

¹THE BANGLADESH COLLABORATORS (SPECIAL TRIBUNALS) ORDER, 1972

PRESIDENT'S ORDER NO. 8 OF 1972

[24th January, 1972]

Whereas certain persons, individually or as members of organisations, directly or indirectly, have been collaborators of the Pakistan Armed forces, which had illegally occupied Bangladesh by brute force, and have aided or abetted the Pakistan Armed forces of occupation in committing genocide and crimes against humanity and in committing atrocities against men, women, and children and against the person, property and honour of the civilian population of Bangladesh and have otherwise aided or co-operated with or acted in the interest of the Pakistan Armed forces of occupation or contributed by any act, word or sign towards maintaining, sustaining, strengthening, supporting or furthering the illegal occupation of Bangladesh by the Pakistan Armed forces or have waged war or aided or abetted in waging war against the People's Republic of Bangladesh;

And whereas such collaboration contributed towards the perpetration of a reign of terror and the commission of crimes against humanity on a scale which has horrified the moral consciences of the people of Bangladesh and of right-thinking people through the world;

And whereas it is imperative that such persons should be dealt with effectively and be adequately punished in accordance with the due process of law;

¹ The entry of the Bangladesh Collaborators (Special Tribunals) Order, 1972 (P.O. No. 8 of 1972) was crossed-out from the FIRST SCHEDULE of the Constitution by the Constitution (Fifth Amendment) Act, 1979 (Act 1 of 1979) and the Constitution (Fifth Amendment) Act, 1979 was declared void and non est by the Appellate Division of the Supreme Court of Bangladesh in Civil Petition for leave to Appeal Numbers 1044 and 1045 of 2009, and subsequently the entry "The Bangladesh Collaborators (Special Tribunals) Order, 1972 (P.O. No. 8 of 1972)" was inserted in the FIRST SCHEDULE of the Constitution by section 47 of the Constitution (Fifteenth Amendment) Act, 2011 (Act 14 of 2011).

And whereas it is expedient to provide for the setting up of Special Tribunals for expeditious and fair trial of the offences committed by such persons;

Now therefore, in pursuance of the Proclamation of Independence of Bangladesh, reads with the Provisional Constitution of Bangladesh Order, 1972 and in exercise of all powers enabling him in that behalf, the President is, pleased to make the following Order :

1. (1) This Order may be called the Bangladesh Collaborators (Special Tribunals) Order, 1972.

(2) It extends to the whole of Bangladesh.

(3) It shall come into force at once and shall be deemed to have taken effect on the 26th day of march, 1971.

2. In this Order,—

- (a) “Code” means the Code of Criminal Procedure, 1898 (Act V of 1898);
- (b) “Collaborator” means a person who has—
 - (i) participated with or aided, or abetted the occupation army in maintaining, sustaining, strengthening, supporting or furthering the illegal occupation of Bangladesh by such army;
 - (ii) rendered material assistance in any way whatsoever to the occupation army by any Act, whether by words, signs or conduct;
 - (iii) waged war or abetted in waging war against the People's Republic of Bangladesh;
 - (iv) actively resisted or sabotaged the efforts of the people and the liberation forces of Bangladesh in their liberation struggle against the occupation army;

- (v) by a public statement or by voluntary participation in propagandas within and outside Bangladesh or by association in any delegation or committee or by participation in purported bye-elections attempted to aid or aided the occupation army in furthering its design of perpetrating its forcible occupation of Bangladesh.

Explanation—A person who has performed in good faith functions which he was required by any purported law in force at the material time to do shall not be deemed to be a collaborator:

Provided that a person who has performed functions the direct object or result of which was the killing of any member of the civil population or the liberation forces of Bangladesh or the destruction of their property or the rape of or criminal assault on their women-folk, even if done under any purported law passed by the occupation army, shall be deemed to be a collaborator.

- (c) “Government” means the Government of the People's Republic of Bangladesh;
- (d) “Liberation forces” includes all forces of the People's Republic of Bangladesh engaged in the liberation of Bangladesh;
- (e) “Occupation army” means the Pakistan Armed Forces engaged in the occupation of Bangladesh;
- (f) “Special Tribunal” means a Tribunal set up under this Order.

3. (1) Any Police Officer or any person empowered by the Government in that behalf may, without a warrant, arrest any person who may reasonably be suspected of having been a collaborator.

(2) Any Police Officer or person making an arrest under clause (1) shall forthwith report such arrest to the Government together with a precis of the information or materials on the basis of which the arrest has been made, and, pending receipt of the order of the Government, may, by order in writing, commit any person so arrested to such custody as the Government may by general or special order specify.

