

# THE ASSAM PREVENTION OF UNCONSTITUTIONAL BANDH ACT, 2013

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# THE ASSAM PREVENTION OF UNCONSTITUTIONAL BANDH ACT, 2013

(Received the assent of the Governor of Assam on.....)

## INTRODUCTION

An Act to provide for prevention of unconstitutional bandh which illegally disrupts public order, production, supplies and services essential to the life of the community in the State of Assam or any part thereof, acceptance of temporary deposits of funds and contributions from sponsors and maintain accounts, utilisation of fund in paying compensation for losses or damages caused to persons by participants thereof and for purposes connected therewith or incidental thereto and to enable the State Government of Assam to take appropriate measures including restriction on movement, preventive detention, realisation of collective fines, control of press, publication of books, journals and papers, control of meetings, processions, demonstrations and should it arise, control and restore any break-down of law and order, and for purposes connected therewith or incidental thereto.

### **Statement of objects and reasons:**

Of late in the State of Assam unconstitutional and illegal bandhs called by different student, youth and socio-political organisations are on the increase. The Task Force appointed by the Government of Assam, comprising the cream of its senior IAS and IPS officers after field study, wondering how, of late, as many as 29 various organisations and bodies have been giving unconstitutional and illegal bandh calls, while the State Government looking anxiously for a lawful remedy, proposed a suitable legislation 'to control and regulate bandh'. The Supreme Court decision in *Communist Party of India vs. Bharat Kr.* (1998 1 SCC 201) holding bandhs as 'unconstitutional and illegal' and since then it has been the law of the land and has been followed by the Gauhati High Court (Meghalaya) in PIL No. 72/2005 on 06/01/2010. The practice of calling such bandh is found by us to have been of extraneous origin and of ephemeral nature, it needs be stopped forthwith. This pernicious practice has no historical, legal or Constitutional basis and sooner it is ended, the better for all concerned.

According to the task force appointed by the Government of Assam, in the year 2012 there were as many as 52 State-wide bandh calls, *i.e.* almost one every week. The so called bandhs disrupted all the routine educational, economic, industrial and socio-economic activities of the people on all fronts to the detriment of the Government and the people of Assam particularly the students.

Pursuant to the hallowed order of His Excellency the Governor of Assam Shri J. B. Patnaik dated the 26<sup>th</sup> February 2013, and in response to the salient observations of their Lordships of the Gauhati High Court in PIL No. 34/2012 (*Arun Pathak vs. State of Assam*) and

the similar writ petition WP(C) No. 55/2013 (*Koshy Jacob vs. Union of India*) pending in the Supreme Court of India, whereupon notices have already been issued by their Lordships of the Supreme Court to all the other State Governments of India, conceived the need of an “Assam (Prohibition) of Bandh Act, 2013”. However, the Assam Maintenance of Public Order Act 1947, the Assam Preventive Detention Act, 1980 and the National Security Act, 1980 having already been there in the statute book, with the object of preventing unconstitutional bandh this Act has been enacted.

**Preamble:**

Whereas it is expedient to provide the law enabling the State Government of Assam to prevent unconstitutional bandh, maintain public order and production, supply and distribution of goods and services essential to the life of the community, for creation of a ‘Bandh Loss Compensation Fund’ and a ‘Caution Money Deposit Fund’ accepting contributions from envisaged persons and to provide for restrictions of movements, imposition and recovery of collective fines, control of press and publications, control of meetings, processions and purposes connected therewith in order to safeguard, studies and prevent illegal and unconstitutional bandh, order preventive detention of recalcitrant persons under the Act and to prevent and overcome, should it arise any break-down of law and order.

It is here by enacted as follows:

**CHAPTER-I**

**PRELIMINARY**

- 1. Short title, extent and commencement.-** (1) This Act shall be called ‘The Assam Prevention of Unconstitutional Bandh Act, 2013’.
- (2) It shall apply to the whole of the State of Assam.
- (3) It shall come into force, on such date as the State Government of Assam may, by notification in the Official Gazette, appoint.
- 2. Definitions.-** In this Act unless the subject or context otherwise requires,-

**Advisory Board:** The Advisory Board is the Board constituted to decide the detention cases under this Act.

**Bandh:** (*origin via hindi from sanskrit bandh*) Bandh means to stop, closure or locking of all shops, establishments and offices; holiday, but does not include any closure as a mark of sorrow.

**Bandh Loss Compensation Fund:** It means fund created by the District Magistrate or the Sub-Divisional Magistrate, as the case may be out of the contributions made by the

organisers of meeting and procession, under the law, refundable if no such loss is actually caused.

