earnings or assets in respect of which any such law has been contravened; or

(iii) any property acquired by such person, whether before or after the commencement of this Act, wholly or partly out of or by means of any income, earnings or assets the source of which cannot be proved and which
cannot be shown to be attributable to any act or thing done in respect of any matter in relation to which Parliament has no power to make laws; or

(iv) any property acquired by such person, whether before or after the commencement of this Act, for a consideration, or by any means, wholly or partly traceable to any property referred to in sub-clauses (i) to (iii) or the income or earnings from such property;

and includes—

(A) any property held by such person which would have been, in relation to any previous holder thereof, illegally acquired property under this clause if such previous holder had not ceased to hold it, unless such person or any other person who held the property at any time after such previous holder or, where there are two or more, such previous holders, the last of such previous holders is or was a transferee in good faith for adequate consideration;

(B) any property acquired by such person, whether before or after the commencement of this Act, for a consideration, or by any means, wholly or partly traceable to any property falling under item (A), or the income or earnings therefrom;

(d) "prescribed" means prescribed by rules made, under this Act;

(e) "property" includes any interest, in property, movable or immovable;

(f) "trust" includes any other legal obligation,

(2) Any reference in this Act to any law which is not in force in any area shall, in relation to that area, be construed as a reference to the corresponding law, if any, in force in that area.

(3) Any reference in this Act to any officer or authority shall, in relation to any area in which there is no officer or authority with the same designation, be construed as a reference to such officer or authority as may be specified by the Central Government by notification in the Official Gazette.

4. Prohibition of holding illegally acquired property—(1) As from the commencement of this Act, it shall not be lawful for any person to whom this Act applies to hold any illegally acquired property either by himself or through any other person on his behalf.

(2) Where any person holds any illegally acquired property in contravention of the provisions of sub-section (1) property shall be liable to be forfeited to the Central Government in accordance with the provisions of this Act

5. Competent authority—(1) The Central Government by order published in the Official Gazette, authorises as officers of the Central Government (not below the rank of a Joint Secretary to the Government), as it thinks fit, to the functions of the competent authority under this Act.

(2) The competent authorities shall perform their functions in respect of such persons or classes of persons as the Government may, by order, direct.

6. Notice of forfeiture—(1) If, having regard to the value of the properties held by any person to whom this Act applies, either by himself or, through any other person on his behalf, his known sources of income, earnings or assets, and any other information or material available to it as a result of action taken under Section 18 or otherwise, the competent authority has reason to believe (the reasons for such belief to be recorded in writing that all or any of such properties are illegally acquired properties, it may serve a notice upon such person (hereinafter referred to as the
person affected) calling upon him within such time as may be specified in the notice, which shall not be ordinarily less than thirty days, to indicate the sources of his income, earnings or assets, out of which or by means of which he has acquired such property, the evidence on which he relies and other relevant information and particulars, and to show cause why all or any of such properties, as the case may be, should not be declared to be illegally acquired properties and forfeited to the Central Government under this Act.

(2) Where a notice under sub-section (1) to any person any property as held on behalf of such person by any other person, a copy of the notice shall also be served upon such other person.

7. Forfeiture of property in certain cases—(1) The competent authority may, after considering the explanation, if any, to the show-cause notice issued under Section 6, and the materials available before it after giving to the person affected (and in a case where the person affected holds any property specified in the notice through any other person, to such other person also) a reasonable opportunity of being heard, by order, record a finding whether all or any of the properties in question are illegally acquired properties.

(2) Where the competent authority is satisfied that some of the properties referred to in the show-cause notice are illegally acquired properties but is not able to identify specifically such properties, then, It shall be lawful for the competent authority to specify the properties which, to the of its judgment, are illegally acquired properties and record a finding accordingly under sub-section (1).

(3) Where the competent authority records a finding under this section to the effect that any property is illegally acquired property, it shall declare that such property shall, subject to the provisions of this Act, stand forfeited to the Central Government free from all encumbrances.

(4) Where any shares in a company stand forfeited to the Central Government under this Act, then, the company shall, notwithstanding anything contained in the Companies Act, 1956 (1 of 1956), or the articles of association of the company, forthwith register the Central Government as the transferee of such shares.

8. Burden of proof—In any proceedings under this Act, the burden of proving that any property specified in the notice served under Section 6 is not illegally acquired property shall lie on the person affected.

9. Fine in lieu of forfeiture—(1) Where the competent authority makes a declaration that any property stands forfeited, to the Central Government under Section 7 and it is a case where the source of only a part, being less than one-half, of the income, earnings or assets with which, such property was acquired has not been proved to the satisfaction of the competent authority, it shall make an order giving an option to the person affected to pay in lieu of forfeiture, a fine equal to one and one-fifth times the value of such part.

Explanation - For the purposes of this sub-section, the value of any part of income, earnings or assets, with which any property has been acquired, shall be—

(a) in the case of any part of income or earning, the amount of such part of income or earnings;

(b) in the case of any part of assets, the proportionate part of the full value of the consideration for the acquisition of such assets.

(2) Before making an order imposing a fine under section, (1) the person affected shall be given a reasonable opportunity of being heard.
(3) Where the person affected pays the fine due under section (1), within such time as may be allowed in that behalf the competent authority may, by order, revoke the order of forfeiture under Section 7 and thereupon such property stand released.

10. Procedure in relation to certain trust properties—In the case of any person referred to in clause (vi) of Explanation 4 to sub-section (2) of Section 2, if the competent authority, on the basis of the information and materials available to it, has reason to believe (the reasons for such belief to be recorded in writing) that any property held in trust is illegally acquired property, it may serve a notice upon the author of the trust or, as the case may be, the contributor of the assets out of or by means of which such property was acquired by the trust and the trustees, calling upon them within such time as may be specified in the notice which shall not ordinarily be less than thirty days, to explain the source of the money or other assets out of or by means of which such property was acquired, or, as the case may be, the source of the money or other assets which were contributed to the trust for acquiring such property and thereupon such notice shall be deemed to be a notice served under Section 6 and all the other provisions of this Act shall apply accordingly.

Explanation—For the purposes of this section “illegally acquired property”, in relation to any property held in trust, includes—

(i) any property which if it had continued to be held, by the author of the trust or the contributor of such property to the trust would have been illegally acquired property in relation to such author or contributor;

(ii) any property acquired by the trust out of any contributions made by any person which would have been illegally acquired property in relation to such person had such person acquired such property out of such contributions.

11. Certain transfers to be null and void—Where after the issue of a notice under Section 6 or under Section 10, any property referred to in the said notice is transferred by any mode whatsoever such transfer shall, for the purposes of the proceedings under this Act, be ignored and if such property is subsequently forfeited to the Central Government under Section 7, then, the transfer of such property shall be deemed to be null and void.

12. Constitution of appellate tribunal—(1) The Central Government may by notification in the Official Gazette, constitute an Appellate Tribunal to be called the Appellate Tribunal for Forfeited Property consisting of a Chairman and such number of other members (being officers of the Central Government not below the rank of a Joint Secretary to the Government) as the Central Government thinks fit, to be appointed by the Government for hearing appeals against the orders made under Section 7, sub-section (1) of Section 9 or Section 10.

(2) The Chairman of the Appellate Tribunal shall be a person who is or has been or is qualified to be a Judge of the Supreme Court or of a High Court.

(3) The terms and conditions of service of the Chairman and members shall be such as may be prescribed.

(4) Any person aggrieved by an order of the competent authority made under Section 7, sub-section (1) of Section 9 or Section 10, may, within forty-five days from the date on which the order is served on him, prefer an appeal to the Appellate Tribunal:

Provided that the Appellate Tribunal may entertain any appeal after the said period of forty-five days, but not after sixty days from, the date aforesaid if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.
(5) On receipt of an appeal under sub-section (4), the Appellate Tribunal may, after giving an opportunity to the appellant to be heard, if he so desires, and after making such further enquiry as it deems fit, confirm, modify or set aside the order appealed against.

(6) The powers and functions of the Appellate Tribunal may be exercised and discharged by Benches consisting of three members and constituted by the Chairman of the Appellate Tribunal.

[(6-A) Notwithstanding anything contained in sub-section (6), where the Chairman considers it necessary so to do for the disposal of appeals under this section, he may constitute a Bench of two members and a Bench so constituted may exercise and discharge the powers and functions of the Appellate Tribunal.

Provided that if the members of a Bench so constituted differ on any point or points, they shall state the point or points on which they differ and refer the same to a third member (to be specified by the Chairman) for hearing on such point or points and such point or points shall be decided according to the opinion of that member.”;

(7) The Appellate Tribunal may regulate its own procedure,

[(8) On application to the Appellate Tribunal and on payment of the prescribed fee, the Tribunal may allow a party to any appeal or any person, authorised in this behalf by such party to inspect at any time during office hours, any relevant records and registers of the Tribunal and obtain a certified copy of any part thereof.]

13. Notice or order not to be invalid for error in description.—
No notice issued or served, no declaration made; and no order passed, under this shall be deemed to be invalid by reason of any error in the description of the property or person mentioned therein if such property or person is identifiable from the description, so mentioned.

14. Bar of jurisdiction.—No order passed or declaration made under this Act shall be appealable except as provided therein, and no civil court shall have jurisdiction in respect of any matter which the Appellate Tribunal or any competent authority is empowered by or under this Act to determine, and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

15. Competent authority and Appellate Tribunal to powers of civil court—The competent authority and the Appellate Tribunal shall have all the powers of a civil court while trying a suit under the Code of Civil Procedure, 1908 (5 of 1908), in respect of the following, matters, namely—

(a) summoning and enforcing the attendance of person and examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

(d) requisitioning any public record or copy thereof from any court or office;

(e) issuing commissions for examination of witnesses or documents;

(f) any other matter which may be prescribed.

16. Information to competent authority—(1) Notwithstanding anything contained in any other law, the competent authority shall have power to require any officer or authority of the Central Government or a State Government or a local authority to
furnish information in relation to such persons, points or matters as in the opinion of the competent authority will be useful for, or relevant to, the purposes of this Act.

(2) Any officer of the Income-tax Department, the Customs Department or the Central Excise Department or any officer of enforcement appointed under the Foreign Exchange Regulation Act, 1973 (46 of 1973), may furnish suo motu any information available with him to the competent authority if in the opinion of the officer such information will be useful to the competent authority for the purposes of this Act.

17. Certain officers to assist competent authority and Appellate Tribunal— For the purposes of any proceedings under this Act, the following officers are hereby empowered and required to assist the competent authority and the Appellate Tribunal, namely:—

(a) officers of the Customs Department;
(b) officers of the Central Excise Department;
(c) officers of the Income-tax Department;
(d) officers of enforcement appointed under the Foreign Exchange Regulation Act, 1973 (46 of 1973);
(e) officers of police;

18. such other officers of the Central or State Government as are specified by the Central Government in this behalf by notification in the Official Gazette.

18. Power of competent authority to require certain officers to exercise certain powers— (1) For the purposes of any proceeding under this Act or the initiation of any such proceedings, the competent authority shall have power to cause to be conducted any inquiry, investigation or survey in respect of any person, place, property, assets, documents, books of account or any other relevant matters.

(2) For the purposes referred to in sub-section (1) the competent authority may, having regard to the nature of the inquiry, investigation or survey, require an officer of the Income-tax Department to conduct or cause to be conducted such inquiry, investigation or survey.

(3) Any officer of the Income-tax Department who is conducting or is causing to be conducted any inquiry, investigation, or survey required to be conducted under sub-section (2), may, for the purpose of such inquiry, investigation or survey, exercise any power (including the power to authorise the exercise of any power) which may be exercised by him for any purpose under the Income-tax Act, 1961 (43 of 1961), and the provisions of the said Act shall, so far as may be, apply accordingly.

19. Power to take possession.—(1) Where any property has been declared to be forfeited to the Central Government under this Act, or where the person affected has failed to pay the fine due under sub-section (1) of Section 9 within the time allowed therefore under sub-section (1) of that section, the competent authority may order the person affected as well as any other person who may be in possession of the property to surrender or deliver possession thereof to the competent authority or to any person duly authorised by it in this behalf within thirty days of the service of the order.

(2) If any person refuses or fails to comply with an order made under sub-section (1), the competent authority may take possession of the property and may for that purpose use such force as may be necessary.
(3) Notwithstanding anything contained in sub-section (2), the competent authority may, for the purpose of taking possession of any property referred to in sub-section (1), requisition the service of any police officer to assist the competent authority and it shall be the duty of such officer to comply with such requisition.

20. Rectification of mistakes— With a view to rectifying any mistakes apparent from record, the competent authority or the Appellate Tribunal, as the case may be, amend any order made by it within a period of one year from the date of the order:

Provided that if any such amendment is likely to affect any person prejudicially, it shall not be made without giving to such person a reasonable opportunity of being heard.

21. Findings under other laws not conclusive for proceedings under-this Act— No finding of any officer or authority under any other law shall be conclusive for the purposes of any proceedings under this Act.

22. Services of notices and orders — Any notice or order issued or made under this Act shall be served—

(a) by tendering the notice or order or sending it by registered post to the person for whom it is intended or to his agent;

(b) if the notice or order cannot be served in the provided in clause (a), by affixing it on a place in the -property in relation to which the notice or order is issued or made, or on some conspicuous part of the premises in which the person for it is intended is known to have last resided or on business or personally worked for gain.

23. Protection of action taken in good faith — No suit, prosecution or other proceeding shall lie against the Central Government or any officer of the Central or State Government for anything which is done, or intended to be done, in good faith, in pursuance of this Act or the rules made thereunder.

24. Act to have overriding effect — The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

25. Provisions of the Act not to apply to certain properties held in fcrust—Nothing contained in this Act shall apply in relation to any property held by a trust, or an institution created or established, wholly for public religious or charitable purposes if—

(i) such property has been so held by such trust or institution from a date prior to the commencement of this Act; or

(ii) such property is wholly traceable to any property held by such trust or institution prior to the commencement of this Act.

26. Power to make rules. —(1) The Central Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide, for all or any of the following matters, namely—

(a) the terms and conditions of service of the Chairman and other members of the Appellate Tribunal sub-section (3) of Section 12;

3[(aa) the fees which shall be paid for the inspection of the records and registers of the Appellate Tribunal or for obtaining a certified copy of any part thereof under sub-section (8) of Section 12;]

(b) the powers of a civil court that may be exercised by the competent authority and the Appellate Tribunal under clause (f) of Section 15;
(c) any other matter which has to be, or may be, prescribed.

(3) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or successive sessions aforesaid, both Houses agree in making any modification in the rule, or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule,

27. Repeal and saving - (1) The Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Ordinance, 1975 (20 of 1975), is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the Ordinance so repealed shall be deemed to have been done or taken under the corresponding provisions of this Act.

References:

1. Ins. by Act 55 of 1980, S. 2 w.e.f. 1-7-1981.
APPENDIX-V

The Preventive Detention Act, 1950
[Act No. 4 of 1950] (25th February, 1950)

Be it enacted by Parliament as follows:—

1. Short title, extent and duration.—(1) This Act may be called the Preventive Detention Act, 1950.

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

(a) “State Government” in relation to a Union territory, means the administrator thereof;

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

(c) “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.

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

(a) if satisfied with respect to any person 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 person who is a foreigner within the meaning of the Foreigners Act, 1946 (31 of 1946), 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) the Commissioner of Police for Bombay, Calcutta, Madras or Hyderabad,

(d) Collectors in the territories which, immediately before the 1st November, 1956, were comprised in the State of Hyderabad,

if satisfied as provided in sub-clauses (ii) and (iii) of clause (a) of sub-section (1), exercise the power conferred by the said subsection.

(3) When any order is made under this section by an officer mentioned in subsection (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 made after the commencement of the Preventive Detention. (Second Amendment) Act, 1952 (61 of 1952), 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.

(4) When any order is made or approved by the State Government under this section, the State Government shall, as soon as may be, 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.

3-A. Execution of detention orders—A detention order be executed at any place in India in the manner provided for the execution of warrants of arrest under the Code of Criminal Procedure, 1898 (5 of 1898).

4. 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.

5. 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.

6. 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 Presidency Magistrate or 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, 1898 (5 of 1898), 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.
7. 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, 16[as soon as may be, but not later than five 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.

8. 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 is[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 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:

Provided that nothing in this sub-section shall affect the power of any Advisory Board constituted before the commencement of the Preventive Detention (Second Amendment) Act, 1952 (61 of 1952), to dispose of any reference under Section 9 pending before it at such commencement]

9. Reference to Advisory Board.—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 8 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.

10. 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.

[2-A] 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.

(3) 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.

28[11. 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.]

29[11-A. Maximum period of detention—(1) The maximum period for which any person may be detained in pursuance of any detention order which has been confirmed under Section 11 shall be twelve months from the date of detention.

(2) Notwithstanding anything contained in sub-section (1), every detention order which has been confirmed under Section 11 before the commencement of the Preventive Detention (Second Amendment) Act, 1952 (61 of 1952), shall, unless a shorter period is specified in the order, continue to remain in force until the 1st day of April, 1953, or until the expiration of twelve months from the date of detention, whichever period of detention expires later.

(3) The provisions of sub-section (2) shall have effect notwithstanding anything to the contrary contained in Section 3 of the Preventive Detention (Amendment) Act, 1952 (34 of 1952), but nothing contained in this section shall affect the power of the appropriate Government to revoke or modify the detention order at any earlier time.]

