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THE HIMACHAL PRADESH HABITUAL OFFENDERS ACT, 1969

(ACT NO. 8 OF 1970)¹

(Received the assent of the President on the 19th February, 1970, and was published in the Rajpatra, Himachal Pradesh (Extra-ordinary), dated the 6th April, 1970, pp. 305-316).

Amended, repealed or otherwise affected by,-

The Himachal Pradesh Adaptation of Laws (State and Concurrent Subjects) Order, 1973, published in the Rajpatra, Himachal Pradesh (Extra-ordinary), dated the 20th January, 1973, pp. 91-112, effective from 25th January, 1971.

An Act to make better provision for the treatment and training of habitual offenders, and for certain other matters.

BE it enacted by the Legislative Assembly of Himachal Pradesh in the Twentieth Year of the Republic of India as follows:-

CHAPTER-I

PRELIMINARY

1. Short title, extent and commencement.- (1) This Act may be called the Himachal Pradesh Habitual Offenders Act, 1969.

(2) It extends to the whole of the ²[State] of Himachal Pradesh.

(3) It shall come into force at once.

1. For Statement of Objects and Reasons see the Rajpatra, Himachal Pradesh (Extra-ordinary), dated 31st May, 1969, p. 421.
2. Substituted for "Union Territory" by A.O. 1973.

2. Definitions.- (1) In this Act, unless the context otherwise requires:-

- (a) "Code" means the Code of Criminal Procedure, 1898 (5 of 1898);
- (b) "corrective settlement" means any place established, approved or certified as a corrective settlement under section 14;
- (c) "District Magistrate" means a District Magistrate appointed under section 10 of the Code;
- (d) "habitual offender" means any person who since his attaining the age of eighteen years,-
 - (i) during any consecutive period (whether before or after the commencement of this Act, or partly before and partly after such commencement) of five years, has been sentenced on conviction, on not less than three occasions, to a substantive term of imprisonment for one or more of the scheduled offences committed on separate occasions, being offences which are not so connected together as to form parts of the same transaction; and
 - (ii) such sentence has not been reversed in appeal or revision:

Provided that in computing the consecutive period of five years aforesaid, any period spent in jail either under a sentence of imprisonment or under detention shall not be taken into account;

- (e) "Government" means the Government of Himachal Pradesh;
- (f) "notification" means a notification published in the Official Gazette, under the proper authority;
- (g) "Official Gazette" means the Himachal Pradesh Rajpatra;
- (h) "prescribed" means prescribed by rules made under this Act;
- (i) "registered offender" means a habitual offender registered or re-registered under this Act;
- (j) "scheduled offence" means an offence specified in the Schedule or an offence analogous thereto;
- (k) "Superintendent of Police" means the Superintendent of Police and includes any person appointed by the Government to perform the duties of a Superintendent of Police under this Act.

(2) Words and expressions used but not defined in this Act shall have the meanings assigned to them in the Code.

CHAPTER II

REGISTRATION OF HABITUAL OFFENDERS AND RESTRICTION OF THEIR MOVEMENTS

3. Power of Government to direct registration of habitual offenders.- The Government may direct the District Magistrate to make or cause to be made a register of habitual offenders within his district, by entering therein the names and other prescribed particulars of such offenders.

4. Procedure for preparing a register of habitual offenders.- For the purpose of carrying out the direction given under section 3, the District Magistrate or any officer appointed by him in this behalf shall, by notice in the prescribed form to be served in the prescribed manner, call upon every habitual offender in the district;

- (a) to appear before him at a time and place specified in the notice;
- (b) to furnish such information as may be necessary to enable him to enter the name and other prescribed particulars of the habitual offender in the register; and
- (c) to allow the finger and palm impression, foot-prints and photographs of the habitual offender to be taken:

Provided that the name and other prescribed particulars of a habitual offender shall not be entered in the register, unless he has been given reasonable opportunity of showing cause why such entry should not be made.

5. Charge of Register and alterations therein .- (1) The register shall be placed in the keeping of the Superintendent of Police of the district who shall, from time to time, report to the District Magistrate, any alterations which ought, in his opinion, to be made therein.

(2) After the register has been placed in the keeping of the Superintendent of Police, no fresh entry shall be made in the register, nor shall any entry be cancelled, except by or under, an order in writing of the District Magistrate.

6. Powers to take finger and palm impressions, foot-prints and photographs at any time .- The District Magistrate or any officer appointed by him in this behalf, may at any time order the finger and palm impressions, footprints and photographs, of any registered offender to be taken.

7. Registered offenders to notify change of residence and to report themselves.- (1) Every registered offender shall notify to such authority, and in such manner, as may be prescribed, any change or intended change of his ordinary residence:

Provided that where such offender changes, or intends to change, his ordinary residence to another district (whether within the ¹[State] of Himachal Pradesh or not) he shall notify the change or intended change to

1. Substituted for the word "Union Territory" vide A.O., 1973.

the District Magistrate.

