

THE KHYBER PAKHTUNKHWA PROVINCE PROHIBITION ACT, 1938

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[AS AMENDED BY KHYBER PAKHTUNKHWA ORDINANCE X OF 1972]

An Act to introduce and extend the prohibition of the manufacture, sale and consumption of intoxicating liquors and drugs in the Khyber Pakhtunkhwa.

Whereas with a view of improve the moral condition and the material prosperity of the people of the Khyber Pakhtunkhwa, it is expedient as early as possible to bring about the prohibition except for medicinal, scientific, industrial or such like purpose or any purpose other than used as a beverage, of the production, manufacture, possession, ex-port, import, transport, purchase, sale and consumption of intoxicating liquors and drugs in the said Province.

And whereas it is desirable to give effect o the above-mentioned policy by introducing it in certain selected areas in the said Province and utilizing the experience gained therein for extending it to the other areas thereof ;

It is hereby enacted as follows: —

CHAPTER I—PRELIMINARY

1. Short title, extent and commencement. (1) This Act may be called the Khyber Pakhtunkhwa Prohibition Act, 1938.

(2) It extends to the whole of the Khyber Pakhtunkhwa.

(3) The whole of the Act shall come into force at once in the District of Dera Ismail Khan.

(4) This Section and Sections 3, 6, 16 and 24 shall come into force at once in the rest of the Khyber Pakhtunkhwa and the rest of this Act, shall come into force in such local area on such dates, as the Provincial Government, by notification in the official Gazette, may appoint.

(5) The Provincial Government may, by notification in the official Gazette, direct that the provisions of this Act other than this Section and Sections 3, 6, 16 and 24 shall cease to be in force in any local area.

COMMENTARY

Rules framed under the Act—Khyber Pakhtunkhwa Prohibition Rules, 1949.

—In exercise of the powers conferred by Section 53 of the Khyber Pakhtunkhwa Prohibition Act, 1938. the Provincial Government have framed the Khyber Pakhtunkhwa Prohibition Rules, 1949.¹ These Rules were amended from time to time.²

¹ PLD 1950 KHYBER PAKHTUNKHWA Statutes 22-38

² 'For these subsequent amendments, see PLD 1950 KHYBER PAKHTUNKHWA Statues 40, PLD 1959 W.P. Statutes 143, 222, PLD 1962 W.P. Statutes 463, PLD 1963 W.P. Statutes, 14, 16, 244, PLD1964 W.P. Statutes 125, 327, PLD 1965 W.P. Statutes 127, 144 and PLD 1967 W.P. Statutes 44.

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Rules regarding the grant of rewards were framed *vide* notification No. 9151-EXC., dated 12th November, 1949.³

2. Repeals. From the date on which the provisions of this Act other than Sections 1, 3, 6, 16 and 24 come into force in any local area, the Punjab Excise Act, 1914, shall cease to be in force in such area, and if under a direction under sub-section (5) of Section 1, the said provisions cease to be in force in any local area, the said Act as for the time being in force in other parts of the Khyber Pakhtunkhwa shall come into force in that area.

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

- (1) “bottle” means to transfer liquor from a cask or other vessel to a bottle, jar, flask or pot or similar receptacle for the purpose of sale whether any process of manufacture be employed or not and includes rebottling;
- (2) “buy” or “buying” includes any receipt including gift:
- (3) “Collector” means a Collector of land revenue, or any person appointed under clause (b) of Section 24 to exercise all or any of the powers or to perform all or any of the duties of a Collector under this Act;
- (4) “Commissioner” means the officer appointed under clause (a) of Section 24;
- (5) “Cultivation” includes the tending or protecting of a plant during growth and does not necessarily imply raising it from seed;
- (6) “Export” means—
 - (a) to take out of any local area in which the whole of this Act is in force into any local area in the Khyber Pakhtunkhwa in which the whole of this Act is not in force, or
 - (b) to take out of the Khyber Pakhtunkhwa otherwise than across a Customs frontier as defined by the Central Government;
- ⁴[(6a) “foreigner” means a person who is not a citizen of Pakistan];
- (7) “Import” means—
 - (a) to bring into any local area in which the whole of this Act is in force from any local area in the Khyber Pakhtunkhwa in which the whole of this Act is not in force, or
 - (b) to bring into the Khyber Pakhtunkhwa otherwise than across a Customs frontier as defined by the Central Government ;

³ Published in PLD 1949 KHYBER PAKHTUNKHWA Statutes 74.

⁴ Ins. by KHYBER PAKHTUNKHWA Ord. X of 1972.