30[12. Validity and duration of detention in certain cases— For the avoidance of doubt it is hereby declared that—

(a) every detention order in force at the commencement of the Preventive Detention (Amendment) Act, 1951 (4 of 1951), shall continue in force and shall have effect as if it had been made under this Act as amended by the Preventive Detention (Amendment) Act, 1951; and

(b) nothing contained in sub-section (3) of Section 1 or sub-section (1) of Section 12 of this Act as originally enacted shall be deemed to affect the validity or duration of any such order.]

13. 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 a State Government, by the Central Government.

3[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 Central Government or a State Government or an officer, as the case may be, is satisfied that such an order should be made.]
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 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 subsection 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 the penalty thereof.

15. Protection of action taken under the Act—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.

16. Repeal—The Preventive Detention (Extension of Duration) Order, 1950, is hereby repealed.

References:
1. This Act has been extended to Pondicherry by Reg. 7 of 19635 S. 3 and Sch. I (w.e.f. 1-10-1963).
2. Subs. by Act 51 of 1954, S. 2, for the former sob-section (2).
4. Subs. by the Adaptation of Laws (No. 3) Order, 1956, for cl. (a).
6. Subs. by Act 50 of 1950, S. 2 for “Any District Magistrate or Sub-Divisional Magistrate, or, in a Presidency-town, the Commissioner of Police, may,”
7. Subs. by Act 4 of 1951, S.4 for clauses (c), (d) and (e).
8. Subs. by the Adaptation of Laws (No. 3) Order, 1956, for “State of Hyderabad”.
9. Subs. by Act 50 of 1950, S. 2, for “by a District Magistrate,. Sub-Divisional Magistrate or Commissioner of Police”.
10. Subs, by Act 61 of 1952, S. 4, for “have a bearing on the necessity for the order”.
11. Ins. by S. 4, ibid.
13. Ss. 4 and 5 subs, by S. 6, ibid.
16. Subs. by S. 6, ibid., for “as soon as may be”.
17. Subs. by Act 4 of 1951, S. 7, for certain original words.
18. Subs. by S. 8, ibid., for “two”.
21. Subs. by the Adaptation of Laws (No 3) Order, 1956, for “Part C Stats”.
22. Subs. by the Adaptation of Laws (No. 3) Order, 1956.
24. Subs. by S. 9, ibid.
26. The words “to attend in person or” omitted by Act 61 of 1952, S. 9.
27. Subs. by S. 9, ibid., for “legal representative”.
28. Subs. by Act 4 of 1951, S. 11, for the former section.
APPENDIX-VI

The West Bengal (Prevention of Violent Activities) Act, 1970

[Presetent's Act No. 19 of 1970]

(22nd November, 1970)

In exercise of the powers conferred by Section 3 of the West Bengal State Legislature (Delegation of Powers) Act, 1970 (17 of 1970), the President is pleased to enact as follows: —

1. Short title, extent and commencement—

(1) This Act may be called the West Bengal (Prevention of Violent Activities) Act, 1970.

(2) It extends to the whole of the State of West Bengal.

(3) It shall come into force at once.

2. Definition—In this Act, unless the context otherwise requires, “detention order” means an order made under Section 3.

3. Power to make orders detaining certain persons—(1) 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 the maintenance of public order, it is necessary so to do, make an order directing that such person be detained.

(2) For the purposes of sub-section (1), the expression “acting in any manner prejudicial to the security of the State or the maintenance of public order” means —

(a) using, or instigating any person by words, either spoken or written, or by signs or by visible representations or otherwise, to use, any lethal weapon —

(i) to promote or propagate any cause or ideology, the promotion or propagation of which affects, or is likely to affect, adversely the security of the State or the maintenance of public order; or

(ii) to overthrow, or to overawe the Government established by law in India.

Explanation — In this clause, ‘lethal weapon’ includes firearms, explosive or corrosive substances, swords, spears, daggers, bows and arrows; or

(b) committing mischief, within the meaning of Section 425 of the Indian Penal Code, by fire or any explosive substance on any property of Government or any local authority or any corporation owned or controlled by Government or any University or other educational institution or on any public building, where the commission of such mischief disturbs, or is likely to disturb, public order; or

(c) causing insult to the Indian National Flag or to any other object of public veneration, whether by mutilating, damaging, burning, defiling, destroying or otherwise, or instigating any person to do so.

Explanation — In this clause, ‘object of public veneration’ includes any portrait or statue of an eminent Indian, installed in a public place as a mark of respect to him or to his memory; or

(d) committing, or instigating any person to commit, any offence punishable with death or imprisonment for life or imprisonment for a term extending to seven years or more or any offence under the Arms Act, 1959 (54 of 1959) or the Explosive
Substances Act, 1908 (6 of 1908) where the commission of such offence disturbs, or is likely to disturb, public order; or

(e) in the case of a person referred to in clauses (a) to (f) of Section 110 of the Code of Criminal Procedure, 1898 (5 of 1898), committing any offence punishable with imprisonment where the commission of such offence disturbs, or is likely to disturb, public order.

(3) Any of the following officers, namely:—

(a) District Magistrates,

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

(c) in the Presidency-town of Calcutta, the Commissioner of Police, Calcutta, may, if satisfied as provided in sub-section (1), exercise the power conferred by the said sub-section.

(4) When any order is made under this section by an officer specified in sub-section (3), he 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.

(5) When any order is made or approved by the State Government under this section, the State Government shall, as soon as may be, 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.

4. Execution of detention orders — A detention order may be executed at any place in the State of West Bengal in the manner provided for the execution of warrants of arrest under the Code of Criminal Procedure, 1898 (5 of 1898).

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 State 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 of West Bengal, by order of the State Government.

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, though within the State of West Bengal, is outside the limits of the territorial jurisdiction of the officer making the order; or

(b) that the place of detention of such person, though within the State of West Bengal, is outside the limits of the territorial jurisdiction of the officer making the order.

7. Powers in relation to absconding persons — (1) If the State Government or an officer specified in sub-section (3) 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 Presidency Magistrate or 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, 1898 (5 of 1898), 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, of with both.

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (5
of 1898), every offence under clause (b) of sub-section (1) 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 not later than five days from the date of
detention, communicate to him the grounds on the order has been made, shall afford
him the earliest opportunity, of making a representation against the order to the State
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.

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 State.

(3) The State Government shall appoint one -of the members of the Advisory
who is or has been a Judge of a High Court to be its Chairman.

10. Reference to Advisory Boards - In every case where a detention order has been
made under this Act, the State 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 specified in sub-section (3) of Section 3, also the report made by
such officer under sub-section (4) 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
State Government or from any person called for the purpose through the
State 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 State 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 State 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 State 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.

14. Revocation of detention orders—(1) Without prejudice to the provisions of Section 22 of the Bengal General Clauses Act, 1899 (Bengal Act 1 of 1899), a detention order may at any time be revoked or modified by the State Government notwithstanding that the order has been made by an officer specified in subsection (3) of Section 3.

(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 State Government or an officer specified in sub-section (3) of Section 3, as the case may be, is satisfied that such an order should be made.

15. Temporary release of persons detained—(1) The State 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 subsection 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 under the Act—No suit or other legal proceeding shall lie against the 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.

References:

1. President's rule in West Bengal was withdrawn on 2-4-1971 and so this Act ceased to have effect w.e.f., 2-4-1972.
APPENDIX-VII

The Maintenance of Internal Security Act, 1971

[No. 26 of 1971]* (2nd July, 1971)

Be it enacted by parliament in the Twenty-second Year of the Republic of India as follows.

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

(2) It extends to the whole of India [* * * *] 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 Defense 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 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;

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

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

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

(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.

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,
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 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.

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.

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 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 Section 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 [Code of Criminal Procedure, 1973], every offence under clause (b) of sub-section (1) 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 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 case 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 [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.

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

[(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.]

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 the 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.

(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.

(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.

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.

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 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.

(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 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.

(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 [* *] 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, report the fact to the Central Government]

(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) In the case of any person in respect of whom a declaration has been made by a State Government under subsection (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.

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 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.

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, Section 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.

18. Exclusion of common law or natural law rights, if any.—No person (including a foreigner) 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]


(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.
References:


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).

1a. Ins. by the Defence of India (Amendment) Act, 1975 (32 of 1975), S. 7 (w.e.f. 31-7-1975).

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

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


4a. Subs. by MISA Amendment Act, 1975 (39 of 1975), S. 2 (w.e.f. 29-6-75).

5. Subs. by MISA (Amendment) Act, 1975 (39 of 1975), S. 3 (w.e.f. 29-6-75).

6. Subs. by ibid., (w.e.f. 29-6-1975).

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


9. Ins. by MSA (Amendment) Act, 1975 (39 of 1975), S. 5 (w.e.f. 29-6-75).


11a. Subs. by Act 78 of 1976 for "twelve months" (w.e.f. 16-6-1976). See-also S. 3 of that Act [1976 CCL-ll-562].


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


19. Ins. by MISA (Amendment) Act, 1975 (39 of 1975), S. 7 (w.e.f. 25-6-75).


APPENDIX-VIII

The Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances
Act, 1988

[No. 46 of 1988]
(6th September, 1988)

An Act to provide for detention in certain cases for the purpose of preventing illicit traffic in narcotic drugs and psychotropic 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 the activities of persons engaged in such illicit traffic have a deleterious effect on the national economy;

And whereas having regard to the persons by whom and the manner in which such activities are organised and carried on, and having regard to the fact that in certain areas which are highly vulnerable to the illicit traffic in narcotic drugs and psychotropic substances, 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 Parliament in the Thirty-ninth Year of the Republic of India as follows:—

1. Short title, extent and commencement - (1) This Act may be called the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988.
(2) It extends to the whole of India except the State of Jammu and Kashmir.
(3) It shall be deemed to have come into force on the 4th day of July, 1988.

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 by an officer of 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 of a State Government, or a person detained under such order, the State Government;
   (b) "customs airport" means any airport appointed under clause (a) of section 7 of the Customs Act, 1962 [52 of 1962] to be a customs airport;
   (c) "detention order" means an order made under section 3;
   (d) "foreigner" has the same meaning as in the Foreigners Act, 1946 [31 of 1946];
   (e) "illicit traffic" in relation to narcotic drugs and psychotropic substances, 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, sale, purchase, transportation, warehousing, concealment, or consumption, import inter-State, export inter-State, import into India, export from India or transhipment, of narcotic drugs or psychotropic substances;
(iv) dealing in any activities in narcotic drugs or psychotropic substances other than those provided in sub-clauses (i) to (iii); or

(v) handling or letting any premises for the carrying on of any of the activities referred to in sub-clauses (i) to (iv), other than those permitted under the Narcotic drugs and Psychotropic Substances Act, 1985 [61 of 1985]- or any rule or order made, or any condition of any licence, term or authorisation issued, thereunder and includes—

(1) financing, directly or indirectly, any of the aforementioned activities.

(2) abetting or conspiring in the furtherance of or in support of doing any of the aforementioned activities;

(3) harbouring persons engaged in any of the aforementioned activities,

(f) “Indian customs waters” has the same meaning as in clause (28) of section 2 of the Customs Act, 1962 [52 of 1962]

(g) "State Government", in relation to a Union territory, means the Administrator thereof;

(h) words and expressions used herein but not defined, and defined in the Narcotic Drugs and Psychotropic Substances Act, 1985 [61 of 1985] have the meaning respectively assigned to them in that Act,

3. Power to make orders detaining certain persons. (1) The Central Government or a State Government, or any officer of the Central Government, not below the rank of a Joint Secretary to that Government, specially empowered for the purposes of this section by that Government, or any officer of a State Government, not below the rank of a Secretary to that Government, specially empowered for the purposes of this section by Government, may, if satisfied, with respect to any person (including a foreigner) that, with a view to preventing him from engaging in illicit traffic in narcotic drugs and psychotropic substances, it is necessary so to do, make an order directing that such person be detained.

(2) When any order of detention is made by a State Government or by an officer empowered by a State Government, the State Government, within ten days, forward to the Central Government a report in respect of the order.

(3) For the purposes 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 at any place in India in the manner provided for the execution of warrants of arrest under the Code of Criminal Procedure, 1973 [2 of 1974],

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 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. Grounds of detention severable. Where a person has been detained in pursuance of an order of detention under subsection (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 subsection 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 limits of 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 appropriate 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, that Government may—

(a) make a report in writing of the fact to a Metropolitan Magistrate or a 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 of Criminal Procedure, 1973 [2 of 1974] 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 Code of Criminal Procedure, 1973 [2 of 1974], every offence under clause (b) of sub-section (1) shall be cognizable.
9. Advisory Boards. 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 Central Government and each State Government shall, whenever necessary, constitute one or more Advisory Boards each of 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 appropriate 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 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 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, excepting 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 appropriate 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 appropriate 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 a foreigner) in respect of whom an order of detention is made under this Act at any time before the 31st day of July, 1993*, may be detained without obtaining, in accordance with the provisions of sub-clause (a) of clause (4) 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 traffic in narcotic drugs and psychotropic substances, and the Central Government or any officer of the Central Government, not below the rank of an Additional Secretary to that Government, specially empowered for the purposes of this section by that Government, is satisfied that such person engages or is likely to engage in illicit traffic in narcotic drugs and psychotropic substances into, out of,
through or within 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 1— In this sub-section, “area highly vulnerable to such illicit traffic”
means—

(i) the Indian customs waters;

(ii) the customs airports;

(iii) the metropolitan cities of Bombay, Calcutta, Delhi, Madras and the city of
Varanasi;

(iv) the inland area one hundred kilometres in width from the coast of India falling
within the territories of the State of Andhra Pradesh, Goa, Gujarat, Karnataka,
Kerala, Maharashtra, Orissa, Tamil Nadu and West Bengal and the Union territories
of Daman and Diu and Pondicherry;

(v) the inland area one hundred kilometres in width from—

(a) the India-Pakistan border in the States of Gujarat, Punjab and Rajasthan;

(b) the India-Nepal border in the States of Bihar, Sikkim, Uttar Pradesh and West
Bengal;

(c) the India-Burma border in the States of Arunachal Pradesh, Manipur, Mizoram
and Nagaland;

(d) the India-Bangladesh border in the States of Assam, Meghalaya, Tripura and
West Bengal;

(e) the India-Bhutan border in the States of Arunachal Pradesh, Assam, Sikkim and
West Bengal,

(vi) such other area or customs station, as the Central Government may, having
regard to the vulnerability of such area or customs station, as the case may be, to
illicit traffic, by notification in the Official Gazette, specify in this behalf.

Explanation 2- For the purposes of Explanation 1, "customs station" has the same
meaning as in clause (13) of section 2 of the Customs Act, 1962 [52 of 1962].

(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 "the 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 the maximum period for which any person may
be detained in pursuance of any detention order to which the provisions of section 10
apply and which has been confirmed under clause (f) of section 9, read with sub-
section (2) of section 10, shall be two years from the date of detention:

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

12. 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 of a State
Government, by that State Government or by the Central Government;

(b) notwithstanding that the order has been made by an officer of the Central
Government or by a State Government, by the Central Government.

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

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

(2) A State Government may, at any time, direct that any person detained in
pursuance of a detention order made by that Government or by an officer
subordinate to that Government be released for any specified period either without
conditions or upon such conditions specified in the direction as the person, accepts,
and may, at any time, cancel his release.

(3) In directing the release of any person under sub-section (1) or sub-section (2), the
Government directing; the release may require him to enter into a bond with sureties
for the due observance of the conditions specified in the direction.

(4) Any person released under sub-section (1) or sub-section (2) shall surrender
himself at the time and place, and to the authority, specified in the order
directing his release, or canceling his release, as the case may be.

(5) If any person fails without sufficient cause to surrender himself in the manner
specified in sub-section (4), he shall be punishable with imprisonment for a term
which may extend to two years, or with fine, or with both.

(6) If any person released under sub-section (1) or subsection (2) fails to fulfill 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.

(7) 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 bond or otherwise.

14. 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 of
other legal proceeding shall lie against any person for anything in good faith done or
intended to be done in pursuance of this Act.
15. Amendment of Act 52 of 1974. In section 3 of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974, to sub-section (1), the following proviso shall be added, namely:-

"Provided that no order of detention shall be made on any of the grounds specified in this sub-section on which an order of detention may be made under section 3 of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 or under section 3 of the Jammu and Kashmir Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Ordinance, 1988." [J. & K. Ordinance 1 of 1988],

16. Repeal and saving- (1) The Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Ordinance, 1988 [Ord. 7 of 1988], 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.

Reference:


APPENDIX-IX

Forfeiture of Property Derived from, or Used In, Illicit Traffic

[Chapter VA of the NDPS Act, 1985, Sec. 68A to 66Y] (Ins. by Act 2 of 1989, Sec. 19)

68A. Application, (1) the provisions of this Chapter shall apply only to the persons specified in sub-section (2).

(2) The persons referred to in sub-section (1) are the following, namely—

(a) every person who has been convicted of an offence punishable under this Act with imprisonment for a term of five years or more;

(b) every person who has been convicted of a similar offence by a competent court of criminal jurisdiction outside India;

(c) every person in respect of whom an order of detention has been made under the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988, or under the Jammu and Kashmir Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988.