**Blockade:** Blockade (*Rasta Roko*) means an act of sealing off a place to prevent goods or people from entering or leaving. Blockade of a road or railway track amounts to denial of a free person's fundamental right to move from one part of the road or railway to the next part of it where he has the right to go on foot or on his vehicle.

**Caution Money Deposits:** Caution money deposits means advance deposit to be made, against receipts, to the concerned District Magistrate or Sub-Divisional Magistrate, as the case may be, by or on behalf of the would be participants of the proposed meeting and/or procession, demonstration or rally, if any, in advance for defraying the expenses or losses, if any, caused by the depositors' action during the unconstitutional bandh, procession, demonstration and the like, refundable if no such loss or damage is actually caused.

**Detention:** Detention means the action or state of detaining or being detained; the state of being not allowed to go home.

**Detention Order:** Detention order means an order of detention passed by any authority under this Act.

**Hartal:** Hindi 'hartal' or 'hottal' means locking of all shops as a mark of protest {Oxford Concise (Indian Edition)}. Hartal differs from bandh. While hartal implies employer-employee relationship, bandh may not always do so.

**Note:** The Hon'ble Supreme Court of India in Appeal in *Bharat Kr. (1988)* 1 SCC 184 said:

"2. On a perusal of the impugned judgment of the High Court, referring to which learned counsel for the appellant pointed out certain portions, particularly in paras 13 & 18 including the operative part in support of their submissions, we find that the judgment does not call for any interference. We are satisfied that the distinction drawn by the High Court between a 'bandh' and a call for a general strike or 'hartal' is well made out with reference to the effect of a bandh on the fundamental rights of other citizens. There cannot be any doubt that the fundamental rights of the other people as a whole cannot be subservient to the fundamental rights of only a section of the people. It is on the basis of this distinction that the High Court has rightly concluded that there cannot be a right to call or enforce a 'bandh' which interferes with the fundamental freedoms or other citizens, in addition to causing of national loss in many ways. We may also add that the reasoning given by the High Court particularly those in paragraphs 12, 13 and 17 for

the ultimate conclusion and direction in paragraphs 18 is correct with which we are in agreement.”

**Lockout:** Lockout means tactic used by employers in labour disputes, in which the employees are locked out of the work place or otherwise denied employment. The lock out has been less used in modern times, usually as part of a modern plan among members of employers Associations to frustrate labour union by closing work facilities in response to strikes (Concise Encyclopedia Britannica Article).

**Prescribed Form:** Prescribed form means the prescribed application form for permission to hold public meetings, processions, demonstrations, rallies etc, available free of cost from the office of the District Magistrate or the Sub-Divisional Magistrate as the case may be.

**Preventive Detention:** Preventive detention means detention with a view to prevent something from happening. Preventive detention of a person means detention of a person with a view to prevent that person from doing something which is not to be done.

**Public Law:** The public law is the law of relations between individual and the State. The discipline and profession concerned with the customs and practices and rules of conduct that are recognized as binding by the community (Encyclopedia Britannica Article).

**Note:** Entry 27 of List II. Production, supply and distribution of essential goods and services to the community, subject to the provisions of Entry 33 of List III. (Trade and commerce in and, the production, supply and distribution of the enumerated products)

**Procession:** Procession means a multiple of people on foot and/or vehicles marching forward in an orderly manner on road or across fields.

**Public Order:** Public order is the state or condition for the citizens in a State where under every citizen is free and unobstructed in the socio-economic system of production, supply and distribution, of goods and services in the matter of peaceful pursuance of enjoyment of their fundamental and other rights and privileges under the Constitution and the laws in peace and tranquility, without any obstruction or hindrance from any unauthorised person or body. Public order implies absence of violence, an orderly state of affairs in which citizens can peacefully pursue their normal avocations of life. Anything which disturbs public peace and tranquility and would, therefore, cover legislation to regulate the use of sound amplifiers and to prevent forcible and fraudulent conversion, or to prevent antisocial activities that disturbs public order. In short, public order is synonymous with public peace, safety and tranquility.

**Note:** Entry 27 of List II. Production, supply and distribution of essential goods and services to the community, subject to the provisions of Entry 33 of List III. (Trade and commerce in and, the production, supply and distribution of the enumerated products)

**Security of the State:** Security of the State means the State of being or feeling secured against criminal activity such as terrorism. Measures to ensure such safety of the State which is wider and will include economic security also. (List 1, Entry 9)

**State Government:** State Government means the State Government of Assam.

**Strike:** Strike means collective refusal of workers to work under the conditions set by the employer. It differs from bandh which means closure irrespective of industrial bargaining, though strike may also result in closure of the affected establishment. Bandh is different from general strike (1988, 1 SCC 184). Strikes may arise from disputes over wages or working conditions. They may also be conducted in sympathy with other striking workers, or for purely political goals. Many strikes are organized by labour unions. Strikes not authorized by the union (wild cat strikes) may be directed against union leadership as well as the employer. The right to strikes is granted in principle to workers in nearly all industrialized countries, and its use has paralleled the rise of labour union since the 19<sup>th</sup> century. Most strikes are intended to inflict a cost to employers for failure to meet specified demands. (Britannica Concise Encyclopedia Article)

**Trade Union:** Trade union is an organized association of workers in a trade, group of trades, or profession, formed to protect and further their rights and interests. An association of workers in a particular trade, industry or plant formed to obtain improvements in pay, benefits and working conditions through collective action.

