

THE SMUGGLING OF ARMS ACT, 1934

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THE SMUGGLING OF ARMS ACT, 1934

ACT NO. VI OF 1934

[12th April, 1934]

An Act for the prevention of smuggling of arms and ammunition in Bangladesh.*

WHEREAS it is expedient to make better provision for the prevention of smuggling of arms and ammunition in Bangladesh;

¹[* * *]

It is hereby enacted as follows:—

1. (1) This Act may be called the ²[* * *] Smuggling of Arms Act, 1934. Short title and extent

(2) It extends to the whole of Bangladesh.

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

(1) "arms" and "ammunition" have the same meaning as in section 4 of the Arms Act, 1878;

³[* * *]

(4) "notified area" means any area which is declared to be a notified area under section 3.

* Throughout this Act, except otherwise provided, the words "Bangladesh" and "Government" were substituted, for the words "East Pakistan" or "Pakistan" and "Provincial Government" respectively by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

¹ Second paragraph of the preamble was omitted by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

² The word "Bengal" was omitted by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

³ Clauses (2) and (3) were omitted by First Schedule of the East Pakistan Repealing and Amending Ordinance, 1962 (Ordinance No. XIII of 1962).

- (5) "smuggler of arms" includes any person who—
- (a) smuggler arms or ammunition into or from Bangladesh, or abets such smuggling;
 - (b) sells, purchases, receives or transports, or abets the sale, purchase, receipt or transport of, arms or ammunition which he knows or has reason to believe to have been smuggled;
 - (c) has been convicted by any Court in Bangladesh of an offence connected with the smuggling of arms or ammunition; or

¹[* * *]

Power to
declare notified
area

3. The Government may, by notification in the official Gazette, declare that any area specified in the notification shall be a notified area for the purposes of this Act.

Report by
District
Magistrate

4. Whenever it shall appear to any District Magistrate that there is within a notified area within his jurisdiction any person who—

- (a) is a smuggler of arms, and
- (b) resides within or habitually visits or frequents such notified area,

the District Magistrate may make a report to the Government with a recommendation that such person be dealt with under the provisions of this Act.

Issue of
warrant on
receipt of
report

5. (1) On receipt of the report of the District Magistrate the Government may make an order for the issue of a warrant for the arrest of the person against whom the report has been made.

(2) The warrant shall be in such form as shall be prescribed by the Government by notification in the official Gazette and shall be issued by the District Magistrate and shall

¹ Sub-clause (d) was omitted by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

contain a statement of the heads of the charges against such person, and shall require him to submit by petition to the advising judges appointed under sub-section (1) of section 6, by such date as may be specified in the warrant, any representation that he may desire to make.

(3) The person arrested under such warrant shall be detained in custody until the final order of the Government under section 7 is communicated to him, unless the officer by whom the warrant is issued directs, in his discretion, that such person shall be released from custody on his executing, to the satisfaction of such officer, a bond with sufficient sureties for his attendance at such place and at such time or times as may be specified in the warrant and thereafter as such officer may direct:

Provided that while such person is detained in custody he shall be given reasonable facilities, under proper safeguards, for communicating with his legal adviser.

(4) The District Magistrate by whom such warrant is issued shall have—

- (i) for the enforcement of the attendance of the person, against whom the warrant is issued, at such place and at such time or times as may be specified therein (and thereafter as the District Magistrate may direct), in order to communicate to such person the final order of the Government made under section 7, and
- (ii) for the forfeiture, under section 514 of the Code of Criminal Procedure, 1898, of any bond, executed for the attendance of such person at such place and at such time or times, all the powers of such District Magistrate under the Code of Criminal Procedure, 1898; and the warrant shall for the purposes set forth in clauses (i) and (ii) be deemed to be a warrant issued by a District Magistrate for the arrest of the said person to answer a charge in respect of a non-bailable offence committed by him within the jurisdiction of such Magistrate.

Government to
place report
before advising
judges

6. (1) After issue of the warrant under section 5, the Government shall forthwith cause the report of the District Magistrate, with all material facts and circumstances in its possession relevant to the same, to be placed before two advising judges, of whom one shall be the District and Sessions Judge having local jurisdiction over the notified area or any portion thereof concerned and the other a District and Sessions Judge or Additional District and Sessions Judge who was held judicial office not below that of an Additional District and Sessions Judge for a total period of not less than three years.

