

THE CRIMINAL LAW AMENDMENT (SPECIAL COURT) ACT,
1976

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THE CRIMINAL LAW AMENDMENT (SPECIAL COURT) ACT, 1976

'ACT No. XVII OF 1976

An Act to provide for the trial by a Special Court of certain offences

WHEREAS It is expedient to provide for the trial by a special Court of certain offences affecting the security, integrity or sovereignty of Pakistan or any part thereof, including offences of high treason, and for matters connected therewith;

It is hereby enacted as follows:—

1. Short title, extent and commencement.—(1) This Act may be called the Criminal Law Amendment (Special Court) Act, 1976.

(2) It extends to the whole of Pakistan.

(3) It shall come into force at once.

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

(a) "Code" means the Code of Criminal Procedure, 1898 (Act V of 1898);

(b) "Special Court" means 7[a] court set up under section 4.

3. Certain offences triable by Special Court—(1) Any offence punishable under sections 121, 121A, 122, 123 and 123A of the Pakistan Penal Code (Act XLV of 1860), and any offence punishable under the High Treason (Punishment) Act, 1973 (LX VIII of 1973), including an offence of conspiracy to commit any such offence, whether committed before or after the commencement of this Act, shall be tried by *[a Special Court] in accordance with the provisions of this Act.

(2) No court other than the Special Court shall try an offence which is triable by the Special Court under sub-section (1).

(3) If, in the course of a trial before the Special Court, the Court is of opinion that an accused before it has committed or appears to have committed any offence other than an offence referred to in sub-section (1), the Special Court shall record such opinion and refer such accused for the trial of such other offence to a court having jurisdiction to try the offence.

4. Special Court—(1) "[For the trial of any of the offences specified in sub-section (1) of section 3, the Federal Government may, by notification in the official Gazette, set up one or more Special Courts] composed of three persons each of whom is a Judge of a High Court, and shall nominate one of the said persons to be the President of the Special Court.

"Ror Statement of Objects and Reasons, see Gaz. of P., 1976, Ext., Pt. II, pp. 349-350.

?Subs. by the Criminal Law Amendment (Special Court) (Amdt) Ordinance, 1977 (40 of 1977), s. 2, for "the Special Court".

4Subs. ibid., s. 4, for certain words (w.e.f. 14-9-1977).

'((1A) The setting up of a Special Court under sub-section (1) shall not be deemed to affect the jurisdiction of any other Special Court in respect of the trial of a case pending before such other Special Court immediately before the setting up of the Special Court.]

(2) If any member of the Special Court through death, illness or any other reason is unable to continue to perform his functions, the Federal Government may, by notification in the official Gazette, declare the office of such member to be vacant and appoint thereto another person qualified to hold the office.

(3) If, in the course of a trial, any member of the Special Court is, for any reason, unable to attend any sitting thereof, the trial may continue before the other two members.

(4) The Special Court shall not merely by reason of any change in its membership or the absence of any of its members from any sitting be bound to recall and rehear any witness who has already given any evidence and may act on the evidence already given or produced before it.

(5) In the event of any difference of opinion among the members of the Special Court, the opinion of the majority shall prevail and the decision of the Special Court shall be expressed in terms of the views of the majority.

5. Commencement of proceedings—(1) The Federal Government shall forward to the Special Court, on behalf of the prosecution, a complaint in the form of a statement of the case to be tried by the Court, together with a list of the accused persons, formal charges of offences alleged to have been committed by each one of them and a list of witnesses intended to be produced in support of each charge.

(2) For the purpose of taking cognizance of a case under this Act no other complaint would be necessary under any other law.

(3) The submission of a complaint or a list of *[accused persons or] witnesses or formal charges under sub-section (1) shall not preclude—

(a) The Federal Government from submitting an amended or additional statement of the case or charge at any time before judgment is pronounced, or

(b) The Federal Government or the prosecution from submitting additional names of *[accused persons or] witnesses at any subsequent stage of the prosecution evidence in the case.

6. Powers and procedure of Special Court — (1) The Special Court shall have, in respect of a case triable by it, all the powers which a High Court has in relation to trial before it under the Code, but shall, notwithstanding anything contained in the Code, proceed with the trial in the following manner, namely:—

3[(a) as soon as the accused appear or are brought before the Special Court, the formal charges referred to in section 5 shall be read and explained to them, and each one of them shall be asked whether he is guilty;]

'New sub-section (1A) ins. by the Criminal Law Amendment (Special Court) (Amdt.) Ord. 1977(40 of 1977)

?Ins. by the Criminal Law Amendment (Special Court) (Amdt.) Act, 1976 (41 of 1976), s. 2.

3Subs. by the Criminal Law Amendment (Special Court) (Amdt.) Act, 1976 (66 of 1976), s. 2, for the origi

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if the accused pleads guilty, the Special Court shall record the plea, and may in its discretion convict him thereon;

if the accused pleads not guilty or refuses to plead, or claims to be tried, the Special Court shall proceed to take all such evidence as may be produced in support of the prosecution;

'Explanation.— For the purposes of this clause and clause (cc), an accused who refuses to plead or claims to be tried shall be deemed to be pleading not

guilty].

if any accused is added to the list of accused persons referred to in sub-section (1) of section 5 after the examination of any witness and if such accused pleads not guilty or refuses to plead, or claims to be tried, or is not convicted by the Special Court on his plea of guilt (if made), the Special Court may recall and rehear all such witnesses whose evidence in its opinion affects such accused;]

on the close of the evidence of the prosecution, the Special Court shall examine the accused and record his statement as required by section 342 of the Code and, if the accused puts in any written statement, the Special Court shall file it with the record;

after such statement of the accused as is referred to in clause (d) is recorded, the Special Court shall call upon the accused to enter upon his defence, and shall examine all such witnesses as may be produced by the accused or called at the instance of the accused:

