

The
Prohibition
(Enforcement of Hadd)
Order

(4 OF 1979)

[10th February, 1979]

Preamble: Whereas it is necessary to modify the existing law relating to prohibition of intoxicants so as to bring it in conformity with the injunctions of Islam as set out in the Holy Qur'an and Sunnah:

Now, therefore, in pursuance of the Proclamation of the Fifth day of July, 1977 read with the Laws (Continuance in Force) Order, 1977 (C.M.L.A Order No. 1 of 1977), and in exercise of all powers enabling him in that behalf, the President and Chief Martial Law Administrator is pleased to make the following Order:

CHAPTER I
PRELIMINARY

1. Short title, extent and commencement: (1) This Order may be called the Prohibition (Enforcement of Hadd) Order, 1979.

(2) It extends to the whole of Pakistan.

(3) It shall come into force on the twelfth day of Rabi-ul-Awwal, 1399 Hijri, that is, the 10th day of February, 1979.

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

(a) "**adult**" means a person who has attained the age of eighteen years of puberty;

(b) "**authorised medical officer**" means a medical Officer, howsoever designated, authorised by the Provincial Government;

(c) "**bottle**" or "**bottling**" means to transfer intoxicating liquor from a cask or other vessel to a bottle, Jar, flask, pot or similar receptacle for the purpose of sale, whether any process of manufacture be employed or not, and includes rebottling;

(d) "**buy**" or "**buying**" includes any receipt by way of gift or otherwise;

(e) "**Collector**" means any person appointed under this Order to exercise or perform all or any of the powers or functions of a Collector under this Order;

(f) "**hadd**" means punishment ordained by the Holy Qur'an or Sunnah;

(g) "**intoxicant**" means an article specified in the Schedule and include intoxicating liquor and other article or any substance which the Provincial Government may by notification in the official Gazette, declare to be an intoxicant for the purposes of this Order;

(h) "**intoxicating liquor**" includes toddy, spirits of wine, beer and all liquids consisting of or containing alcohol normally used for purposes of intoxication, but does not include a solid intoxicant even if liquefied;

(i) "**manufacture**" includes every process, whether natural or artificial, by which any intoxicant is produced, prepared or blended, and also redistillation and every process for the rectification of intoxicating liquors;

(j) "**place**" includes a house, shed, enclosure, building, shop, tent, vehicle, vessel and aircraft;

(k) "**Prohibition Officer**" means the Collector or any officer appointed or invested with powers under Article 21;

(l) "**public place**" means a street, road, thoroughfare, park, garden or other place to which the public have free access and includes a hotel, restaurant, motel, mess and club, but does not include the residential room of a hotel in the occupation of some person;

(m) "**rectification**" includes every process whereby intoxicating liquors are purified, coloured or flavoured by mixing any material therewith;

(n) "**sale**" or "**selling**" includes any transfer by way of gift or otherwise;

(o) "**ta'zir**" means any punishment other than 'hadd'; and (p) "transport" means to move from one place to another.

CHAPTER II PROHIBITION AND PENALTIES

3. Prohibition of manufacture, etc., of intoxicants: (1) Subject to the provisions of Clause (2) whoever:-

(a) imports, exports, transports, manufactures or processes any intoxicant; or

(b) bottles any intoxicant; or

(c) sells or serves any intoxicant; or

(d) allows any of the acts aforesaid upon premises owned by him or his immediate possession;

4. Owing or possessing intoxicant: Whoever owns, possesses or keeps in-his custody any intoxicant shall be punished with imprisonment of either description for a term which may extend to two years, or with whipping not exceeding thirty stripes, and shall also be liable to fine:

Provided that nothing contained in this Article shall apply to a non-Muslim foreigner or to a non-Muslim citizen of Pakistan who keeps in his custody at or about the time of ceremony prescribed by his religion a reasonable quantity of intoxicating liquor for the purpose of using it as a part of such ceremony:

Provided further that, if the intoxicant in respect of which the offence is committed is herein cocaine, opium or coca leaf, and the quantity exceeds ten grams in the case of heroin or cocaine or one kilogram in the case of opium or coca leaf, the offender shall be punishable with imprisonment for life or with imprisonment which is not less than two years and with whipping not exceeding thirty stripes, and shall also be liable to fine.

5. Article 3 or Article 4 not to apply to certain acts: Nothing contained in Article 3 or Article 4 shall apply to any act done under, and in accordance with the provisions of this Order, or the terms of any rule, notification, order or license issued there under.

