THE CONSERVATION OF FOREIGN EXCHANGE AND PREVENTION OF SMUGGLING ACTIVITIES ACT, 1974

ARRANGEMENT OF SECTIONS

SECTIONS

1. Short title, extent and commencement.
2. Definitions.
3. Power to make orders detaining certain persons.
4. Execution of detention orders.
5. Power to regulate place and conditions of detention.

5A. Grounds of detention severable.

6. Detention orders not to be invalid or inoperative on certain grounds.
7. Powers in relation to absconding persons.
8. Advisory Boards.
9. Cases in which and circumstances under which persons may be detained for periods longer than three months without obtaining the opinion of Advisory Board.

10. Maximum period of detention.

10A. Extension of period of detention.

11. Revocation of detention orders.

12. Temporary release of persons detained.

12A. Special provisions for dealing with emergency.

13. Protection of action taken in good faith.

14. Repeal.

IndiaCode

THE CONSERVATION OF FOREIGN EXCHANGE AND PREVENTION OF SMUGGLING ACTIVITIES ACT, 1974

ACT NO. 52 OF 1974

[13*th December*, 1974.]

An Act to provide for preventive detention in certain cases for the purposes of conservation and augmentation of Foreign Exchange and prevention of smuggling activities and for matters connected therewith.

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 and carried on, and having regard to the fact that in certain areas which are highly vulnerable to smuggling, smuggling activities of a considerable magnitude are clandestinely organised and carried on, it is necessary for the effective prevention of such activities and violations to provide for detention of persons concerned 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[1](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 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*) "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*) "Indian customs waters" has the same meaning as in clause (*28*) of section 2 of the Customs Act, 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 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 or any officer of the Central Government, not below the rank of a Joint Secretary to that

1. 19th December, 1974, *vide* notification No. G.S.R. 690(E), dated 16th December, 1974, *see* Gazette of India, Extraordinary, Part II, sec. 3 (*i*).

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 (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 preventing 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 such person be detained.

[1][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).]

(*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 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.

1. The proviso ins. by Act 46 of 1988, s. 15 (w.e.f. 4-7-1988).

[1][5A. **Grounds of detention severable**.—Where a person has been detained in pursuance of an order of detention under sub-section (*1*) of section 3 which has been made on two or more grounds, such order of detention shall be deemed to have been made separately on each of such grounds and accordingly—

(*a*) such order shall not be deemed to be invalid or inoperative merely because one or some of the grounds is or are—

(*i*) vague,

(*ii*) non-existent,

(*iii*) not relevant,

(*iv*) not connected or not proximately connected with such person, or

(*v*) invalid for any other reason whatsoever,

and it is not, therefore, possible to hold that the Government or officer making such order would have been satisfied as provided in sub-section (*1*) of section 3 with reference to the remaining ground or grounds and made the order of detention;

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

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 the officer making the order of detention, 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 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 cognisable.

1. Ins. by Act 35 of 1975, s. 2 (w.e.f. 1-7-1975).

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, 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 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 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, 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.

[1]**[9. 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 [2][31st day of July, 1999], 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

1. Subs. by Act 58 of 1984, s. 2, for section 9 (w.e.f. 13-7-1984).
2. Subs. by Act 15 of 1996, s. 2, for "31st day of July, 1996" (w.e.f. 31-7-1996).

(*c*) engages or is likely to engage in transporting or concealing or keeping smuggled goods in any area highly vulnerable to smuggling,

and makes a declaration to that effect within five weeks of the detention of such person.

Explanation1.—In this sub-section, "area highly vulnerable to smuggling" means—

(*i*) The Indian customs waters contiguous to [1][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 falling within the territories of [1][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; and

(*v*) 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 [2][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 [3][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.

1. Subs. by Act 23 of 1987, s. 2, for certain words (w.e.f. 2-7-1987).
2. Subs. by Act 20 of 1976, s. 3, for "one year from the date of detention" (w.e.f. 12-12-1975).
3. Subs. by s. 3, *ibid*., for "two years from the date of detention" (w.e.f. 12-12-1975).

[1][*Explanation.*—In this section and in section 10A, "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 Proclamation of Emergency issued under that clause on the 25th day of June, 1975, are both in operation.]

[2][**10A. 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.—[3][(*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 conditions or upon such conditions specified in the direction as that person accepts, and may, at any time, cancel his release.

(*1A*) 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 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.]

1. Ins. by Act 20 of 1976, s. 3 (w.e.f. 12-12-1975).
2. Ins. by s. 3, *ibid.* (w.e.f. 12-12-1975).
3. Subs. by s. 4, *ibid.*,for sub-section (*1*) (w.e.f. 12-12-1975).

(*2*) In directing the release of any person [1][under sub-section (*1*) or sub-section (*1A*), 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.

(*3*) Any person released under [2][sub-section (*1*) or sub-section (*1A*)] 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 [2][sub-section (*1*) or sub-section (*1A*)] 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.

[3][(*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.]

[4][**12A. 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 [5][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 (35 of 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 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 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 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 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, the Government may revoke the declaration.

1. Subs. by Act 20 of 1976, s. 4, for "under sub-section (*1*), the appropriate Government" (w.e.f. 12-12-1975).
2. Subs. by s. 4, *ibid.*, for "sub-section (*1*)" (w.e.f. 12-12-1975).
3. Ins. by Act 35 of 1975, s. 3 (w.e.f. 1-7-1975).
4. Ins. by s. 4, *ibid.* (w.e.f. 1-7-1975).
5. Subs. by Act 90 of 1976, s. 2, for "twelve months" (w.e.f. 16-6-1976).

(*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*)(*i*), and the period of "six months" specified in sub-section (*3*) of section 9.]

13. 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.

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 (20 of 1971), by the said Ordinance shall, on such commencement, cease to have effect.

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