(2) The advising Judges shall consider in camera the report and the other facts and circumstances, if any adduced before, them by the Government, and any representation, submitted to them by the person against whom the report has been made within the time fixed by section 5 or such further time as they may allow, and shall call for such further information, if any, and may examine such witnesses, if any, as shall appear to them to be necessary to enable them to tender their advice on the report. They shall also give to the person against whom the report has been made, if he so desires, an opportunity of appearing in person before them to offer his explanation, and may at the instance of that person require the attendance of any other person, whose statement may support that explanation:

Provided that—

- (a) nothing in this section shall be deemed to entitle the person whose case is before the advising Judges to appear or be represented before them by pleader, nor shall the Government.
- (b) the advising Judges shall not disclose to the person in question any fact the communication of which might endanger the safety of any individual, and
- (c) the advising Judges shall not be bound to observe the rules of evidence and shall not permit the putting of any question which may endanger the safety of any individual.

(3) Any statement made to the advising Judges by any person other than the person whose case is before them shall be deemed to be information given to a public servant within the

meaning of section 182 of the ¹[Penal Code], and the advising Judges shall for the purpose of securing the attendance of any person under the provisions of sub-section (2) have all the powers of a District Magistrate under the Code of a Criminal Procedure, 1898.

(4) When the advising Judges have reached their conclusions, they shall report the same in writing to the Government.

(5) If the person whose case is under their consideration claims, when submitting his representation or when appearing before the advising Judges, that both he and his father were born in Bangladesh or that he is a member of a family which is definitely settled in Bangladesh and is himself so settled, the advising Judges shall give him an opportunity of establishing his claim, and shall also give to the District Magistrate an opportunity of rebutting the same, and at the time of submission of their report to the Government shall record their opinion as to whether such person has established his claim.

7. (1) On receipt of the report of the advising Judges the Government, if satisfied that the person against whom the report has been made, should be removed elsewhere, may by an order reciting the conclusions of the advising Judges, as reported by those Judges,—

Order of
removal by
Government

²[* * *]

(b) ³[***] direct him to leave the notified area within such time, by such route and for such period as may be stated in the order, and may in that case further order

¹ The words "Penal Code" were substituted, for the words "Pakistan Penal Code" by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

² Clause (a) was omitted by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

³ The words and commas "where the Provincial Government is satisfied that both he and his father were born in East Pakistan, or that he is a member of a family which has definitely settled in East Pakistan and is himself so settled," were omitted by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

that he shall during the same period notify his place of residence and any change or intended change of residence and any absence or intended absence from his residence to the officer appointed by the Government in this behalf.

(2) The order of the Government under sub-section (1) shall be final, and shall not be called in question in any subsequent proceeding under section 10 or section 11:

Provided that the Government may, at any time, cancel or suspend such order or reduce the period for which the said person is required to leave ¹[* * *] the notified area.

Evasion of orders

8. Where any person on whom a warrant has been served under section 5—

- (i) fails to attend at the place and at the time or times specified in the warrant and thereafter when required in order to receive the order of the Government under section 7, or
- (ii) prior to the issue of that order, leaves Bangladesh or the notified area, as the case may be,

the Government may issue the order under section 7 in the absence of that person by publishing the same in the official Gazette, and such person shall be deemed to have absconded in order to evade that order:

Provided that the Government may condone a failure to attend under clause (i), on reasons for such non-attendance being furnished to its satisfaction, and in that case such person shall not be deemed to have absconded in order to evade the order.

Identification order

9. Every person in respect of whom an order has been made under section 7 shall, if so directed by the District Magistrate—

- (i) present himself to be photographed;

¹ The words "East Pakistan or" were omitted by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

- (ii) allow his finger impression to be recorded;
- (iii) if literate, furnish such officer with specimens of his handwriting and signature; and
- (iv) attend at such times and places as the District Magistrate may direct for all or any of the aforesaid purposes.

10. When any person, against whom an order has been made under section 7, fails to comply with such order within the time specified therein or after complying with the same order returns to, or after evading the same order returns to or remains in, any place within Bangladesh or the notified area, as the case may be, before the expiry of the period stated in the order, or fails to give to the officer appointed to receive it the information in regard to residence or absence set forth in section 7, such person may be arrested without a warrant by police officer and shall, on conviction before a Magistrate of the first class, be liable to be punished with rigorous imprisonment for a term which may extend to two years, or with fine, or with both.

Penalty

11. (1) Any person who fails to comply with, or attempts to evade, any direction given in accordance with the provisions of section 9 shall be liable to be arrested without a warrant and shall, on conviction before a Magistrate of the first class, be liable to be punished with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand ¹[Taka] or with both.

Penalty for breach of order under section 9

(2) Any offence under this section or under section 10 shall be deemed to be a non-bailable offence.

12. Nothing contained in this Act shall be deemed to prevent any person from being prosecuted under any other law for any act or omission which constitutes as offence punishable under such other law.

Operation of other penal laws not barred

¹ The word "Taka" was substituted, for the word "rupees" by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).