

THE PROHIBITION (ENFORCEMENT OF HADD) ORDER, 1979

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THE SCHEDULE

THE PROHIBITION (ENFORCEMENT OF HADD) ORDER, 1979

(PRESIDENT'S ORDER NO. IV OF 1979)

[19 February, 1979]

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 1 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 tenth day of February, 1979.

2. Definitions. In this order, unless there is any thing repugnant in the subject or context,-

- (a) "adult" means a person who has attained the age of eighteen years or puberty.
- (b) "authorised medical officer" means a medical officer, whoever 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, pt 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 of function of a Collector under this Order;
- (f) "hadd" means punishment ordained by the Holy Quran or Sunnah;
- (g) "intoxicant" means an article specified in the Schedule and includes 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 re-distillation 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, colored or flavored by mixing any material therewith;
- (n) "Sale" or "selling" includes any transfer by way of gift or otherwise;
- (o) "tazir" 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 in his immediate possession;

Shall be punishable with imprisonment of either description for a term which may extend to five years and with whipping not exceeding thirty stripes, and shall also be liable to fine.

(2) Whoever---

- (i) imports, exports, transports, manufactures, or traffics in, opium or coca leaf or opium or coca derivatives; or
- (ii) finances the import, export, transport, manufacture, or trafficking of, opium or coca leaf or opium or coca derivatives;

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.

Court Decisions

Overriding effect of the act - Control of Narcotic Substances Act, 1997 is the latest and more exhaustive law on the subject of narcotic as compared to prohibition (Enforcement of Hadd) Order, 1979 and by virtue of its S. 76 read with S. 74 its provision shall have effect notwithstanding any thing contained in any other law for the time being in force in clouding the prohibition (Enforcement of Hadd) Order, 1979. 2000 P. Cr. L. J 1222

Bail - Offences with which the accused was charged did not fall within the prohibitory clause of S.497(1), Cr. P. C. . - Accused had remained in jail for about one year and the case had not proceeded so far and even the charge had not been framed - Record did not show that the accused was likely to abscond, tamper with prosecution evidence or repeat the offence after his release on bail - Accused was not a

previous convict - Delay in receipt of Chemical Examiner's Report of the contraband by itself was not a bar to the grant of bail when reasonable grounds existed for believing that the accused was not connected with the commission of the offence - Non-mention by the counsel of accused while filing bail application before High Court about filing of another application for bail before the Trial Court, would not itself be a ground to penalize the accused for the fault committed by his counsel in case the accused had been found entitled to grant of bail - Despite earlier information respectable persons of the locality were not associated in recovery proceedings carried out against the accused - Allegations against accused, thus, needed further inquiry. PLD 2002 S.C. 590

PLD 1990 Lah.249; PLD 1987 SC 13; 1995 P. Cr. L. J 440; 1997 MLD 2094; PLD 1972 SC 227; 1989 P. Cr. L. J 1334; 1997 SCMR 947; 1998 P. Cr. L. J. 1444; 1998 P. Cr. L. J. 1540; 999 MLD 474; 1998 P. Cr. L. J 664; 1981 P. Cr. L. J 393; PLD 1992 Quetta 67; PLD 1963 SC 1; PLD 1990 SC 1092; 1998 SCMR 485 and PLD 1997 SC 545 ref.

Appreciation of evidence - Courts are not supposed to convict any accused by relying upon the statements of professional witnesses or confession of the accused if such pieces of evidence cannot be corroborated by report of the Expert or when such report is not made available by the prosecution. 1996 P. Cr. L J 1153

Non-production of recovered narcotic in Court and not obtaining of opinion of Chemical Expert after analysis on the nature of such substance---*Effect---No conviction could be recorded against accused in circumstances. 1999 M L D 3105