**Tumult:** Tumult means loud, confused noise. Tumultuous means very loud uproarious or excited, confused or disorderly noise.

**Uncalendared Bandh:** An uncalendared bandh means bandh other than, or outside the State Calendared bandhs.

**Unconstitutional Bandh:** An unconstitutional bandh is a bandh in violation of the provisions of the Constitution of India and, therefore, it is also illegal.

## CHAPTER – II

### UNCONSTITUTIONAL BANDH

- 3. All Bandhs are not lawfully declared valid Bandhs.-** The student organisations, organisations with reflected students strength, if any, public bodies and/or political parties



in Assam calling for and/or observing bandhs are not exercising any legitimate right of industrial labour or Trade Union against their employers and, as such, they are not protected by any such industrial labour's or Trade Union's recognized right to strike against their Management; and hence, the non-labour bandh callers and observers themselves shall be liable for the losses and/or injuries, if any, caused by them to other citizens of Assam during and as a result of the unconstitutional and illegal bandh, under the Constitution of India and the civil and/or criminal law in the State.

- 4. Unauthorised private, oral, print or electronic media publicity to, and/or observation of bandh to be unconstitutional, illegal and penal.-** Any unauthorised calling for or giving of oral, print and/or Electronic media publicity to, holding of and/or enforcing of an unauthorised bandh by any private person, student organisation, organisation with reflected student strength, if any, political party or body in Assam will be unconstitutional, illegal and void being in violation of its public order and maintenance of supplies and services, and also causing individual, public and State loss of production, supply, exchange and distribution of goods and services essential for the life of the community, all these being in violation of the relevant fundamental rights of the affected people of Assam as guaranteed by the Constitution of India.

**Note:** Under Article 153 of the Constitution of India there shall be a Governor for each State. Under Article 154 of the Constitution of India the executive power of the State shall be vested in the Governor and shall be exercised by him either directly or through the officers subordinate to him in accordance with the Constitution. Under Article 163 there shall be a Board of Ministers with the Chief Minister at the head to aid and advice the Governor in the exercise of his functions, except in so far as he is or under this Constitution required to exercise his functions or any of them in his discretion. No private person, body or association can exercise these powers. No private person or body with reflected student strength, political party or any combination thereof shall have any right to call a bandh to Government departments, educational institutions, industry, transport and trade and commerce in the entire State of Assam or any part thereof, and thereby to prevent the citizens not in sympathy with their viewpoint, from exercising their fundamental rights in performing their routine duties for their own benefit or for the benefit of the State. Such a bandh exercise or claim will be wholly unconstitutional, illegal and void in law and cannot be judged as a legitimate exercise of fundamental rights of any person or group thereof.

- 5. None can foreclose State activities by bandh call.-** No individual, student body or body with reflected students strength, if any, political party or any combination thereof shall

have any right to paralyze the educational, economic, and industrial systems of production, distribution and marketing in the entire State of Assam, or any part thereof, and to prevent the citizens not in sympathy with their view point, from exercising their fundamental rights therein, or from performing their routine activities for their own benefit or for benefit of the State or the Nation. Such a claim or exercise will be wholly unlawful and cannot be judged as a legitimate exercise of fundamental right of any person or group, and any violator thereof shall be liable to be dealt with under the appropriate provisions of this Act.

- 6. None has any right to paralyze the State by bandh.**- No private individual, student body or body with reflected students strength, if any, political party or any combination thereof in Assam or any part thereof shall have any right to paralyze the society by calling for, holding of, and/or enforcing of any bandh which is unconstitutional, illegal and void being in violation of its public order and maintenance of supplies and services essential to the life of the community and also cause individual, public and State loss of production, supply, exchange and distribution of goods and services essential for the life of the community.

**Note:** Under Article 153 of the Constitution of India there shall be a Governor for each State. Under Article 154 of the Constitution of India the executive power of the State shall be vested in the Governor and shall be exercised by him either directly through the officers subordinates to him in accordance with the Constitution. Under Article 163 there shall be a Board of Ministers with the Chief Minister at the head to aid and advice the Governor in the exercise of his functions, except in so far as he is or under this Constitution required to exercise his functions or any of them in his discretion. No private person, body or Association can exercise these powers.

