

THE CRIMINAL LAW (SPECIAL PROVISIONS) ORDINANCE, 1968

(W.P. Ord. II of 1968)

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II THE CRIMINAL LAW (SPECIAL PROVISIONS) ORDINANCE, 1968 (W.P. Ordinance II of 1968)

[16 January 1968]

An Ordinance to make special provision for trial of certain offences in certain areas of West Pakistan

Preamble.— WHEREAS it is necessary to make special provision for trial of certain offences in certain areas of West Pakistan to meet the special requirements of those areas;

AND WHEREAS the Provincial Assembly of West Pakistan is not in session and the Governor of West Pakistan is satisfied that circumstances exist which render immediate legislation necessary;

NOW, THEREFORE, in exercise of the powers conferred on him by clause (1) of Article 79 of the Constitution, the Governor of West Pakistan is pleased to make and promulgate the following Ordinance:-

1. **Short title and extent.**— (1) This Ordinance may be called the Criminal Law (Special Provisions) Ordinance, 1968.
(2) It extends to the areas specified in the Schedule.

^[2] [(3) Government may, by notification in the official Gazette, direct that this Ordinance shall, on such date as may be specified in the notification, cease to be in force in any area in which it is in force and, upon its so ceasing to be in force in any area, shall be deemed to have been repealed.]

2. Definitions.— (1) In this Ordinance, unless there is anything repugnant in the subject or context—

- (a) “Commissioner” means the Chief Officer-in-Charge of the Revenue Administration of a Division, and includes any other officer who is specially empowered by Government to exercise the powers and functions of a Commissioner under this Ordinance;
- (b) “Deputy Commissioner” includes any officer exercising or performing any power or function of a Deputy Commissioner under this Ordinance;

(c) “Government” means ^[3] [the Provincial Government];

(d) “party” means the accused and the person or persons primarily interested in the prosecution of the case, including the prosecutor, if any;

(e) “scheduled offence” means an offence made punishable by the Pakistan Penal Code (XLV of 1860), other than an offence specified in section A of Part I of the Schedule to the Conciliation Courts Ordinance, 1961 (XLIV of 1961);

(f) “Tribunal” means a Tribunal constituted under section 6.

(2) Words and expressions used in this Ordinance but not herein defined shall have the meanings assigned to them in the Pakistan Penal Code (XLV of 1860) and the Code of Criminal Procedure, 1898 (V of 1898).

3. Trial of scheduled offences.— (1) Notwithstanding anything contained in any other law for the time being in force ^[4] [but subject to the provisions of section 5], no scheduled offence shall be tried except in the manner provided by this Ordinance.

(2) Except as otherwise provided in this Ordinance, the provisions of the Evidence Act, 1872 (I of 1872), and the Code of Criminal Procedure, 1898 (V of 1898), shall not apply to any proceedings under this Ordinance.

4. Cognizance of scheduled offences.— (1) The Deputy Commissioner shall have exclusive jurisdiction to take cognizance of a scheduled offence committed within the district to which he is so appointed for the time being; and such cognizance may be taken by him—

- (a) upon receiving a complaint of facts which constitute such offence;
- (b) upon a report in writing of such facts made by a police officer; or
- (c) upon information received from any person other than a police officer or upon his own knowledge or suspicion that such offence has been committed:

Provided that cognizance of an offence under section 14 shall not be taken except upon a complaint made by the husband of the woman, or in his absence by some person who had the care of such woman on his behalf at the time when such offence was committed.

(2) When the Deputy Commissioner takes cognizance of a scheduled offence under clause (c) of sub-section (1), he shall, before constituting a Tribunal under section 5, inform the accused that he is entitled to have the case decided by another Deputy Commissioner, and if the accused, or any of the accused, if there be more than one, objects to the case being decided by the Deputy Commissioner who has so taken cognizance of the offence, the matter shall be reported to the Commissioner, who shall transfer the case to another Deputy Commissioner and the Deputy Commissioner to whom the case is so transferred shall proceed in the matter provided in section 5.

(3) Where a person is accused of more offences than one and any such offence is not a scheduled offence, the Deputy Commissioner shall proceed in accordance with the provisions of this Ordinance only in respect of the scheduled offence or offences.