6. Drinking: Whoever, intentionally and without 'ikrah' or 'iztirar' takes an intoxicant by any means whatsoever, whether such taking causes intoxication or not, shall be guilty of drinking.

Explanation: In this Article :

(a) 'ikrah' means putting any person in fear of injury to the person, property or honour of that or any other person; and

(b) 'iztirar' means a situation in which a person is in apprehension of death due to extreme hunger or thirst or serious illness.

7. Two kinds of drinking: Drinking may be either drinking liable to 'Hadd' or drinking liable to Tazir'.

8. Drinking liable to 'Hadd' : Whoever being an adult Muslim takes intoxicating liquor by mouth is guilty of drinking liable to 'hadd' and shall be punished with whipping numbering eighty stripes:

9. Proof of drinking liable to Hadd: The proof of drinking liable to 'hadd' shall be in one of the following forms, namely:-

(a) the accused makes before a Court of competent jurisdiction a confession of the commission of drinking liable to 'hadd'; and

(b) at least two Muslim adult male witnesses, about whom the Court is satisfied, having regard to the requirement of 'tazkiyah-al-shuhood', that they are truthful persons and abstain from major sins (kabair) give evidence of the accused having committed the offence of drinking liable to hadd.

In this Article, Tazkiyah-al-shuhood' means the mode of inquiry adopted by a Court to satisfy itself as to the credibility of a witness.

10. Cases in which Hadd shall not be enforced: (1)'Hadd' shall not be enforced in the following cases, namely:--

(a) when drinking is proved only by the confession of the convict, but he retracts his confession before the execution of'hadd'; and

(b) when drinking is proved by, testimony, but before the execution of 'hadd', any witness resiles from his testimony so as to reduce the number of witnesses to less than two.

(2) In a case mentioned in (1), the Court may order retrial in accordance with the Code of Criminal Procedure, 1898 (Act V of 1898).

11. Drinking liable to Tazir: Whoever--

(a) being a Muslim, is guilty of drinking which is not liable to 'hadd' under Article 8 or for which proof in either of the forms mentioned in Article 9 is not available and the Court is satisfied that the offence stands proved by the evidence on the record;

(b) being a non-Muslim citizen of Pakistan, is guilty of drinking except as a part of a ceremony prescribed by his religion; or

(c) being a non-Muslim who is not a citizen of Pakistan, is guilty of drinking at public place;

shall be liable to tazir and shall be punished with imprisonment of either description for a term which may extend to three years or with whipping not exceeding thirty stripes, or with both.

12. Arrest on suspension of violation of Article 8 or Article 11 : No police officer shall detain or arrest any person on suspicion that he has taken an intoxicant in violation of Article 8 or 11 unless he has asked such person to accompany him to an authorised medical officer for examination and such person either refuses to so accompany him or having been examined by the medical practitioner is certified by him to have taken an intoxicant.

(2) Whoever contravenes the provisions of clause (1) shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to five hundred rupees, or with both.

13. Punishment for vexatious delay: Any officer or person exercising powers under this Order who vexatiously and unnecessarily delays forwarding to a Prohibition Officer any person arrested or any article seized under this Order shall be punishable with fine which may extend to one thousand rupees.

14. Things liable to confiscation : in any case in which an offence has been committed under this Order, the intoxicant, still, utensil, implement or apparatus in respect or by means of which the offence has been committed shall be liable to confiscation along with the receptacles, packages, coverings, animals, vessels, carts or other vehicles used to hold or carry the same.

15. Confiscation how ordered: (1) In any case involving anything liable to confiscation under this Order, the Court deciding the case may order such confiscation despite the acquittal of the person charged.

(2) When an offence either under this Order has been committed but the offender is not known or cannot be found, or when anything liable to confiscation under this Order and not in the possession of any person cannot be satisfactorily accounted for the case shall be inquired into and determined by the Collector or other Prohibition Officer-in-charge of the District or any other officer authorised by the Provincial Government in this behalf, who may order such confiscation:

Provided that no such order shall be made until the expiration of fifteen days from the date of seizure of the things intended to be confiscated or without hearing the persons, if any, claiming any right thereto and evidence, if any, which they produce in support of their claims.

16. Cognizance of certain offences: (1) The following offences shall be cognizable, namely:

- (a) an offence punishable under Article 3; and
- (b) an offence punishable under Article 4, Article 8 or Article 11, if committed at a public place.

(2) No Court shall take cognizance of an offence punishable under:

- (a) Article 12 or Article 13, save on a complaint made by the person in respect of whom the offence has been committed; and
- (b) Article 20, save on a complaint made by, or under the authority of, a Prohibition Officer.