Provided that such order of detention has not been revoked on the report of the Advisory Board constituted under the said Acts or such order of detention has not been set aside by a court of competent jurisdiction;

(d) every person who is a relative of a person referred to in clause (a) or clause (b) or clause (c);

(e) every associate of a person referred to in clause (a) or clause (b) or clause (c);

(f) any holder (hereafter in this clause referred to as the “present holder”) of any property which was at any time previously held by a person referred to in clause (a) or clause (b) or clause (c) unless the present holder or as the case may be, any one who held such property after such person and before the present holder, is or was a transferee in good faith for adequate consideration.

68B, Definitions. In this Chapter, unless the context otherwise requires—

(a) "Appellate Tribunal" means the Appellate Tribunal for Forfeited Property constituted under section 68N;

(b) “associate” in relation to a person whose property is liable to be forfeited under this Chapter, means—

(i) any individual who had been or is residing in the residential premises (including out-houses) of such person;

(ii) any individual who had been or is managing the affairs or keeping the accounts of such person;

(iii) any association of persons, body of individuals, partner-firm, or private company within the meaning of the Companies Act, 1956, of which such person had been or is a member, partner or director;

(iv) any individual who had been or is a member, partner or director of an association of persons, body of individuals, partnership firm or private company referred to in sub-clause (iii) at any time when such person had been or is a member, partner or director of such association, body, partnership firm or private company;
(v) any person, who had been or is managing the affairs, or keeping the accounts, of any association of persons, body of individuals, partnership firm or private company referred to in sub-clause (iii);

(vi) the trustee of any trust, where —

(1) the trust has been created by such person; or

(2) the value of the assets contributed by such person (including the value of the assets, if any, contributed by him earlier) to the trust amounts, on the date on which contribution is made, to not less than twenty per cent of the value of the assets of the trust on that date;

(vii) where the competent authority, for reasons to be recorded in writing, considers that any properties of such person are held on his behalf by any other person, such other person;

(c) "competent authority" means an officer of the Central Government authorised by it under section 68D;

(d) "concealment" means the concealment or disguise of the nature, source, disposition, movement or ownership of and includes the movement or conversion of such property by electronic transmission or by any other means;

(e) "freezing" means temporarily prohibiting the transfer, conversion, disposition or movement of property by an order issued under section 68F;

(f) "identifying" includes establishment of proof that the property was derived from, or used in, the illicit traffic;

(g) "illegally acquired property", in relation to any person to whom this Chapter applies, means,—

(i) any property acquired by such person, whether before or after the commencement of this Chapter, wholly or partly out of or by means of any income, earnings or assets derived or obtained from or attributable to illicit traffic; or

(ii) any property acquired by such person, whether before or commencement of this Chapter, for a consideration, or by any means wholly or partly traceable to any property referred to in sub-clause (i) or the income of earning from such property, and includes—

(A) any property held by such person which would have been, in relation to any previous holder thereof, illegally acquired property under this clause if such previous holder had not ceased to hold, it, unless such person or any other person who held the property at any, time after such previous holder or, where there are two or more such previous holders, the last of such previous holders is or was a transferee in good faith for adequate consideration;

(B) any property acquired by such person, whether before or after the commencement of this Chapter, for a consideration, or by any means, wholly or partly traceable to any property falling under item (A), or the income or earnings therefrom;

(h) "property" means property and assets of every description, whether corporeal or incorporeal, movable or immovable, tangible or intangible and deeds and instruments evidencing title to, or interest in, such property or assets, derived from, or used in, the illicit traffic;

(i) "relative" means—

(I) spouse of the person;
(2) brother or sister of the person;
(3) brother or sister of the spouse of the person;
(4) any lineal ascendant of descendant of the person;
(5) any lineal ascendant or descendant of the spouse of the person;
(6) spouse of a person referred to in sub-clause (2), sub-clause (3), sub-clause (4) or sub-clause (5);
(7) any lineal descendant of a person referred to in sub-clause (2) or sub-clause (3);
(j) "tracing" means determining the nature, source, disposition, movement, title or ownership of property;
(k) "trust" includes any other legal obligation.

68C. Prohibition of Holding Illegally Acquired Property, (1) As from the commencement of this Chapter, it shall not be lawful for any person to whom this Chapter applies to hold any illegally acquired property either by himself or through any other person on his behalf,
(2) Where any person holds any illegally acquired property in contravention of the provisions of sub-section (1), such property shall be liable to be forfeited to the Central Government in accordance with the provisions of this Chapter;
Provided that no property be forfeited under this Chapter if such property was by a to whom this Act applies before a period of six the on which fee was charged for an offence relating to illicit traffic.

68D. Competent Authority. (1) The Central Government may, by order published in the Official Gazette authorize any Collector of Customs or Collector of Central Excise or Commissioner of Income-tax or any other officer of the Central Government of equivalent rank to perform the functions of the competent authority under this Chapter.
(2) The competent authorities shall perform their functions in respect of such persons or classes of persons as the Central Government may, by order, direct

68E. Identifying Illegally Acquired Property. (1) Every officer empowered under section 53 and every officer-in-charge of a police station, shall, on receipt of information that any person to whom this Chapter applies has been charged with any offence punishable under this Act, whether committed in India or outside, proceed to take all steps necessary for tracing and identifying any property illegally acquired by such, person,
(2) The steps referred to in sub-section (1) may include inquiry, investigation or survey in respect of any person, place, property, assets, documents, books of account in any book or public financial institution or any other relevant matters.
(3) Any inquiry, investigation or survey referred to in subsection (2) shall be carried out by an officer mentioned in subsection (1) in accordance with such directions or guidelines as the Competent authority may make or issue in this behalf.

63F. Seizure or Freezing of Illegally Acquired Property- (1) Where any officer conducting an inquiry or investigation under 68E has reason to believe that any property in relation to which such inquiry or investigation is being conducted is an illegally acquired property and such property is likely to be concealed, transferred or dealt with in any manner which will result in frustrating any proceeding relating to forfeiture of such property under this Chapter, he may make an order for seizing such property and where it is not practicable to seize such property, he may make an
order that such property shall not be transferred or otherwise dealt with except with the prior permission of the officer making such order, or of the competent authority and a copy of such order shall be served on the person concerned.

Provided that the competent authority shall be duly informed of any order made under this sub-section and a copy of such an order shall be sent to the competent authority within forty-eighth hours of its being made.

(2) Any order made under sub-section (1) shall have no effect unless the said order is confirmed by an order of the competent authority within a period of thirty days of its being made.

Explanation – For the purposes of this section, “transfer of property” means any disposition, conveyance, assignment, settlement, delivery, payment or other alienation of property and, without limiting the generality of the foregoing, includes—

(a) the creation of a trust in a property;

(b) the grant or creation of any lease, mortgage, charge, easement, license, power, partnership or interest in property;

(c) the exercise of a power of appointment, of property vested in any person, not the owner of the property, to determine its disposition in favour of any person, other than the donee of the power;

(d) any transaction entered into by any person with intent thereby to diminish directly or indirectly the value of his own property and to increase the value of the property of any other person.

68G. Management of Properties Seized or forfeited under this Chapter. (1) The Central Government may, by order published in the Official Gazette, appoint as many, of its officers (not below the rank of a Joint Secretary to the Government) as it thinks fit, to perform the functions of an Administrator.

(2) The Administrator appointed under sub-section (1) shall receive and manage the property in relation to which an order has been made under sub-section (1) of section 68F or under section 681 in such manner and subject to such conditions as may be prescribed.

(3) The Administrator shall also take such measures, as the Central Government may direct, to dispose of the property which is forfeited to the Central Government.

68H. Notice of Forfeiture of Property. (1) If, having regard to the value of the properties held by any person to whom this Chapter applies, either by himself, or through any other person on his behalf, his known sources of income, earnings or assets, and any other information or material available to it as a result of a report from any officer making an investigation under section 68E or otherwise, the competent authority has reason to believe (the reasons for such belief to be recorded in writing) that all or any of such properties are illegally acquired properties, it may serve a notice upon such person (hereinafter referred to as the person affected) calling upon him within a period of thirty days specified in the notice to indicate the sources of his income, earnings or assets, out of which or by means of which he has acquired such property, the evidence on which he relies and other relevant information and particulars, and to show cause why all or any of such properties, as the case may be, should not be declared to be illegally acquired properties and forfeited to the Central Government under this Chapter.
(2) Where a notice under sub-section (1) to any person specifies any property as being held on behalf of such person by any other person, a copy of the notice shall also be served upon such other person.

68L Forfeiture of Property in Certain Cases. (1) The competent authority may, after considering the explanation, if any, to the show cause notice issued under section 68H, and the materials, available before it and after giving to the person affected (and in a case where the person affected holds any property specified in the notice through any other person, to such other person also) a reasonable opportunity of being heard, by order, a finding whether all or any of the properties in question are illegally acquired properties:

Provided that if the person affected (and in a case where the person affected holds any property specified in the notice through any other person, such other person also) does not appear before the competent authority or represent his case before it within a period of thirty days specified in the show cause notice, the competent authority may proceed to record a finding this sub-section ex parte on the basis of evidence available before it.

(2) Where the competent authority is satisfied that some of the properties referred to in the show cause notice are illegally acquired properties but is not able to identify specifically such properties, then, it shall be lawful for the competent authority to specify the properties which, to the best of its judgement, are illegally acquired properties and record a finding accordingly under sub-section (1).

(3) Where the competent authority records a finding under this section to the effect that any property is illegally acquired property, it shall declare that such property shall, subject to the provisions of this chapter, stand forfeited to the Central Government free from all encumbrances.

(4) Where any shares in a company stand forfeited to the Central Government under this Chapter, then, the company shall, notwithstanding anything contained in the Companies Act, 1956, or the articles of association of the company, forthwith register the Central Government as the transferee of such shares.

68J. Burden of Proof. In any proceedings under this Chapter, the burden of proving that any property specified in the notice served under section 68H is not illegally acquired property shall be on the person affected.

68K. Fine in Lieu of Forfeiture. (1) Where the competent authority makes a declaration that any property stands forfeited to the Central Government under section 68I and it is a case where the source of only a part of the illegally acquired property has not been proved to the satisfaction of the competent authority, it shall make an order giving an option to the person affected to pay, in lieu of forfeiture, a fine equal to the market value of such part.

(2) Before making an order imposing a fine due under sub-section (1), the person affected shall be given a reasonable opportunity of being heard.

(3) Where the person affected pays the fine due under subsection (1), within such time as may be allowed in that behalf, the competent authority may, by order, revoke the declaration of forfeiture under section 68I and thereupon such property shall stand released.

68L. Procedure in relation to Certain Trust Properties. In the case of any person referred to in sub-clause (vi) of clause (b) of section 68B, if the competent authority, on the basis of the information and materials available to it, has reason to believe, (the reasons for such belief to be recorded in writing) that any property held in trust
is illegally acquired property, it may serve a notice upon the author of the trust or, as
the case may be, the contributor of the assets out of or by means of which such
property was acquired by the trust and the trustees, calling upon them within a
period of thirty days specified in the notice, to explain the source of money or other
assets out of or by means of which such property was acquired or, as the case may
be, the source of money or other assets which were contributed to the trust for
acquiring such property and thereupon such notice shall be deemed to be a notice
served under section 68H and all the other provisions of the Chapter shall apply
accordingly.

Explanation—For the purposes of this section "illegally acquired property", in
relation to any property held in trust, includes—

(i) any property which if it had continued to be held by the author of the trust or the
contributor of such property to the trust would have been illegally acquired property
in relation to such author or contributor;

(ii) any property acquired by the trust out of any contributions made by any person
which would have been illegally acquired property in relation to such person had
such person acquired such property out of such contributions.

68M. Certain Transfers to be Null and Void. Where after the making of an order
under sub-section (1) of section 68F or the issue of a notice under section 68H or
under section 68L, any property referred to in the said order or notice is transferred
by any mode whatsoever such transfer shall, for the purposes of the proceedings
under this Chapter, be ignored and if such property is subsequently forfeited to the
Central Government under section 681, then, the transfer of such property shall be
deemed to be null and void.

68N. Constitution of Appellate Tribunal. (1) The Central Government may, by
notification in the Official Gazette, constitute an Appellate Tribunal to be called the
Appellate Tribunal for Forfeited Property consisting of a Chairman and such number
of other members (being officers of the Central Government not below the rank of a
Joint Secretary, to the Government) as the Central Government thinks, fit, to. be
appointed by that—Government for hearing appeals against the orders made under
section 68F, section 681, sub-section (1) of section 68K or section 68L.

(2) The Chairman of the Appellate Tribunal shall be a person who is or has been or Is
qualified to be a Judge of the Supreme Court or of a High Court.

(3) The terms and conditions of service of the Chairman and other members shall be
such as may be prescribed

680. Appeals. (1) Any person aggrieved by an order of the competent authority
made under section 68F, section 681, subsection (I) of section 68K or section 68L,
may, within forty-five days from the date on which the order is served on him, prefer
an appeal to the Appellate Tribunal:

Provided that the Appellate Tribunal may entertain an appeal after the said period of
forty-five days, but not after sixty days, from the date aforesaid if it is satisfied that
the appellant was prevented by sufficient cause from filing the appeal in time.

(2) On receipt of an appeal under sub-section (1), the Appellate Tribunal may, after
giving an opportunity to the appellant to be heard, if he so desires, and after making
such further inquiry as it deems fit, confirm, modify or set aside the order appealed
against
(3) The powers and functions of the Appellate Tribunal may be exercised and discharged by Benches consisting of members and constituted by the Chairman of the Appellate Tribunal.

(4) Notwithstanding anything contained in sub-section (3), where the Chairman considers it necessary so to do for the expeditious disposal of appeals under this section, he may constitute a Bench of two members and a Bench so constituted may exercise and discharge the powers and functions of the Appellate Tribunal:

Provided that if the members of a bench so constituted differ on any point or points, they shall state the point or points on which they differ and refer the same to a third member (to be specified by the Chairman) for hearing of such point or points and such point or points shall be decided according to the opinion of that member.

(5) The Appellate Tribunal may regulate its own procedure,

(6) On application to the Appellate Tribunal and on payment of the prescribed fee, the Tribunal may allow a party to any appeal or any person authorised by such party to inspect at any time during office hours, any relevant records and registers of the Tribunal and obtain a certified copy of any part thereof.

68P. Notice or Order not to be Invalid for Error in Description. No notice issued or served, no declaration made, and no order passed, under this Chapter shall be deemed to be invalid by reason of any error in the description of the property or person mentioned therein if such property or person is identifiable from the description so mentioned.

68Q. Bar of Jurisdiction- No order passed or made under this Chapter shall be appealable except as provided therein and no civil court shall have jurisdiction in respect of any matter which the Appellate Tribunal or any authority is empowered by or under this Chapter to and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Chapter.

68R. Competent Authority and Appellate Tribunal to have Powers of Civil Court. The competent authority and the Appellate Tribunal shall have all the powers of a civil court while trying a suit under the Code of Civil Procedure, 1908, in respect of the following matters, namely—

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

(d) requisitioning any public record or copy thereof from any court or office;

(e) issuing commissions for examination of witnesses or documents;

(f) any other matter which may be prescribed.

68S. Information to Competent Authority. (1) Notwithstanding anything contained in any other law, the competent authority shall have power to require any officer or authority of the Central Government or a State Government or a local authority to furnish information in relation to such persons, points or matters as in the opinion of the competent authority will be useful for, or relevant to, the purposes of this Chapter.

(2) Every officer referred to in section 68T may furnish suo motu any information available with him to the competent authority if in the opinion of the officer such
information will be useful to the competent authority for the purposes of this Chapter.

68T. Certain Officers to Assist Administrator, Competent Authority and Appellate Tribunal. For the purposes of any proceedings under this Chapter, the following officers are hereby empowered and required to assist the Administrator appointed under section 68G, competent authority and the Appellate Tribunal, namely-

(a) officers of the Narcotics Control Bureau;
(b) officers of the Customs Department;
(c) officers of the Central Excise Department;
(d) officers of the Income-Tax Department;
(e) officers of enforcement appointed under the Foreign Exchange Regulation Act, 1973 (46 of 1973);
(f) officers of police;
(g) officers of the Narcotics Department;
(h) officers of the Central Economic Intelligence Bureau;
(i) officers of the Directorate of Revenue Intelligence;
(j) such other officers of the Central or State Government as are specified by the Central Government in this behalf by notification in the Official Gazette.

68U. Power to Take Possession. (1) Where any property has been declared to be forfeited to the Central Government under this Chapter, or where the person affected has failed to pay the fine due under sub-section (1) of section 68K within the time allowed - therefore under sub-section (3) of that section, the competent authority may order the person affected as well as any other person who may be in possession of the property to surrender or deliver possession thereof to the Administrator appointed under section 68G or to any person duly authorised by him in this behalf within thirty days of the service of the order.

(2) If any person refuses or fails to comply with an order made under sub-section (1), the Administrator may take possession of the property and may for that purpose use such force as may be necessary,

(3) Notwithstanding anything contained in sub-section (2), the Administrator may, for the purpose of taking possession of any property referred to in sub-section (1), requisition the service of any police officer to assist him and it shall be the duty of Such officer to comply with such requisition.

68V. Rectification of Mistakes. With a view to rectifying any mistakes apparent from record, the competent authority or the Appellate Tribunal, as the case may be, may amend any order made by it within a period of one year from the date of the order:

Provided that if any such amendment is likely to affect any person prejudicially, it shall not be made without giving to such person a reasonable opportunity of being heard.