(4) Where it appears to any magistrate, Court or other authority enquiring into or trying any offence that such offence is a scheduled offence, such magistrate, Court or authority shall stay further proceedings in respect of such offence and refer it to the Deputy Commissioner for proceeding in accordance with the provisions of this Ordinance.

5. Question of guilt or innocence to be referred to Tribunal.— The Deputy Commissioner taking cognizance of a scheduled offence shall constitute a Tribunal in accordance with section 6 and refer the question of the guilt or innocence of the person or persons accused of such offence to the decision of such Tribunal ^[5] [:]

^[6] [Provided that if a scheduled offence is punishable with death, the Deputy Commissioner may, if he deems fit, entrust the case to a criminal court having jurisdiction therein to deal with the case in accordance with the provisions of law applicable thereto.]

6. Constitution of Tribunal.— (1) A Tribunal constituted for the purpose of section 5 shall consist of a Government official, not below the rank of Naib-Tehsildar, who shall be its President, and four other members, all to be appointed by the Deputy Commissioner.

(2) In appointing a person as a member, other than the President, the Deputy Commissioner shall have regard to the integrity, education, social status and representative character of such person.

(3) No person shall be appointed as a member of the Tribunal, other than the President except after giving the parties concerned an opportunity of being heard and considering objections, if any, to the appointment of such person.

7. Reference of question to a new Tribunal in certain cases.— (1) Where a Tribunal declines or fails to give a finding on a question referred to it under section 5, or misconducts itself, or where, by reason of death or illness or absence from the country of any member or for any other sufficient cause, the Tribunal is, in the opinion of the Deputy Commissioner, unable to perform its functions, the Deputy Commissioner shall, unless he proceeds in accordance with the provisions of sub-section (2), by order in writing stating the reasons therefor, constitute another Tribunal in accordance with section 6 and refer the question to the Tribunal so constituted.

(2) If any member of the Tribunal dies, refuses to act, becomes incapacitated from acting or fails to attend any two meetings of the Tribunal without sufficient cause to the satisfaction of the President of the Tribunal, the President shall refer the matter to the Deputy Commissioner, who shall, as soon as may be, appoint another member in place of the defaulting member in accordance with the provisions of sub-sections (2) and (3) of section 6.

8. Quorum.— The Tribunal shall not conduct any proceedings unless the President and at least three other members are present.

9. Procedure before the Tribunal.— (1) For the purpose of coming to a finding on a question referred to it, the Tribunal shall give opportunity to the parties to appear before it and proceed to hear the complainant, if any, and record such evidence as may be adduced in respect of the accusation or on behalf of the accused or as may be called for by the Tribunal:

Provided that the Tribunal may in its discretion refuse to take or hear any evidence which in its opinion is being tendered for the purpose of causing vexation or delay or for defeating the ends of justice:

Provided further that the provisions of sections 121 to 126 of the Evidence Act, 1872 (I of 1872) shall apply to any proceedings before a

Tribunal as they apply to proceedings before a Judge or a Magistrate.

(2) The Tribunal shall give the parties an opportunity of cross-examining the witnesses deposing against them.

(3) The Tribunal may administer oath to a witness in such form or manner, not inconsistent with the religion of the witness, as it deems fit.

10. Tribunal to have certain powers of a court.— For the purpose of the performance of its functions under this Ordinance, the Tribunal shall have the same powers as are vested in a Court under the Code of Criminal Procedure, 1898 (V of 1898), in respect of enforcing the attendance of any witness or the production of any document or other thing.

11. Action upon the report of the Tribunal.— (1) The finding of the Tribunal on a question referred to it under section 5 shall be submitted to the Deputy Commissioner in the form of a report containing the reasons for such finding.

(2) Upon receipt of a report of the Tribunal, the Deputy Commissioner may, if the report does not give a finding on the question referred to the Tribunal or any substantial part thereof, or if he is of opinion that there has been material irregularity or that the proceedings of the Tribunal have been so conducted as to occasion a miscarriage of justice, remand the question to the Tribunal or refer the question to a second Tribunal constituted in accordance with section 6.