- 7. No private person can paralyze the State by calling a bandh.**- No private individual, student body or body with reflected students strength, if any, political party or any combination thereof in Assam or any part thereof shall have any right to paralyze the State by calling for, holding of, and/or enforcing of any Bandh to Government departments, educational institutions, industry, transport and trade and commerce in the entire State of Assam or any part thereof, and to prevent the citizens not in sympathy with their view point, from exercising their fundamental rights performing their routine duties for their own benefit or for the benefit of the State. Such bandh exercise or claim will be wholly unconstitutional, illegal and void in law and cannot be judged as a legitimate exercise of fundamental right of any person or group thereof.

- 8. Private persons/bodies have no right to order closure of Government functioning for any period.-** No private person, group of private persons, student organisations, or organisation with reflected students strength, if any, or political party in Assam has any fundamental or ordinary right to close down for any daily period the usual routine activities of production, supply, exchange, and distribution of essential goods and services in the entire State of Assam or any part thereof so as to prevent the other citizens thereof from exercising their own fundamental rights and freedoms conferred on them by the Constitution of India, during that period.
- 9. No private individual or body has any right to paralyze State Government functioning.-** No individual student body or body with reflected students strength, if any, political party or any combination thereof shall have any right to paralyze the Government of Assam administration, education system, industry and commerce in the entire State of Assam, or any part thereof, and to prevent the citizens not in sympathy with their view point, from exercising their fundamental rights or from performing their routine duties for their own benefit or for benefit of the State or the Nation. Such a claim or exercise will be wholly unlawful and could not be judged as a legitimate exercise of fundamental right of any person or group thereof. Any such violation shall be liable to be punished with simple imprisonment for two years or with fine or reimbursement not exceeding Rupees 10,000/- (ten thousand) per day in default further imprisonment for two years.
- 10. Private persons or bodies have no right to usurp Government functions.-** No private person or organisation in Assam has any right to usurp the Government function of granting holidays in the State of Assam or any part thereof, the function of granting Government holidays and working days being a purely Government function, and the same having already been decided as per the State Government Annual Calendar, no student bodies, bodies with reflected student strength, if any, private individual or body of individuals, or political parties have any right to usurp the same or superimpose any alternative thereof. Any private declaration of bandh in the State of Assam will wholly be unconstitutional, illegal and void, the perpetrators thereof being liable to punishment under the appropriate provisions of this Act.
- 11. Unconstitutional bandh observation amounts to violation of public order.-** Any unconstitutional bandh amounts to violation of public order. Public order is the state or condition of the citizens in the state where-under every citizen is free and unobstructed in socio-economic system of production, supply, exchange and distribution of goods and

services in the matter of peaceful, pursuance of enjoyment of their fundamental and other rights and Privileges under the Constitution and the laws in peace and tranquility, without any obstruction or hindrance from any unauthorised person or body.

**Note:** In other words, Public order implies absence of violence, and orderly State of affairs in which citizens can peacefully pursue their normal avocations of life. Anything which disturbs public peace and tranquility disturbs public order. In short, public order is synonymous with public peace, safety, security and tranquility and would, therefore, cover legislation to regulate the use of sound amplifiers and to prevent forcible and fraudulent conversion, or to prevent antisocial activities that disturbs public order. In short, public order is synonymous with public peace, safety and tranquility.

Entry 27 of List II. Production, supply and distribution of essential goods and services to the community, subject to the provisions of Entry 33 of List III. (Trade and commerce in and, the production, supply and distribution of the enumerated products)

Though 'Police' and 'Public Order' are state subjects under the Seventh Schedule (List II) to the Constitution of India, the Union Government attaches Maintenance of Public Order is a Constitutional power and responsibility of the State. (Entry 1, List II) the failure to maintain Public order is a Constitutional responsibility of the State Government (Entry 1, List II).

**12. The bandh callers, organisers and participants of bandh to be personally liable to imprisonment and for losses and injuries caused, if any.-**

(1)

- a. The observation of unconstitutional bandh itself constitutes an offence punishable with simple imprisonment for two years or with fine or reimbursement not exceeding Rupees 10,000/- (ten thousand) per day in default further imprisonment for two years.
- b. Blockade amounts to partial closure of economic activity by restraint of production. The blockaders for that reason shall be liable to be punished with imprisonment for one year or with fine or reimbursement of not exceeding Rupees 5,000/- (five thousand) per day in default further imprisonment for six months.

