

THE ENEMY AGENTS ORDINANCE, 2005 (1948 A.D.)

(Ordinance No. VIII of 2005.)

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THE ENEMY AGENTS ORDINANCE, 2005 (1948 A.D.)

(Ordinance No. VIII of Samvat 2005)

[Promulgated by His Highness under section 5 of the Jammu and Kashmir Constitution Act, 1996 and published in Government Gazette dated 12th Magh, 2005.]

An Ordinance to provide for the trial punishment of enemy agents and persons committing certain offences with intent to aid the enemy.

Preamble.— Whereas an emergency has arisen as a result of wanton attack by outside raiders and enemies of the State which makes it necessary to provide for the trial and punishment of enemy agents and persons committing certain offences with intent to aid the enemy ; and

Whereas the present law on the subject (Ordinance No. XIX of 2004) requires to be amended in certain respects and it is proposed to issue the Ordinance with necessary amendments in consolidated form ;

Now therefore, in exercise of the powers reserved under section 5 of the Jammu and Kashmir Constitution Act, 1996, His Highness is pleased to make and issue the following Ordinance :—

1. *Short title, extent and commencement.* —(1) This Ordinance may be called the Enemy Agents Ordinance, 2005.

(2) It extends to the whole of the Jammu and Kashmir State and applies also to subjects and servants of the State outside the Jammu and Kashmir State wherever they may be.

(3) It shall come into force at once.

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

- (a) “enemy” means and includes any person, directly or indirectly, participating or assisting in the campaign recently undertaken by raiders from outside in subverting the Government established by law in the State ;
- (b) “enemy agent” means a person, not operating as a member of enemy armed force, who is employed by, or works for, or acts on instructions received from, the enemy.

3. *Penalty for aiding the enemy.*— Whoever is an enemy agent or, with intent to aid the enemy, does, or attempts or conspires with any other person to do any act which is designed or likely to give assistance to the military or air operations of the enemy or to impede the military or air operations of Indian forces or to endanger life or is guilty of incendiarism shall be punishable with death or rigorous imprisonment for life or with rigorous imprisonment for a term which may extend to 10 years and shall also be liable to fine.

¹[*Explanation.*—For removal of doubts it is hereby declared that a person shall also be guilty of an offence under this section if he, being aware that arms and explosives or any equipment capable of being used for espionage or sabotage have been dumped or left behind by a raider or an enemy agent, wilfully omits to report to the nearest Magistrate or police Officer of the arms, ammunition or equipment so dumped or left behind.]

4. *Offences triable under this Ordinance.* —(1) Any offence punishable under section 3 committed at any time after 22nd October, 1947, whether committed before or after the commencement of this Ordinance, shall be triable under the provisions of this Ordinance.

(2) Where a person is charged before a Special Judge with an offence punishable under section 3, he may be charged with and tried at the same trial for any other offence with which he might under the Code of Criminal Procedure, 1989, be charged at one trial and the procedure of this Ordinance shall apply to the trial of any such other offence.

5. *Appointment and jurisdiction of Special Judge.* —(1) For the trial of offences punishable under section 3, the ²[Government in consultation with the High Court] may ³[appoint as a Special Judge having jurisdiction throughout the State, any person who is qualified to be appointed as judge of the High Court, or who exercised the powers of a Sessions Judge under the Code of Criminal Procedure, Samvat 1989] or who have, for a period of not less than 10 years, practised at the Bar.

(2) A Special Judge shall try any offence punishable under section 3 which the ²[Government in consultation with the High Court] by general or special order in writing direct to be tried by him and may hold his sittings for the trial of any case in any place fixed by the ²[Government in consultation with the High Court].

1. Explanation inserted by Act XXIV of 1967.

2. Substituted by Act XL of 1966 for “Government”.

3. Substituted by Act XIV of 1972, s. 2.

6. *Transfer of cases from one Special Judge to another.* —(1) The¹[Government in consultation with the High Court] may, at any stage of the proceedings before a Special Judge, transfer the case to another Special Judge

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1989, when a case is transferred under sub-section (1), the Special Judge to whom the case is transferred shall not be bound to re-summon or re-hear the witnesses or any of them unless he is satisfied that such a course is necessary in the interests of justice.

7. *Procedure of Special Judges.* —(1) A Special Judge may take cognizance of an offence without the accused being committed to his Court for trial, and, in trying accused persons, shall follow the procedure prescribed by the Code of Criminal Procedure, 1989, for the trial of warrant cases by Magistrates :

Provided that a Special Judge shall ordinarily record a memorandum only of the substance of the evidence of each witness examined, may 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 his opinion necessary in the interests of justice.

(2) In matters not coming within the scope of sub-section (1), the provisions of the Code of Criminal Procedure, 1989, so far as they are not inconsistent with this Ordinance, shall apply to the proceeding of a Special Judge ; and for the purposes of the said provisions, the Court of the Special Judge shall be deemed to be a Court of Sessions.

8. *Sentences by Special Judges.*— A Special Judge may pass any sentence authorised by law.

9. *Review of convictions.* —(1) If, in any proceeding before a Special Judge,—

- (a) a person convicted is sentenced to death or to imprisonment for life, or
- (b) though no person is so sentenced, the Special Judge certifies that in his opinion the case has involved questions of special difficulty, whether of law or fact or is one which for any other reason ought properly to be reviewed, the proceedings shall be submitted for review by a person chosen by the Government from the Judges of the High Court and the decision of that person shall be final.

