



**Government of West Bengal**  
**Judicial and Legislative (Legislative) Department**

**West Bengal Act XXXII of 1948**

# **The West Bengal Black Marketing Act, 1948**

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**THE WEST BENGAL BLACK MARKETING ACT, 1948**  
**(WEST BENGAL ACT XXXII OF 1948).**

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# West Bengal Act XXXII of 1948

## THE WEST BENGAL BLACK MARKETING ACT, 1948.

[Passed by the West Bengal Legislature.]

[Assent of the Governor-General was first published in the *Calcutta Gazette, Extraordinary*, of the 17th October, 1948.]

*An Act to make special provision for checking black marketing.*

WHEREAS it is expedient to make special provision for checking black marketing;

It is hereby enacted as follows:—

1. (1) This Act may be called the West Bengal Black Marketing Act, 1948.

Short title,  
extent  
and com-  
mence-  
ment.

(2) It extends to the whole of West Bengal.

(3) It shall come into force on the date on which the West Bengal Black Marketing Ordinance, 1948, ceases to operate.

West Ben.  
Ord. VI of  
1948.

2. In this Act, the expression "Black Marketing" means,—

Definition.

(a) selling or purchasing for purposes of trade any goods at a greater price than the maximum price fixed, by or under any law, notification or order for the time being in force, for the sale of such goods;

(b) otherwise than in accordance with any law, notification or order for the time being in force, selling or disposing of, or supplying articles declared to be rationed articles or otherwise rationed by or under any law, notification or order in force;

(c) in contravention of any law, notification or order for the time being in force, supplying, distributing, selling, disposing of, or parting with the possession or custody of, or offering to supply, distribute, sell, dispose of or part with the possession or custody of, or acquiring or taking into possession goods or anything whatsoever, the supply, distribution, sale, disposal, parting with the possession or custody, acquiring or taking into possession of which is prohibited or subject to restrictions or conditions (including conditions as to price) by or under any law, notification or order for the time being in force;

(d) storing, taking, causing, permitting or suffering delivery of goods upon any premises delivery upon which is prohibited by or under any law, notification or order for the time being in force;

(e) otherwise than in accordance with any law, notification or order for the time being in force, producing, manufacturing, or treating any goods or thing the production, manufacture or treating of which is subject to restrictions or conditions by or under any law, notification or order for the time being in force;

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ic.  
ency Magistrate or a

VI of 1948.

(Sections 3, 4.)

- (f) otherwise than in accordance with any law, notification or order for the time being in force, moving or purporting to sell or supply or purporting to acquire or take into possession for purposes of trade any goods or any thing whatsoever vested in His Majesty by or under any law, notification or order for the time being in force;
- (g) otherwise than in accordance with any law, notification or order for the time being in force, using, or dealing with any licence, permit, ration card, ration document, or ration coupon issued under any law, notification or order for the time being in force;
- (h) in contravention of any law, notification or order for the time being in force, making or uttering any counterfeit or forged licence, permit, ration card, ration document or ration coupon or doing any other act or thing in relation to any licence, permit, ration card, ration document or ration coupon issued under any law, notification or order for the time being in force, or in relation to any counterfeit or forged licence, permit, ration card, ration document or ration coupon;
- (i) withholding from sale any article which has been prohibited from being so withheld by or under any law, notification or order for the time being in force.

Offence of  
black  
marketing  
and  
penalty.

3. (1) Whoever commits black marketing shall be punishable with imprisonment which may extend to seven years but shall not, except for reasons to be recorded in writing, be less than six months and shall also be liable to a fine.

(2) The offence of black marketing under this Act shall not be prosecuted without the sanction of the Provincial Government.

(3) In addition to any other punishment, the Court before which a person is convicted of the offence of black marketing shall order the forfeiture to His Majesty of the goods or things (if any) in respect of which the offence of black marketing was committed or an equivalent quantity of the same or like goods or things belonging to the convicted person, or of a sum of money representing their value at the time of the order of forfeiture.