(2) The District Magistrate may, by order in writing, direct that any registered offender shall,-

- (a) report himself once in each month, or where the District Magistrate for reasons specified in the order so directs, more frequently to such authority, and in such manner, as may be specified in the order; and
- (b) notify any absence or intended absence from his ordinary residence to the aforesaid authority:

Provided that the District Magistrate may exempt any such offender from notifying any absence or intended absence from his ordinary residence for such period, and under such conditions, as appear to him reasonable.

8. Procedure by District Magistrate on change of residence of habitual offender to other district.- (1) Where any registered offender changes his ordinary residence to another district within the ¹[State] of Himachal Pradesh, the District Magistrate of the district in which the offender is registered shall inform the District Magistrate of the other district of such change, and at the same time furnish him with the name and other particulars relating to the registered offender in the register.

(2) On the receipt of such information, the District Magistrate of the other district shall enter in his register the name and other particulars of the registered offender furnished to him, and inform the District Magistrate of the first district of such registration, and thereupon such District Magistrate shall cancel from his register the entry relating to that offender:

Provided that where a registered offender changes his ordinary residence to another district outside the ²[State] of Himachal Pradesh the District Magistrate of the first district shall, while furnishing the District Magistrate of the other district with the name and other particulars of the registered offender make a request to that District Magistrate that he may be informed of the steps, if any, which may have been taken in relation to the offender under any law for the time being in force in that other district; and upon the receipt of such information the District Magistrate of the first district shall cancel from register the entry relating to that offender.

(3) Upon the entry of the name and other particulars of a registered offender in any register in ³[State] of Himachal Pradesh under sub-section (2), the provisions of this Act and the rules made thereunder shall apply to him as if he has been registered, in pursuance of a direction given under section 3, in the register of the district to which he has changed his ordinary residence.

1. Substituted for "Union territory" vide A.O. 1973.
 2. Substituted for "Union territory" vide A.O. 1973.
 3. Substituted for "Union territory" vide A.O. 1973.

9. Duration registration and re-registration of habitual offenders.-

(1) Subject to the provisions of sub-section (3), the registration of a habitual offender under this Act shall, unless earlier cancelled, cease to be in force on the expiry of five years from the date of such registration, and on such cancellation or expiry the habitual offender shall cease to be a registered offender.

(2) Notwithstanding the cancellation, or expiry of duration of registration, a habitual offender may be re-registered in accordance with the provisions of this Act relating to registration, as often as he is convicted of one or more of the scheduled offences at any time after such cancellation, or expiry; and subject to the provisions of sub-section (3), the re-registration shall, unless earlier cancelled, cease to be in force on the expiry of five years from the date of such re-registration.

(3) Where a registered offender is, during the period of registration or re-registration, convicted of one or more of the scheduled offences and sentenced to a substantive term of imprisonment, the duration of registration or re-registration shall be extended for a period of five years from the date of his release from such imprisonment.

10. Right to make representations against re-registration etc.- (1)

Any person aggrieved by the registration or re-registration of his name under section 4, or as the case may be, section 9 or by an order under sub-section (2) of section 7, may within the prescribed period make a representation to the Commissioner against such registration, re-registration or orders.

(2) The Commissioner shall, after considering the representation, and giving the aggrieved person an opportunity of being heard, either confirm or cancel the registration, re-registration or order, as the case may be, and shall in the case of confirmation record, a brief statement of the reasons therefor.

11. Power to restrict movements of registered offenders.- (1)

If in the opinion of the Government it is necessary or expedient in the interests of the general public so to do, the Government may, subject to the provisions of sub-section (4), by order direct that any registered offender shall be restricted in his movements to such area, and for such period not exceeding three years as may be specified in the order.

(2) Before making any such order the Government shall take into consideration the following matters, that is to say,-

- (a) the nature of the offences of which the registered offender has been convicted and the circumstances in which the offences were committed;
- (b) whether the registered offender follows any lawful occupation, and whether such occupation is conducive to an honest and settled way of life and is not merely a pretence for the purpose of facilitating the commission of crime;
- (c) the suitability of the area to which his movements are to be restricted; and

(d) the manner in which the registered offender may earn his living within the restricted area and the adequacy of arrangements which are or are likely to be, available therefor.

(3) A copy of the order shall be served on the registered offender in the prescribed manner.

(4) The period specified in an order under sub-section (1) shall in no case extend beyond the period of registration or re-registration, as the case may be, referred to in section 9.

12. Power to cancel or alter restrictions of movements.- The Government may, by order, cancel any order made under section 11, or alter any area specified in an order under that section:

Provided that before making such order, the Government shall consider the matter referred to in sub-section (2) of section 11 in so far as they may be applicable.