68W. Findings under Other Laws not Conclusive for Proceedings under this Chapter. No finding of any officer or authority under any other law shall be conclusive for the purpose of any proceedings under this Chapter.

68X. Service of Notices and Orders. Any notice or order issued or made under this Chapter shall be served—
(a) by tendering the notice or order or sending it by registered post to the person for whom it is intended or to his agent;

(b) if the notice or order cannot be served in the manner provided in clause (a) by affixing it on a conspicuous place in the property in relation to which the notice or order is issued or made or on some conspicuous part of the premises in which the person for whom it is intended is known to have last resided or carried on business, or personally worked for gain.

68Y. Punishment for Acquiring Property in relation to which Proceedings have been taken under this Chapter. Any person who too knowingly acquired, by any mode whatsoever, any property in relation to which proceedings are pending under this Chapter shall be punishable with imprisonment for a term which may extend to five years and with fine which may extend to fifty thousand rupees.

Whereas public order is adversely affected every now and then by the dangerous activities of certain persons, who are known as bootleggers, dacoits, drug-offenders, goondas, immoral traffic offenders and land-grabbers.

And whereas having regard to the resources and influence of the persons by whom, the large scale on which, and the manner in which the dangerous activities are being clandestinely organised and carried on in violation of law by them, as bootleggers, dacoits, drug-offenders, goondas, immoral traffic offenders or land-grabbers in the State of Andhra Pradesh and particularly in its urban areas, it is necessary to have a special law in the State of Andhra Pradesh to provide for preventive detention of these six classes of persons and for matters connected therewith.

Be it enacted by the Andhra Pradesh Legislative Assembly in the Thirty-sixth Year of the Republic of India as follows:

1. Short title and extent (1) This Act may be called the Andhra Pradesh Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug-Offenders, Goondas, Immoral Traffic Offenders and Land-Grabbers Act, 1986.

(2) It extends to the whole of the State of Andhra Pradesh.

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

(a) "acting in any manner prejudicial to the maintenance of public order" means when a bootlegger a dacoit, a drug-offender, a goonda, an immoral traffic offender or a land-grabber is engaged or is making preparations for engaging, in any of the activities as such, which affect adversely, or are 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 any of the persons referred to in this clause directly, 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 widespread danger to life or public health;

(b) “boot-logger” means a person, who distils, manufactures, stores, transports, imports, exports, sells or distributes any liquor, intoxicating drug or other intoxicant in contravention of any of the provisions of the Andhra Pradesh Excise Act, 1968 and the rules, notification and orders made thereunder, or in contravention of any other law for the time being in force, or who knowingly expends or applies any money or supplies any animal, vehicle, vessel or other conveyance or any receptacle or any other material whatsoever in furtherance or support of the doing of any of the above mentioned things by himself or through any other person, or who abets in any other manner the doing of any such thing;
(c) "dacoit" means a person who either by himself or as a member of or leader of a gang commits or abets the commission of any of the offences punishable under sections 395 to 400 of the Indian Penal Code, 1860;

(d) "detention order" means an order made under section 3;

(e) "detenu" means a person detained under a detention order;

(f) "drag-offender" means a person, who manufactures, stocks, imports, exports, sells or distributes any drug or cultivates any plant of does any other thing in contravention of any of the provisions of the Drugs and Cosmetics Act, 1940 or the Narcotic Drugs and Psychotropic Substances Act, 1985 and the rules, notifications and orders made under either Act, of in contravention of any other law for the time being in force, or who knowingly expends or applies any money in above mentioned things by himself or through any other person or who abets in any other manner the doing of any such thing;

(g) "goonda" means a person, who either by himself or as a member of or leader of a gang, habitually commits, or attempts to commit or abets the commission of offences punishable under Chapter XVI or Chapter XVII or Chapter XXII of the Indian Penal Code;

(h) "Government" means the State Government of Andhra Pradesh;

(i) "immoral traffic offender" means a person who commits or abets the commission of any offence under the Suppression of Immoral Traffic in Women and Girls Act, 1956;

(j) "land-grabber" means a person, who illegally takes possession of any land (whether belonging to Government, local authority or any other person) or enters into or creates illegal tenancies or lease and licence, agreements or any other agreement in respect of such lands; or who constructs unauthorised structures thereon for sale or hire, or give such lands to any person on rental or lease and licence basis or for construction or use and occupation of unauthorised structures or he knowingly gives financial aid to any person for taking illegal possession of such lands, or for construction of unauthorised structures thereon or who collects or attempts to collect from any occupier of such lands, rent, compensation or other charges by criminal intimidation or who evicts or attempts to evict any such occupier by force without resorting to the lawful procedure; or who abets in any manner the doing of any of the above mentioned things;

(k) "unauthorised structure" means any structure constructed without express permission in writing, of the appropriate authority under and in accordance with any law for the time being in force in the area concerned.

3. Power to make orders detaining certain persons— (1) The Government, may, if satisfied with respect to any bootlegger, dacoit, drug-offender, goonda, immoral traffic offender or land-grabber 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 a District Magistrate or a Commissioner of Police, the Government are satisfied that it is necessary so to do, they 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 (1), exercise the powers conferred by the said sub-section:
Provided that the period specified in the 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 order is made under this section by an officer mentioned in subsection (2), 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 twelve days after the making thereof, unless, in the meantime, it has been approved by the Government.

4. Execution of detention orders. A detention order may be executed at any place in the State 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 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 by order of the Government.

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, though within the State, is outside the limits of the territorial jurisdiction of the officer making the order, or;

(b) that the place of the detention of such person though within the State, is outside the said limits.

7. Power in relation to absconding persons. (1) If the Government have, or an officer mentioned in sub-section (2) of section 3, 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 then the provisions of sections 82 to 86 (both inclusive) of the Code of Criminal Procedure, 1973, shall apply in respect of such person and his property, subject to the modifications mentioned in this sub-section, and, irrespective of the place where such person ordinarily resides, the detention order made against him shall be deemed to be a warrant issued by a competent Court. Where the detention order is made by the Government, an Officer, not below the rank of District Magistrate or Commissioner of Police authorised by the Government in this behalf, or where the detention order is made by an officer mentioned in sub-section (2) of section 3, such officer, as the case may be, shall irrespective of his ordinary jurisdiction, be deemed to be empowered to exercise all the powers of the competent Court under sections 82, 83, 84 and 85 of the said Code for issuing a proclamation for such person and for attachment and sale of his property situated in any part of the State and for taking any other action under the said sections. An appeal from any order made by any such officer rejecting an application for restoration of attached property shall lie to the Court of Session,
having jurisdiction in the place where the said person ordinarily resides, as provided in section 86 of the said Code.

(2) (a) Notwithstanding anything contained in sub-section (1), if the Government have, or an Officer mentioned in sub-section (2) of section 3 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 Officer, as the case may be, may by order notified in the Andhra Pradesh Gazette, direct the said person to appear before such officer, at such place and within such period as may be specified in the order.

(b) If such person fails to comply with such order, 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, or proves that it was not possible for him to so inform the officer mentioned in the order, he shall, on conviction, be punished with imprisonment for a term which may extend to one year, or with fine, or with both.

(c) Notwithstanding anything contained in the said Code, offence under clause (b) shall be cognizable.

8. Grounds of order of detention to be disclosed to by the order, (1) When a person is detained in pursuance of a detention order, the authority making the order shall, as soon may be but not later than five 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.

9. Constitution of Advisory Boards. (1) The Government shall, whenever necessary, constitute one or more Advisory Boards for the purpose of this Act.

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

10. Reference to Advisory Board. In every case where a detention order has been made under this Act, the Government three weeks from the date of detention of a person under the order, place before the Advisory Board constituted by them 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 the case where the order has been made by an officer, also the report by such officer under subsection (3) of-section 3.

11. Procedure of Advisory Board. (1) The Advisory Board shall, after 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 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) 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.

(5) 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.

12. Action upon 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 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 13 as they think 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 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 made under this Act which has been confirmed under section 12, shall be twelve months from the date of detention.

14. Revocation of detention orders. (1) Without prejudice to the provisions of section 15 of the Andhra Pradesh General Clauses Act 1891 a detention order may, at any time, be revoked or modified by the Government, notwithstanding that the order has been made by an officer mentioned in sub-section (2) of section 3.

(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 an Officer, as the case may be, are or is satisfied that such an order should be made.

15. Temporary release of persons detained. (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 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 canceling 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, on conviction, be punished 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 fulfill 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, prosecution or other legal proceeding shall lie against the Government or any officer or person, for anything in good faith done or intended to be done in pursuance of this Act.
APPENDIX-XI

The Assam Preventive Detention Acts, 1980
[President’s Act No. 5 of 1980]
(19th July, 1980)

In exercise of the powers conferred by section 3 of the Assam State Legislature (Delegation of Powers) Act, 1980 (38 of 1980) the President is pleased to enact as follows:-

1. Short title and extent. (1) This Act may be called the Assam Preventive Detention Act, 1980.
(2) It extends to the whole of the State of Assam.

2. Definitions- In this Act, unless the context otherwise requires-
(a) “Advisory Board” means the Board constituted under section 9;
(b) “detention order” means an order made under section 3;
(c) "State" means the State of Assam;
(d) "State Government" means the State Government of Assam.

3. Power to make orders detaining certain persons. (1) The State Government or any officer of the State Government not below the rank of a Secretary to the State Government or a District Magistrate if satisfied with respect to any persons a view to preventing him from acting in any manner to the security of the State, the maintenance of public order or 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:

Provided that no order of detention shall be made under this sub-section with respect to any person with a view to preventing him from acting in any manner prejudicial to the maintenance of supplies of commodities essential to the community, and for the purposes of the proviso the expression "acting in any manner prejudicial to the maintenance of supplies of commodities essential to the community" shall have the same meaning as in the to sub-section (1) of Section 3 of the Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act, 1980. Central Act of 1974.

(2) When any order is made under the preceding sub-section by any officer mentioned therein, he 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 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 under section 8 the grounds of detention are communicated by the officer making the order after five days but not later than ten days from the date of detention this sub-section shall apply subject to the modification that for the words "twelve days", the words "fifteen days" shall be substituted. Central Act 2 of 1974.

17. Detention orders against any bootlegger, dacoit, drug-offender, goonda, immoral traffic offender or land-grabber to be made under this Act and not under National Security Act Central Act, 1980:

On and after the commencement of this Act no order of detention under the National Security Act, 190 shall be made by the Government or any of their officers under that Act in respect of any bootlegar, dacoit, drug-offender, goonda, immoral traffic offender or land-grabber in the State of Andhra Pradesh 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.

References:


5. Powers 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 State 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 State of Assam or in another State, by order of the State Government:

Provided that no order shall be made by the State Government 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,

6. Detention order 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 State Government or the officer making the order, or

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

7. Powers in relation to absconding persons. (1) If the State Government or the officer making an order under sub-section (1) of section's 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 State Government or the officer making the order may—

(a) make a 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, and thereupon the provisions of sections 82, 83, 84 and 85 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 and imprisoned 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, 1973, every offence under clause (b) of sub-section (1) shall be cognizable.

8. Grounds of order of detention to be disclosed to person 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 State 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 Board. (1) The State Government shall constitute one or more Advisory Boards for the purposes of this Act in accordance with the recommendation of the Chief Justice of the Gauhati High Court.
(2) Every such Board shall consist of a Chairman who shall be a serving Judge of the Gauhati High Court and of not less than two other members who shall be serving or retired Judges of any High Court.

10. Reference to Advisory Board. In every case where a detention order has been made under this Act the State Government shall within three weeks from the date of detention of a person under the order, place before the Advisory Board, 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 referred to in sub-section (1) of section 3, also the report by such officer under sub-section (2) of that section.

11. Procedure of Advisory Board. (1) The Advisory Board, after considering the materials place before it and after calling for such further information as it considers necessary from the State Government or from any person called for the purpose through the State 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 bearing him in person, submit its report to the State 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 of 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 whom a detention order has been made to appear by any practitioner in any matter connected with the Advisory Board.

(5) The proceedings of the Advisory Board and the report of the Advisory Board 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 sufficient cause for the detention of a person, the State 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 State 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 six months from the date of detention but in no case shall exceed the period fixed by law of Parliament, if any.

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

14. Revocation or modification of detention order. (1) Without prejudice to the provisions of section 23 of the Assam General Clauses Act, 1915 a detention order made by any officer may, at any time, be revoked or modified by the State Government.

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

15. Temporary release of persons detained. (1) The State in 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), lie 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 subsection 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, prosecution or other legal
proceedings shall lie against the State Government or any officer of the State
Government or any other person, for anything in good faith done or intended to be
done in pursuance of this Act

17. Repeal and saving. (1) The Assam Preventive Detention Ordinance, 3 of 1980, 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 18th day of April, 1980.

Reference:

1. Enacted by the President of India on 19th July 1980; published in the Gazette of
APPENDIX-XII

The Bihar Control of Crimes Act, 1981
[7 of 1981]
(11th August, 1981)

Be it enacted by the legislature of the State of Bihar in the thirty-second Year of the Republic India as follows:-

Chapter I

1. Short title and extent. (1) This Act may be called the Bihar Control of Crimes Act, 1981.
(2) It extends to the whole of the State of Bihar.

2. Definitions. In this Act unless the context otherwise requires—
(a) "Commissioner" means the Commissioner of a Division and includes any officer specially empowered by the State Government to exercise all or any of the powers of Commissioner under this Act;
(b) "District Magistrate" includes an Additional District Magistrate or Sub-divisional Officer specially empowered by the State Government in this behalf;
(c) "detention order" means an order made under Section-12;
(d) "anti-social element" means a person who is—
(i) either by himself or as a member of or leader of a gang, habitually commits, or attempts to commit or abets- the commission of offences, punishable under Chapter XVI or Chapter XVII of the Indian Penal Code, or
(ii) habitually commits or abets the commission of offences under the Suppression of Immoral Traffic in Women and Girls Act, 1956; or
(iii) who by words or otherwise promotes or attempts to promote on grounds of religion, language, caste or community or any other grounds whatsoever, feelings of enmity or hatred between different religions, racial or groups of castes or communities; or (iv) has been found habitually passing indecent remarks to, or teasing women or girls; or (v) who has convicted of an offence under Sections 25, 26, 27, 28 or 29 of the Arms Act of 1959.

3. Externment etc., of Anti-Social Elements. (1) Where it appears to the District Magistrate that—
(a) any person is an Anti-Social Element, and
(b) (i) that his movements or acts in the district or any part thereof are causing or are calculated to cause alarm, danger or harm to persons or property; or
(ii) that there are reasonable grounds for believing that he is engaged or about to engage in the district or any part thereof, in the commission of any offence punishable under Chapter XVI or Chapter XVII of the Indian Penal Code, or the Suppression of Immoral Traffic in and Girls Act, 1956 or abetment of any offence; the District Magistrate shall by notice In writing Inform him of the general nature of the material allegation, against him in respect of clauses (a) and (b) and shall give him a reasonable Opportunity of tendering an explanation regarding them.
(2) The person against whom an order under this section is proposed to be made shall have the right to consult and be defended by a counsel of his choice and shall be given a reasonable opportunity of examining himself, if he so desires, and also of examining any other witnesses that he may wish to produce in support of his explanation, unless for reasons to be recorded in writing the District Magistrate is of opinion that the request is made for purpose of vexation of delay.

(3) The District Magistrate on being satisfied that the conditions, specified in clauses (a) and (b) of sub-section (1), exist, may by order in writing—

(a) direct him to remove himself outside the district or part thereof as the case may be, by such route, if any and within such time as may be specified in the order and to desist from entering the district or the specified part thereof, until the expiry of such period, not exceeding six months as may be specified in the order;

(b) (i) require such person to notify his movements, or to report himself or to do both, in such manner, at such time and to such authority or person as may be specified in the order;

(ii) prohibit or restrict possession or use by him of any such article as may be specified in the order;

(iii) direct him otherwise to conduct himself in such manner as may be specified in the order, until the expiry of such period not exceeding six months as for specified in the order.

4. Permission to return temporarily. The District Magistrate by an order permit any person in respect of whom an order has been made under clause (a) of sub-section, (3) of Section 3 or enter or return for temporary period into or to the area from which he was directed to remove himself subject to such conditions as the District Magistrate may specify and may at any time rescind any such permission.

5. Extension of period of order. The District Magistrate may, after giving, except where for reasons to be recorded in writing he is satisfied that it is impracticable so to do, to the person concerned an opportunity of making a representation in that behalf extend from time to time in the interest of the general public, the period specified in the order made under Section 3, but the period so extended shall in no case exceed two years in the aggregate.

6. Appeal. (1) Any person aggrieved by an order made under Section 3, Section 4 or Section 5 may appeal to the Commissioner within fifteen days from the date of such order.

(2) The Commissioner may either confirm the order, with or modification or set it aside, and may, pending disposal of the appeal, stay the operation of the order subject to such terms, if any, as he thinks fit.