Prohibition of  
carrying  
on business in  
certain  
cases.

4. (1) On the third or any subsequent occasion on which a person is found guilty of an offence of black marketing the Provincial Government may make such order, having effect during such period as the Provincial Government thinks fit, for preventing the offender carrying on or being concerned in any manner directly or indirectly with the carrying on of the business in the course of which the transaction constituting the offence of black marketing was effected, or any branch of that business or any business or branch of business of a similar character.

XXXII of 1948.]

(Sections 5—8.)

(2) If any person contravenes an order made under this section he shall be punishable with imprisonment of either description for a term which may extend to six months and shall also be liable to fine.

(3) No Court shall take cognizance of an offence under sub-section (1) unless upon a complaint made by order of or under authority from the Provincial Government.

5. (1) Where a person guilty of the offence of black marketing is a body corporate, every person who, at the time of the commission of the offence, was a director, officer or servant actively concerned in the conduct of the business of the body corporate shall be deemed to be guilty of the offence, unless he proves that the offence was committed without his knowledge and that he used all due diligence to prevent the commission of the offence or of offences of the same character. Vicarious liability.

(2) Where the offence of black marketing is committed by a firm, each partner, secretary or principal officer or agent thereof shall, unless the contravention took place without his knowledge and he exercised all due diligence to prevent such contravention, be deemed to be guilty.

6. Any person who attempts or abets the commission of an offence of black marketing shall be deemed to have committed the offence of black marketing: Attempts and abetments.

Provided, however, that the purchase of any goods for a purpose other than that of trade shall not by itself amount to abetment of black marketing.

Act XLV  
of 1860.

7. Any public servant as defined in the Indian Penal Code who by any dereliction of duty facilitates the commission of the offence of black marketing by any person shall be deemed to have abetted the commission of the said offence within the meaning of section 6 unless he proves his innocence. Abetment by public servants.

8. (1) Where a person is convicted of an offence punishable under this Act, the Court before which he is convicted may, in addition to any punishment provided for the offence, order him to execute a bond for a sum proportionate to his means with or without sureties to observe the provisions of the law, as in force in relation to which the offence was committed, for a period not exceeding three years. Bond by convicted person.

(2) If any person fails to comply with an order of the Court requiring him to execute a bond, the Court may order him to be put in prison for any term not exceeding twelve months to commence at the expiration of any term of imprisonment to which he was sentenced on his conviction.

(3) If any person who has executed a bond under sub-section (1) commits a breach of the condition specified in the bond his bond shall be forfeited and any person bound thereby shall pay the penalty thereof or show cause to the satisfaction of the Court concerned why such penalty should not be paid.

(Sections 9—12.)

Security  
for good  
behaviour  
in certain  
cases.

9. Whenever a Chief Presidency Magistrate or District Magistrate or a Presidency Magistrate or Magistrate of the first class specially empowered by the Provincial Government in this behalf, has information that there is within the limits of his jurisdiction any person who within or without such limits transports foodstuff in contravention of an order made or deemed to have been made under the Essential Supplies (Temporary Powers) Act, 1946, such Magistrate if in his opinion there is such sufficient ground for proceeding may require such person to show cause why he should not be ordered to execute a bond with or without sureties for his good behaviour for such period not exceeding one year as the Magistrate thinks fit to fix and thereafter the provisions of Chapters VIII and XLII of the Code of Criminal Procedure, 1898, shall apply in such cases.

XXIV  
of 1946.Act V  
of 1898

Any contravention of the order under the Essential Supplies (Temporary Powers) Act, 1946, committed after the execution of such bond shall be deemed to constitute a forfeiture of the bond.

Offences  
under the  
Act to be  
cognizable  
and non-  
bailable.

10. Any offence punishable under this Act shall be cognizable and non-bailable.

Special  
provision  
regarding  
bail.