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(8) "Intoxicating drug" mean—

- (i) 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 ;
- (ii) charas, that is, the resin obtained from the Indian hemp plant, which has not been submitted to any manipulation other than those necessary for packing and transport ;
- (iii) any mixture, with or without neutral material, of any of the above forms of intoxicating drug, or any drink prepared therefrom ; and
- (iv) any other intoxicating or narcotic substance which the Provincial Government may, by notification, declare to be an intoxicating drug, such substance not being opium, coca leaf, or a manufactured drug, as defined in Section 2 of the Dangerous Drugs Act of 1930 ;

(9) "Liquor" includes toddy, spirits of wine, methylated spirits, spirits, wine, beer and all liquids consisting of or containing alcohol ;

(10) "Local Body" means any Municipality or Notified Area constituted under the Punjab Municipal Act, 1911, or any District Board constituted under the Punjab District Boards Act, 1883 ;

(11) "Manufacture" includes every process, whether natural or artificial, by which any fermented, spirituous, or intoxicating liquor or intoxicating drug is produced, prepared or blended, and also re-distillation and every process for the rectification of liquors ;

(12) "Place" includes also a house, shed, enclosure, building, shop, tent and vessel ;

(13) "Police Station" includes any place which the Provincial Government may, by notification, declare to be a police station for the purposes of this Act ;

(14) "Prohibition Officer" means the Commissioner, a Collector, or any officer or other person lawfully appointed or invested with powers under Section 34 ;

(15) "Rectification" includes every process whereby spirits are purified or are coloured or flavoured by mixing any material therewith ;

(16) "Sale" or "selling" includes any transfer including gift ;

(17) "Spirits" means any liquor containing alcohol and obtained by distillation (whether it is denatured or not) ;

Explanation. "Denatured" means subjected to a process prescribed by the Provincial Government by notification for the purpose of rendering unfit human consumption ;

- (18) "Transport" means to move from one place to another within any local area to which this Act applies.

COMMENTARY

Declaration of medicines to be intoxicating drugs — Notification. In the exercise of power conferred on him by sub-clause (IV) of clause (8) of Section 2 of the Khyber Pakhtunkhwa Prohibition Act, 1938, the Governor of West Pakistan is pleased to declare-

- (i) Medicinal spirituous preparation; and
- (ii) Liquor,

to be intoxicating drugs.⁵

CHAPTER II — PROHIBITION AND PENALTIES

4. Prohibition of manufacture of, traffic in, and consumption of, liquors and intoxicating drugs. (1) Whoever—

- (i) imports, exports, transports or possesses liquor or any intoxicating drug ; or
- (ii) manufactures liquor or any intoxicating drug ; or
- (iii) except in accordance with the rules made by the Provincial Government in that behalf, cultivates the hemp plant (*Cannabis Sativa*) ; or collects any portion of such plant from which an intoxicating drug can be manufactured ; or
- (iv) constructs or works any distillery or brewery ; or
- (v) uses, keeps or has in his possession any materials, still, utensil, implement or apparatus, whatsoever for the manufacture of liquor or any intoxicating drug ;
- (vi) bottles any liquor for purposes of sale ; or
- (vii) sells liquor or any intoxicating drug ; or
- (viii) consumes or buys liquor or any intoxicating drug; or
- (ix) allows any of the acts aforesaid upon premises in his immediate possession.

shall be punished with imprisonment which may extend to six months or with a fine which may extend to one thousand rupees, or with both :

⁵ PLD 1962 W.P. Statutes 463.

⁶[Provided further that any foreigner may, in such quantity as may be notified by the Provincial Government, import, export, transport, possess or buy for his personal consumption any liquor].

- (2) It shall be presumed until the contrary is shown—
- (a) that a person accused of any offence under clauses (a) to (i) of sub-section (1) has committed such offence in respect of any liquor or intoxicating drug or any still, utensil, implement or apparatus whatsoever for the manufacture of liquor or any intoxicating drug or any such materials as are ordinarily used in the manufacture of liquor or any intoxicating drug, for the possession of which he is unable to account satisfactorily ; and
- (b) that a person accused of any offence under clause (i) of sub-section (1) has committed such offence if any offence is proved to have been committed in premises in his immediate possession implement or apparatus whatsoever for the manufacture of liquor or any intoxicating drug, or any such materials as are ordinarily used in the manufacture of liquor or any intoxicating drug.

5. Punishment for rendering or attempting to render denatured spirits fit for human consumption. Whoever renders or attempts to render for human consumption any spirit, whether manufactured in Pakistan or not which has been denatured or has in his possession any spirit in respect of made, shall be punished with imprisonment which may extend to six months or with fine which may extend to one thousand rupees or with both.