(3) Where the Tribunal unanimously or by a majority of four-fifths reports a finding of guilty, the Deputy Commissioner may if he does not proceed under sub-section (2), either convict and pass sentence on, or acquit, the person or persons so found guilty.

(4) Where the Tribunal unanimously or by a majority of four-fifths reports a finding of not guilty, the Deputy Commissioner shall, if he does not proceed under sub-section (2), acquit the person or persons so found not guilty.

(5) Where the Tribunal reports a finding either of guilty or of not guilty by a majority of less than four-fifths, the Deputy Commissioner shall, if he does not proceed under sub-section (2), acquit the accused person or persons.

(6) Where the Deputy Commissioner remands or refers under sub-section (2) a question, he shall—

(a) if the Tribunal, on such remand or reference, unanimously or by a majority of not less than four-fifths reports a finding of guilty, convict and pass sentence on the accused; and

(b) in any other case, acquit the accused.

(7) The Deputy Commissioner shall, before passing any order under this section, give the accused an opportunity of being heard and shall record reasons for every such order.

(8) The order of the Deputy Commissioner under this section, either convicting or acquitting any accused, shall be announced in the presence of the accused and a copy thereof shall be furnished to the parties free of cost.

12. Punishment.— Where the Deputy Commissioner convicts a person under section 11—

(a) he shall pass upon him any sentence of fine, whatever may be the punishment provided for the offence in the Pakistan Penal Code, 1860 (XLV of 1860);

(b) he may, in lieu of, or in addition to, such fine—

(i) pass a sentence of imprisonment of either description for a term which may extend to seven years; or

(ii) in respect of any offence punishable with transportation or imprisonment of either description not exceeding five years;

(iii) subject to confirmation by the Commissioner, pass a sentence of transportation or imprisonment of either description for a term exceeding seven years but not exceeding fourteen years; or

(iv) subject to the provisions of section 393 of the Code of Criminal Procedure, 1898 (V of 1898), pass a sentence of whipping, or of whipping and imprisonment of either description not exceeding five years:

Provided that no sentence of whipping shall be passed for an offence under sections 121, 121-A, 122, 123, 124-A, 125, 126, 127, 144, 150, 216, 216-A, 400, 401, 402, 494 or 495 of the Pakistan Penal Code (XLV of 1860):

Provided further that no sentence of transportation or imprisonment shall be passed for an offence for a term exceeding that provided for that offence under the Pakistan Penal Code, 1860 (XLV of 1860).

13. Compensation.— (1) Where the Deputy Commissioner passes any sentence of fine for an offence, he may, at the time of passing the sentence, order the whole or any part of the fine recovered to be applied in payment of compensation for any loss or injury, whether of person or of property, caused to any person by the offence.

(2) Where a person has received any such compensation as a full discharge of the civil liability of the accused to such person on account of the loss or injury mentioned in sub-section (1), no Civil Court or any authority performing the functions of a Civil Court shall take cognizance of a claim to compensation based on such loss or injury.

(3) Where a person entitled to receive compensation under sub-section (1) dies before receiving it, the amount of the compensation may be paid to the heirs of such person to be determined by the Deputy Commissioner in accordance with the personal law of the deceased.

14. Women punishable for adultery.— A married woman who, knowingly and by her own consent, has sexual intercourse with any man who is not her husband shall be punishable with imprisonment for a term which may extend to five years, or with fine, or with both.

15. Scheduled offences to be cognizable.— (1) All scheduled offences shall be cognizable.

(2) Any private person may arrest or cause to be arrested any person who is reasonably suspected of being concerned in any scheduled offence or against whom a reasonable complaint has been made or credible information has been received or a reasonable suspicion exists of having been so concerned and, without unnecessary delay, make over or cause to be made over the person so arrested to a police officer or, in the absence of a police officer, take such person so arrested or cause him to be taken in custody to the nearest police station or State Levies Force.

16. Bail.— (1) A scheduled offence shall be bailable or non-bailable according as the same is bailable or non-bailable under the Code of Criminal Procedure, 1898 (V of 1898), and the Deputy Commissioner shall have the same powers of granting bail to a person or persons accused of an offence as a Court has under that Code.