Burden of proof - Prosecution led no evidence in support of its case and relied upon S. 26, Control of Narcotic Substances Ordinance, 1996 to maintain that it was the duty of accused to demolish the case of prosecution - Trial Court convicted accused as he did not lead any evidence to disprove recoveries allegedly effected from him - primary duty of prosecution was to prove its case beyond reasonable doubt and burden of prosecution would not be displaced under the presumption embodied in S. 26, Control of Narcotic Substances Ordinance, 1996 which lays down that once prosecution had led evidence in support of its case, it was then that accused would be required to disprove the same 26, Control of Narcotics Substance Act, 1996 had not absolved prosecution of its duty to prove its case beyond doubt - Conviction and sentence awarded to accused by Trial Court were set aside and case was remanded to decided the same afresh accordingly. 2000 P.Cr.L.J 858

4. Owning 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 to a 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 heroin, 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.

Recovery of heroin and opium from the accused had been proved on record—Policy recovery witnesses had duly corroborated each other—Hostile witness had also admitted categorically and unequivocally that the recovery memo. Was got signed by him without any protest on his part—Provisions of S. 103, Cr.P.C. were adhered to and minor lapses on the part of the police could be ignored which had caused no prejudice to the accused—production of entire recovered narcotics in the court was not a mandatory requirement—Certificate for destroying the recovered heroin and opium had been produced in the court to substantiate the factum of recovery—Impugned judgment based on forthright and credible evidence did not call for any interference—appeal was dismissed in circumstances. **PLD 2004 SC 334**

Hostile witness—Statement of a hostile witness cannot be discarded altogether and can be taken into consideration subject to availability of corroboration—court is duty bound to consider such evidence and determine as to whether any part of it is worthy of belief if examined in the light of other incriminating material and evidence available on record. **PLD 2004 SC 334**

Police witnesses—Statement of an official witness in the absence of any serious enmity can be relied upon if it remains unshattered. **PLD 2004 SC 334**

Sentence--Held: No cognizance of an offence u/A. 4 of the prohibition Order can be taken u/A. 16 Thereof, if the offence is committed not in a public place-It could be done only after obtaining a warrant u/A. 22 of the Order-Further held: While searching a place like the house in question it is mandatory for police officer u/Section 103 Cr. P. C. . to associate two respectable inhabitants of the locality as witnesses to the search about to be conducted. 1995 PLR 806

Bail - Offences with which the accused was charged did not fall within the prohibitory clause of S.497(1), Cr. P. C. . - Accused had remained in jail for about one year and the case had not proceeded so far and even the charge had not been framed - Record did not show that the accused was likely to abscond, tamper with prosecution evidence or repeat the offence after his release on bail - Accused was not a previous convict - Delay in receipt of Chemical Examiner's Report of the contraband by itself was not a bar to the grant of bail when reasonable grounds existed for believing that the accused was not connected with the commission of the offence - Non-mention by the counsel of accused while filing bail application before High Court about filing of another application for bail before the Trial Court, would not itself be a ground to penalize the accused for the fault committed by his counsel in case the accused had been found entitled to grant of bail - Despite earlier information respectable persons of the locality were not associated in recovery proceedings carried out against the accused - Allegations against accused, thus, needed further inquiry. PLD 2002 S.C. 590

PLD 1990 Lah.249; PLD 1987 SC 13; 1995 P. Cr. L. J 440; 1997 MLD 2094; PLD 1972 SC 227; 1989 P. Cr. L. J 1334; 1997 SCMR 947; 1998 P. Cr. L. J. 1444; 1998 P. Cr. L. J. 1540; 999 MLD 474; 1998 P. Cr. L. J 664; 1981 P. Cr. L. J 393; PLD 1992 Quetta 67; PLD 1963 SC 1; PLD 1990 SC 1092; 1998 SCMR 485 and PLD 1997 SC 545 ref.