7. Recognizance for certain purpose. (1) The District Magistrate or Commissioner may, for the purpose of—

(a) securing the attendance of any person against whom an order is proposed to be made under Section 3 or has been made but its operation has under Section 6, or

(b) seeing the due observance of any direction, requirement, prohibition, restriction or condition specified in an order made in respect of any person under Section 3, Section 4, Section 5 or Section 6, require such person to enter into a bond, with or without sureties, and the provisions of the Code of Criminal Procedure, 1973 shall mutatis mutandis apply in relation to such bond as they apply in relation to bonds executed or required to be executed under the said Code.
(2) In particular and without prejudice to the generality of the foregoing provisions—

(a) District Magistrate while issuing notice to any person under sub-section (1) of Section 3, may issue warrant for his arrest with endorsement thereon of a direction in terms of the provisions of Section 71 of the said Code and the provisions of Sections 70 to 89 of the said Code shall, so far as may be, apply in relation to such warrant as if the District Magistrate were a Court;

(b) If any person who is required to execute a bond for the observance of any direction, requirement, prohibition, restriction, or conditions fails to so do, he, shall be committed to prison or if he is already in prison, be detained in prison until the period for which the direction, requirement, promotion, restriction or condition is to operate or until, the time he executes the bond with or without sureties, as the case may be, in terms of the order and the provisions of Section 119, 120, 121, 122, 123 and 124 of the said Code shall mutatis mutandis apply as if the District Magistrate or the Commissioner were a Court.

(c) Sections 445, 447, and 448 of the said Code shall mutatis mutandis apply in relation to all bonds executed under this section as if District Magistrate or the Commissioner were a Court.

8. Nature of evidence. The District Magistrate or the Commissioner may for the purpose of satisfying himself as to whether the conditions necessary for the making of confirmation of an order under Section 3 or Section 5 or exist or not take into consideration any evidence which he considers to have probative value and the provisions of the Indian Evidence Act, 1872 shall not apply thereto.

9. Rescission of order. The District Magistrate or the Commissioner may at any time rescind an order made under Section 3, whether or not, such order was confirmed on appeal under Section 6.

10. Revocation or modification of orders. Orders under Section 3, 4, 5 and 6 may at any time be revoked or modified by the State Government provided that the revocation or modification shall not be a bar to the making of a fresh order under section 3 against the same person in any case where fresh after an order of revocation or modification of the order by the Government.


(1) Where, after an order is made against person under Section 4, Section 5 or Section 6 such person,

(a) has failed to remove himself from the district or part thereof as directed by the order; or

(b) has re-entered the area, from which has ordered to remove himself during the period of operation of that order, the District Magistrate may cause him to be arrested and removed in police custody to such place outside the area specified in the said order as he may direct.

(2) Any Police officer may arrest without warrant any person reasonably suspected of an act or omission specified in sub-section (1), and shall forthwith forward the person so arrested to the nearest Executive Magistrate who shall cause him to be forwarded to the District Magistrate who may thereupon cause person to be removed in police custody to such place outside the area specified in the said order as he may direct.

(3) The provisions of this section shall be in addition to and not in derogation of the provisions of Section 24.
Chapter II

12. Power to make orders detaining certain persons. (1) 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 maintenance of public order and there is reason to fear that the activities of anti-social elements cannot be prevented, otherwise than by the immediate arrest of such person, make an order directing that such anti-social element 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 a District Magistrate, the State Government is satisfied that it is necessary so to do, it may by an 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 section (1) exercise the power conferred upon by the said subsection.

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.

(3) When any order is made by District Magistrate, he 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 12 days after the making thereof unless, in the meantime it has been approved by the State Government.

Provided that where under Section 17 the grounds of detention are communicated by the officer making the order after five days but not later than ten days from the date of detention, this sub-section shall apply subject to the modification that, for the words "twelve days", the words "fifteen days" shall be substituted.

13. Execution of detention order. The detention order may be executed in any place in India in the manner provided for the execution of warrants of arrest under the Code of Criminal Procedure, 1973 (2 of 1974).

14. Power to regulate place and condition 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 of discipline and punishment for breaches of discipline as the State Government may, by general or special order, specify; and

(b) to be removed from the place of detention to another place of detention, by order of the State Government.

15. Detention orders not to be invalid or inoperative on certain No detention order shall be invalid or inoperative merely by reason of—

(a) that the person to be detained thereunder is outside the limits of the territorial jurisdiction of the State Government, or officer making the order, or

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

16. Powers in relation to absconding person. (1) If the State Government or the District Magistrate mentioned in sub-section (2) of Section 12 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 a report in writing, of the fact to a Chief Judicial Magistrate of the first class having jurisdiction in the place where the said person ordinarily resides;

(b) by order notified in the official Gazette direct the said person to appear before such officer, at such and within such period as may be specified in the order.

(2) Upon the making of a report against any person under (a) of sub-section (1)' the provisions of Sections 82, 83, 84 and 85 of the Code of Criminal Procedure, 1973 (2 of 1974) 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 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 (2 of 1974) every offence under sub-section (3) shall be cognizable.

17. Grounds of order of detention to be disclosed to person 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 State 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.


(2) The Board shall consist of three persons who are, or have been or are qualified to be appointed as, Judges of High Court, and such persons shall be appointed by the Government.

(3) The 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.

19. Reference to Advisory Board, Save as otherwise expressly provided in this Act 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 by it under Section 18 the grounds on which the order has been made and representation, if any, made by the person affected by the order, and in case where the order has been made by the District Magistrate mentioned in sub-section (2) of Section 12 also the report by such under sub-section (3) of that section.

20. Procedure of Advisory Boards, (1) The Advisory Board 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, 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 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 connection with the reference to 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.

21. Action upon the report of the Advisory Boards. (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 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 a person, the Government shall revoke the detention order and cause the person concerned to be released forthwith.

22. 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 21 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.

23. 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:

(1) Notwithstanding that the order has been made by an officer mentioned in sub-section (2) of Section 12 or by the State Government to which that officer is subordinate.

(2) The revocation or expiry of a detention order shall not bar the making of a fresh detention order under Section 12 against the same person in any case where fresh facts have arisen after the date of revocation or expiry on which the State Government or an officer mentioned in sub-section (2) of Section 12, as the case may be, satisfied such an order should be made.

24. Temporary release of persons detained - (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 Government may require him to enter into a bond with or without sureties for the due observance of the specified in the direction.

(3) Any person released under sub-section (1) himself at the time and place, and to the authority, specified in the order directing 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), lie 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 any of the conditions imposed upon him under the 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.

Chapter III

25. Punishment for contravention of order under Sections 3 to 6, Whoever
contravenes any order made under Section 3, Section 4, Section 5 or Section 6 shall
be punishable with rigorous imprisonment for a term which may extend to three
years but in no case it shall be less than three months and shall
be, liable to fine not exceeding Rs 5,000.

26. Cognizance of offence. No Magistrate shall take Cognizance of an offence
punishable under the Act, except-

(a) upon a report in writing of the facts constituting such offences made by a Police
Officer not below the rank of Deputy of Police; or

(b) upon information received from any person other than a police officer or from
any gazetted officer that such offences has been committed.

27. Saving as to orders. No order made in exercise of any conferred by or under this
Act shall be called in question at any court.

28. Protection of Action taken under the Act. (1) 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 or of any order made thereunder.

(2) No suit or other legal prosecution shall lie against the State Government or any
officer of the State Government for any damage caused or likely to be caused by
anything which is in good faith done or intended to be done in pursuance of this Act
or of any order made thereunder.

29. Power to make rules. (1) The State Government may by notification in the official
gazette make rules consistent with the provisions of this Act for carrying out the
purposes of the Act.

(2) Every rule made by the State Government under this Act shall be laid, as soon as
may be after it is made, before each house of the State Legislature while it is in
session for a total period of 30 days which may be comprised in one session or in two
successive session and if, before the expiry of session in which it is so laid or the
session immediately following, both houses agree in making any modification in the
rule or such house agree that the rule should not be made, the rule shall thereafter
have affect only in such modified form or be of no affect as the case may be, so,
however that any such modification or annulment shall be without prejudice to the
validity of anything previously done under that rule.

30. Repeal and saving. (1) The Bihar Control of Crimes (Second) Ordinance, 1981
(Bihar Ordinance No. 115 of 1981) is hereby repealed.

(2) Notwithstanding such repeal anything done or any action taken in the exercise of
any power conferred by or under the said Ordinance shall be deemed to have been
done or taken in the exercise of the powers conferred by or under this Act as if this
Act were in force on the day on which such thing or action was done or taken.

Reference:

1. Published in Bihar Gazette, Extraordinary No. 857, dated 12th August, 1981.
APPENDIX-XIV

The Gujarat Prevention of Anti-Social Activities Acts 1985*
[16 of 1985]
(1st August, 1985)

An act to provide for preventive detention of bootleggers, dangerous persons, drug offenders, immoral traffic offenders and property grabbers for preventing their anti-social and dangerous activities prejudicial to the maintenance of public order.

It is hereby enacted in the Thirty-sixth Year of the Republic of India as follows:

1. Short title, extent and commencement. (1) This Act may be called the Gujarat Prevention of Anti-social Activities Act, 1985.

(2) It extends to the whole of the State of Gujarat

(3) It shall be deemed to have come into force on the 27th May, 1985

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

(a) "authorised officer" means a District Magistrate or a Commissioner of Police authorised under sub-section (2) of section 3 to exercise the powers conferred under sub-section (1) of that section;

(b) "bootlegger" means a person who distils, manufactures, stores, transports, imports, exports, sells or distributes any liquor, intoxicating drug or other intoxicant in contravention of any provision of the Bombay Prohibition Act, 1949, (Bom. XXV of 1949) and the rules and orders made thereunder, or any other law for the time being in force or who knowingly expends or applies any money or supplies any animal, vehicle, vessel or other conveyance or any receptacle or any other material whatsoever in furtherance or support of the doing of any of the things described above by or through any other person, or who abets in any other manner the doing of any such thing;

(c) "dangerous person" means a person, who either, by himself or as a member of or leader of a gang habitually commits, or attempts to commit or abets the commission of offences, punishable under Chapter XVI or Chapter XVII or Chapter XXII of the Indian Penal Code, (XLV of 1860), or any of the offences punishable under Chapter V of the Arms Act, 1959 (54 of 1959),

(d) “detention order” means an order made under section 3;

(e) "detenu" means a person detained under a detention order;

(f) "drug offender" means a person who-

Imports any drug in contravention of section 10 of the Drugs and Cosmetics Act, 1940 (XXIII of 1940), (hereinafter in the definition referred to as "the Drugs Act"),

(ii) manufactures for sale; or sells or stocks or exhibits for sale or distributes any drug in contravention of section 18 of the Drugs Act.

(iii) manufactures for sale any Ayurvedic (including Siddha) or Unani drug in contravention of section 33D of the Drugs Act,
(iv) sells, or stocks or exhibits for sale or distributes any Ayurvedic (including Siddha) or Unani drug other than that manufactured by a manufacturer licensed under Chapter IV A, in contravention of section 33E of the Drugs Act.

(v) cultivates any coca plant, opium poppy, of cannabis plant or provides, manufactures, possesses, sells, purchases, transports, warehouses, imports interstate, exports- interstate, imports, into India, exports from India or tranship & any narcotic drug or psychotropic substance in contravention of section 8 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985),

(vi) knowingly expends or supplies any money in furtherance or support of the doing of any of the things mentioned in any of the sub-clauses (i) to (v) by or through any other person, or (Vii) abets in any manner the doing of any of the things mentioned in any of the sub-clauses (i) to (vi):

(g) "immoral traffic offender" means a person who habitually commits or abets the commission of any offence under the Suppression of Immoral Traffic in Women and Girls Act, 1956, (104 of 1956);

(h) "property grabber" means a person who illegally takes possession of any lands (whether belonging to Government, local authority or any other person) or enters into or creates illegal tenancies or lease and licence agreements or any other agreements in respect of such lands or who constructs unauthorised structures thereon for sale or hire or gives such lands to any person on rental or lease and licence basis for construction or use and occupation of unauthorised structures or who knowingly gives financial aid to pay person for taking illegal possession of such lands or for Construction of unauthorised structures thereon, or who collects or attempts to collect from any occupiers of such lands rent, compensation or other charges by criminal intimidation or who evicts or attempts to evict any such occupiers by force without resorting to the lawful procedure, or who abets in any manner the doing of any of the above mentioned things;

(i) "unauthorised structure" means any structure constructed in any area without express permission in writing of the officer or authority having jurisdiction in such area required under the Bombay Land Revenue Code, 1879 (Bom. V of 1879), and the Gujarat Town Planning and Urban Development Act, 1976 (Presi. Act 27 of 1976), and the Bombay Provincial Municipal Corporations Act, 1949 (Bom. LIX of 1949), the Gujarat Municipalities Act, 1963, (Guj. 34 of 1964), or, as the case may be, the Gujarat Panchayat Act, 1961 (Guj. VI of 1962) or except in accordance with any other law for the time being in force in such area.

3. Power to make orders detaining certain persons. (1) 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 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 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 the District Magistrate or the Commissioner of Police, may also, if satisfied as provided in sub-section (1) exercise the powers conferred by the said sub-section.

(3) When any order is made under this section by an authorised officer he 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 (4) For the purpose of this section, a person shall be deemed to be "acting in any manner prejudicial to the maintenance of public order" when such
person is engaged in or is making preparation for engaging in any activities, whether as a bootlegger or dangerous person or drug offender or immoral traffic offender or property grabber, which affects adversely or are likely to affect adversely the maintenance of public order.

Explanation—For the purpose of this sub-section, 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 any person referred to in this sub-section directly or indirectly, is causing or is likely to cause any harm, danger or alarm or feeling of insecurity among the general public or any section thereof or a grave or widespread danger to life, property or public health.

4. Execution of detention orders. A detention order may be executed at any place in the State in the manner provided for the execution of warrant of arrest under the Code of Criminal Procedure, 1973 (2 of 1974).

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 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 by order of the State Government.

6. Grounds of detention severable. Where a person has been detained in pursuance of an order of detention 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 ground 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 officer making such order 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 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.

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, though within State, is outside the limits of the territorial jurisdiction of the authorised officer making the order, or

(b) that the place of detention of such person, though within the State, is outside the said limits.

8. Powers in relation to absconding persons. (1) If the State Government or any authorised officer has reason to believe that person in respect of whom a detention order has been made has absconded, or is concealing himself so that the order cannot be executed, then the provisions of sections 82 to 86 (both inclusive) of the Code of Criminal Procedure, 1973 (2 of 1974) shall apply in respect of such person and his property, subject to the modifications mentioned in this sub-section and, irrespective
of the place where such person ordinarily resides, the detention order made against
him shall be deemed to be a warrant issued by a competent Court. Where the
detention order is made by the State Government, an officer, not below the rank of a
District Magistrate or a Commissioner of Police authorised by the State Government
in this behalf, or where the detention order is made by an authorised officer, the
authorised officer, as the case may be, shall, irrespective of his ordinary Jurisdiction,
be deemed to be empowered to exercise all the powers of the competent Court under
sections 82, 83, 84 and 85 of the said Code for issuing a proclamation for such person
and for attachment and sale of his property situated in any part of the State and for
taking any other action under the said sections. An appeal from any order made by
any such officer rejecting an application for restoration of attached property shall lie
to the Court of Sessions having jurisdiction in the place where the said person
ordinarily resides, as provided in section 86 of the said Code.

(2) (a) Notwithstanding anything contained in sub-section (1), if the State
Government or an authorised officer has reason to believe that 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 State Government or the officer, as the case
may be, may 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.

(b) Where such person fails to comply with such order, then, 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, or proves
that it was not possible for him to so inform the officer mentioned in the order, he
shall, on conviction, be punished with imprisonment for a term which may extend to
one year, or with fine, or with both.

(c) Notwithstanding anything contained in the said Code, every offence under clause
(b) shall be cognizable.

9. Grounds of order of detention to be disclosed to detenu. (1) When a person is
detained in pursuance of a detention order the authority making the order shall, as
soon as may be, but 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 State
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.

10. Constitution of Advisory Board. (1) The State 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, Judges of any High Court or who are qualified under the Constitution
of India to be appointed as Judges of a High Court:

Provided that the Chairman of such Board shall be a person who is, or has been, a
Judge of a High Court.

11. Reference to Advisory Board. In every case where a detention order has been
made under this Act the State 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 10 the grounds on which the order has been made and the
representation, if any, made by the person affected by the order, and where the order has been made by an authorised officer, also the report made by such officer under sub-section (3) of section 3.

12. Procedure of Advisory Board. (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 State Government or from any person called for the purpose through the State Government or from the detenu and if, in any particular case, the Advisory Board considers it essential so to do or if the detenu desires to be heard, after hearing the detenu in person, submit its report to the State Government, within seven weeks from the date of detention of the detenu.

(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 detenu.

(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) 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.

(5) 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.

13. Action upon 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 the detenu, the State Government may confirm the detention order and continue the detention of the detenu for a period, not exceeding the maximum period prescribed by section 14 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 for the person concerned, the State Government shall revoke the detention order and cause the detenu to be released forthwith.

14. Maximum period of detention. The maximum period for which any person may be detained in pursuance of any detention order made under this Act which has been confirmed under Section 13, shall be one year from the date of detention.

15. Revocation of detention orders. (1) Without prejudice to the provisions of section 21 of the Bombay General Clauses Act, 1904 (Bom. I of 1904), a detention order may, at any time for reasons to be recorded in writing, be revoked or modified by the State Government, notwithstanding that the order has been made by an authorised officer.

(2) The expiry or revocation of a detention order (hereinafter in this sub-section referred to as "the earlier detention order") shall not bar the making of another detention order (hereinafter 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.

16. Temporary release of persons detained. (1) The State Government may, at any time, for reasons to be recorded in writing, 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 detenu 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 detenu 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 detenu fails without sufficient cause to surrender himself in the manner specified in sub-section (3), he shall on conviction, be punished with imprisonment for a term which extend to two years, or with fine, or with both.