(2) The sponsors, organisers and the participants of the bandh and related meetings, processions and demonstration, if any, shall be personally and also collectively liable for, the losses caused by them due to the organising and/or holding of any unconstitutional and illegal bandh, meetings, processions should those turn

destructive of the public order and/or of maintenance of services essential to the life of the community in the State of Assam, for the loss of life, destruction of public and private properties or other losses suffered, if any, by anyone during and in consequences of the illegal bandh, functions including meetings, processions and demonstrations, if any.

**13. The overwhelming greater number will prevail over the lesser.-** The fundamental right to normal work performing their routine duties for their own benefits and/or benefit of the State, of a greater number of citizens will prevail over the right to closure of work, if any, of a far lesser number of citizens and to prevent the citizens not in sympathy with their viewpoint, from exercising their fundamental rights. Such an exercise or claim will be wholly unlawful and cannot be judged as a legitimate exercise of fundamental right of any person or minority group thereof. Any such violator shall be liable to be punished with simple imprisonment for two years or with fine or reimbursement not exceeding Rupees 10,000/- (ten thousand) per day in default further imprisonment for two years.

**14. No private person or authority may give any valid bandh call.-** No private person or authority may give any valid bandh call for the State of Assam or any part thereof, in violation of the State Holiday list and doing so will be punishable with simple imprisonment for two years or with fine or reimbursement not exceeding Rupees 10,000/- (ten thousand) per day in default further imprisonment for two years. All those Government servants who refrain from their routine work in response to such illegitimate bandh calls may also be liable to be punished with simple imprisonment for two years or with fine or reimbursement not exceeding Rupees 10,000/- (ten thousand) per day in default further imprisonment for two years and may also be deprived of their daily remuneration/wages.

**15. The Government beneficiaries and illegal bandhs.-** The Government of Assam employees, stipenderies, scholarship holders, concession rater, free studentship holders, laptop and bicycle winners, and other student benefits holders may run the risk of being deprived of their benefits for abstaining from duties, classes and assignments in response to such unconstitutional bandh calls.

**Note:** The determination of the Annual working days Calendar in the State of Assam has always been a prerogative of the State Government of Assam, and no private individual or body of private individuals has any right to call

for any bandh in derogation of the State calendar, thereby destroying the public order and interrupting the systems of production, supply and distribution of goods and services essential to the life of the community to any extent; and anyone doing so shall be liable to be punished with simple imprisonment for two years or with fine or reimbursement not exceeding Rupees 10,000/- (ten thousand) per day in default further imprisonment for two years and may also be deprived of their daily remuneration/wages.

### **CHAPTER-III**

#### **PREVENTIVE MEASURES**

- 16. The State Government may order detention of persons for commission of prejudicial acts in the nature of calling, promoting, supporting and/or joining unconstitutional bandh.-** The State Government or any officer of the State Government not below the rank of Secretary may, if satisfied with respect to any person that with a view to preventing him from calling, promoting, supporting and/or joining any unconstitutional bandh prejudicial to other citizen's fundamental rights; or acting in any manner towards any unconstitutional bandh; or acting in any manner prejudicial to the maintenance of public order, or to the maintenance of supply and services essential to the life of the community it is necessary so to do, make an order directing that such person shall be punished with simple imprisonment for two years or with fine or reimbursement not exceeding Rupees 10,000/- (ten thousand) per day in default further imprisonment for two years

[*Explanation:* - For the purpose of this section "acting in any manner prejudicial to supply and services essential to the Community" does not include "acting in any manner prejudicial to maintenance of supplies of commodities essential to the community" as defined in the Explanation to sub-section (i) of section 3 of *Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act 1980*, and accordingly no order of detention shall be made under this Act on any ground on which an order of detention may be made under that Act.]

- (1) **Submission of representation against the detention.-** The ordered person under section 16 may submit a representation to the State Government against his detention.
- (2) **The ordered person under section 16 may be required to execute a Bond.-** An order made under section 16 may require the person in respect of whom it is made to enter into a bond, with or without sureties, for the due performance of, or as an alternative to the enforcement of such restrictions, *i.e.*, conditions made in the order as may be specified in the order.

**17. Power to make order restricting the movements or actions of certain persons**

**in Assam.-** The State Government or any officer of the State Government not below the rank of Secretary or a District Magistrate may if satisfied with respect to any particular person that with a view to preventing him from acting in any manner prejudicial to prevention of unconstitutional bandh or acting in any manner prejudicial to the security of the State, maintenance of public order, maintenance of supplies and services essential to the community excluding black marketing therein, it is necessary so to do, may make an order.