11. Notwithstanding anything contained in the Code of Criminal Procedure, 1898, no person accused in a trial before or convicted and sentenced to imprisonment by a Tribunal constituted under this Act of an offence shall be released on bail or on his own bond unless—

- (a) the prosecution has been given an opportunity to oppose the application for such release, and
- (b) where the prosecution opposes the application, the Tribunal is satisfied that there are reasonable grounds for believing that he is not guilty of the offence.

Cases  
triable  
by Special  
Tribunals.

12. (1) The Provincial Government may, from time to time by notification in the *Official Gazette*, allot cases for trial to each Special Tribunal, and may also from time to time by like notification transfer any case from one Special Tribunal to another or withdraw any case from the jurisdiction of a Special Tribunal or make such modifications in the description of a case (whether in the names of the accused or in the charges preferred or in any other manner) as may be considered necessary.

(2) The Special Tribunals shall have jurisdiction to try the cases for the time being respectively allotted to them under sub-section (1) in respect of such of the charges as may be preferred against the several accused and any such case which is at the commencement of this Act or at the time of such allotment pending before any Court or another Special Tribunal shall be deemed to be transferred to the Special Tribunal to which it is so allotted.

XXXII of 1948.]

(Sections 13, 14.)

13. (1) The Special Tribunal constituted under this Act shall consist of three persons each of whom shall be a person who—

Constitu-  
tion of  
Special  
Tribunals.

(a) is or has been a Judge of a High Court or a Sessions Judge or an Additional Sessions Judge; or

(b) is qualified for appointment as a Judge of a High Court:

Provided that the appointment to a Special Tribunal of any person not qualified under clause (a) shall be made in consultation with the High Court.

(2) The Provincial Government shall appoint one of the members to be the President of the Special Tribunal.

14. (1) A Special Tribunal may take cognizance of offences without the accused being committed to it for trial, and in trying accused persons shall follow the procedure prescribed by the Code of Criminal Procedure, 1898, for the trial of warrant cases by Magistrates:

Procedure  
and  
powers of  
Special  
Tribunals.

Act V of  
1898.

Provided that a Special Tribunal may, for reasons to be recorded in writing, refuse to summon any witness if satisfied after examination of the accused that the evidence of such witness will not be material, and shall not be bound to adjourn any trial for any purpose, unless such adjournment is in its opinion necessary in the interest of justice:

Provided further that for the purpose of sub-section (1) of section 356 of the said Code, English shall be deemed to be the language of the Court and the Tribunal may decide by which one, if any, of its members the evidence of any or all of the witnesses shall be taken down in writing, and where under the provisions of that sub-section the evidence of witnesses is taken down under the direction and superintendence of the Tribunal but not by a member thereof, the provisions of sub-section (3) of section 356 shall not apply.

(2) Notwithstanding anything contained in section 13 any two members of a Special Tribunal may proceed with the trial of a case during the temporary and unavoidable absence of the third member:

Provided that all three members shall be present when after the evidence has been concluded the prosecutor or the accused or his pleader is addressing the Special Tribunal and when the judgment in the case is delivered.

(3) Save as provided in sub-section (1), the provisions of the Code of Criminal Procedure, 1898, except the provision of section 196A and of Chapter XXXIII, shall, so far as they are not inconsistent with this Act, apply to proceedings of a Special Tribunal; and for the purposes of the said provisions the Special Tribunal shall be deemed to be a Court of Session, trying cases without a jury, and a person conducting a prosecution before a Special Tribunal shall be deemed to be a Public Prosecutor.

(Sections 15—18.)

(4) A Special Tribunal shall not, merely by reason of a change in its members, be bound to recall and rehear any witness who has given evidence, and it may act on the evidence already recorded by or produced before it.

(5) In the event of any difference of opinion among the members of a Special Tribunal the opinion of the majority shall prevail.

(6) A Special Tribunal may pass any sentence authorised by law.