(2) The President of a Tribunal may, in regard to a case referred to the Tribunal for decision under section 5, exercise the powers of the Deputy Commissioner under this section.

17. Security for keeping the peace.— (1) Where the Deputy Commissioner—

(a) is satisfied that any person within his District has either a blood feud, or occasioned cause of quarrel likely to lead to blood-shed; or

(b) is of opinion that it is necessary for the purpose of preventing murder, or culpable homicide not amounting to murder, to require a person within his District to execute a bond under this section for keeping the peace,

the Deputy Commissioner may order the person to execute a bond with or without sureties (not exceeding two in number), for his good behaviour or for keeping the peace, as the case may be, during such period, not exceeding three years, as the Deputy Commissioner may fix.

(2) The Deputy Commissioner may make an order under sub-section (1)—

- (a) on the recommendation of a Tribunal; or
- (b) after enquiry as provided in section 19.

(3) Pending the completion of an enquiry for the purposes of sub-section (2), the Deputy Commissioner may, if he considers that immediate measures are necessary for preventing any offence referred to in sub-section (1), direct a person in respect of whom the enquiry is to be held, to execute a bond, with or without sureties (not exceeding two in number), for keeping the peace or maintaining good behaviour for a period not exceeding one month, and detain him in custody till such bond is executed.

(4) Where a person has been convicted in accordance with the finding of a Tribunal of an offence punishable under section 302, section 304, section 307 or section 308 of the Pakistan Penal Code 1860 (XLV of 1860), the Deputy Commissioner, at the time of passing the sentence, or the Commissioner, at the time of deciding the appeal, may make an order under sub-section (1) with respect to that person.

(5) Where the Deputy Commissioner makes an order under sub-section (1) on the recommendation of a Tribunal he shall record his reasons for acting on the recommendation.

(6) Where the Commissioner or the Deputy Commissioner is of opinion that sufficient grounds exist for making an order under sub-section (1), he may, either in lieu of, or in addition to, such order, by order in writing, direct that the person concerned shall notify his residence and any change of residence in the manner prescribed by section 565 of the Code of Criminal Procedure, 1898 (V of 1898), during such term, not exceeding three years, as may be specified in the order.

18. Power of demanding security from male adult members of families.— Where a blood-feud or other cause of quarrel likely to lead to blood-shed exists, or in the opinion of the Deputy Commissioner, is likely to arise between two families or factions, the Deputy Commissioner may on the recommendation of a Tribunal or after enquiry as provided in section 19, order all or any of the male adult members of both the families or factions of either family or faction to execute a bond, with or without sureties, for their good behaviour or for keeping the peace, as the case may be, during such period, not exceeding three years, as he may fix.

19. Procedure for enquiry.— (1) An enquiry for the purposes of section 17 or section 18 shall be conducted in the presence of the person or persons required to furnish a bond and shall provide an adequate opportunity to such person or persons—

- (a) of showing cause why a bond shall not be required;
- (b) of cross-examining any witnesses not called for by himself or themselves who may testify to the necessity or otherwise for the execution of a bond;
- (c) of having his or their witnesses examined;

Provided that the Deputy Commissioner may, in his discretion, refuse to hear any evidence which he feels is being tendered for the purposes of vexation or delay or for defeating the ends of justice:

Provided further that the provisions of sections 121 to 126 of the Evidence Act, 1872 (I of 1872), shall apply to proceedings under this section as they apply to proceedings before a Judge or a Magistrate.

(2) The Deputy Commissioner shall record his order under this section with the reason for making it.

20. Breach of bond.— (1) A bond executed under section 17, shall be liable to be forfeited, if the person bound thereby to be of good behaviour or to keep the peace, as the case may be, commits or attempts to commit, or abets the commission of, any offence punishable under Chapter XVI of the Pakistan Penal Code, 1860 (XLV of 1860).

(2) A bond executed under section 18 shall be liable to be forfeited, if the person bound thereby to be of good behaviour or to keep the peace, as the case may be, commits or attempts to commit, or abets the commission of, any offence punishable with imprisonment in respect of any member of the opposite family or faction to which the bond related.

