



THE ENEMY AGENTS ORDINANCE, 1943



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THE ENEMY AGENTS ORDINANCE, 1943.

¹ORDINANCE 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 (26 Geo 5,c.2.), the Governor-General is pleased to make and promulgate the following Ordinance :—

1. Short title, extent and commencement.—(1) This Ordinance may be called the Enemy Agents Ordinance, 1943.

²[(2) It extends to the whole of Pakistan and applies also—

(i) to all citizens of Pakistan and persons in the service of Government wherever they maybe;
and

(ii) to persons on board any ship or aircraft registered in Pakistan.]

(3) It shall come into force at once.

¹The Ordinance has been applied to—

(i) Baluchistan, see Notification No. 20-W, dated the 16th February, 1943, Gazette of India, 1943, Pt. I, p. 217;

(ii) tribal areas beyond the western and northern boundaries of the North-West Frontier Province subject to modifications, see Notification No. 21-W, dated the 16th February 1943, Gazette of India, 1943, Pt. I, p. 217;

(iii) such of the Baluch tribal areas beyond the western border of the Dera Ghazi Khan District of the Punjab as are not included in the Baluchistan tribal areas and subject to such amendments as the ordinance is for the time being subject in the Provinces, etc., see Notification No. 24-W, dated the 20th February, 1943, Gazette of India, 1943, Pt. I, p. 239. The Ordinance has been extended to the Leased Areas of Baluchistan by the Leased Areas (Laws) Order, 1950 (G. G. O. 3 of 1950).

²Subs. by the Central Laws (Statute Reform) Ordinance, 1960 (21 of 1960), s. 3 and 2nd Sch. (with effect from the 14th October, 1955), for the original sub-section (2), as amended by A. O., 1949 and the Federal Laws (Revision and Declaration) Act, 1951 (26 of 1951).

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

(a) “enemy” means any State at war with ¹[Pakistan];

(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.

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 naval, military or air operations of the enemy or to impede the naval, military or air operations of ²[the Armed Forces of Pakistan or the forces of a foreign power allied with Pakistan ³*
* or to endanger life], shall be punishable with death.

4. Offences triable under this Ordinance.—(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 ([V of 1898](#)), be charged at one trial, and the procedure of this Ordinance shall apply to the trial of any such other offence.

¹Subs. by Act 26 of 1951, s. 4 and 3rd Sch., for “His Majesty”.

²The original words “His Majesty’s Forces or to endanger life” have been amended by the Enemy Agents (Amdt.) Ordinance, 1944 (11 of 1944), s. 2 and Act 26 of 1951, s. 4 and 3rd Sch., to read as above.

³The Words “or of any Acceding State” omitted by the Federal Laws (Revision and Declaration) Ordinance, 1981 (27 of 1981), s.3 and Sch., II.

5. Appointment and jurisdiction of Special Judge.— (1) For the trial of offences punishable under section 3, the ¹[Federal Government may appoint as Special Judges, having jurisdiction throughout ²[Pakistan], 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 ([V of 1898](#)).

(2) A Special Judge shall try any offence punishable under section 3 which the ¹[Federal 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 ¹[Federal Government].

6. Transfer of cases from one Special Judge to another.— (1) The ¹[Federal Government] 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, 1898 ([V of 1898](#)), when a case is transferred under subsection (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 Judge.— (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 ([V of 1898](#)), 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, 1898 ([V of 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.

¹Subs. by F.A.O., 1975, Art.2 and Table, for "Central Government".

²Subs. by the Central Laws (Statute Reform) Ordinance, 1960 (21 of 1960), s. 3 and 2nd Sch. (with effect from the 14th October, 1955), for "the Provinces and the Capital of the Federation" which had been subs. by A. O., 1949 for "British India".