(a) Directing that, except in so far as he may be permitted by the provisions of the order, or by such authority or person as may be specified therein, he shall not be in any such area or place in Assam as may be specified in the order;

(b) Requiring him to reside or remain in such place or within such area in Assam as may be specified in the order, and if he is not already there to proceed to that place or area within such time as may be specified in the order;

(c) Requiring him to notify his movements or to report himself in such manner, at such time and to such authority or persons as may be specified in the order;

(d) Imposing upon him such restrictions as may be specified in the order in respect of his employment or business, in respect of his association or communication with other persons, in the matter of declaration or announcement of unconstitutional bandh and in respect of his activities in relation to the dissemination of news or propagation of opinions;

(e) Prohibiting or restricting the possession or use by him of any such article or articles as may be specified in the order;

(f) Prohibiting any declaration of unconstitutional bandh in the State of Assam, or in any part thereof;

(g) Otherwise regulating his conduct in any such particular manner as may be notified in the order;

**(1) The District Magistrate and the Sub-Divisional Magistrate may exercise the power within Jurisdiction.-** A District Magistrate or a Sub-Divisional Magistrate within respective jurisdiction may exercise the power conferred by section 17, with immediate report to the State Government, and the order so made shall remain valid for a period not exceeding two months.

**(2) The ordered person under section 17 may be required to execute a Bond.-** An order made under section 17 may require the person in respect of whom it is made to enter into a bond, with or without sureties, for the due performance of, or as an alternative to the enforcement of such restrictions, *i.e.*, conditions made in the order as may be specified in the order.

**18. Duration of orders made under section 16 and 17 of the Act.-** An order made under sub-section (1) of section 16 or under sub-section (1) of section 17 shall be in force for such period as may be specified in the bond executed under sub-section (2) of section 16 or 17, unless earlier revoked:

Provided that in cases of detention under sections 16 and/or 17 the State Government may, if and so often they deem necessary or expedient, before the date on which under this section any one of such orders would otherwise have ceased to be in force, and after giving an opportunity to each of the persons concerned to make any representation in writing which each of them may desire to make and after referring the matters to the Advisory Board and considering its reports direct that the order shall continue in force for a further period not exceeding one year at a time as may be specified in the orders respectively.

**19. Grounds of order under section 16(1) and/or 17(1) to be disclosed to persons affected by the respective order.-** Where an order is made in respect of any person under sub-section(1) of sections 16 or 17 respectively, as soon as may be, after the respective order is made, the authority making the order shall communicate to the person affected thereby, so far as such communication can be made without disclosing facts which the said authority considers it would be against the public interest to disclose, the grounds on which the order has been made against him and such other particulars as are in the opinion of such authority sufficient to enable him to make if he wishes a representation against the order; and each of such persons may at any time thereafter make a representation in writing to such authority against the order and it shall be the duty of such authority to inform such person of his right of making such representation and to afford him the earliest opportunity of doing so.

**20. Reference to Advisory Board.-** On receipt of the representations referred to in sections 16 and 17 or in case no representation is received, the State Government, as soon as may be shall place before the Advisory Board constituted under sub-section (1) of section 16 and 17 the grounds on which the respective order has been made and in case such order has been made by an authority or officer subordinate to them, the report made



by him under section 16 and/or 17 and the representation, if any, made by the persons concerned.

**21. Constitution of Advisory Board.-**

- (1) The State Government, whenever necessary, shall constitute an Advisory Board consisting of not less than three members, one of whom shall be a Retired Judge of High Court and he shall be its Chairman. The other two members shall be either Retired Judges of High Court and/or experienced Advocates qualified to be a Judge of High Court.
- (2) The Advisory Board shall, after considering the material placed before it and if necessary, after calling for such further information from the State Government or from the person concerned, as it may deem necessary, submit its report to the State Government before the expiry of four months from the date of the order made under section 16 or 17 of this Act as the case may be.
- (3) After considering the report of the Advisory Board, the State Government may confirm, modify or cancel the order made under section 16 or 17 of this Act.
- (4) The Chairman and the members of the Advisory Board shall for the purpose of this Act be deemed to be holding office within the meaning of sub-section (6) of section 2 of the *Indian Official Secrets Act, 1923*.

**22. Imposition of collective fines on inhabitants of area.-**

(1) If it appears to the State Government that the inhabitants of any area are concerned in or abetting unconstitutional bandh prejudicially affecting the public functioning or the maintenance of public order, or the maintenance of supplies or services essential to the life of the community, or are harbouring persons concerned in the commission of such offences, or are failing to render all the assistance, in their power to discover or apprehend the offender or offenders or are suppressing material evidence of the commission of such offences, the State Government may, by notification in the official Gazette, impose a collective fine on the inhabitants of that area:

Provided that an imposition of a collective fine by any authority on whom the power may have been delegated under this Act may be made by publication of the order imposing the fine in any such manner as such authority may consider best calculated to bring the order to the notice of the inhabitants of the area concerned.