Appreciation of evidence - Record did not disclose any investigation having been made in the case - Accused had neither been arrested from the spot nor was identified by anyone to show that he was driving the car from which heroin was alleged to have been recovered after a chase by the police - *Prosecution witness who had claimed the said car to be owned by him was bound to be made an accused by the Investigating Officer on account of recovery of heroin from it and he could not be treated innocent by the police on the basis of statements recorded under S.161 or 164, Cr. P. C. . unless the same had been proved in the Court to have been based on truth - Prosecution witnesses having not spoken the truth, their statements against the accused could not be relied upon - Chemical Examiner's report was neither submitted alongwith the charge *sheet nor was ever produced by the prosecution at any stage during the Court proceedings and on account of its non-availability with the Court framing of charge on the basis of .presumption was invalid irrespective of the fact that the accused pleaded guilty or not guilty - In the absence of Chemical Examiner's report heroin could not be said to have been recovered from the car allegedly in possession of the accused - Accused was

acquitted in circumstances. 1996 P. Cr. L J 1153

Courts are not supposed to convict any accused by relying upon the statements of professional witnesses or confession of the accused if such pieces of evidence cannot be corroborated by report of the Expert or when such report is not made available by the prosecution. 1996 P. Cr. L J 1153

Burden of proof - Prosecution led no evidence in support of its case and relied upon S. 26, Control of Narcotic Substances Ordinance, 1996 to maintain that it was the duty of accused to demolish the case of prosecution - Trial Court convicted accused as he did not lead any evidence to disprove recoveries allegedly effected from him - primary duty of prosecution was to prove its case beyond reasonable doubt and burden of prosecution would not be displaced under the presumption embodied in S. 26, Control of Narcotic Substances Ordinance, 1996 which lays down that once prosecution had led evidence in support of its case, it was then that accused would be required to disprove the same 26, Control of Narcotics Substance Act, 1996 had not absolved prosecution of its duty to prove its case beyond doubt - Conviction and sentence awarded to accused by Trial Court were set aside and case was remanded to decided the same afresh accordingly. 2000 P.Cr.L.J 858

Control of Narcotic Substances Act, 1997 is the latest and more exhaustive law on the subject of narcotic as compared to prohibition (Enforcement of Hadd) Order, 1979 and by virtue of its S. 76 read with S. 74 its provision shall have effect notwithstanding any thing contained in any other law for the time being in force in clouding the prohibition (Enforcement of Hadd) Order, 1979. 2000 P. Cr. L. J 1222

Non-production of recovered narcotic in Court and not obtaining of opinion of Chemical Expert after analysis on the nature of such substance--*Effect---No conviction could be recorded against accused in circumstances. 1999 M L D 3105

5. Article 3 or Article 4 not 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 licence issued thereunder.

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:

Provided that punishment shall not be executed unless it is confirmed by Court to which an appeal from the order of conviction lies; and, until the punishment is confirmed and executed, the convict shall, subject to the Provisions of the Code of Criminal Procedure, 1898. Relating to the grant of bail or suspension of sentence, be dealt with in the same manner as if sentenced to simple imprisonment.

Court Decisions

Police may register a case under Section 8 of Order alongwith or without any other Section, the Magistrate should not forward the case to the Sessions Judge unless he finds it is covered by the provision of Sections 8 and 9 of the Order and the Hadd sentence is possible to be passed on the facts on the face of the record. PSC 1984 FSC 118

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 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 accuse having committed the offence of drinking liable to hadd.

Explanation:-- In this Article, tazkiyah al-shuhood means the mode of inquiry adopted by a court to satisfy it self 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 clause (1), the Court may order retrial in accordance with the Code of Criminal procedure, 1898.

11. Whoever--

(a) Drinking liable to tazir.—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 a

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 suspicion of violation of Article 8 or Article 11.—(1) Not police officer shall detain or arrest any person on suspicion that he has taken an intoxicant in violation of Article 8 or Article 11 unless he has asked such person to accompany him to an authorized 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 intoxication.

(2) Whoever contravenes the provisions of clause (1) shall be punishable with imprisonment for a term which may extend to six month, 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 under this order has been committed but the offender is not known or cannot be found, or when anything liable to confiscation under the 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 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, of prohibition officer.

