

**THE AZAD GOVT. OF THE STATE OF JAMMU & KASHMIR.
LAW & PARLIAMENTARY AFFAIRS SECRETARIAT,
MUZAFFARABAD.**

Dated the 22nd October, 1979.

No. 5093/SL/79. The following Ordinance made by the President on the 20th day of October, 1979, is hereby published for general information.

(ORDINANCE CXLIX OF 1979)

AN

ORDINANCE

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 Quran and Sunna;

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 Quran and Sunnah ;

AND WHEREAS the President is satisfied that circumstances exist which render it necessary to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by sub-section (1) of Section 41 of the Azad Jammu and Kashmir Interim Constitution Act, 1974, the President is pleased to make and promulgate the following Ordinance :-

CHAPTER ---- 1

PRELIMINARY

1. **Short title, extent and commencement.**- (1) This Ordinance may be called the Prohibition (Enforcement of **Hadd**) Ordinance, 1979.
 - (2) It extends to the whole of Azad Jammu and Kashmir.
 - (3) It shall come into force at once.
2. **Definitions.**- In this Ordinance, unless there is anything repugnant in the subject or context ,-
 - (a) 'adult' means a person who has attained the age of eighteen years or puberty ;

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- (b) "authorised medical officer" means a medical officer, whosoever designated , authorised by the Government ;
- (c) "bottle" or "bottling" means to transfer intoxicating liquor from a cask or other vessel to a bottle, jar, flash, pot or similar receptable 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 Ordinance to exercise or perform all or any of the powers or functions of a Collector under this Ordinance;
- (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 Government may, by notification in the official Gazette, declare to be an intoxicant for the purposes of this Ordinance;
- (h) "intoxicating liquor" includes toddy, spirits of wine, wine, beer and all liquids consisting of or containing alcohol normally used for purposes of intoxication, but does not include a solid intoxicant even in 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 section 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 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. **Precipitation of manufacture, etc., of intoxicants.**- 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.
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.
5. **Section 3 or section 4 not to apply to certain acts.**- Nothing contained in section 3 or section 4 shall apply to any act done under, and in accordance with, the provisions of this Ordinance, 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 section ,-

- (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 the punishment shall not be executed unless it is confirmed by the 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 (Act V of 1898), relating to the grant of bail or suspension of sentence, be dealt with in the same, manner as if sentenced to simple imprisonment.

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**.

Explanation.- In this section, **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 resides 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 section 8 or for which proof in either of the forms mentioned in section 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 Stale Subject, is guilty of drinking; or
- (c) being a non-Muslim who is not a State Subject, 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 section 8 or section 11.**- (1) No Police officer shall detain or arrest any person on suspicion that he has taken an intoxicant in violation of section 8 or Section 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 sub-section (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 Ordinance who veraciously and unnecessarily delays forwarding to a Prohibition Officer any person arrested or any article seized under this Ordinance 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 Ordinance, the intoxicant, still, utensil, implement or apparatus in respect of 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 Ordinance, the Court deciding the case may order such confiscation despite the acquittal of the person charged.
- (2) When an offence under this Ordinance has been committed but the offender is not known or cannot be found, or when anything liable to confiscation under this Ordinance 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 incharge of the District or any other officer authorised by the 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 section 3 ;and
- (b) an offence punishable under section 4, section 8 or section 11, if committed at a public place.
- (2) No Court shall take cognizance of an offence punishable under –

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

CHAPTER-III

LICENCES FOR MEDICINAL OR SIMILAR OTHER PURPOSE

17. **Licences for bonafide medicinal or other purposes.**- The Government or, subject to the control of the 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 **bonafide** medicinal, scientific, industrial or similar other purposes; or
 - (b) for the export of any intoxicant or article containing intoxicating liquor.
18. **Form and conditions of licences.**- Every licence issued under this Ordinance shall –
- (a) be granted on payment of such fee, if any, for such period and on such conditions; and
 - (b) be in such form and contain such particulars, as the 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

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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 Ordinance; or
 - (b) the purpose for which the licence is granted ceases to exist.

(3) As and when any licence is cancelled under sub-section (1) or sub-section (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 Ordinance, be punishable with imprisonment of either description for a term which may extend to one year and with fine, unless he proves that he exercised all due diligence to prevent such breach ; and any person who commits any such 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 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 Ordinance in any area specified in the notification and to have the control of the administration of the provisions of this Ordinance in such area;
 - (b) appoint officers with such designations, powers and duties as the 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 Ordinance.

CHAPTER-V
POWERS, DUTIES AND PROCEDURE OF OFFICERS, ETC.