Provided that the Special Court may refuse to examine or call any such witness, if the Special Court is satisfied that the accused intends to call or examine such witness to cause vexation or delay or to defeat the ends of justice;

after all the evidence referred to in the foregoing clauses is recorded, the Special Court shall hear the prosecutor and defence counsel, and on conclusion of the same shall proceed to pronounce its judgment;

the persons mentioned in the list of accused persons referred to in >* * * section 5 and the offences with which they are charged shall be tried together;

the proceedings of the special Court shall be recorded under its direct supervision:

Provided that, if the special Court so directs, the evidence of any witness may be taken down in shorthand or typescript by a person specially appointed for the purpose; and the transcript of the shorthand or the typescript with necessary corrections shall form part of the record; and

'Ins. by the Criminal Law Amendment (Special Court) (Amdt.) Act, 1976 (66 of 1976), s. 2.

New clause (cc) ins. by the Criminal Law Amendment (Special Court) (Amdt.) Act, 1976 (41 of 1976), s. 3.

>The words "sub-section (1) of" omitted ibid., s. 3.

(i) all orders and proceedings and the evidence of each witness shall be signed by at least two members of the Special Court and the final judgment shall be signed by each of the three members.

(2) The Special Court shall have the power to punish any person who obstructs or abuses its process or disobeys any of its orders or directions, or does anything which tends to prejudice the case of a party before it, or tends to bring it or any of its members into hatred or contempt, or does anything which, by law, constitutes contempt of court, with simple imprisonment for a term which may extend to six months or with fine which may extend to two hundred rupees, or with both.

7. Place of sitting. The Special court shall hold its sittings at such place or places as the Federal Government may appoint.

8. Proceedings to be open. Subject to any restriction imposed by the Special Court, its proceedings shall be open to the public but '[the Special Court may prohibit the publication of the whole or any part of its proceedings.]

9. Restriction of adjournments. No trial before the Special Court shall be adjourned for any purpose unless the Special Court is of opinion that the adjournment is necessary in the interests of justice and, in particular, no trial shall be adjourned by reason of the absence of any accused person due to illness, or if the absence of the accused or his counsel has been brought about by the accused person himself, or if the behaviour of the accused person prior to such absence has been, in the opinion of the Special Court, such as to impede the course of justice but, in any such case, the Special Court shall proceed with the trial after taking necessary steps to appoint an advocate to defend any such accused person.

10. Special rules of evidence.—(1) The Special Court 7[shall receive] in evidence,—

(a) any statement recorded by a Magistrate, being a statement made by any person who, at the time of the trial, is dead, or cannot be found or whose attendance cannot be procured without any amount of delay or expense which the Special Court considers unreasonable in the circumstances;

(b) any statement or confession of an accused person recorded by a Magistrate under the Code, whether before or after the registration of a case triable by the Special Court;

(c) any previous judgment of a Special Court constituted under the Suppression of Terrorist Activities (Special Court) Ordinance, 1974 (XVIII of 1974), or the Suppression of Terrorist Activities (Special Courts) Act, 1975 (XV of 1975); and

(d) 3[the judgment and findings of the Supreme Court] on a reference made to it under sub-section (2) of section 6 of the Political Parties Act, 1962 (III of 1962):

Provided that such statement, confession, judgment, "[finding] or decision is relevant to the trial or proceedings before it.

'Subs. by the Criminal Law Amendment (Special Court) (Amdt.) Act, 1977 (27 of 1977) s. 2, for certain words.
Subs. ibid., s.3, for "may receive".

3Subs. ibid., for "the conclusions arrived at by the Supreme Court in its decision".

4Subs. ibid., for "conclusion".

(2) No objection to any document or property seized in the course of the investigation being received or produced in evidence shall be entertained on any ground other than a ground affecting its admissibility under the Evidence Act, 1872 (I of 1872).

11. Provision for counsel—(1) The Federal Government may appoint one or more persons to conduct the prosecution in a case forwarded to the Special Court for trial and every such person shall be deemed to be a public prosecutor for the purposes of the Code.

(2) Where an accused person is not represented by counsel, the Special Court may, at any stage of the case, direct that a counsel, being any advocate selected by it after taking into consideration the views of the accused person, shall be engaged at the expense of the Federal Government to defend the accused person and may also determine the fees to be paid to such counsel.

12. Jurisdiction, etc., of Special Court not to be questioned. —(1) No Court shall entertain any plea as to the jurisdiction of the Special Court or as to the legality or propriety of anything done or purported to be done by the Special Court or order the release under section 491 or section 498 of the Code or any other law of any accused person in a case triable by the Special Court for so long as the Court is seized of the case.

(2) Save as provided in sub-section (3), no order, judgment or sentence of the Special Court shall be called in question in any manner whatsoever in or before any court or other authority.

(3) Any party aggrieved by the final judgment of the Special Court may prefer an appeal to the Supreme Court within thirty days of the passing of the judgment.

13. Act to override all other laws. The provisions of this Act shall have effect notwithstanding anything contained in the Code, the Evidence Act, 1872 (I of 1872), or any other law for the time being in force.

14. [Repeal.] Omitted by the Federal Laws (Revision and Declaration) Ordinance, 1981 (XXVII of 1981), s. 3 and Sch., IT.