(3) On receipt of a report under clause (2), the Government may by order in writing, direct such person to be detained for an initial period of six months for the purpose of inquiry into the case.

(4) The Government may extend the period of detention if, in the opinion of the Government further time is required for completion of the inquiry.

(5) Any person arrested and detained before the commencement of this Order who is alleged to be a collaborator, shall be deemed to be arrested and detained under this Order and an order in writing authorising such detention shall be made by the Government:

Provided that the initial period of detention of six months in the case of such person shall be computed from the date of his arrest.

4. Notwithstanding anything contained in the Code or in any other law for the time being in force, any collaborator, who has committed any offence specified in the Schedule shall be tried and punished by a special Tribunal set up under this Order and no other Court shall have any jurisdiction to take cognizance of any such offence.

5. (1) The Government may set up as many Special Tribunals as it may deem necessary to try and punish offences under this Order for each district or for such area as may be determined by it.

(2) A Special Tribunal shall consist of one member.

(3) No person shall be qualified to be appointed a member of a Special Tribunal unless he is or has been a Sessions Judge or an Additional Sessions Judge or an Assistant Sessions Judge.

6. (1) A Special Tribunal consisting of a Sessions Judge or an Additional Sessions Judge shall try and punish offences enumerated in Parts I and II of the Schedule.

(2) A Special Tribunal consisting of an Assistant Sessions Judge shall try and punish offences enumerated in Parts III and IV of the Schedule.

7. A Special Tribunal shall not take cognizance of any offence punishable under this Order except upon a report in writing by an officer-in-charge of a police station.

8. The provisions of the Code in so far as they are not inconsistent with the provisions of this Order, shall apply to all matters connected with, arising from or consequent upon a trial by a Special Tribunal.

9. (1) A Special Tribunal shall not be bound to adjourn a trial for any purpose unless such adjournment is, in its opinion, necessary in the interests of justice.

(2) No trial shall be adjourned by reason of the absence of any accused person, if such accused person is represented by counsel, or if the absence of the accused person or his counsel has been brought about by the accused person himself, and the Special Tribunal shall proceed with the trial after taking necessary steps to appoint an advocate to defend an accused person who is not represented by counsel.

10. A Special Tribunal may, with a view to obtaining the evidence of any person supposed to have been directly or indirectly concerned in, or privy to the offence, tender a pardon to such person on condition of his making a full and true disclosure of the whole circumstances within his knowledge relative to the offence and to every other person concerned, whether as principal or a better, in the commission thereof; and any pardon so tendered shall, for the purpose of section 339 and 339A of the Code, be deemed to have been tendered under section 338, of the Code.

11. Notwithstanding anything contained in any other law for the time being in force,—

- (a) any collaborator who is convicted for any of the offences specified in Part I of the Schedule shall be punished with death or transportation for life and shall be liable to a fine;

- (b) any collaborator who is convicted for any of the offences specified in Part II of the Schedule shall be punished with rigorous imprisonment for a term not exceeding ten years and shall also be liable to a fine;
- (c) any collaborator who is convicted for any of the offences specified in Part III of the Schedule shall be punished with rigorous imprisonment for a term not exceeding five years and shall also be liable to a fine;
- (d) any collaborator who is convicted for any of the offences specified in Part IV of the Schedule shall be punished with rigorous imprisonment for a term not exceeding two years and shall also be liable to a fine.

12. Without prejudice to any sentence passed by the Special Tribunal, the property, immovable, movable, or any portion thereof, of a collaborator may, on his conviction, be forfeited to the Government, upon an order in writing made in this behalf by the Government.

13. If any accused is convicted of and sentenced for more than one offence, the sentences of imprisonment shall run concurrently or consecutively, as determined by the Special Tribunal.

14. Notwithstanding anything contained in the Code on person who is in custody, accused or convicted of an offence punishable under this Order shall be released on bail.

15. The provisions of Chapter XXVII of the Code shall apply to a sentence of death passed by a Special Tribunal.

16. (1) A person convicted of any offence by a Special Tribunal may appeal to the High Court.

(2) The Government may direct a Public Prosecutor to present an appeal to the High Court from an order of acquittal passed by a Special Tribunal; upon intimation to the Special Tribunal by the Public Prosecutor that such an appeal is being filed, the person in respect of whom the order of acquittal was passed shall continue to remain in custody.

(3) The period of limitation for an appeal under clause (1) shall be 30 days from the date of sentence and for an appeal under clause (2) shall be 30 days from the date of the order of acquittal.