(5) If any detenu 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.

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

18. Matters within the purview of this Act to be dealt with under this Act only. On and after the commencement of this Act, no order of detention under the National Security Act, 1980 (65 of 1980), shall be made by the State Government or any officer subordinate to it, in respect of any boot-legger, drug offender, dangerous person, immoral traffic offender, or property grabber in the State on the ground of preventing him from acting in any manner prejudicial to the maintenance of public order, in so far as an order under this Act, could be made for detention of such person,


(2) Notwithstanding such repeal,-

(a) anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under this Act;

(b) every person in respect of whom an order of detention has been made under section 3 of the said Ordinance by reason of his being a dangerous person and is in force immediately before the date on which the assent to this Act of the President is first published in the Official Gazette, (hereinafter referred to as “the said date”), shall, notwithstanding that his detention has been rendered inconsistent with section 3 of this Act, continue to be under detention subject to the provisions of this Act;

(c) (i) an Advisory Board constituted under section 10 of the said Ordinance and functioning immediately before the same date shall, notwithstanding that its constitution has been rendered inconsistent with the provisions of section 10 of this Act, continue to so function after the said date subject to the provisions of this Act;

(ii) any reference made under section 11 of the said Ordinance and pending before such Advisory Board immediately before the said date may continue to be dealt with by that Board after that date as if such Board had been constituted under section 10 of this Act.
References:

* Published in the Gujarat Government Gazette Pan IV, Dt 2nd August, 1985.
2. Subs. By ibid
APPENDIX - XV

Jammu and Kashmir Public Safety Act,
[Act No. VI of 1978]
(8th April, 1978)

Whereas it is necessary in the interest of the security of the and public order to make law providing for the measures hereinafter appearing.

Now, therefore it is enacted by the Jammu and Kashmir State Legislature in the Twenty-ninth Year of the Republic of India as follows:

Chapter I

1. Short title and extent. (1) This Act may be called the Jammu and Kashmir Public Safety Act, 1978.

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

2. Definitions. In this Act, unless there is anything repugnant in the subject or context,

(1) "the Code" means the Code of Criminal Procedure, Samvat 1989;

(2) "notified" and "notification" mean notified and notification respectively in the Government Gazette.

Chapter II

ACCESS TO CERTAIN PREMISES AND AREAS

3. Prohibited places. (1) If as respects any place the Government considers it necessary or expedient that, special precautions should be taken to prevent the entry of unauthorised persons, the Government may by notified, order, declare that place to be a prohibited place.

(2) No person shall, without the permission of the Government or the authority specified by the Government, enter, or be on or in or pass over, or loiter in the vicinity of, any prohibited place.

(3) Where in pursuance of sub-section (2) any person is granted permission to enter, or to be on or in, or to pass over, a prohibited place, that person shall, while acting under such permission, comply with such orders for regulating his conduct as may be given by the Government or the authority specified by the Government.

(4) Any Police Officer, or any other person authorised in this behalf by the Government, may search any person entering or seeking to enter or being on or in, or leaving a prohibited place and any vehicle, aircraft or article brought in by such person, and may, for the purpose of the search, detain such person, vehicle, aircraft and article:

Provided that no female shall be searched in pursuance of this sub-section except by a female.

(5) If any person is in a prohibited place in contravention of this section, then, without prejudice to any other proceedings which may be taken against him, he may be removed there from by any Police Officer not below the rank of a Sub-Inspector or by any other person authorised in this behalf by the Government.
(6) If any person is in a prohibited place in contravention of any of the provisions of this section he shall be punishable with imprisonment for a term which may extend to one month, or with fine, or with both.

4. Protected areas. (1) If the Government considers it necessary or expedient in the interests of the defence or security of the State to regulate the entry of persons into any area, it may, by a notified order declare the area to be a protected area, and thereupon, for so long as the order is in force, such area shall be a protected area for the purposes of this Act.

(2) The Government or the authority specified by the Government may regulate the entry of any person into a protected area.

(3) If any person is in a protected area in contravention of the provisions of any order passed under this section then, without prejudice to any other proceedings which may be taken against him, he may be removed therefrom by or under the direction of any police officer not below the rank of a Sub-Inspector.

(4) If any person is in a protected area in contravention of any of the provisions of this section, he shall be punishable with imprisonment for a term which may extend to two months, or with fine, or with both.

5. Forcing or evading a guard. Any person who effects or attempts to effect entry into a prohibited place or a protected after taking precautions to conceal his entry or attempts entry from any person posted for the purpose of protecting or of preventing or controlling access to such place or area shall be punishable with imprisonment for a term which may extend to three months, or with fine, or with both.

Chapter III

MAINTENANCE OF COMMUNAL AND REGIONAL HARMONY

6. Power to prohibit circulation within the State or entry into the State of certain documents. (1) The Government, or any authority authorised by it in this behalf, if satisfied that such action is necessary for the purposes of preventing or combating any activity prejudicial to the maintenance of communal or sectarian, or regional harmony affecting or likely to affect public order, may, by notified order, regulate or restrict the circulation within the State, or prohibit or restrict the importation into the State, of any document.

Provided that no such order shall remain in force for more than three months from the making thereof unless before the expiry of such period, and in case the High Court does not otherwise direct, the Government, by an order made in the like manner, extend it by any period not exceeding three months at a time as it thinks fit, so, however, that the total period of the original order does not exceed one year.

Provided further that a person aggrieved by such order may, within ten days of the passing thereof, make a representation to the Government which may on consideration confirm, modify or rescind the order within 21 days of the making of the representation, after giving the aggrieved party an opportunity of being heard.

Provided also that in case the representation is rejected by the Government, the aggrieved person may within a period of two months from the date of the order rejecting the representation apply to the High Court to set aside such order. Every such application shall be heard and determined by a Special Bench of the High Court composed of three-

(2) Any person who contravenes an order made under this section shall be punishable with imprisonment for a term, which may extend to three months or with fine, or with, both.
(3) In the event of disobedience of an order made under subsection (1) the 
Government or the authority issuing the order, 
without prejudice to the penalty to which the person guilty of the disobedience is 
liable under sub-section (2), order the seizure of all copies of any such 

7. Removal of doubts. For the removal of doubts it is hereby declared that the 
restriction imposed by section 6 on the rights conferred by clause (1) of Article 19 of 
the Constitution of India shall be deemed to be reasonable restrictions.

Chapter IV

POWER TO MAKE ORDERS DETAINING CERTAIN PERSONS

8. Detention of certain persons. (1) The Government may-
(a) if satisfied with respect to any person that with a view to preventing him from 
acting in any manner prejudicial to-
(i) the security of the State or the maintenance of the public order, or
(ii) ***

[(a-l) if satisfied with respect to any person that with a view to preventing him. 
from-
(i) smuggling timber, or
(ii) abetting the smuggling of timber, or,
(iii) engaging in transporting or concealing or keeping smuggled timber, or
(iv) dealing in smuggled timber otherwise than by engaging in transporting or 
concealing or keeping in smuggled timber, or
(v) harbouring persons engaged in smuggling of timber or in abetting the smuggling 
of timber; or]

(b) if satisfied with respect to any person who is—
(i) a foreigner within the meaning of the Foreigners Act, 1946, or
(ii) a person residing in the area of the State under the occupation of Pakistan, 
that a view to regulating his continued presence in the State or with a view to 
making arrangements for his expulsion from the State,
it is necessary so to do, make an order directing that such person be detained.

(2) any of the following officers namely:
(i) Divisional Commissioners,
(ii) District Magistrates,
may, if satisfied as provided in sub-clauses (i) and (ii) of clause (a) or clause (1) (a) of 
sub-section (1), exercise the powers conferred by the said sub-section.

(3) For the purposes of sub-section (1),—

[(a***)]

(b) "acting in any manner prejudicial to the maintenance of public order" means-
(i) promoting, propagating, or attempting to create, feelings of enmity or hatred or 
disharmony on grounds of religion, race, caste, community, or region;
(ii) making preparations for using, or attempting to use, or using, or instigating, 
inciting, provoking, or otherwise abetting, the use of force where such preparation,
using, attempting, instigation, inciting, provoking or abetting, disturbs or is likely to disturb public order;

(iii) attempting, to commit, or committing, or instigating, inciting, provoking or otherwise abetting the commission of, mischief within the meaning of section 425 of the Ranbir Penal Code where the commission of such mischief disturbs, or is likely to disturb public order;

(iv) attempting to commit, or committing, or instigating, inciting, provoking or otherwise abetting the commission of an offence punishable with death or imprisonment for life or imprisonment for a term extending to seven years or more, where the commission of such offence disturbs, or is likely to disturb public order.

(c) "smuggling" in relation to timber means possessing or carrying of illicit timber and includes any act which will render the timber liable to confiscation under the Forest Act, Samvat 1987;

(d) "timber" means timber of Fir, Kail, Chir or Deodar tree whether in logs or cut up in pieces but does not include fire-wood.

(4) When any order is made under section by an officer mentioned in sub-section (2), lie 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 twelve days after the making thereof unless in the meantime it has been approved by the Government.

9. Execution of detention orders. A detention order may be executed at any place in the manner provided for the execution of warrants of arrest under the

10. Power to regulate place and conditions of detention. Any person in respect of whom a detention order has been made under section 8 shall be liable-

(a) to be detained in such place and under such conditions including conditions as to the maintenance of discipline and punishment for breaches 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 in the State by order of the Government

10-A. Grounds of detention severable. Where a person has been detained in pursuance of an order of detention under section 8 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 ground 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 reasons whatsoever, and it is not, therefore, possible to hold that the Government or officer making such order would have been satisfied as provided in section 8 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 section after being satisfied as provided in that section with reference to the remaining ground or grounds.

11. Detention orders not to be invalid or inoperative on certain grounds. No detention order shall be invalid or inoperative merely on the ground—

(a) that the person to be detained thereunder is outside the limits of the territorial jurisdiction of the officer making the order; or

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

12. Powers in relation to absconding persons. If the Government, or an officer specified in sub-section (2) of section 8, 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 officer 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 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 notified order 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.

13. 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 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.

14. Constitution of Advisory Board—

(1) The Government shall, whenever necessary, constitute Advisory Board for the purposes of this Act.

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

(3) The Chairman and the other members of the Board shall be appointed by the Government in consultation with the Chief Justice of the High Court.

15. Reference to Advisory Board, in every case where a detention order has been made under this Act the Government shall, within for weeks from the date of detention place before the Advisory Board constituted by it under section 14, the grounds on which the order has been made, 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 (4) of section 8.
16. Procedure of Advisory Board. (1) The Advisory Board shall, after considering the material placed before it and, after calling for such further information as it may deem necessary from the Government or from the 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, after hearing him in person, submit its report to the Government within eight weeks from the date of detention.

(2) Notwithstanding anything contained in sub-section (1), the Board may, if the person detained so demands, at any time before submitting its report, after affording an opportunity to the person detained and the Government or the officer, as the case may be, of being heard, determine whether the disclosure of facts, not disclosed under sub-section (2) of section 13 to the person detained is or is not against public interest. Such finding of the Board be binding on the Government.

(3) The report of the Advisory Board shall specify in a the opinion of the Advisory Board as to whether or not there is sufficient cause for the detention, of the person concerned.

(4) 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.

(5) Nothing in this section shall entitle any person, against 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.

17. 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 Government may confirm the detention order and continue the detention of the person concerned.

(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 Government shall revoke the detention order and cause the person to be released forthwith.

18. Maximum period of detention. (1) The maximum period for which any person may be detained in pursuance of any detention order which has been confirmed under section 17, shall be--

(a) twelve months from the date of detention in the case of persons acting in any manner prejudicial to, the maintenance of public order or indulging in smuggling of timber; and

(b) two years from the date of detention in the case of persons acting in any manner prejudicial to the security of the State.

(2) Nothing contained in this section shall affect the of the Government to revoke or modify the detention order at any earlier time, or to extend the period of detention of a foreigner in case his expulsion from the State has not been made possible.

19. Revocation of detention orders. (1) Without prejudice to the provisions of section 21 of the General Clauses Act, Samvat 1977, a detention order may at any time be revoked or modified by the Government, notwithstanding that the order has been made by any officer mentioned in sub-section (2) of section 8.
(2) There shall be no bar to making of a fresh order of detention against a person on the same facts as an earlier order of detention made against such person in any case where-

(i) the earlier order of detention or its continuance is not legal on account of any technical defect; or

(ii) the earlier order of detention has been revoked by reason of any apprehension, or for avoiding any challenge that such order or its continuance is not legal on account of any technical defect: Provided that in computing the maximum period for which a person against whom such fresh order of detention has been issued may be detained, the period during which such person was under the earlier order of detention shall be excluded.

20. Temporary release of persons detained. (1) The Government may at any time order that a 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 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 the penalty thereof.

(6) The period of release shall not count towards the total period of detention undergone by the person released under this section.

Chapter V

MISCELLANEOUS

21. Cognizance of offences under this Act (1) No court shall take cognizance of any offence under this Act except on a report in writing made by a public servant.

(2) Notwithstanding anything contained in the Second Schedule to the Code, offences under this Act shall be cognizable and non-bailable.

22. Protection of action taken under this Act. No suit, prosecution or any other legal proceeding shall lie against any person for anything done or intended to be done in good faith in pursuance of the provisions of this Act.

23. Power to make rules. The Government may, by notification, make such rules consistent with the provisions of this Act, as may be necessary for carrying out the objects of this Act.

(2) Notwithstanding such repealed, anything done or any action taken (including any rule or order made) under the said Ordinance shall, so far as consistent with the provisions of this Act, deemed to have been done or taken under the corresponding provisions of this Act.

References:
APPENDIX-XVI

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

[Act No. XXIII of 1988]  
(31st August, 1988)

An Act to provide for detention in certain cases for the purpose of illicit traffic in narcotic drugs and psychotropic substances and combating abuse of such drugs and substances for matters concerned 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. Definition. 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 transhipment, of narcotic drugs or psychotropic substances;

(iv) dealing in narcotic drugs or psychotropic substances otherwise than as provided in sub-clauses (i) to (iii);

(v) handling or 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 persons 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 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) 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 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 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 and for reasons to be recorded in writing, not fifteen days, from the date of detention.


5. Power to regulate place and conditions of detention. Every person in respect of whom a detention order has been made is 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 subsection (1) of section 3 which has been made on two or more 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 section with reference to the remaining ground or grounds.

11. Detention orders not to be invalid or inoperative on certain grounds. No detention order shall be invalid or inoperative merely on the ground—

(a) that the person to be detained thereunder is outside the limits of the territorial jurisdiction of the officer making the order; or

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

12. Powers in relation to absconding persons. If the Government, or an officer specified in sub-section (2) of section 8, 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 officer 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 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 notified order 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 Code of Criminal procedure, Samvat 1989, every offence under clause (b) of sub-section (1) shall be cognizable.

9. Advisory Boards. 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 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, it considers it essential, so to do or if the person concerned desires to be heard in person after hearing him in person, prepares 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 by any legal practitioner in any matter connected the reference to the Advisory Board and the 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 kilometers 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 modification, 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 “the 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 and under clause (f) 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 made 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 falls 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 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 suitor other legal proceeding shall lie against the government and no suit, prosecution or legal proceedings shall lie against any person for anything in good faith done or intended to be done in pursuance of this Act.


(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.
Reference:

APPENDIX-XVII

The Karnataka Prevention of Dangerous Activities of Bootleggers, Drug-offenders, Gamblers, Goondas, Immoral Traffic Offenders and Slum-Grabbers Act, 1985

[12 of 1985] (29th April, 1985)

An Act to provide for preventive detention of bootleggers, drug-offenders, gamblers, goondas, immoral traffic offenders and slum-grabbers for preventing their dangerous activities prejudicial to the maintenance of public order.

WHEREAS public order is adversely affected every now and then by the dangerous activities of certain persons, who are known as bootleggers, drug-offenders, gamblers, goondas, immoral traffic offenders and slum-grabbers;

Be it enacted by the Karnataka State Legislature in the Thirty-sixth Year of the Republic of India as follows:

1. Short title and commencement. (1) This Act may be called the Karnataka Prevention of Dangerous Activities of Bootleggers, Drug-offenders, Gamblers, Goondas, Immoral Traffic Offenders and Slum-Grabbers Act, 1985.

(2) It shall be deemed to have come into force on the Fifteenth day of December, 1984.

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

(a) “acting in any manner prejudicial to the maintenance of public order” means—

(i) in the case of bootlegger, when he is engaged, or is making preparations for engaging, in any of his activities as a bootlegger, which affect adversely, or are likely to affect adversely, the maintenance of public order;

(ii) in the case of a drug-offender, when he is engaged, or is making preparations for engaging in any of his activities as a drug offender which affect adversely or are likely to affect adversely the maintenance of public order;

(iii) in the case of a gambler when he is engaged or is making preparations for engaging in any of his activities as a gambler which affect adversely or are likely to affect adversely the maintenance of public order;

(iv) in the case of a goonda when he is engaged or is making preparations for engaging in any of his activities as a goonda which affect adversely or are likely to affect adversely the maintenance of public order;

(v) in the case of an immoral traffic offender when he is engaged, or is making preparations for engaging in any of his activities as an immoral traffic offender which affect adversely, or are likely to affect adversely, the maintenance of public order;

(vi) in the case of a slum-grabber, when he is engaged or is making preparations, for engaging, in any of his activities as a slum-grabber, affect adversely or are 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 any of the persons referred to in this clause directly or indirectly, is causing or is calculated to cause any harm, danger or alarm or a feeling
of insecurity, among the general public or any section, thereof of a grave or widespread danger to life or public health.