Court Decisions

Recovery of 70 grams heroin - No cognizance of an offence u/A. 4 of the prohibition Order can be taken u/A. 16 Thereof, if the offence is

committed not in a public place-It could be done only after obtaining a warrant u/A. 22 of the Order-Further held: While searching a place like the house in question it is mandatory for police officer u/Section 103 Cr. P. C. . to associate two respectable inhabitants of the locality as witnesses to the search about to be conducted. 1995 PLR 806

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.

Court Decisions

Complainant had produced his evidence but process had not yet been issued by the Court against the accused - On one date the complainant and his counsel both were absent when the case was called, but the Court did not consider it appropriate to dismiss the complaint in default - Case was then transferred to the Sessions Court which dismissed the same for non-prosecution by the impugned order - Validity - Not imperative upon the Court to dismiss a complaint before the issuance of process, for non-appearance of complainant or his counsel - Complaint contained cross-version of a case in which the complainant was facing trial in the Special Court constituted under the Anti-Terrorism Act, 1997 - Complainant had examined his witnesses and if he was compelled to file a fresh complaint and examine the witnesses afresh, it would not only expose him to inconvenience but would also protract the proceedings unnecessarily - Impugned order having no legal compulsion, would not advance the cause of justice and thus same was held to be improper in the exercise of revisional jurisdiction - Impugned order was consequently set aside and the case was remitted to the Sessions Court with the direction to proceed in accordance with law - Revision petition was allowed accordingly. PLD 2002 Lah.341
PLD 1968 Lah.570 ref.

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 a 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 expresser 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 the 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 one acting with his express or implied permission on his behalf, of any of the terms and conditions 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 breach, and any such person who commits any breach shall, whether he acts with or without the permission of the holder of the licence, also be liable to the same punishment.

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 a 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 PROVEDURE OF OFFICERS, ETC.

22. Issue of search war-rants.—(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 intoxicant, material, still, utensil, implement or apparatus in respect of which the alleged offence has been committed.

(2) Any person who has been entrusted with the execution of such a warrant may detain and search and, if he thinks, proper, but subject to the Provisions 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 punishable under this order, shall be guilty of that offence shall, in addition to the punishment provided of that offence, be awarder 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 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 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.- (1) Unless otherwise expressly provided in this order, the Provisions of sections 34 to 38 of Chapter II, section 63 to 72 of Chapter III, and Chapters V and VA of the Pakistan penal Code shall apply, mutatis mutandis, in respect of offences under this order.
(2) Whoever is guilty of he abetment of an offence liable to hadd under this order be liable to the punishment provided for such offence as tazir.

27. Application of the Code of Criminal procedure, 1898.—(1) Unless otherwise expressly provided in this provisions of the code of Criminal procedure, 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 thereof, 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 an appeal from an order under that Article or from and 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, mutatis mutandis, to the confirmation of a sentence under this order.

(3) The provisions of sub-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 prohibition officer or any other officer in respect of anything which is in good faith done under this order or the rules made thereunder.

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

30. Presiding officer of court to be a Muslim.—The 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 provision of this Order.

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

- (a) for the issue of licences and the enforcement of the conditions thereof;
- (b) prescribing the powers to be exercised and the duties to be performed by prohibition officers in furtherance of the objects 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 thereunder, or by what authorities such orders may be revised, and prescribing the time and manner of presenting appeals, and procedure for dealing there with;
- (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;
- (b) the Baluchistan prohibition ordinance, 1978;
- (c) the North-west frontier province prohibition ordinance, 1978;
- (d) the Punjab prohibition ordinance, 1978: and
- (e) the Sind prohibition Ordinance, 1978;

THE SCHEDULE

[See Article 2 (g)]

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 ganja).
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 neutral materials, of any of the articles mentioned in entries 1 and 2, or any drink prepared therefrom.

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.