(2) The State Government or any officer empowered in this behalf by the State Government on evidence of some of the public preventing unconstitutional bandh

successfully by general or special order may exempt any person or class or section of such inhabitants from liability to pay any portion of such fine.

(3) The District Magistrate, after such enquiry as he may deem necessary, shall apportion such fine among the inhabitants who are liable collectively to pay it, and such apportionment shall be made according to the District Magistrate's judgment of the respective means of such inhabitants.

(4) In any such apportionment the District Magistrate may assign a portion of such fine to a joint or undivided family to be payable by it.

(5) The portion of such fine payable by any person (including a Hindu undivided family) may be recovered-

(a) In the manner provided by the Code of Criminal Procedure, 1973, for the recovery of fines imposed by a Court, as if such portion were a fine imposed by the District Magistrate acting as a Court:

Provided that the State Government may, in lieu of the rules referred to in sub-section (2) of section 386 of the Code of Criminal Procedure, 1973, make rules under this Act regulating the manner in which warrants under clause (a) of sub-section (1) of the said section of the said Code are to be executed, and for the summary determination of any claims made by any person other than the person liable to pay the fine in respect of any property attached in execution of the warrant; or

(b) As arrears of land revenue.

### **23. Control of meetings, processions, etc.-**

(1) The State Government may for the purpose of preventing unconstitutional bandh, maintaining public order by general or special order prohibit, restrict or impose conditions upon the holding of processions, meetings or assemblies by a class of persons or organizations whose activities, in the opinion of the State Government, are subversive of law and order and prevention of unconstitutional bandh.

(2) If any person contravenes any prevention of unconstitutional bandh order issued under this section, he shall be punishable with imprisonment which may extend to two years or with fine or reimbursement not exceeding Rupees 10,000/- (ten thousand) per day or with both.

### **24. Control of camps drill parades.-**

(1) The State Government may in the interest of public order by an order prohibit, or impose such conditions as may be necessary on the holding of camps or performance of drill or parade with or without arms, or any article, weapon or implement capable of being used as arms by any class of persons or organizations whose activities are in the opinion of the State Government subversive of law and order and prevention of unconstitutional bandh.

(2) Any contravention of an order made under this section shall be punishable with imprisonment which may extend to two years or with fine or with both.

## **25. Control of publications, etc.-**

(1) The State Government, if satisfied that such action is necessary for the purpose of preventing unconstitutional bandh and/or any activity which undermines the security of or tends to overthrow the State or any part thereof, may-

- a. By order in writing prohibit either absolutely or for a specified period the bringing into, or sale or distribution or circulation within, the State of any newspaper, periodical, book, leaflet, or other document specified in the order;
- b. by an order in writing addresses to any printer, publisher or editor or generally to all printers, publishers, or editors or to such class of printers, publishers or editors as may be specified therein,-
  - i. prohibit either absolutely or for a specified period the printing or publication of any matter relating to a particular subject or class of subject in any particular issue or issue of a newspaper all periodical or in any book or in any other document whatsoever;
  - ii. require that any matter relating to or arising out of any matter published in any previous issue of any newspaper or periodical be published in any particular issue of such newspaper or periodical in such manner as may be specified in the order;
  - iii. Prohibit either absolutely or for a specified period the publication of any newspaper, periodical, book or any other document whatsoever or the use of any press.

(2) The officer referred to in sub-clause (iii) of clause (b) of sub-section (1) may after scrutiny of the matter, issue a direction either prohibiting its publication or permitting its publication with such modifications as he may deem necessary.

(3) If any person contravenes any order made or direction given under this section, he shall, on conviction, be punishable with imprisonment for a term which may extend to one year or with fine or with both.

(4) where it appears to the State Government that an order made or direction given under this section is contravened, the State Government may, without prejudice to the penalty prescribed in sub-section (3), direct that any copy wherever found of the newspaper or periodical or any issue thereof, or book or other document, in respect of which the order or the direction appears to have been contravened or any printing press or other instrument or apparatus used in the printing or production of any such newspaper, periodical, book or document shall be seized and detained.

[“*Explanation-* For the purpose of this section ‘printer’ includes a ‘keeper’ of a ‘printing press’ shall have the same meaning as is assigned to that word in the *Indian Press (Emergency Powers) Act, 1931*”.]