(b) “bootlegger” means a person, who distils, manufactures, stores, transports, imports, exports, sells or distributes any liquor, intoxicating drug or other intoxicant in contravention of any of the provisions of the Karnataka Excise Act, 1965 (Karnataka Act 21 of 1966) and the rules, notifications and orders, made thereunder, or in contravention of any other for the time being in force, or who knowingly expends or applies any money or supplies any animal, vehicle, vessel, or other conveyance or any receptacle or any other material whatsoever in furtherance or support of the doing of any of the above mentioned things by or through any other person or who abets in any manner the doing of any such things;

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

(d) “detenu” means a person detained under a detention order;

(e) “drug-offender” means a person, who manufactures, stocks, import, exports, sells or distributes any drug or cultivates any plant or does any other thing in contravention of any of the provisions of the Drugs and Cosmetics Act, 1940 (Central Act XXIII of 1940), or the Dangerous Drugs Act 1930 (Central Act II of 1930) and the rules, notifications and orders made under either Act, or in contravention of any other law for the time being in force, or who knowingly expends or applies any money in furtherance or support of the doing of any of the above mentioned things by or through any other person, or who abets in any other manner the doing of any such things;

(i) “gambler” means a person, who commits or abets the commission of any offence punishable under Chapter VII of the Karnataka Police Act, 1962 (Karnataka Act 4 of 1964) including an offence of gambling relatable to “matka” and punishable under the said Chapter;

(g) “goonda” means a person who either by himself or as a member of or leader of a gang, habitually commits or attempts to commit or abets the commission of offences punishable under Chapter XVI, Chapter XVII or Chapter XXII of the Indian Penal Code (Central Act XLV of 1860);

(h) “immoral traffic offender” means a person who commits or abets the commission of any offence under the Suppression of Immoral Traffic in Women and Girls Act, 1956 (Central Act 104 of 1956);

(i) “slum-grabber” means a person, who illegally takes possession of any land (whether belonging to Government, local authority or any other person) or enters into, or creates illegal tenancies or leave and licence agreements or any other agreement in respect of such lands; or who constructs unauthorised structures thereon for, sale or hire, or gives such lands to any person on rental or leave and licence basis for construction or use and occupation, of unauthorised structures or who knowingly gives financial aid to any person for taking illegal possession of such lands, or for construction of unauthorised structures thereon, or who collects or attempts to collect from any occupier of such lands, rent, compensation or other charges by criminal intimidation, or who evicts or attempts to evict any such occupier by force without resorting to the lawful procedure; or who abets in any manner the doing of any of the above mentioned things;

(j) “unauthorised structure” means any structure constructed without express permission in writing of the appropriate authority tinder, and in accordance with any law for the time being in force in the area concerned.
3. Power to make order detaining certain persons. (1) The Slate Government may, if satisfied with respect to any bootlegger or drug-offender or gambler or goonda or immoral traffic offender or slum-grabber that with a view to prevent 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 persons 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 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 (1) exercise the powers conferred by the sub-section.

Provided that the period specified in the 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.

(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 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.

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

5. Power to regulate place and conditions of detention. Every in respect of whom a detention order has been made, 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 State 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 by order of the State Government.

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 though within the State is outside the limits of the territorial jurisdiction of the officer making the order, or

(b) that the place of detention of such person, though within lit State, is outside the said limits;

6A. Grounds of detention severable. Where a person has been detained in pursuance of an order of detention under subsection (1) or sub-section (2) 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 the 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 the Officer making the order of detention shall be deemed to
have made the order of detention under the said sub-section (1) or sub-section (2),
after being satisfied as provided in sub-section (1) with reference to the remaining
ground or grounds.

7. Powers in relation to absconding persons. (1) If the State Government or an officer
mentioned in sub-section (2) of section 3 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, then the provisions of sections 82 to 86 (both
inclusive) of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974), still apply
in respect of such person and his property subject to the modifications mentioned in
this sub-section, and, irrespective of the place where such person ordinarily resides
the detention order made against him shall be deemed to be a warrant by a
competent court Where the detention order is made by the State Government an
officer, not below the rank of District Magistrate or Commissioner of Police
authorised by the State Government in this behalf, or where the detention order is
made by an officer, mentioned in sub-section (2) of section 3 such officer as the case
may be, shall irrespective of his ordinary jurisdiction, be deemed to be empowered to
exercise all the powers, of the competent court, under sections 82, 83, 84 and 85 of
the said Code for issuing proclamation for such person, and for attachment and sale
of his property situated in any part of the State and for taking any other action under
the said section. An appeal from any order made by any such officer rejecting an
application for restoration of attached property shall lie to the court of session having
jurisdiction in the where the said person ordinarily resides, as provided in section 86
of the said Code.

(2) (a) Notwithstanding anything contained in sub-section (1), if the State
Government have, or an officer mentioned in sub-section (2) of section 3 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 State
Government or the Officer, as the case may be, may, by order, notified in the official
Gazette, direct the said person to appear before such officer, at such-place ,and
period as may be specified in the order.
(b) If such person fails to comply with such order 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, or proves that it was not
possible for him to so inform the officer mentioned in the order, he shall, on
conviction, be punished with imprisonment for a term which may extend to year, or
with fine, or with both.
(c) Notwithstanding anything contained in the said Code, under clause (b) 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 not later than five 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 State Government.

(2) Nothing in subsection (1) shall require the authority to disclose facts which it
considers to be against the public interest to disclose.

necessary constitute one or more Advisory Boards, for the purpose of this Act.

(2) The constitution of every such Board shall be in accordance with the
recommendation of the Chief Justice of the High Court of Karnataka.

(3) Every such Board shall consist of a Chairman and two other members and the
Chairman shall be a serving judge of High Court of Karnataka and the other
members shall be serving or retired judges of any High Court.

10. Reference to Advisory Board. In every case where a detention order has been
made under this Act the State Government

eminent 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, also
the report by such officer under sub-section (3) of section 3.

11. Procedure of Advisory Board. (1) The Advisory Board shall, after considering the
materials placed before it and, after calling for such further information as it may
decide necessary from, the State Government or from any person called for the
purpose through the State 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
State 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) 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

(5) 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.

12. Action upon 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 State 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 13, as they think 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 State Government
shall revoke the detention, order and cause the person to be released, forthwith.
13. Maximum period of detention. The period for which any person may be detained, in pursuance of any detention order made under this Act which has been confirmed under section 12, shall be twelve months from the date of detention.

14. Revocation of detention orders. (1) Without prejudice to the provisions of section 21 of the Karnataka Central Clauses Act, 1899, a detention order may, at any time, be revoked or modified by the State Government, notwithstanding that the order has been made by an officer mentioned in sub-section (2) of section 3.

(2) The revocation or expiry of a detention order (hereinafter in this sub-section referred to as the earlier detention order) shall not, whether such earlier order has been made before or after the commencement of the Karnataka Prevention of Dangerous Activities of Bootleggers, Drug-offenders Goon-Traffic Offenders and Slum-grabbers (Amendment) Act 1987, the of another detention-order (hereinafter 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 revocation or expiry 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.

15. Temporary release of persons detained- (1) The State 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 detenu 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 section (1) shall surrender himself at the time and place, and to the authority, specified in the order directing his release or canceling 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, on conviction, be punished 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 sub-section (1) or in the bond entered into by him, the bonds shall be declared to be forfeited and any person be liable to pay the penalty thereof.

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

17. Detention order against any bootlegger, drug-offender, gambler, goonda, immoral traffic offender or slum-grabber to be made under this Act and not under the National Security Act. On and after the commencement of this Act, no order of detention under the National Security Act, 1980 (Central Act 65 of 1980) shall be made by the State Government or any of their officers under that Act, in respect of any bootlegger, drug-offender, gambler, goonda, immoral traffic offender or slum grabber in the State of Karnataka, on the ground of preventing him from
acting in any manner prejudicial to the maintenance of public order, which order of detention may be or can be made against such person under this Act.

18. Repeal and savings. (1) The Karnataka Prevention of Dangerous Activities of Bootleggers, Drug-offenders, Gamblers, Goondas, Immoral Traffic offenders and Slum-grabbers Ordinance, 1984 (Karnataka Ordinance 16 of 1984) 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 this Act.

References:

1. Published in the Karnataka Gazette Extraordinary, dated 29th April 1985.
APPENDIX-XVIII

The Maharashtra Prevention of Communal, Anti-social other Dangerous Activities Act, 1980

[7 of 1981]
(22nd January, 1981)

An act to provide for prevention of communal, anti-social and other dangerous activities in Maharashtra and for matters connected therewith, Whereas both Houses of the State Legislature were not in session;

And whereas the Governor of Maharashtra was satisfied which rendered it necessary for him to take immediate action to make a law to provide for the prevention of communal, anti-social and other dangerous activities in the State of Maharashtra and for matters connected therewith; and, therefore, promulgated the Maharashtra Prevention of Communal, Anti-social and other Dangerous Activities Ordinance, 1980 on the 27th August 1980;

And whereas it is expedient to replace the said Ordinance by an Act of the Legislature, with modifications on account of certain corresponding provisions in the National 1930, promulgated by the President of which has come into force on the 23rd September 1980; it is thereby enacted in the Thirty-first Year of the Republic of India, as follows: —

1. Short title, extent, commencement and application, (1) This Act may be called the Maharashtra Prevention of Communal, Anti-social and other Dangerous Activities Acts 1980.
(2) It extends to the whole of the State of Maharashtra.
(3) It shall be deemed to have come into force on the 27th August 1980.
(4) Section 2 to 16 of this Act shall, from the commencement of the National Security Ordinance, 1980, on the 23rd September 1980 apply, and shall be deemed to have applied, only to the orders of detention made or deemed to have been made this Act before the 23rd September, 1980.

2. Definition. In this Act, unless the context otherwise requires,
(a) "acting in any manner prejudicial to the maintenance of public order" means-
(i) propagating, promoting, or attempting to create, or otherwise functioning in such a manner as to create feelings of enmity or hatred or disharmony on grounds of religion, race, caste, community or language of any persons or class of persons;
(ii) making preparations for rising, or attempting to use, or using, or instigating, inciting or otherwise abetting the use of any lethal weapons (including firearms and explosives, inflammable or corrosive substances), where such preparations, using, attempting, instigating, inciting or abetting disturbs, or is likely to disturb, public order;
(iii) attempting to commit, or committing, or instigating, inciting or otherwise abetting the commission of, mischief within the meaning of section 425 of the Indian Penal Code in respect of public property or means of public transportation, where the commission of such mischief disturbs, or is likely to disturb, public order;
(iv) committing offences punishable with death or imprisonment for life or imprisonment for a term extending to seven years or more, where the commission of such offences disturbs, or is likely to disturb, public order.

Explanation: In this clause,—

(A) "firearms" shall have the same meaning as in the Arms Act, 1959;

(B) "explosive substances" shall have the same meaning as in the Explosive Substances Act, 1908;

(C) "public property" means any property owned or controlled by the Government or by a Corporation owned or controlled by the Government or by a society financed wholly or substantially by the Government;

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

(c) "detenu" means a person detained under a detention order.

3. Power to make orders detaining certain persons. (1) 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 maintenance of public order, 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) Commissioners of Police,

may also, if satisfied as provided in sub-section (1), exercise the powers 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, together with 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.

4. Execution of detention orders. A detention order may be executed at any place in the State 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 State 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, by order of the State Government.

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 though within the State is outside of the territorial jurisdiction of the officer making the order, or
(b) that the place of detention of such person through within the State is outside the said limits.

7. Powers in relation to absconding persons. If the Government, or an officer specified in sub-section (2) of section 8, 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 officer may—

(a) 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 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 Code of Criminal Procedure, 1973, every offence under clause (b) of sub-section (1) 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 not later than five 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.

9. Constitution of Advisory Board. (1) The State 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, Judges of the High Court, or who are qualified under the constitution of India to be appointed as Judges of the High Court.

10. Reference to Advisory Board. in every case where a detention order has been made under this Act the State Government shall, within thirty days 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, 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 subsection (3) of section 3.

11. Procedure of Advisory Board. (1) The Advisory Board shall, after considering the material placed before it and, after calling for such further information as it may deem necessary from the State Government or from any person called for the purpose through the State 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
State 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) The proceedings of the Advisory Boards and its reports, excepting that part of the report in which the opinion of the Advisory Board is specified, shall be confidential.

(5) 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.

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 State 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 State Government shall revoke the detention order and cause the person to be released forthwith.

13. Maximum period of detention. (1) The maximum period for which any person may detained in pursuance of any detention order made under this act which has been confirmed under section 12, shall be six months from the date of detention.

14. Revocation of detention orders. (1) Without prejudice to the provisions of section 21 of the Bombay General Clauses Act, 1904, a detention order may, at any time, be revoked or modified by the State Government, notwithstanding that the order has been made by any officer mentioned in sub-section (2) of section 3.

(2) The revocation or expiry of a detention order shall not bar the making of a fresh detention order under Section 3 against a same person in any case where fresh facts have arisen after the date of revocation or expiry on which the State Government or an officer, as the case may be, is satisfied that such an order should be made.

15. Temporary release of persons detained. (1) The State Government may at any time, direct that any person detained in pursuance of 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 detenu 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 subsection or in the bond entered into by him, the
bond shall be declared to forfeited and any person bound thereby shall be liable to
the penalty thereof.

16. Protection of action taken under this Act. No suit, prosecution or any other legal
proceeding shall lie against any person for anything done or intended to be done in
good faith in pursuance of the provisions of this Act.

17. Amendment of section 56 of Bom. XXII of 1951.

18. Amendment of section 151 of Act II of 1974. In section 151 of the code of criminal
procedure, 1973, in its application to the State of Maharashtra,-

(a) in sub-section (2), after the words “required or authorised” the words, brackets
and figure “under sub-section (3) or” shall be inserted;

(b) after sub-section (2), the following sub-section shall be inserted; namely:-

“(3) (a) Where a person is arrested under this section and the officer making the
arrest, or the officer-in-charge of the police station before whom the arrested person
is produced, has reasonable grounds to believe that the detention of the arrested
person for a period longer than twenty-four hours from the time of arrest (excluding
the time required to take the arrested person from the place of arrest to the court of a
judicial Magistrate) is necessary, by reason that-

(i) the person is likely to continue the design to commit, or is likely to commit, the
cognizable offence referred to in sub-section (1) after his release; and

(ii) the circumstances of the case are such that his being at large is likely to be
prejudicial to the maintenance of public order, the officer making the arrest, or the
officer-in-charge of the police station, shall produce such person before the nearest
Judicial Magistrate, together with a report In writing stating the reasons for the
continued detention of such person for a period longer than twenty-four hours.

(b) Notwithstanding anything contained in this Code or any other law for the time
being in force, where the Magistrate before whom such arrested person is produced
is satisfied that there are reasonable grounds for the temporary of such person in
custody beyond the period of twenty-four hours, lie may, from time to time, by order
remand such person to such custody as he may think fit:

Provided that, no person shall be detained under this section for a period exceeding
fifteen days at a time, and for a total period exceeding thirty days from the date of
arrest of such person.

(c) When any person is remanded to custody under clause (b), the Magistrate shall,
as soon as may be, communicate to such person the grounds on which, the order has
been made and such, and person may make a representation against the order to the
Court of Session. The Sessions Judge may, on receipt of such representation, after
holding such inquiry as he deems fit, either reject the representation, or if he
considers that further detention of the arrested person is not necessary, or that it is
otherwise proper and just so to do, may vacate the order and the arrested person
shall then be released forthwith.”

Communal, Anti-social and other Dangerous Activities Ordinance, 1980 is hereby
repealed.

(2) Notwithstanding such repeal, anything done or any action taken (including any
order made) under the said Ordinance shall be deemed to have been done, taken or
made as the case may be, under the corresponding provisions of this Act.
Reference:
APPENDIX-IX

The Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers and Drug-Offenders Act, 1981

[This Act received assent of the President on 21st September 1981; assent was first published in the Maharashtra Government Gazette, Part IV, Extraordinary, on 23rd September 1981.]

An Act to provide for preventive detention of Slumlords, Bootleggers and Drug-offenders, for preventing their dangerous activities prejudicial to the maintenance of public order. Whereas public order was adversely affected every now and then by the dangerous activities of certain persons, who are known as Slumlords, Bootleggers and Drug-offenders;

And whereas both Houses of the State Legislature were not in session;

AND WHEREAS having regard to the resources and influence of the persons by whom, the large scale on which, and the manner in which, the dangerous activities were being clandestinely organised and carried on in violation of law by them, as or Drug-offenders in the State of Maharashtra, and particularly in its urban areas, the Governor of Maharashtra was satisfied that circumstances existed which rendered it necessary for him to take immediate action to have a special law in this State to provide for preventive detention of these three classes of persons and for matters con-therewith and, therefore, promulgated the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers and Drug-offenders Ordinance, 1981, on the 11th June 1981;

AND WHEREAS it is expedient to replace the said Ordinance1 by an Act of the State Legislature; It is hereby enacted In Thirty-second Year of the Republic of India as follows:—

1. Short title, extent and commencement (1) This Act may be called the Maharashtra Prevention of Dangerous, Activities of Slumlords, Bootleggers and Drug-offenders Act, 1981.