(3) If, while a bond executed under section 18 is in force, the life of any member of either family or faction is unlawfully taken or attempted, the Deputy Commissioner may declare the bond of all or any of the members of the other family or faction alongwith their sureties (if any) to be forfeited, unless it is shown to his satisfaction that the homicide or attempt was not committed by or in consequence of the abetment of any member of that family or faction.

21. Imprisonment in default of security.— (1) Where a person ordered to give security under section 17 or section 18, does not give security on or before the date on which the period for which the security is to be given commences, he shall be committed to prison, or, if he is already in prison, be detained in prison until that period expires, or until within that period he furnishes the required security.

(2) Imprisonment for failure to give security under section 17 or section 18 may be rigorous or simple, as the officer requiring the security directs in each case.

22. Collective fine.— (1) Where from the circumstances of any case, there appears to be good reason to believe that the inhabitants of any village, or part of a village, or any of them have—

- (a) abetted or are concerned in the commission of any scheduled offence; or
- (b) failed to render, when called upon by the Deputy Commissioner or any public servant, assistance in their power to discover the offender concerned in the commission of any scheduled offence; or
- (c) harboured any offender or person suspected of having taken part in the commission of a scheduled offence;

the Deputy Commissioner may, with the previous sanction of Government, impose any reasonable fine on the male adult inhabitants of such village or part of a village, or any of them as a whole, as the case may be, after holding a summary enquiry and affording them an opportunity of showing cause against the proposed action.

(2) The Deputy Commissioner after such enquiry as he may deem necessary, shall apportion the fine imposed under sub-section (1) among the inhabitants of the village or part of the village who are liable collectively to pay it and such apportionment shall be made according to his judgement of the respective means of such inhabitants.

(3) A fine imposed under this section shall, in default of payment, be recoverable as if it were an arrear of land-revenue due from the inhabitants of the village or part thereof, upon whom the fine is imposed.

23. Appeal.— (1) Any party aggrieved by any decision given, sentence passed or order made, by the Deputy Commissioner under this Ordinance may, within thirty days of such decision, sentence or order, prefer an appeal to the Commissioner.

Explanation— In computing the period of thirty days mentioned in this sub-section the day on which the decision, sentence or order sought to be appealed against was given, passed or made, and the time requisite for obtaining a copy thereof, shall be excluded.

(2) The Commissioner shall not confirm, modify, alter or set aside any decision, sentence or order appealed against except after giving the parties an opportunity of being heard.

(3) The Commissioner may, in deciding an appeal under sub-section (1), exercise all or any of the powers conferred on an appellate Court by the Code of Criminal Procedure, 1898 (V of 1898), and may also enhance any sentence:

Provided that no sentence shall be passed by the Commissioner in such appeal which the Deputy Commissioner could not have passed under this Ordinance.

(4) The decision of the Commissioner on an appeal under this section shall be final.

24. Revisions.— (1) Government may, at any stage, call for and examine the record of any proceedings pending before, or disposed of by, a Commissioner, Deputy Commissioner or Tribunal for the purpose of satisfying itself as to the correctness, legality or propriety of any decision, sentence or order given, passed or made, or as to the regularity of any such proceedings and may when calling for such record, direct that the execution of any sentence be suspended and, if the accused is in confinement, that he be released on bail or on his own bond pending the examination of the record:

Provided that nothing herein contained shall be deemed to authorize Government to vary or set aside a finding of a Tribunal on a question of fact where such finding has been accepted by the Deputy Commissioner unless it is of opinion that there has been a material irregularity or defect in the proceedings or that the proceedings have been so conducted as to occasion a mis-carriage of justice.

(2) Government may, after examining any record called for under sub-section (1), and giving the parties an opportunity of being heard, pass such orders as it may think fit :

Provided that no sentence shall be passed by Government in the exercise of its powers under this sub-section which the Deputy Commissioner could not have passed under this Ordinance.

25. Execution of sentence.— Where a sentence of fine passed under this Ordinance does not provide for imprisonment in default of payment of the fine, the amount of the fine shall be recoverable as arrears of land revenue, and any other sentence including a sentence of imprisonment in default of payment of fine, shall be executed in the manner provided for the execution of such sentence passed by a Court under the Code of Criminal Procedure, 1898 (V of 1898).