For the purpose of this section it shall be presumed, until the contrary is proved, that any spirit which is proved on chemical analysis to contain any quantity of any of the prescribed denaturants is or contains or has been derived from denatured spirit.

6. ⁷[Prohibition of advertisement. Whoever prints or publishes in any newspaper, book, leaflet or booklet or any other single or periodical publication or otherwise displays or distributes any advertisement or other mater commending, soliciting the use of, or offering any liquor or intoxicating drug other than liquor or drug specially approved as of medicinal value by the Medical Council established under law, shall be punished with fine which may extend to one thousand rupees].

7. Punishment for conspiracy. When two or more persons agree :-

- (a) to commit or cause to be committed any offence under sub-section (1) of section 4 or under section 5 ; or
- (b) to evade or nullify the provisions of this Act in any area where it is in force,

⁶ Subs. by KHYBER PAKHTUNKHWA Ord. X of 1972

⁷ Subs. by KHYBER PAKHTUNKHWA Ord. X of 1972

each of such persons shall, notwithstanding that no act except the agreement was done by any of the parties thereto in pursuance thereof or that the agreement was made or the operations thereunder took place in an area to which this Act has not been extended, be punished with imprisonment which may extend to three years or with fine which may extend to five thousand rupees or with both.

8. Punishment for vexation, search or arrest. Any officer or person exercising powers under this Act, who—

- (a) without reasonable ground of suspicion, enters or searches or causes to be searched any closed place;
- (b) vexatiously and unnecessarily seizes the property of any person on the pretence of seizing or searching for anything liable to confiscation under this Act ; or
- (c) vexatiously and falsely lays information leading to a search, seizure, detention or arrest ; or
- (d) in any other way maliciously exceeds his lawful powers, shall be punished with imprisonment which may extend to six months, or with fine which may extend to five hundred rupees or with both.

9. Punishment for vexatious delay. Any officer or person exercising powers under this Act, who vexatiously and unnecessarily delays forwarding to a Prohibition Officer or to the officer in charge of the nearest Police Station as required by section 38, any person arrested or any articles seized under this Act, shall be punished with fine which may extend to two hundred rupees.

10. Punishment for abetment or escape of person arrested, etc. Any officer or person exercising powers under this Act who :—

- (a) unlawfully releases or abets the escape of any person arrested under this Act, or abets the commission of any offences against this Act ; or
- (b) acts in any manner inconsistent with his duty for the purpose of enabling any person to do anything whereby any of the provisions of this Act may be evaded or broken, and

any other officer of the Provincial Government or of a local body who abets the commission of any offence against this Act shall be punished with imprisonment which may extend to six months, or with fine which may extend to five hundred rupees.

11. Punishment for offences not otherwise provided for.—Whoever is guilty of any willful act or intentional omission in contravention or any of the provisions of this Act or of any rule, notification or order made thereunder and not otherwise provided for in this Act shall be punished with fine which may extend to two hundred rupees.

12. Punishment for abetment of offences against Act in area to which Act not extended.—Where any offence against this Act is committed in any area to which it has been extend, whoever commits, or attempts to commit or abets the commission of, any of the acts making up the offence shall be liable to be punished therefore whether such commission, attempt or abetment takes place within or outside such area.

13. Things liable to confiscation.— In any case in which an offence has been committed against this Act, the liquor, drug, materials, 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 entry the same.

14. Confiscation how ordered.— (1) When the offender is convicted or when the person charged with an offence against this Act is acquitted, but the court decides that anything is liable to be confiscated, confiscation may be ordered by the court.

(2) When an offence against this Act has been committed but the offender is not known or cannot be found, or when anything liable to confiscation under this Act and not in the possession of any person and determined by the Collector or other Prohibition Officer in charge of the district or any other officer authorized by the Provincial Government in that behalf, who may order such confiscation ;

Provided that no such order shall be made until the expiration of fifteen days from the date of seizing the things intended to be confiscated or without hearing the person, if any claiming any right thereto, and evidence, if any, which they produce in support of their claims.

15. Offences under Act to be cognizable.— All offences under this Act shall be cognizable and the provisions of the Code of Criminal Procedures, 1898 (V of 1898) with respect to cognizable offences shall apply to them.

CHAPTER III—EXEMPTIONS AND LICENCES

16. ⁸[Power to notify exemption.—(1) The Provincial Government may, by notifications and on such terms and conditions as it may specify,

- (i) any specified liquor or intoxicating drug or article containing any such liquor or drug ; or
- (ii) any person or class of persons ; or
- (iii) any area, place or premises ; or
- (iv) any institution ;

from the observance of all or any of the provisions of this Act.