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

(3) It shall be deemed to have come into force on the 11th June 1981.

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

(a) “acting in any manner prejudicial to the maintenance of public order” means—

(i) in the case of a slumlord, when he is engaged, or is making preparation for engaging, in any of his activities as a slumlord, which affect adversely, or are likely to affect adversely, the maintenance of public order;

(ii) in the case of a bootlegger, when he is engaged, or is making preparations for engaging, in any of his activities as a bootlegger, which affect adversely, or are likely to affect adversely, the maintenance of public order;

(iii) in the case of drug-offender, when he is engaged, or is making preparation for engaging, in any of his activities as drug-offender, which affect adversely, or are likely to affect adversely, the maintenance of public order;

Explanation: For the purpose of this clause (a), 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 any of the persons referred to in this clause, directly or
indirectly, is causing or calculated or 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 or public health;

(b) “bootlegger” means a person, who distils, manufactures, stores, transports, imports, exports, sells or distributes any liquor, intoxicating drug or other intoxicant in contravention of any provisions of the Bombay Prohibition Act, 1949 and the rules and orders made thereunder, or of any other law for the time being in force or who knowingly expends or applies any money or supplies any animal, vehicle, vessel or other conveyance or any receptacles or any other materials whatsoever in furtherance or support of the doing any of the abovementioned things by or through any other person, or who abets in any other manner the doing of any such things;

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

(d) “detenu” means a person detained under a detention order;

(e) “drug-offender” means a person, who manufactures, stocks, import, exports, sells or distributes any drug or cultivates any plant or does any other thing in contravention of any of the provisions of the Drugs and Cosmetics Act, 1940 or the Dangerous Drugs Act 1930 or the rules and orders made under either Act, or in contravention of any other law for the time being in force, or who knowingly expends or applies any money in furtherance or support of the doing of any of the above mentioned things by or through any other person, or who abets in any other manner the doing of any such things;

(f) “slumlord” means a person, who illegally takes possession of any lands (whether belonging to Government, local authority or any other person) or enters into or creates illegal tenancies or lease and licence agreements or any other agreements in respect of such lands, or who constructs unauthorised structures thereon for sale or hire, or gives such lands to any persons on rental or lease and licence basis for construction, or use and occupation, of unauthorised structures, or who knowingly gives financial aid to any persons for taking illegal possession of such lands, or for construction of unauthorised structures thereon, or who collects or attempts to collect from any occupiers of such lands rent, compensation or other charges by criminal intimidation, or who evicts or attempts to evict any such occupiers by force without resorting to the lawful procedure, or who abets in any manner the doing of any other abovementioned things;

(g) “unauthorised structure” means any structure constructed, without express permission in writing of the Municipal Commissioner in a Municipal Corporation area, and elsewhere of the Collector, or except in accordance with any law for the time being in force in the area concerned.

3. Power to make orders detaining certain persons

(1) 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 maintenance of public order, it is necessary so to do, make an order directing that such person is detained. (2) 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 (1), exercise, the powers conferred by the said sub-section:

Provided that the period specified in the order made by the State Government under this sub-section shall not, in the first instance, exceed three months, but the State Government 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 order is made under this section by an officer mentioned in sub-section (2), he 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.

4. Execution of detention orders. A detention order may be executed at any place in the State 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 State 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 by order of the State Government.

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 though within the State is outside the limits of the territorial jurisdiction of the officer making the order, or

(b) that the place of detention of such person though within the State is outside the said limits.

7. Powers in relation to absconding persons. (1) If the State Government, or an officer mentioned in sub-section (2) of section 3, 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, then the provisions of section 82 to 86 (both inclusive) of the Code of Criminal Procedure, 1973, shall apply in respect of such person and his property, subject to the modifications mentioned in this sub-section and, irrespective of the place where such person ordinarily resides, the detention order made against him shall be deemed to be a warrant issued by a competent Court. Where the detention order is made by the State Government, an officer, not below the rank of District Magistrate or Commissioner of Police authorised by the State Government in this behalf, or where the detention order is made by an officer mentioned in sub-section (2) of section 3, such officer, as the case may be, shall irrespective of his ordinary jurisdiction, be deemed to be empowered to exercise all the powers of the competent Court under sections 82, 83, 84 and 85 of the said Code for issuing a proclamation for such person and for attachment and sale of his property situated in any part of the State and for taking any other action under the said sections. An appeal from any order made by any such officer rejecting an application for restoration of attached property shall lie to the Court of Session, having jurisdiction in the place where the said person ordinarily resides, as provided in section 86 of the said Code.

(2) (a) Notwithstanding anything contained in sub-section (1), if the State Government or an officer mentioned in subsection (2) of section 3 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 State Government or the officer, as the case may be, may, 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.

(b) If such person fails to comply with such order, 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, or proves that it was not possible for him to so inform the officer mentioned in the order, he shall, on conviction, be punished with imprisonment for a term which may extend to one year, or with fine, or with both.

(c) Notwithstanding anything contained in the said Code, every offence under clause (b) 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 not later than five 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 State 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 Advisor Boards. (1) The State 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, Judges of any High Court or who are qualified under the Constitution of India to be appointed as Judges of a High Court.

10. Reference to Advisory Board. In every case where a detention order has been made under this Act, the State 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 a person affected by the order, and in the 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 place before it and, after calling for such further information as it may deem necessary from the State Government or from any person called for the purpose through the State 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 State 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) 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.
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.

12. Action upon 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 State Government may confirm the detention order and continue the detention of the person concerned for such period, not exceeding the maximum period prescribed by section 13, 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 State 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 made under this Act, which has been confirmed under section 12, shall be six months from the date of detention.

14. Revocation of detention orders. (1) Without prejudice to the provisions of section 21 of the Bombay General Clauses Act, 1904, a detention order may, at any time, be revoked or modified by the State Government, notwithstanding that order has been made by an officer mentioned in sub-section (2) of section 3.

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

15. Temporary release of persons detained. (1) The State Government may, at any time, direct that any person detained in pursuance of a detention order may be released for any specified period, either with or without conditions, 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 detenu under sub-section (1), the State Government may require him to enter into a bond, either 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 canceling 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, on conviction, be punished 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 fulfill 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, prosecution or other legal proceeding shall lie against the State Government or any officer or person, for anything in good faith done or intended to be done in pursuance of this Act.

17. Detention orders against any slumlord, bootlegger or drug-offender to be made under this Act and not under National Security Act. On and after the commencement of this Act, no order of detention under the National Security Act, 1980, shall be
made by the State Government or any of its officers under that Act, in respect of any slumlord, bootlegger or offender in the State of Maharashtra, 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 or can be made against, such person under this Act.


(2) Notwithstanding such repeal, anything done or any taken (including any order made) under the said Ordinance shall be deemed to have been done, taken or made, as the case may be, under the corresponding provisions of this Act.

Reference:

APPENDIX-X

Tamilnadu Prevention of Dangerous Activities of Bootleggers, Drug-offenders, (Forest Offenders) Goondas, Immoral Traffic Offenders and Slum Grabbers Act, 1982

[14 of 1984]
(12th March, 1982)

An Act to provide for preventive detention of bootleggers, drug-offenders, (forest offenders) goondas, immoral traffic offenders and slum-grabbers for preventing their dangerous activities prejudicial to the maintenance of public order.

WHEREAS public order is adversely affected every now and then by the dangerous activities of certain persons, who are known as bootleggers, drug-offenders, goondas, immoral traffic offenders and slum-grabbers;

AND WHEREAS having regard to the resources and influence of the persons by whom, the large scale on which, and the manner in which, the dangerous activities were being clandestinely organised and carried on in violation of law by them, as bootleggers, Drug-offenders, goondas, immoral traffic offenders or slum grabbers in the State of Tamil Nadu, and particularly in its urban areas, and forest area it is necessary have a special law in the State of Tamil Nadu, to provide for preventive detention of these six classes of persons and for matters connected therewith.

Be it enacted by the Legislature of the State of Tamil Nadu in the Thirty-third Year of the Republic of India as follows:

1. Short title and commencement. (1) This Act may be called the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug-offenders, forest offenders, Goondas, Immoral Traffic Offenders and Slum-Grabbers Act, 1982.

(2) It extends to the whole of the State of Tamil Nadu.

(3) It shall be deemed to have come into force on the 5th January, 1982.

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

(a) “acting in any manner prejudicial to the maintenance of public order” means —

(i) in the case of bootlegger, when he is engaged, or is making preparations for engaging, in any of his activities as a bootlegger, which affect adversely, or are likely to affect adversely, the maintenance of public order;

(ii) in the case of a drug-offender, when he is engaged, or is making preparations for engaging in any of his activities as a drug offender which affect adversely or are likely to affect adversely the maintenance of public order;

[iii-A] in the case of a forest-offender when he is engaged or is making preparations for engaging in any of his activities as a forest-offender, which affect adversely, or are likely to affect adversely, the maintenance of public order;

(iii) in the case of a goonda when he is engaged or is making preparations for engaging in any of his activities as a goonda which affect adversely or are likely to affect adversely the maintenance of public order;
(iv) in the case of an immoral traffic offender when he is engaged, or is making preparations for engaging in any of his activities as an immoral traffic offender which affect adversely, or are likely to affect adversely, the maintenance of public order;

(v) in the case of a slum-grabber, when he is engaged or is making preparations, for engaging, in any of his activities as a slum-grabber, affect adversely or are likely to affect adversely the maintenance of public order:

Explanation: For the purpose of this clause (a), 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 any of the persons referred to in this clause (a) directly or indirectly, is causing or is calculated to cause any harm, danger or alarm or a feeling of insecurity, among the general public or any section, thereof of a grave or widespread danger to life or public health;

(b) “bootlegger” means a person, who distills, manufactures, stores, transports, imports, exports, sells or distributes any liquor, intoxicating drug or other intoxicant in contravention of any of the provisions of the Tamil Nadu Prohibition Act, 1937 (Tamil Nadu Act X of 1937) and the rules, notifications and orders, made thereunder, or in contravention of any other for the time being in force, or who knowingly expends or applies any money or supplies any animal, vehicle, vessel, or other conveyance or any receptacle or any other material whatsoever in furtherance or support of the doing of any of the above mentioned things by or through any other person or who abets in any other manner the doing of any such things;

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

(d) “detenu” means a person detained under a detention order;

(e) “drug-offender” means a person, who manufactures, stocks, import, exports, sells or distributes any drug or cultivates any plant or does any other thing in contravention of any of the provisions of the Drugs and Cosmetics Act, 1940 (Central Act XXIII of 1940), or the Narcotic Drugs and Psychotropic Substances Act, 1985, (Central Act 61 of 1985) and the rules, notifications and orders made under either Act, or in contravention of any other law for the time being in force, or who knowingly expends or applies any money in furtherance or support of the doing of any of the above mentioned things by or through any other person, or who abets in any other manner the doing of any such things;

(ff) “forest-offender” means a person, who commis or attempts to commit or abets the commission of offences punishable under Chapter II or Chapter III or Chapter V or Chapter VI-B or Chapter VII of the Tamil Nadu Forest Act, 1882 (Tamil Nadu Act V of 1982) or under Chapter VI of the Wildlife (Protection) Act, 1972 (Central Act 53 of 1972);

(f) “goonda” means a person who either by himself or as a member of or leader of a gang, habitually commits or attempts to commit or abets the commission of offences punishable under Chapter XVI, Chapter XVII or Chapter XXII of the Indian Penal Code (Central Act XLV of 1860);

(g) “immoral traffic offender” means a person who commits or abets the commission of, any offence under the Suppression of Immoral Traffic in Women and Girls Act, 1956 (Central Act 104 of 1956);

(h) “slum-grabber” means a person, who illegally takes possession of any land (whether belonging to Government, local authority or any other person) or enters into, or creates illegal tenancies or lease and license agreements or any other agreement in respect of such lands; or who constructs unauthorised, thereon for sale or
hire, or gives such lands to any on rental or, leave and license basis for construction or use and occupation of unauthorized structures or who knowingly gives financial aid to any person for taking illegal possession of such lands, or for construction of unauthorized structures or who collects or attempts to collect from any occupier of such lands, rent, compensation or other charges by criminal intimidation or who evicts or attempts to evict any occupier by force without resorting to the lawful procedure; or who abets in any manner the doing of any of the above.

(i) "unauthorised structure" means any structure constructed without express permission in writing of the appropriate authority under, and in accordance with, any law for the time being in force in the area concerned.

3. Power to make orders detaining certain persons. (1) The State Government may, if satisfied with respect to any bootlegger or drug-offender or forest offender or goonda or immoral traffic offender or slum-grabber that with a view to prevent 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 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 (1), exercise, the powers conferred by the said sub-section:

Provided that the period specified in the order made by the State Government under this sub-section shall not, in the first instance, exceed three months, but the State Government 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 order is made under this section by an officer mentioned in sub-section (2), he 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.

4. Execution of detention orders. A detention order may be executed at any place in the State in the manner provided for the execution of warrants of arrest under the Code of Criminal Procedure, 1973 (Central Act 2 of 1974).

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 State 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 by order of the State Government.

5-A. 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 Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug-offenders, Goondas, Immoral Traffic offenders and Slum-grabbers (Amendment) Act, 1986) 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 ground 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-

(!) 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 section 3 with reference to the 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 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 though within the State is outside the limits of the territorial jurisdiction of the officer making the order, or

(b) that the place of detention of such person though within the State is outside the said limits.

7. Powers in relation to absconding persons—

(1) If the State Government, or an officer mentioned in sub-section (2) of section 3, 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, then the provisions of section 82 to 86 (both inclusive) of the Code of Criminal Procedure, 1973, (Central Act 2 of 1974) shall apply in respect of such person and his property, subject to the modifications mentioned in this sub-section and, irrespective of the place where such person ordinarily resides, the detention order made against him shall be deemed to be a warrant issued by a competent Court. Where the detention order is made by the State Government, an officer, not below the rank of District Magistrate or Commissioner of Police authorised by the State Government in this behalf, or where the detention order is made by an officer mentioned in sub-section (2) of section 3, such officer, as the case may be, shall irrespective of his ordinary jurisdiction, be deemed to be empowered to exercise all the powers of the competent Court under sections 82, 83, 84 and 85 of the said Code for issuing a proclamation for such person and for attachment and sale of his property situated in any part of the State and for taking any other action under the said sections. An appeal from any order made by any such officer rejecting an application for restoration of attached property shall lie to the Court of Session, having jurisdiction in the place where the said person ordinarily resides, as provided in section 86 of the said Code.

(2) (a) Notwithstanding anything contained in sub-section (1), if the State Government or an officer mentioned in subsection (2) of section 3 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 State Government or the officer, as the case may be, may, by order
notified in the Tamil Nadu 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.

(b) If such person fails to comply with such order, 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, or proves that it was not possible for him to so inform the officer mentioned in the order, he shall, on conviction, be punished with imprisonment for a term which may extend to one year, or with fine, or with both.

(c) Notwithstanding anything contained in the said Code, every offence under clause (b) 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 not later than five 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 State 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 Advisor Boards-

(1) The State 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, Judges of any High Court or who are qualified under the Constitution of India to be appointed as Judges of a High Court.

10. Reference to Advisory Board. In every case where a detention order has been made under this Act, the State 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 a person affected by the order, and in the case where the order has been made by an officer, also the report by such officer under sub-section (3) of Section 3.


(1) The Advisory Board shall, after considering the materials place before it and, after calling for such further information as it may deem necessary from the State Government or from any person called for the purpose through the State 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 State 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) 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.

(5) 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.

12. Action upon 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 State Government may confirm the detention order and continue the detention of the person concerned for such period, not exceeding the maximum period prescribed by section 13, 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 State 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 made under this act, which has been confirmed under section 12, shall be six months from the date of detention.

14. Revocation of detention orders. (1) Without prejudice to the provisions of section 21 of the Tamil Nadu General Clauses Act, 1891 (Tamil Nadu Act 1 of 1891). A detention order may, at any time, be revoked or modified by the State Government, notwithstanding that order has been made by an officer mentioned in sub-section (2) of section 3.

(2) The revocation or expiry of a detention order (termed as the earlier detention order) shall not (whether such earlier detention order has been made before or after the commencement of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug offenders Goondas, Immoral Traffic Offenders and Slum-grabbers (Amendment) Act, 1986) 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 revocation or expiry 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.

15. Temporary release of persons detained.

(1) The State 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 detenu 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, on conviction, be punished 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 subsection 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, prosecution or other legal proceeding shall lie against the State Government or any officer or person, for anything in good faith done or intended to be done in pursuance of this Act.

17. Detention orders against any bootlegger, drug-offender, immoral traffic offender, or slum-grabber to be made under this Act and not under National Security Act. On and after the commencement of this Act, no order of detention under the National Security Act, 1980 (Central Act 65 of 1980) shall be made by the State Government or any of their officers under that Act in respect of any bootlegger, drug-offender, forest offender, immoral traffic offender, or slum-grabber in the State of Tamil Nadu, 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.

18. Repeal and saving.

(1) The Tamil Nadu Prevention Dangerous Activities of Boot-loggers, Drug-offenders, Goondas, Immoral Traffic Offenders and slum-grabbers Ordinance, 1982 (Tamil Nadu Ordinance I of 1982) is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the said Ordinance, shall be deemed to have been or taken under this Act.