CHAPTER III

LICENCES FOR MEDICINAL OR SIMILAR OTHER PURPOSES

17. Licences for 'Bona Fide' medicinal or other purposes: The Provincial Government or, subject to the control of the Provincial Government, the Collector, may issue licences to any person in respect of any institution, whether under the management of Government or not:

(a) for the manufacture, import, transport, sale or possession of any intoxicant or article containing intoxicating liquor on the ground that such intoxicant or article is required by such person in respect of such institution for a bona fide medicinal, scientific, industrial or similar other purpose or for consumption by a non-Muslim citizen of Pakistan as a part of a religious ceremony or by a non-Muslim foreigner; or

(b) for the export of any intoxicant or article containing intoxicating liquor.

18. Forms and conditions of licences: Every licence issued under this Order shall:--

(a) be granted on payment of such fee, if any, for such period and on such condition; and

(b) be in such form and contain such particulars, as the Provincial Government may direct, either generally or in any particular case.

19. Power to cancel or suspend licences: (1) The Collector may cancel or suspend a licence:

(a) if any fee payable by the holder thereof be not duly paid, or

(b) in the event of any breach by the holder thereof or by his servant or by any one acting with his express or implied permission on his behalf of any of the terms or conditions of the licence.

(2) The Collector shall cancel a licence if-

(a) the holder thereof is convicted of any offence under this Order; or

(b) the purpose for which licence is granted ceases to exist.

(3) As and when any licence is cancelled under clause (1) or clause (2), the holder thereof shall at once declare to the Collector the stock of intoxicating liquor or articles containing such liquor lying with him, and dispose of such stock to such authorised person as the Collector may specify.

20. Penalty for the breach of conditions of licence: In the event of any breach by the holder of a licence or by his servant or by any one acting with his express or implied permission on his behalf, of any of the terms and conditions of the licence, such holder shall, in addition to the cancellation or suspension of the licence, and in addition to any other punishment to which he may be liable under this Order, be punishable with imprisonment [for life or with imprisonment which is not less than two years] and with fine, unless he proves that he exercised all due diligence to prevent such

CHAPTER IV ESTABLISHMENT AND CONTROL

21. Appointment of officers: The Provincial Government may, from time to time, by notification in the official Gazette:

(a) appoint an officer to exercise all the powers of Collector under this Order in any area specified in the notification and to have the control of the administration of the provisions of this Order in such area;

(b) appoint officers with such designations, powers and duties as the Provincial Government may think fit to assist the Collector or other Prohibition Officer; and

(c) delegate to any Prohibition Officer all or any of its powers under this Order.

CHAPTER V

POWERS, DUTIES AND PROCEDURE OF OFFICERS, ETC.

22. Issue of search warrants: (1) If any Collector, Prohibition Officer or Magistrate, upon information obtained and after such inquiry as he thinks necessary, has reason to believe that an offence under Article 3, Article 4, Article 8 or Article 11 has been committed, he may issue a warrant for the search for any intoxicant, material, still, utensil, implement or apparatus in respect of which the alleged offence has been committed.

(2) Any person has been entrusted with the execution of such a warrant may detain and search and, if he thinks proper, but subject to the provision of clause (1) of Article 12, arrest any person found in the place searched, if he has reason to believe such person to be guilty of an offence under Article 3, Article 4, Article 8 or Article 11.

23. Powers of Prohibition Officer: In addition to the powers conferred on him by the foregoing provisions of this Order, a Prohibition Officer shall have all the powers conferred on the officer-in-charge of a police station while conducting an investigation into a cognizable offence.

24. Enhanced punishment for certain offences after previous conviction: Whoever, having been convicted by a Court of an offence shall, in addition to the punishment provided for that offence, awarded for every such subsequent offence the punishment of imprisonment provided for that offence.

25. Punishment for attempt to commit offence punishable under this Order: Whoever attempts to commit an offence punishable under this Order or to cause such an offence to be committed, and in such attempt does any act towards the commission of the offence, shall be punished, in the Case of an offence punishable under Article 8, with rigorous imprisonment for a term which may extend to two years, and in other cases, with imprisonment for a term which may extend to one-half of the longest term provided for that offence, or with such whipping or fine as is provided for the offence or with any two of or all, the punishments.

26. Application of certain provisions Of the Pakistan Penal Code (Act XLV of 1860): (1) Unless otherwise expressly provided in this Order, the provisions of Sections 34 to 38 of Chapter II, Sections 63 to 72 of Chapter III, and Chapters V and V-A of the Pakistan Penal Code (Act XLV of 1860), shall apply, mutatis mutandis, in respect of offences under this Order.