13. Powers under sections 11 and 12 also exercisable by certain Magistrates.- (1) Subject to the provisions of sub-section (3), the powers of the Government under sections 11 and 12 may be exercised also by a Magistrate having power to act under section 110 of the Code, but without prejudice to the exercise of his powers under that section of the Code.

(2) A Magistrate acting under section 11 or 12 shall follow, as nearly as may be, the procedure laid down in sections 112, 113, 114, 115 and 117 of the Code for an order requiring security for good behaviour:

Provided that the order in writing referred to in section 112 of Code shall, in addition to setting forth the substance of the information received, state the term, not exceeding three years, during which the order of restriction shall be in force.

(3) Where the Government has already made an order under section 11 in respect of a habitual offender, the Magistrate shall not exercise any powers conferred by this section in respect of the same habitual offender, during any period in which the order of the Government is in force.

CHAPTER III

CORRECTIVE TRAINING OF HABITUAL OFFENDERS

14. Establishment of corrective settlements.- (1) For the purpose of placing therein such habitual offenders as are directed to receive corrective training under this Act, the Government may, by notification in the Official Gazette, establish and maintain in the ¹[State] of Himachal Pradesh as many corrective settlements as it thinks fit.

(2) The Government may also approve or certify any privately managed institution (whether known as a settlement or otherwise) as a corrective settlement for the purposes of this Act.

1. Substituted for "Union territory" vide A.O. 1973.

15. Power to direct habitual offenders to receive corrective training.-

(1) Where the Government is satisfied from the report of the District Magistrate or otherwise that it is expedient with a view to the reformation of a registered offender and the prevention of crime, that the registered offender should receive training of a corrective character for a substantial period, the Government may by order in writing direct that the registered offender shall receive training of a corrective character for such period not exceeding the duration of his registration or re-registration as may be specified in the order.

(2) Where a habitual offender, who is not more than forty years of age,-

- (a) is convicted of any offence punishable with imprisonment, or
- (b) is required in pursuance of section 110 of the Code to execute a bond for his good behaviour, and the court or the Magistrate is satisfied from the evidence in the case and other materials on record that it is expedient with a view to his reformation and the prevention of crime, that he should receive training of a corrective character for substantial period, the court or the Magistrate may, in lieu of sentencing him for such offence or, as the case may be, requiring him to execute such bond, direct that he shall receive corrective training for such term of not less than two or more than five years, as the court or the Magistrate may determine.

(3) Before giving any direction under sub-section (1) or sub-section (2) the Government, the court or the Magistrate, as the case may be, shall,-

- (a) consult the officer prescribed on the capacity of the corrective settlements to receive the habitual offender;
- (b) take into consideration the physical and mental condition of the offender, and the suitability for receiving corrective training in a corrective settlement; and
- (c) give a reasonable opportunity to the offender to show cause why such direction should not be given.

(4) A habitual offender, in respect of whom a direction to receive corrective training has been made, shall be placed in a corrective settlement for the term of his training, and while in such settlement shall be treated in such manner and receive such training as may be prescribed.

16. Power to transfer or discharge from corrective settlement.-

The Government or any officer authorised by it in this behalf, may at any time by order in writing direct any habitual offender who may be in a corrective settlement to be transferred to another corrective settlement to be discharged therefrom, and accordingly he shall be so transferred or, as the case may be, discharged.

CHAPTER IV**PENALTIES AND PROCEDURE**

17. Penalty for failure to comply with certain provisions of the Act.- A habitual offender who without lawful excuse, the burden of proving which shall lie upon him-

- (a) fails to appear in compliance with a notice issued under section 4; or
- (b) intentionally omits to furnish any information required under that section or furnishes as true any information which he knows, or has reasons to believe, to be false or does not believe to be true; or
- (c) refuses to allow his finger and palm impression, foot-prints and photographs to be taken by any person acting under an order passed under section 6; or
- (d) fails to comply with the provision of sub-section (1) of section 7 or with an order of the District Magistrate under sub-section (2) thereof or with an order under section 11;

may be arrested without warrant, and shall be punished,-

- (i) on first conviction, with imprisonment for a term which may extend to six months or with fine which may extend to two hundred rupees, or with both, and
- (ii) on a second or subsequent conviction, with imprisonment for a term which may extend to one year or with fine which may extend to five hundred rupees, or with both:

Provided that, if the Court, after taking into consideration the offender's age and physical and mental condition and his suitability for receiving training of a corrective character in a corrective settlement, is satisfied that it is expedient with a view to his reformation and the prevention of crime, that he should receive training of a corrective character for a substantial period the court may, in lieu of sentencing the offender to any punishment under this section, direct, after giving him an opportunity of showing cause (and after consulting the officer prescribed on the capacity of the corrective settlements to receive him) that he shall receive corrective training in a corrective settlement for such term not exceeding three years, as it may determine.