Appeal  
and  
revision.

15. The High Court may, subject to the provisions of section 16 regarding the transfer of cases, exercise, so far as they may be applicable, all the powers conferred by Chapters XXXI and XXXII of the Code of Criminal Procedure, 1898, on a High Court, as if the Special Tribunal were a Court of Session trying cases without a jury within the local limits of the High Court's jurisdiction. Act V of 1898.

Bar of  
certain  
jurisdiction.

16. No Court shall have authority to transfer any case from a Special Tribunal, or, save as provided in section 15, have any jurisdiction of any kind in respect of any proceedings of a Special Tribunal.

Burden of  
proof in  
certain  
cases.

17. When any person is prosecuted for an offence of black marketing, in respect of an act or being in possession of a thing without lawful authority or without a permit, licence or other document, the burden of proving that he had such authority, permit, licence or other document, shall be on him.

Accused  
person  
to be  
competent  
witness.

18. Any person charged with an offence of black marketing shall be a competent witness, for the defence, and may give evidence on oath in disproof of the charges made against him or any person charged together with him at the same trial:

Provided that—

- (a) he shall not be called as a witness except on his own request;
- (b) his failure to give evidence shall not be made the subject of any comment by the prosecution or give rise to any presumption against himself or any person charged together with him at the same trial;
- (c) he shall not be asked, and if asked shall not be required to answer any question tending to show that he has committed or been convicted of any offence other than the offence with which he is charged, or is of bad character, unless—
  - (i) the proof that he has committed or been convicted of such offence is admissible evidence to show that he is guilty of the offence with which he is charged, or

XXXII of 1948.]

(Sections 19, 20.)

- (ii) he has personally or by his pleader asked questions of any witness for the prosecution with a view to establish his own good character, or has given evidence of his good character, or the nature or conduct of the defence is such as to involve imputations on the character of the prosecutor or of any witness for the prosecution, or
- (iii) he has given evidence against any other person charged with the same offence.

19. (1) Where any accused, in a trial before a Court under this Act, is, for any reason incapable of appearing or fails to appear before the Court, or resists his production before the Court, or behaves before the Court in a persistently disorderly manner, the Court may, for reasons to be recorded in writing, at any stage of the trial, by order in writing made after such inquiry as it thinks fit, dispense with the attendance of such accused for such periods as it may think fit, and proceed with the trial in the absence of the accused.

Special procedure for trial in the absence of accused persons.

(2) Where a plea is required in answer to a charge from an accused whose attendance has been dispensed with under sub-section (1), such accused shall be deemed not to plead guilty.

(3) An order under sub-section (1) dispensing with the attendance of an accused shall not affect his right of being represented by a pleader at any stage of the trial, or of being present in person if he has become capable of appearing, or appears before the Court and undertakes to behave in an orderly manner.

Act V of 1898.

(4) Notwithstanding anything contained in the Code of Criminal Procedure, 1898, no finding, sentence or order passed in such trial shall be held to be illegal by any Court by reason of any omission or irregularity whatsoever arising from the absence of any or all of the accused whose attendance has been dispensed with under sub-section (1).

20. (1) Upon the conviction of any person for the offence of black marketing, the Provincial Government may require that person to exhibit in or outside or both in and outside his place of business (if any), notices of such number, size and lettering, in such positions and containing such particulars relating to the conviction as the Provincial Government determines and to keep them so exhibited continuously for a period of not less than three months from the date of conviction; and the person shall comply fully with that requirement; and if he fails to do so, shall again be guilty of the offence of black marketing.

Notice of conviction to be displayed in or outside shops.

(2) If any such person refuses or fails to comply with any such requirement, any officer authorised in that behalf by an order in writing passed by the Provincial Government may, without prejudice to any proceedings arising out of any such

*(Section 21.)*

refusal or failure, affix the notices in or outside or both in and outside the place of business in accordance with the requirement of the Provincial Government in pursuance of the last preceding sub-section.

