

**THE RAILWAY PROPERTY (UNLAWFUL
POSSESSION) ORDINANCE, 1979**

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¹THE RAILWAY PROPERTY (UNLAWFUL POSSESSION) ORDINANCE, 1979

ORDINANCE NO. XVII OF 1979

[28th March, 1979]

An Ordinance to consolidate and amend the law relating to unlawful possession of railway property.

WHEREAS it is expedient to consolidate and amend the law relating to unlawful possession of railway property;

NOW, THEREFORE, in pursuance of the Proclamation of the 20th August, 1975, and 8th November, 1975, and in exercise of all powers enabling him in that behalf, the President is pleased to make and promulgate the following Ordinance:-

1. (1) This Ordinance may be called the Railway Property (Unlawful Possession) Ordinance, 1979. Short title and commencement

(2) It shall come into force on such date as the Government may, by notification in the *official Gazette*, appoint.

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

- (a) "Force" means the Railway Nirapatta Bahini constituted under section 3 of the Railway Nirapatta Bahini Ordinance, 1976 (XLVII of 1976);
- (b) "member of the Force" means a person appointed to the Force other than a superior officer;
- (c) "officer of the Force" means an officer of and above the rank of Assistant Sub-Inspector appointed to the Force and includes a superior officer;
- (d) "railway property" includes any goods, money or valuable security or animal, belonging to, or in the charge or possession of, the railway Administration;
- (e) "superior officer" means any of the officers of the Force appointed under section 4 of the Railway Nirapatta Bahini Ordinance, 1976 (XLVII of 1976);

¹ The Ordinance was declared void and non est by the Appellate Division of the Supreme Court of Bangladesh in Civil Petition for leave to Appeal Numbers 1044 and 1045 of 2009 and subsequently the Ordinance has been made effective as an Act of Parliament by section 4 and Schedule of ১৯৭৫ সালের ১৫ আগস্ট হইতে ১৯৭৯ সালের ৯ এপ্রিল তারিখ পর্যন্ত সময়ের মধ্যে জারীকৃত কতিপয় অধ্যাদেশ কার্যকরণ (বিশেষ বিধান) আইন, ২০১৩ (২০১৩ সনের ০৬ নং আইন)।

- (f) words and expressions used but not defined in this Ordinance and defined in the Railways Act, 1890 (IX of 1890), shall have the meanings respectively assigned to them under that Act.

Penalty for unlawful possession of railway property

3. Whoever is found, or is proved to have been, in possession of any railway property reasonably suspected of having been stolen or unlawfully obtained shall, unless he proves that the railway property came into his possession lawfully, be punishable with imprisonment for a term which may extend to seven years, or with fine, or with both.

Penalty for connivance at offences

4. Any owner or occupier of land or building, or any agent of such owner or occupier in-charge of the management of that land or building, who wilfully connives at an offence against the provisions of this Ordinance, shall be punishable with imprisonment for a term which may extend to five years, or with fine, or with both.

Offences under the Ordinance not to be cognizable

5. Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (V of 1898), an offence under this Ordinance shall not be cognizable.

Power to arrest without warrant

6. Any superior officer or member of the Force may, without an order from a Magistrate and without a warrant, arrest any person who has been concerned in an offence punishable under this Ordinance or against whom a reasonable suspicion exists of his having been so concerned.

Disposal of persons arrested

7. Every person arrested for an offence punishable under this Ordinance shall, if the arrest was made by a person other than an officer of the Force, be forwarded without delay to the nearest officer of the Force.

Inquiry how to be made against arrested persons

8. (1) When any person is arrested by an officer of the Force for an offence punishable under this Ordinance or is forwarded to him under section 7, he shall proceed to inquire into the charge against such person.

(2) For this purpose the officer of the Force may exercise the same powers and shall be subject to the same provisions as the Officer-in-Charge of a Police-station may exercise and is subject to under the Code of Criminal Procedure, 1898 (V of 1898), when investigating a cognizable case:

Provided that-

- (a) if the officer of the Force is of opinion that there is sufficient evidence or reasonable ground of suspicion against the accused person, he shall either admit him to bail to appear before a Magistrate having jurisdiction in the case, or forward him in custody to such Magistrate;
- (b) if it appears to the officer of the Force that there is not sufficient evidence or reasonable ground of suspicion against the accused person, he shall release the accused person on his executing a bond, with or without sureties as the officer of the Force may direct, to appear, if and when so required, before the Magistrate having jurisdiction in the case, and shall make a report of all the particulars of the case to his official superior.

9. (1) An officer of the Force shall have power to summon any person whose attendance he considers necessary either to give evidence or to produce a document, or any other thing in any inquiry which such officer is making for any of the purposes of this Ordinance.

Power to
summon
persons to give
evidence and
produce
documents

(2) A summons to produce documents or other things may be for the production of certain specified documents or things or for the production of all documents or things of a certain description in the possession or under the control of the person summoned.

(3) All persons, so summoned, shall be bound to attend either in person or by an authorised agent as such officer may direct; and all persons so summoned shall be bound to state the truth upon any subject respecting which they are examined or make statements and to produce such documents and other things as may be required:

Provided that the exemptions under sections 132 and 133 of the Code of Civil Procedure, 1908 (V of 1908), shall be applicable to requisitions for attendance under this section.

(4) Every such inquiry, as aforesaid, shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228 of the Penal Code (XLV of 1860).

Issue of search
warrant

10. (1) If an officer of the Force has reason to believe that any place is used for the deposit or sale of railway property which had been stolen or unlawfully obtained, he shall make an application to the Magistrate, having jurisdiction over the area in which that place is situated, for issue of a search warrant.

(2) The Magistrate to whom an application is made under sub-section (1) may, after such inquiry as he thinks necessary, by his warrant authorise any officer of the Force-

- (a) to enter, with such assistance as may be required, such place;
- (b) to search the same in the manner specified in the warrant;
- (c) to take possession of any railway property therein found which he reasonably suspects to be stolen or unlawfully obtained; and
- (d) to convey such railway property before a Magistrate, or to guard the same on the spot until the offender is taken before a Magistrate, or otherwise to dispose thereof in some place of safety.

Searches and
arrests how to
be made

11. All searches and arrests made under this Ordinance shall be carried out in accordance with the provisions of the Code of Criminal Procedure, 1898 (V of 1898), relating respectively to searches and arrests made under that Code.

Power of Courts
to order
forfeiture of
vehicles, etc.

12. Any Court trying an offence punishable under this Ordinance may order the forfeiture to Government of any property in respect of which the Court is satisfied that an offence under this Ordinance has been committed and may also order the forfeiture of any receptacles, packages or coverings in which such property is contained, and the animals, vehicles, or other conveyances used in carrying the property.

Ordinance to
override other
laws

13. The provisions of this Ordinance shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

Repeal

14. The Railway Stores (Unlawful Possession) Ordinance, 1944 (XIX of 1944), is hereby repealed.