⁸ Subs. by KHYBER PAKHTUNKHWA Ord. X of 1972.

(2) When issuing a notification under subsection (1), the Provincial Government may provide that a breach of any of the conditions subject to which the exemption is notified shall be punished with imprisonment which may extend to six months or with fine which may extend to one thousand rupees or with both.

(3) Any notification issued under subsection (1) shall have effect from the date specified therein, which shall not be earlier than 5th May 1972].

17. ⁹[Exemption of foreigners and lawful consignments.—Unless the Provincial Government by notification otherwise direct, the provisions of this Act shall not be deemed to apply—

- (a) to liquor in possession of any foreigner for this own personal use while passing through any local area in which this Act is in force ; or
- (b) to lawful consignments of liquor or intoxicating drugs carried by a railway administration or a public carrier through or into any such local area].

18. 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 or in respect of any institution whether under the management of Government or not, for the manufacture, export, import, transport, sale or possession of any liquor, intoxicating drug or article containing such liquor or drug on the ground that such liquor or article is required by such person or in respect of such institution for a bona fide medicinal, scientific, industrial or such like purpose.

19. ¹⁰[Permits and licences. * * * * *].

20. ¹¹[Form and conditions of licences.—Every licence or permit granted under this Act or the rules made thereunder shall—

- (a) be granted on payment of such fees, if any, for such period, and subject to such restrictions and limitations and no such conditions ; and
- (b) be in such form and contain such particulars ;

as the Provincial Government may direct either generally or in any particular case”]

21. ²[Counterpart agreement to be executed by licencees.—Every person taking out any licence or permit under this Act or the rules made thereunder may be required to execute a counterpart agreement in conformity with the tenor of his licence or permit, and to give such security for the performance of his agreement as the Collector may require.]

⁹ Subs. by KHYBER PAKHTUNKHWA X of 1972

¹⁰ Omitted by KHYBER PAKHTUNKHWA Ord. X of 1972.

¹¹ Subs. by KHYBER PAKHTUNKHWA X of 1972

22. Power to cancel or suspend licensees and permits.—(1) The Collector may cancel or suspend any such license or permit—

- (a) if any fee payable by the holder thereof be not duly paid ; or
- (b) in the event of any breach by the holder of such licence or permit or by his servants or by any one acting with this express or implied permission on his behalf, of the terms or conditions of such licence or permit ; or
- (c) if the holder thereof is convicted of any offence against this Act, or of any cognizable and non-bailable offence ; or
- (d) if the conditions of such licence or permit provide for its cancellation or suspension at will ; or
- (e) if the purpose for which the license or permit is granted ceases to exist.

(2) The Provincial Government may cancel or suspend any such license or permit without assigning the aforesaid or any other reasons.

¹²[(3) As and when any licence is cancelled by the Provincial Government under subsection (2) above, the licensee shall at once declare to the District Excise and Taxation Officer the unsold stock of liquor or intoxicating drug lying with him. Such unsold stock of liquor or intoxicating drug may be disposed of by the licensee to any authorized person after obtaining permission from the District Excise and Taxation Officer concerned.]

23. Penalty for breach of conditions of licenses and permits.

In the event of any breach by the holder of such license or permit or by his servants or by any one acting with his express or implied permission on his behalf, of any of the terms or conditions of such license or permit, such holder shall, in addition to the cancellation or suspension of the license or permit granted to him, be punished with imprisonment which may extend to six months or with fine which may extend to one thousand rupees or with both, unless he shall establish that all due and reasonable precautions were exercised by him to prevent any such breach.

Any person who commits any such breach shall, whether he acts with or without the permission of the holder of the licence or permit, be liable to the same punishment.

CHAPTER IV—ESTABLISHMENT AND CONTROL

24. Appointment of officers and withdrawal of powers. The Provincial Government may, from time to time, by notification—

- (a) appoint an officer to exercise all the powers of a Collector under this Act in all local areas in which it is in force and to have the control of the administration of the provisions of this Act in such areas;

¹² Added by KHYBER PAKHTUNKHWA Ord. X of 1972.

- (b) appoint any person other than the Collector of land revenue to exercise within a district all or any of the powers and to perform all or any of the duties of a Collector under this Act, either concurrently with or to the exclusion of the Collector of land revenue, subject to such control as the Provincial Government may from time to time direct ;
- (c) withdraw from the Revenue and Divisional Commissioner or the Collector of land revenue any or all the powers conferred on him by this Act ;
- (d) appoint paid or honorary officers with such designation, powers and duties as the Provincial Government may think fit ;
- (e) order that all or any of the powers and duties assigned to any person under clause (d) shall be exercised and performed by any existing Government official or any other person ; and
- (f) delegate to any Prohibition Officer all or any of their powers under this Act.