**A. Control of use of loud speakers, megaphones, microphones, etc.-**

- (1) The State Government may, for the purpose of preventing unconstitutional bandh or activities, which in their opinion undermine the security of, or tend to overthrow the State by general or special order prohibit, restrict or impose conditions on-
  - (i) The use or operation in any street, square, public place or any other place of any apparatus for amplifying the human voice, or any reproduction of the human voice, such as a megaphone or an electrically operated loudspeaker; and
  - (ii) The use or operation or driving in any street, square, public place or any other place of any vehicle which carries or has attached to it any apparatus referred to in sub-clause (i).
- (2) If any person contravenes any order issued under this section, he shall be punishable with imprisonment which may extend to two years or with fine or with both.
- (3) The apparatus referred to in sub-clause (i) together with the vehicle, if any, to which it may be attached shall be liable to be forfeited to Government if it be used or operated in contravention of an order passed under this section.

**B. Prevention of prejudicial act and report.-**

- (1) No person shall, without lawful authority or excuse,-
  - (a) Do any act, prejudicial to prevention of unconstitutional bandh; or

- (b) Make, print, publish, distribute or exhibit any document containing, or spread by any other means whatsoever, any report prejudicial to prevention of unconstitutional bandh.
- (2) The author, editor, printer or publisher of, and any person who otherwise makes, produces or exhibits, any report prejudicial to prevention of unconstitutional bandh and any person who distributes or sells any report of that nature, knowing it to be of such nature shall be deemed to have contravened this section.
- (3) If any person contravenes any of the provisions of this or any other section, he shall be punishable with imprisonment for a term which may extend to two years or with fine or reimbursement not exceeding Rupees 10,000/- (ten thousand) per day, or with both:

Provided that in any proceedings arising out of a contravention of this section,-

- (a) In relation to the making or printing of any document, it shall be a defence for the accused to prove that the said document was made or printed, as the case may be-
- (i) Before the Assam Maintenance of Public Order (Second Amendment) Act, 1949 came into force, or
  - (ii) With the permission or under the authority of the State Government, or
  - (iii) As a proof intended for submission to the State Government or to a person or authority designated by the State Government in this behalf with a view to obtaining permission for its publication;
- (b) In relation to the publication of any document it shall be a defence for the accused to prove that the said document was published with the permission or under the authority of the State Government.

[*Explanation*- for the purpose of this section-

- (a) “prejudicial act” means any act, including shouting tumultuous slogans, which is intended or is likely to undermine the security of, or tends to overthrow the State.
- (b) “prejudicial report” means any report, statement, utterance or visible representation, which is, or the publishing of which is, an incitement to the commission of a prejudicial act:

Provided that *bonafide* acts indicating disapprobation of the policy or measures of the Government with a view to obtain their alteration by lawful means shall not be deemed to be acts which are intended or are likely to undermine the security of or tend to overthrow the State.

**C. Power photographing, etc.-**

(1) The State Government or any District Magistrate may further direct a person on whom any order under section 15 of this Act has been passed that such person shall-

- (a) Allow himself to be photographed or videographed;
- (b) Allow his finger and thumb-impressions to be taken ;and
- (c) Furnish specimens of his handwriting and signature.

(2) If any person contravenes any order issued under this section, he shall be punishable with imprisonment for a term which may extend to two years or with fine or with both.

**D. Punishment for carrying or possessing any corrosive substance or liquid.-** Any person who carries on his person or knowingly has in his possession or under his control any corrosive substance or liquid, under such circumstances as to give rise to a reasonable suspicion that he does not carry it on his person or have it in his possession or under his control for a lawful object, shall, unless he can show that he was carrying it on his person, or he had it in his possession or under his control for a lawful object, be punishable with imprisonment for a term which may extend to two years or with fine or with both.

**26. Delegation of powers and duties of State Government.-** The State Government may by order direct that any power or duty except the power to make orders under section 16 which is conferred or imposed on the State Government shall in such circumstances and under such conditions, if any, as may be specified in that direction be exercised or discharged by an officer not below the rank of a District Magistrate or Additional District Magistrate.

#### CHAPTER-IV

#### PROTECTION OF MEASURES UNDER THE ACT

**27. Protection of action to be taken under this 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.

- 28. Opening of Temporary Deposit Accounts/Funds.-** The Deputy Commissioner and/or the Sub-Divisional Officer within his jurisdiction may as and when considered necessary open Temporary Deposit Bank Accounts into which the contributions of the public will be deposited and out of which the compensations payable, if any, will be disbursed as and when ordered by the Court. In case of there being no payment due out of the account, the money will be refunded to the respective contributors.
- 29. Power to arrest without warrant.-** Any police officer may arrest without warrant any person who is reasonably suspected of having committed or of being about to commit an offence of calling, observing or persuading any other person to observe unconstitutional bandh, punishable under this Act.
- 30. Application of other laws not barred.-** The provisions of this Act shall be in addition to and not in derogation of any other Act, Ordinance or Regulation for the time being in force.
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