1. Substituted by Act XL of 1966 for “Government”.

(2) Where any proceedings are so submitted for review, the Judge reviewing the proceedings may exercise in his discretion any of the powers exercisable under section 439 of the Code of Criminal Procedure, 1989, by the High Court in the case of any proceedings which the said section 439 refers :

Provided that where in the exercise of these powers the Judge reviewing the proceedings directs a retrial of the accused, or directs further evidence to be taken, the reviewing Judge may direct the retrial to be held or the further evidence to be taken by the Special Judge by whom the case was tried in the first instance or by any other Special Judge, or by a Special Judge to be appointed for the purpose by the Government.

(3) The person appointed under sub-section (1) to review the proceedings of a special Judge may call for and examine the record of any proceedings before the Special Judge for the purpose of satisfying himself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed and as to the regularity of any proceedings of the Special Judge, and may exercise in the case of proceedings the record of which has been so called for any of the powers which would have been exercisable by him in the case of such proceedings had they been submitted to him for review under sub-section (1).

10. *Hearing of proceedings in camera.*— If, as respects any proceedings before a Special Judge or before a Judge reviewing under section 9 of the proceedings of a Special Judge, the Special Judge or reviewing Judge, as the case may be, is satisfied that it is expedient in the interests of the public safety or the defence of the State so to do, such Judge may give directions, that throughout or during any part of the proceedings such person or class of persons as the Judge may determine shall be excluded.

11. *Limitation on appearance of pleaders.* —(1) In any proceedings before the Special Judge and in proceeding before a Judge reviewing under section 9 the proceedings of a Special Judge when the Special Judge or the reviewing Judge grants permission in this behalf, a person accused of an offence triable under this Ordinance may be defended by a pleader.

(2) A Special Judge, or a Judge reviewing under section 9 the proceedings of a Special Judge, may appoint a pleader to defend at any stage of the proceedings a person accused of an offence triable under this Ordinance who has not himself engaged a pleader.

(3) A Special Judge, shall not be required to grant an adjournment for the purpose of securing the attendance of a pleader if in the opinion of the Special Judge such adjournment would cause unreasonable delay in the disposal of the case.

12. *Special rule of evidence.*— Notwithstanding anything contained in the Evidence Act, 1977, when the statement of any person has been recorded by the Magistrate such statement may be admitted in evidence in any trial before a Special Judge, if such a person is dead or cannot be found or is incapable of giving evidence.

13. *Special rule of procedure.* —(1) When any accused, in a trial before a Special Judge, has by his voluntary act rendered himself incapable of appearing before the Court, or resists his production before it or behaves before it in a persistently disorderly manner, the Court may, at any stage of the trial, by order in writing, made after such enquiry as it may think fit, dispense with the attendance of such accused for such period as it may think fit and proceed with the trial in his absence.

(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 being present in persons if he has become capable of appearing, or appears in Court and undertakes to behave in an orderly manner.

(4) Notwithstanding anything contained in the Code of Criminal Procedure, 1989, no finding, sentence or order passed in a trial before a Special Judge shall be held to be illegal 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).

14. *Exclusion of interference of other Courts.*— Notwithstanding the provisions of the Code of Criminal Procedure, 1989, or of any other law for the time being in force, or of anything having the force of law by whatsoever authority made or done, there shall be no appeal from any order or sentence made or passed by a Special Judge or reviewing Judge under this Ordinance and, save as provided in this Ordinance, no Court shall have authority to revise such order or sentence or to transfer any case from the Court of a Special Judge or to make any order under section 491 of the Code of Criminal Procedure, 1989, or have any jurisdiction of any kind in respect of any proceedings under this Ordinance.

15. *Accused only entitled to copy of record.* —(1) Notwithstanding the provisions of the Code of Criminal Procedure, 1989, or of any other law for the time being in force, or of anything having the force of law by whatsoever authority made or done, no person, other than the accused or his pleader, shall be entitled

to be furnished with a copy of any part of the records of, or of any document relating to, any proceedings under this Ordinance.

(2) Any such copy furnished to the accused or his pleader, shall be kept by the person to whom it was furnished in his personal custody, and it shall be an offence punishable under section 17 for that person to show it to any person other than his pleader or his client, as the case may be, or to divulge its contents except in the course of the proceeding for the purpose of which it was obtained.

(3) Any such copy shall be returned to the authority from whom it was obtained within 10 days of the conclusion of the proceedings for the purpose of which it was furnished and any failure so to do shall be punishable with the punishment provided for an offence under section 17.

16. *Application of ordinary law.*— The provisions of the Code of Criminal Procedure, 1989, and of any other law for the time being in force, in so far as they may be applicable and in so far as they are not inconsistent with the provisions of this Ordinance, shall apply to all matters connected with, arising from or consequent upon, a trial under this Ordinance.

17. *Disclosure of information relating to proceedings under this Ordinance.*— Any person who, without the previous authorization of the Government, discloses or publishes any information with respect to any proceedings or with respect to any person proceeded against under this Ordinance, shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both.

18. *Power to make rules.*— The Government may make rules providing for any matter necessary to carry into effect the purposes of this Ordinance.

19. *Repeal.*— The Enemy Agents Ordinance No. XIX of 2004 is hereby repealed but all rules made, orders issued, prosecutions and action taken and punishment awarded under that Ordinance shall be deemed to have been made, issued, taken and awarded under this Ordinance.