26. Suspension, remission, etc., of sentences.— Government shall have the same powers of suspension, remission and commutation in respect of sentences passed under this Ordinance as it has under sections 401 and 402 of the Code of Criminal Procedure, 1898 (V of 1898), in respect of sentences passed under that Code.

27. Appearance of legal practitioners.— In proceedings under this Ordinance before the Tribunal, the Deputy Commissioner, the Commissioner and Government, the parties shall be entitled to be represented by a legal practitioner of their choice.

28. Jurisdiction of Courts barred.— Except as otherwise provided in this Ordinance, no proceedings under this Ordinance, and no decision given, sentence passed or order made in any such proceeding, shall be called in question in any Court or before any other authority.

29. Indemnity.— No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under or in pursuance of this Ordinance or any rule or order made thereunder.

30. Delegation.— The Deputy Commissioner may authorize any officer not below the rank of an Extra Assistant Commissioner to exercise or perform all or any of his powers or functions under this Ordinance.

31. Power to make rules.— (1) Government may, by notification in the official Gazette, make rules for carrying out the purposes of this Ordinance.

(2) In particular, and without prejudice to the generality of the foregoing provisions, such rules may provide for all or any of the following matters, namely:-

- (a) the offences which may be compounded;
- (b) the persons by whom and the manner in which an offence may be compounded;
- (c) the procedure regarding appeal and revision;
- (d) the maintenance of record of the Tribunal and those of the Deputy Commissioner and the Commissioner; and
- (e) such other matters as Government may consider necessary for carrying into effect the provisions of this Ordinance.

32. Pending proceedings.— Nothing in this Ordinance shall affect the continuance of any proceedings by or before any magistrate, Court or other authority in respect of any offence taken cognizance of before the commencement of this Ordinance.

33. Repeal.— The Quetta and Kalat (Civil and Criminal Law) Ordinance, 1965 (W.P. Ordinance No.III of 1965), in so far as it relates to the trial of offences and taking of security and preventive proceedings, is hereby repealed.

SCHEDULE

[See SECTION 1 (2)]

1. The Divisions of Quetta and Kalat except the Tribal Areas.
2. The District of Lasbela.
3. The Added Areas of Hazara District specified in the First Schedule to the North-West Frontier Province (Enlargement of the Area and Alteration of Boundary) Order, 1952 (G.G.O. No.1 of 1952).
4. The Added Areas of Mardan District specified in Schedule A to the North-West Frontier Province (Increase of Area and Alteration of Boundary) Order, 1953 (G.G.O. No.7 of 1953).
5. The Added Areas of Hazara District specified in the First Schedule to the North-West Frontier Province (Enlargement of the Area and Alteration of Boundary) Order, 1955 (G.G.O. No.13 of 1955).
6. The former excluded Areas of Upper Tanawal and the Baluch Area of Dera Ghazi Khan specified in the Schedule to the Excluded Areas (Cesser of Exclusion) (West Pakistan) Order, 1961 (P.O. No.3 of 1961).

[1] This Ordinance was promulgated by the Governor of West Pakistan on 16th January, 1968; approved by the Provincial Assembly of West Pakistan, with amendments, on 23rd May, 1968, under clause (3) of Article 79 of the Constitution of the Islamic Republic of Pakistan (1962); assented to by the Governor of West Pakistan on 11th June, 1968; and, published in the West Pakistan Gazette (Extraordinary), dated 12th June, 1968, pages 2155-F to 2155-O.

[2] Added by the Criminal Law (Special Provisions) (Amendment) Ordinance, 1968 (W.P. Ord. IX of 1968).

[3] Substituted, for “the Government of West Pakistan”, by the Federal Adaptation of Laws Order, 1975 (P.O. 4 of 1975).

[4] Inserted by the Criminal Law (Special Provisions) (Punjab Amendment) Ordinance, 1972 (VII of 1972).

[5] Substituted for the full-stop, by the Criminal Law (Special Provisions) (Punjab Amendment) Ordinance, 1972 (VII of 1972).

[6] Added *ibid*.