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THE ENEMY AGENTS ORDINANCE, 1943

ORDINANCE NO. I OF 1943

[9th January, 1943]

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

WHEREAS an emergency has arisen 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;

NOW, THEREFORE, in exercise of the powers conferred by section 72 of the Government of India Act, as set out in the Ninth Schedule to the Government of India Act, 1935, the Governor-General is pleased to make and promulgate the following Ordinance:-

1. (1) This Ordinance may be called the Enemy Agents Ordinance, 1943.

Short title,
extent and
commencement

(2) It extends to the whole of Bangladesh and applies also-

- (i) to all citizens of Bangladesh and persons in the service of Government wherever they may be; and
- (ii) to persons on board any ship or aircraft registered in Bangladesh.

(3) It shall come into force at once.

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

Definitions

- (a) "enemy" means any State at war with Bangladesh;

* Throughout this Ordinance, the words "Bangladesh" and "Government" were substituted for the words "Pakistan" and "Central Government" respectively by section 3 and the Second Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

- (b) “enemy agent” means a person, not operating as a member of an enemy armed force, who is employed by, or works for, or acts on instructions received from, the enemy.

Penalty for aiding the enemy

3. 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 naval, military or air operations of the enemy or to impede the naval, military or air operations of the Armed Forces of Bangladesh or the forces of a foreign power allied with Bangladesh ¹[* * *] or to endanger life, shall be punishable with death.

Offences triable under this Ordinance

4. (1) Any offence punishable under section 3 committed at any time after the 2nd day of September, 1939, 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, 1898, be charged at one trial, and the procedure of this Ordinance shall apply to the trial of any such other offence.

Appointment and jurisdiction of Special Judges

5. (1) For the trial of offences punishable under section 3, the Government may appoint as Special Judges, having jurisdiction throughout Bangladesh, any persons who have acted for a period of not less than two years in the exercise of the powers of a Sessions Judge or an Assistant Sessions Judge under the Code of Criminal Procedure, 1898.

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

¹ The words “or of any Acceding State” were omitted by section 3 and the Second Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

6. (1) The Government may, at any stage of the proceedings before a Special Judge, transfer the case to another Special Judge.

Transfer of cases from one Special Judge to another

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1898, 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. (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, 1898, for the trial of warrant cases by Magistrates:

Procedure of Special Judges

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, 1898, so far as they are not inconsistent with this Ordinance, shall apply to the proceedings 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 Session.

8. A Special Judge may pass any sentence authorised by law.

Sentences by Special Judges

9. (1) If in any proceedings before a Special Judge-

Review of convictions

(a) a person convicted is sentenced to death, or to transportation 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 appointed in this behalf by the Government, which person shall be chosen from the Judges of ¹[the Supreme Court], and the decision of that person shall be final.

(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, 1898, by ²[the High Court Division] in the case of any proceeding to which the said section 439 refers.

Provided that, where in the exercise of these powers the Judge reviewing the proceedings directs a re-trial of the accused, or directs further evidence to be taken, the reviewing Judge may direct the re-trial 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).]

Hearing of
proceedings in
camera

10. If, as respects any proceedings before a Special Judge or before a Judge reviewing under section 9 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 Bangladesh so to do, such

¹ The words "the Supreme Court" were substituted for the words "a High Court in Pakistan" by section 3 and the Second Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

² The words "the High Court Division" were substituted for the words "a High Court" by section 3 and the Second Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

Judge may give directions that throughout or during any part of the proceedings such persons or classes of persons as the Judge may determine shall be excluded.

11. (1) In any proceedings before a Special Judge, and in proceedings before a Judge reviewing under section 9 the proceedings of a Special Judge when the reviewing Judge grants permission in this behalf, a person accused of an offence triable under this Ordinance may of right be defended by a pleader, but such pleader shall be a person whose name is entered in a list prepared in this behalf by the Government or who is otherwise approved by the Government.

Limitation on appearance of pleaders

(2) A Special Judge, or a Judge reviewing under section 9 the proceedings of a Special Judge, may appoint a pleader whose name is entered in the list referred to in sub-section (1) or who is otherwise approved by the Government 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. Notwithstanding anything contained in the Evidence Act, 1872, when the statement of any person has been recorded by any Magistrate, such statement may be admitted in evidence in any trial before a Special Judge, if such person is dead or cannot be found or is incapable of giving evidence.

Special rule of evidence

13. (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 inquiry 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.

Special rule of procedure

(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 person, 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, 1898, 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).

Exclusion of
interference of
other Courts

14. Notwithstanding the provisions of the Code of Criminal Procedure, 1898, 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 a 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, 1898, or have any jurisdiction of any kind in respect of any proceedings under this Ordinance.

Copies of
proceedings

¹[**14A.** (1) Notwithstanding the provisions of the Code of Criminal Procedure, 1898, 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.

¹ Section 14A was added by section 4 of the Enemy Agents (Amendment) Ordinance, 1944 (Ordinance No. XI of 1944).

(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 16 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 proceedings for the purpose of which it was obtained.

(3) Any such copy shall be returned to the authority from which it was obtained within ten 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 16.]

15. The provisions of the Code of Criminal Procedure, 1898, 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.

Application of ordinary law

16. Any person who, without the previous authorisation 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.

Disclosure of information relating to proceedings under this Ordinance

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

Power to make rules

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