(3) Any person who obstructs any such officer in exercise of any power conferred by this section shall be deemed to have committed an offence under section 353 of the Indian Penal Code.

Act XLV.  
of 1860.

(4) The notices shall be headed with the words "Black Marketing Act, 1948" in bold letters and shall be prepared in such a manner as to be easily legible to persons contemplating making any purchases or conducting any business at the place of business where they are affixed.

(5) If the Provincial Government is satisfied that the exhibition of notices in accordance with the requirements of the foregoing provisions of this section would not be effective to bring the fact of the conviction to the notice of persons dealing with the convicted person, the Provincial Government may, in lieu of or in addition to making any such requirement, require the convicted person to print or cause to be printed on the letter-heads to be used by him in connection with his business during a period of not less than three months from the date of the conviction, a notice headed "Black Marketing Act, 1948" in bold type and of such size and lettering, in such position and containing such particulars relating to the conviction as the Provincial Government determines; and the convicted person shall comply fully with that requirement, and if he fails to do so, shall again be guilty of the offence of black marketing.

Parti-  
culars of  
conviction  
to be  
published  
in the  
Gazette,  
etc.

21. (1) Particulars relating to the conviction of any person for an offence against this Act shall be published in the *Official Gazette*.

(2) If the Provincial Government is satisfied that it is necessary so to do, in order to give adequate publicity to the offence of black marketing committed by any person, it may issue a press note containing as full and adequate an account of the trial and conviction of any such person as is reasonable in all the circumstances; and it shall be the duty of every Editor, Printer and Publisher of such newspaper in West Bengal as the Provincial Government may direct to publish the full text of such press note.

(3) If any Editor, Printer or Publisher of such a newspaper contravenes the provisions of sub-section (2), he shall, on a complaint made by order of or under authority from the Provincial Government, be punishable with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees or with both.

XXXII of 1948.]

(Sections 22—27.)

**22.** Offences under section 20 or section 21 shall be triable by a Presidency Magistrate or a Magistrate of the first class.

Offences under section 20 or section 21 triable by a Presidency Magistrate or a Magistrate of the first class.

**23.** Where any person is convicted of the offence of black marketing the Provincial Government may, if it thinks fit, by an order in writing duly served upon such person, direct that such person after the expiry of his sentence shall remove himself from such area and within such time and by such route as may be specified in the order and not to return thereto for a period to be specified in the order without written permission of the Provincial Government:

Extermination of persons convicted.

Provided that a person who and whose father were born in the Province of West Bengal or who is a member of a family which has definitely settled in that province and is himself so settled shall not be directed to remove himself beyond the boundaries of the Province of West Bengal.

**24.** Any person who having been directed by an order made and served on him under section 23,—

Failure to comply with the order of externment.

(a) fails to remove himself from any area directed by such order, or

(b) having removed himself from such area returns thereto in contravention of such order

may be arrested without a warrant by any police officer, and—

(i) may be removed in police custody outside such area, or

(ii) on conviction before a Magistrate shall be punished with imprisonment for a term which may extend to two years or with fine or with both.

**25.** No suit, prosecution or legal proceedings whatever shall lie against any person in respect of anything which is, in good faith, done or intended to be done under this Act.

Indemnity.

**26.** Any rule, order or appointment made or any notification issued or anything done or any penalty, forfeiture or punishment incurred or imposed or any action taken or any proceedings commenced in exercise of any power conferred by the West Bengal Black Marketing Ordinance, 1948, shall, on the said Ordinance ceasing to be in operation, be deemed to have been made, issued, done, incurred, imposed, taken or commenced in exercise of the powers conferred by this Act as if this Act had commenced on the 1st day of January, 1948.

Continuance of action taken under West Bengal Ordinance VI of 1948.

**27.** The Provincial Government may make rules for carrying out the purposes of this Act.

Rule making power.