(4) The appeal may lie on matters of fact as well as of law.

17. (1) If the Government has reasons to believe that a person, who, in the opinion of the Government, is required for the purpose of any investigation, enquiry or other proceedings connected with an offence punishable under this Order, is absconding or is otherwise concealing himself or remaining abroad to avoid appearance, the Government, may, by a written proclamation published in the official Gazette or in such other manner as may be considered suitable to make it widely known:—

- (a) direct the person named in the proclamation to appear at a specified place at a specified time;
- (b) direct attachment of any property, movable or immovable, or both, belonging to the proclaimed person.

Explanation : “Property belonging to the proclaimed person” shall include property, movable and immovable, standing in the name of the proclaimed person or in the name of his wife, children, parents, minor brothers, sisters of dependents or any *benamdar*.

(2) If the property ordered to be attached is a debt or other movable property, the attachment shall be made,—

- (a) by seizure; or
- (b) by the appointment of an administrator; or
- (c) by an order in writing prohibiting the delivery of such property to the proclaimed person or to any one on his behalf; or
- (d) by all or any two of the methods mentioned in sub-clauses (a), (b) and (c) as the Government may direct.

(3) If the property ordered to be attached is immovable, the attachment shall be made in the case of land paying revenue to Government, by the Deputy Commissioner of the district in which the land is situate, and in all other cases,—

- (a) by taking possession of the property; or
- (b) by the appointment of an administrator; or
- (c) by an order in writing prohibiting the payment of rent or delivery of the property to the proclaimed person or to any one on his behalf; or
- (d) by all or any two of the methods mentioned in sub-clauses (a), (b) and (c) as the Government may direct.

(4) If the property ordered to be attached consists of livestock or is of a perishable nature, the Government may, if it thinks it expedient, order immediate sale thereof, and in such case the proceeds of the sale shall abide the order of the Government.

(5) The powers, duties and liabilities of an administrator appointed under this Article shall be the same as those of a receiver appointed under Chapter XXXVI of the Code of Civil Procedure, 1908 (Act V of 1908).

(6) If any claim is preferred to, or objection made to the attachment of, any property attached under this Article, within seven days from the date of such attachment, by any person other than the proclaimed person, on the ground that the claimant or objector has an interest in such property, and that such interest is not liable to attachment under this Article, the claim or objection shall be inquired into, and may be allowed or disallowed in whole or in part:

Provided that any claim preferred or objection made within the period allowed by this clause may, in the event of the death of the claimant or objector, be continued by his legal representative.

(7) A claim or an objection under clause (6) may be preferred or made before such person or authority as is appointed by the Government.

(8) Any person whose claim or objection has been disallowed in whole or in part by an order under clause (6) may, within a period of one month from the date of such order, appeal against such order to an appellate authority, constituted by the Government, for such purpose, but subject to the order of such appellate authority, the order shall be conclusive.

(9) If the proclaimed person appears within the time specified in the proclamation, the Government may make an order releasing the property from the attachment.

(10) If the proclaimed person does not appear within the time specified in the proclamation, the Government may pass an order forfeiting to the Government the property under attachment.

(11) When any property has been forfeited to the Government under clause (10), it may be disposed of in such manner as the Government directs.

18. Notwithstanding the provisions of the Code or of any other law for the time being in force, no action or proceeding taken or purporting to be taken under this Order shall be called in question by any Court, and there shall be no appeal from any order or sentence a Special Tribunal save as provided in section 16.

SCHEDULE

PART I

Offences under sections 121, 121-A, 302, 304, 307, 376, 396 of the Penal Code and attempts to commit or the abetment of the commission of any of such offences.

PART II

Offences under sections 308, 325, 326, 328, 329, 330, 331, 333, 354, 363, 364, 365, 367, 368, 369, 380, 382, 382, 386, 388, 389, 392, 393, 394, 395, 397, 435, 436, 437, 438, 449, and 450 of the Penal Code and attempts to commit or the abetment of the commission of any of such offences.

PART III

Offences under sections sections 324, 332, 338, 343, 346, 348, 355, 356, 379, 384, 427, 428, 429, 430, 431 and 440 of the Penal Code and attempts to commit or the abetment of the commission of any of the offences.

PART IV

(a) offences under sections 336, 337, 341, 342, 352, 357, 374, 426, 447 and 448 of the Penal Code and attempts to commit or the abetment of the commission of any of the offences.

(b) Any act which mentioned in Clause (b) of Article (2) of this Order, but which is not covered by any item under any of the Parts in this Schedule.