22. **Issue of search warrants.-** (1) If any Collector, Prohibition Officer, Magistrate or Qazi, upon information obtained and after such inquiry as he thinks necessary, has reason to believe that an offence under section 3, section 4, section 8, or section 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 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 sub-section (1) of section (2) arrest any person found in the place searched, if he has reason to believe such person to be guilty of an offence under section 3 section 4, section 8 or section 11.
23. **Powers of Prohibition Officer.-** In addition to the powers conferred on him by the foregoing provisions of this Ordinance, 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 Ordinance, shall be guilty of that offence shall, in addition to the punishment provided for that offence, be awarded for every such subsequent offence the punishment of Imprisonment provided for that offence.
25. **Punishment for attempt to commit offence punishable under Ordinance.-** Whoever attempts to commit an offence punishable under this Ordinance 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 section 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 Penal Code (Act XLV of 1860).**- (1) Unless otherwise expressly provided in this Ordinance, the provisions of sections 34 to 38 of Chapter II, sections 63 to 72 of Chapter III, and Chapters V and VA of the Penal Code (Act XLV of 1860), shall apply **mutatis mutandis**, in respect of offences under this Ordinance.
- (2) Whoever is guilty of the abetment of an offence liable to **hadd** under this Ordinance shall be liable to the punishment provided for such offences as **tazir**.
27. **Application of Code of Criminal Procedure, 1898 (Act V of 1898).**- (1) 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 Ordinance:
- 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.
- (2) 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 Ordinance.
- (3) The provisions of Chapter XXIX of the said Code shall not apply in respect of the punishment awarded under section 8.
28. **Indemnity.**- No suit, prosecution or other legal proceeding shall lie against the Government, a Police Officer, a Prohibition Officer or any other officer in respect of anything which is in good faith done under this Ordinance or the rules made thereunder.
29. **Ordinance to override other laws.**- This Ordinance shall have effect notwithstanding anything contained in any other law for the time being in force.
30. **Application of the Azad Jammu and Kashmir Islamic (Tazirati) Qawanin Nafaz Act, 1974.**- Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (Act V of 1898), the provisions of Section 23, Section 25, Section 28 and Section 31 of the Azad Jammu and Kashmir Islamic (Tazirati) Qawanin Nafaz Act, 1974 (Act XI of 1974)

shall apply, **mutatis mutandis**, in respect of cases under the Ordinance.

31. **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 Ordinance shall be a Muslim :

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

32. **Power to make rules.**- (1) The Government may, by notification in the official Gazette, make rules for the purpose of carrying into effect the provisions of this Ordinance.

(2) In particular and without prejudice to the generality of the foregoing provision, the 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 Ordinance ;
- (c) determining the local jurisdiction of Prohibition Officers in regard to inquiries and investigation ;
- (d) authorising any officer to exercise any power or perform any duty under this Ordinance ;
- (e) regulating the delegation by the Collectors or other prohibition Officers of any powers conferred on them by under this Ordinance ;
- (f) declaring in what cases or classes of cases and to what authorities appeals shall lie from orders, whether original appellate, passed by an authority other than a Court under this Ordinance 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 therewith;
- (g) for the disposal of articles confiscated and of the proceeds thereof; and
- (h) examination of persons referred to in section 12.

33. **Pending cases.**- Nothing in this Ordinance shall be deemed to apply to cases pending before any court immediately before the commencement of this Ordinance or to offences committed before such commencement.
34. **Savings.**- Notwithstanding any judgment, decree or order of any court including the High Court, every thing done, all actions taken, notifications issued, orders or appointments made, proceedings initiated, jurisdiction or powers exercised under the provisions of the Prohibition (Enforcement of Hadd) Ordinance, 1979 (Ordinance XXVII of 1979) or its succeeding Ordinances issued from time to time shall be deemed to have been validly done, taken, issued, made, initiated or exercised under this Ordinance.
35. **Repeal.**- The Azad Jammu & Kashmir Prohibition of the use of Intoxicants (Khamar) Act, 1973 is hereby repealed.

(THE SCHEDULE)

See Section 2 (f)

1. The leaves, small stalks and flowerings 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 natural materials, of any or the articles mentioned in entries 1 and 2, or any drink prepared there from.
4. Opium and opium derivatives and defined in the Dangerous Drugs Act, 1930 (II of 1930).
5. Coca leaf and coca derivatives and defined in the aforesaid Act,
6. Hashish.

(Brigadier Mohammad Hayat Khan)
President,
Azad Jammu and Kashmir,

Sd/- (Khalil Ahmed Qureshi)
Secretary Law