(2) Whoever is guilty of the abetment of an offence liable to 'Hadd' under this Order shall be liable to the punishment provided for such offence as 'Tazir'

27. Application of the Code of Criminal Procedure, 1898 (Act V of 1898): Unless otherwise expressly provided in this Order, the provisions of the Code of Criminal Procedure, 1898 (Act V of 1898), hereinafter referred to as the said Code, shall apply mutatis mutandis in respect of cases under this Order:

Provided that, if it appears in evidence that the offender has committed a different offence under any other law, he may, if the Court is competent to try that offence and to award punishment therefore, be convicted and punished for that offence:

Provided further that an offence punishable under Article 8 shall be triable by a Court of Session and not by a Magistrate authorised under Section 30 of the said Code and on appeal from an order under that Article or from an order under any other provision of this Order which imposes a sentence of imprisonment for a term exceeding two years shall lie to the Federal Shariat Court:

Provided further that a trial by a Court of Session under this Order shall ordinarily be held at the headquarters of the Tehsil in which the offence is alleged to have been committed.

(2) The provisions of the said Code relating to the confirmation of the sentence of death shall apply, mutates mutandis to the confirmation of a sentence under this Order.

(3) The provisions of sub-section (3) of Section 391 or Section 393 of the said Code shall not apply in respect of the punishment of whipping awarded under this Order.

(4) The provisions of Chapter XXIX of the said Code shall not apply in respect of the punishment awarded under Article 8.

28. Indemnity: No suit, prosecution or other legal proceeding shall lie against a Provincial Government, a Police Officer, a Prohibition Officer or any other officer in respect of anything which is in good faith done under this Order or the rules made there under.

29. Order to override other Laws: This Order shall have effect notwithstanding anything contained in any other law for the time being in force.

30. Presiding Officer of Court to be a Muslim: This Presiding Officer of the Court by which a case is tried or an appeal is heard, under this Order shall be a Muslim:

Provided that if the accused is a non-Muslim, the Presiding Officer may be a non-Muslim.

31. Power to make Rules: (1) The Provincial Government may, by notification in the official Gazette, make rules for the purpose of carrying into effect the provisions of this Order.

(2) In particular and without prejudice to the generality of the foregoing provisions, the Provincial Government may make rules:-

- (a) for the issue of licences and the enforcement of the condition thereof;
- (b) prescribing the powers to be exercised and the duties to be performed by Prohibition Officers in furtherance of the object of this Order;
- (c) determining the local jurisdiction of Prohibition Officers in regard to inquiries and investigations;
- (d) authorising any officer to exercise any power or perform any duty under this Order;
- (e) regulating the delegation by the Collector or other Prohibition Officers of any powers conferred on them by or under this Order;
- (f) declaring in what cases or classes of cases and to what authorities appeals shall lie from orders, whether original or appellate, passed by an authority other than a Court under this Order or under any rules made there under or by what authorities such order may be revised, and prescribing the time and manner of presenting appeals and procedure for dealing therewith;

(g) for the disposal of articles confiscated and of the proceeds thereof; and

(h) examination of persons referred to in Article 12.

32. Saving: Nothing in this Order shall be deemed to apply to cases pending before any Court immediately before the commencement of this Order or to offences committed before such commencement.

33. Repeal: The following laws are hereby repealed, namely:-

(a) the Prohibition Act, 1977 (XXIV of 1977);

(b) the Baluchistan Prohibition Ordinance, 1978 (Baluchistan Ordinance No. XI of 1978);

(c) the North-West Frontier Province Prohibition Ordinance, 1978 (N.-W.F.P. Ordinance No. VI of 1978);

(d) the Punjab Prohibition Ordinance, 1978 (Punjab Ordinance No. VI of 1978); and

(e) the Sind Prohibition Ordinance, 1978 (Sind Ordinance No. IV of 1978). –

THE SCHEDULE

1. The leaves, small stalks and flowering or fruiting tops of the Indian hemp plant (*Cannabis Sativa L.*) including all forms known as Bhang, Siddhi or Ganga.
2. Charas, that is, the resin obtained from the Indian hemp plant, which has not been submitted to any manipulations other than those necessary for packing or transport.
3. Any mixture, with or without natural materials, of any of the articles mentioned in entries 1 and 2, or any drink prepared there from.
4. Opium and opium derivatives as defined in the Dangerous Drugs Act, 1930 (II of 1930).
5. Coca leaf and coca derivatives as defined in the aforesaid Act.
6. Hashish.