18. Arrest of persons found outside restriction area or corrective settlement.- If any person,-

- (a) is found outside the areas to which his movements have been restricted in contravention of the conditions under which he is permitted to leave such area; or
- (b) escapes from any corrective settlement in which he is placed, he may be arrested without warrant by a police officer and

taken before a Magistrate who on proof of the facts, may order him to be removed to such area or to such corrective settlement, there to be dealt with in accordance with this Act and rules made thereunder.

19. Enhanced punishment for certain previously convicted persons.- (1) Whoever, being a person in respect of whom a direction has been made under section 11 or section 15, and having been convicted of any of the scheduled offences falling under Part I of the schedule, is convicted of the same or of any other scheduled offence falling in that part shall, on conviction, be punished with imprisonment for life or with imprisonment for a term which may extend to ten years.

(2) Nothing in this section shall affect the liability of such person to any further or other punishment to which he may be liable under the Indian Penal Code (45 of 1860), or any other law.

20. Punishment for certain registered offenders found under suspicious circumstances.- Whoever, being a person in respect of whom a direction has been made under section 11 or section 15, is found in any place under such circumstances as to satisfy the court,-

- (a) that he was about to commit, or aid in the commission of, theft or robbery, or
- (b) that he was making preparation for committing theft or robbery, shall, on conviction, be punished with imprisonment for a term which may extend to three years, and shall also be liable to a fine which may extend to one thousand rupees.

CHAPTER V

MISCELLANEOUS

21. Bar of jurisdiction .- No court shall question the validity of any direction or order issued under this Act.

22. Bar of legal proceedings.- No court shall question the competence of any authority making or issuing any notification, order or direction under this Act.

23. Power to delegate.- The Government may, by notification in the Official Gazette, direct that any power exercisable by it under this Act except the power under section 24 may also be exercised subject to such conditions, if any, as may be specified in the notification, by such officer not below the rank of a District Magistrate as may be specified therein.

24. Power to make rules.- (1) The Government may, by notification in the Official Gazette, make rules for carrying out the purposes 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 form of notice under section 4 and the manner in which such notice may be served;
- (b) the form of the register of habitual offenders and the particulars to be entered therein;
- (c) the authority to whom and the manner in which any change or intended change of ordinary residence shall be notified under sub-section (1) of section 7;
- (d) the nature of restrictions to be observed by registered offenders whose movements have been restricted;
- (e) the grant of certificate of identity to registered offenders and inspection of such certificates;
- (f) the conditions under which the offenders may be permitted to leave the area to which their movements have been restricted or the corrective settlement in which they have been placed;
- (g) the terms upon which offenders may be discharged from corrective settlements;
- (h) the working, management, control and supervision of corrective settlements including the discipline and conduct of persons placed therein;
- (i) the conditions for, and the manner of, approving of certifying privately managed settlements;
- (j) the appointment of non-official visitors for corrective settlements;
- (k) the conditions and circumstances under which members of the family of a habitual offender may be permitted to stay with him in a corrective settlement;
- (l) the periodical review of the cases of all persons whose movements have been restricted or who are placed in corrective settlements under this Act; and
- (m) any other matter which is to be or may be prescribed under this Act.

(3) In making rules under this Act, the Government may provide that a contravention of any of the rules shall be punishable with fine which may extend to one hundred rupees.

(4) Every rule made under this Act shall be laid, as soon as may be after it is made, before the Legislative Assembly while it is in session, for a total period of not less than fourteen days which may be comprised in one session or in two or more successive sessions and if before the expiry of the session in which it is so laid or the sessions aforesaid, the Assembly makes any modification in the rule or decides that the rules 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, however, that any such modification or annulment shall

be without prejudice to the validity of anything previously done under that rule.

25. Corresponding provisions under any law for the time being in force.- Nothing in this Act shall affect the powers of any competent authority under any other law for the time being in force to make an order of restriction or detention, and any order passed or direction made under this Act in so far as it conflicts with any order made by a competent authority under such law shall be deemed to be inoperative while the order under such law remains in force.

26. Repeal and Savings.- The Punjab Habitual Offenders (Control and Reform) Act, 1952 (Act No. 12 of 1952) as in force in the areas added to Himachal Pradesh under section 5 of the Punjab Reorganisation Act, 1966 (Act No. 31 of 1966) and the Bombay Habitual Offenders Act, 1959 (Act No. 61 of 1959) as extended to areas comprised in Himachal Pradesh immediately before 1st November, 1966, are hereby repealed:

Provided that any order made, notification or direction issued, appointment made or action taken in exercise of the powers conferred by or under the Acts hereby repealed, shall be deemed to have been made, issued, done or taken under the corresponding provisions of this Act.

THE SCHEDULE

[See Section 2(j)]

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