25. Prohibition Committees. (1) The Collector or other Prohibition Officer in charge of a district may constitute Prohibition Committees in every Sub-Division, Tahsil, Zail or other specified area thereof to assist him in carrying out the objects of this Act in the district.

(2) Every member of a Prohibition Committee shall observe the working of this Act in his Sub-Division, Tahsil, Zail or other specified area and report thereon and on every matter connected therewith at the prescribed intervals and at any other time he thinks fit, to the Collector or other Prohibition Officer aforesaid.

(3) Every member of a Prohibition Committee shall be entitled to give information at any police station in his Sub-Division, Tahsil, Zail or other specified area regarding the commission of any offence against this Act in such Sub-Division, Tahsil, Zail or other specified area and the officer in charge of such station shall take action on such information and investigate the case in the manner laid down in the Code of Criminal Procedure, 1898 (V of 1898).

26. Power of Provincial Government to authorize officers to admit persons arrested to bail.— The Provincial Government may, by notification, and subject to such conditions as may be prescribed in such notification, empower all or any of the officers or classes of officers or persons mentioned in Section 31 throughout the Province or in any local area to admit a person arrested under that section to bail to appear, when summoned or otherwise directed, before a Police or Prohibition Officer or Magistrate having jurisdiction to inquire into the offence for which such person has been arrested, and may cancel or vary such notification.

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

27. Issue of search warrants. 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 sub-section (1) of Section 4 has been committed, he may issue a warrant for the search for any liquor, intoxicating drug, materials, still, utensils, implement or apparatus in respect of which the alleged offence has been committed. Any person who has been entrusted with execution of such a warrant may detain and search, and if he thinks proper, arrest any person found in the place searched, if he has reason to believe such person to be guilty of any offence under this Act ;

Provided that every person arrested under this section shall be admitted to bail by the person arresting, if sufficient bail be rendered for his appearances either before a Magistrate or before a Police or Prohibition Officer as the case may be.

Before issuing such warrant, the Collector, Prohibition Officer or Magistrate shall examine the informant on oath and the examination shall be reduced into writing in a summary manner and be signed by the informant, and also by the Collector, Prohibition Office or Magistrate.

28. Power of entry and search without warrant. Whenever a Collector, or any Prohibition Officer not below such rank as the Provincial Government may determine, and Police Officer not below the rank of Sub-Inspector, any officer in charge of a Police Station, or any other paid or honorary officer authorised by the Provincial Government in this behalf has reason to believe that an offence under subsection (1) of Section 4 has been committed and that the delay occasioned by obtaining a search warrant under Section 27 will prevent the execution thereof, he may, after recording his reasons and the grounds of his belief, at any time by day or night enter and search any place and may seize anything found therein which he has reason to believe to be liable to confiscation under this Act ; and may detain and search and if he thinks proper, arrest any person found in such place whom he has reason to believe to be guilty of any offence under this Act :

Provided that every person arrested under this section shall be admitted to bail by such officer as aforesaid if sufficient bail be tendered for his appearance either before a Magistrate or before a Police or Prohibition Officer as the case may be.

29. Power to enter and inspect place of manufacture and sale. The Collector, any Prohibition Officer no below such rank as the Provincial Government may determine, or any other Police paid or honorary officer authorised by the Provincial Government in this behalf, may enter and inspect at any time by day or by night, any place in which it is reasonably suspected that any person carries on the manufacture of any liquor or any intoxicating drug, or stores any liquor or intoxicating drug, and may enter and inspect, at any time, any place in which any liquor or intoxicating drug is reasonably suspected to be kept for sale by any persons ; and may examine, test, measure or weigh any material, still, utensil, implement, apparatus, liquor or intoxicating drug found in such place.

30. Power to use force in case of resistance to entry. If any officer empowered to make an entry under Section 27, 28 or 29 cannot otherwise make such entry, it shall be lawful for him to break open any outer or inner door or window and to remove any other obstacles to his entry into any such place.

31. Arrest of offenders and seizures of contraband liquor and articles without warrant. Any Prohibition Officer, any officer of the Police or Land Revenue Department, and any other person authorized in that behalf :—

- (a) may arrest without warrant any person found committing an offence punishable under subsection (1) of Section 4 ;
- (b) may seize and detain any liquor, drug or other article which he has reason to believe to be liable to confiscation under this Act ; and
- (c) may search any person, vessel, vehicle, animal, package, receptacle or covering, upon whom or in or upon which, he may have reasonable cause to suspect any such liquor, drug or other article to be, or to be concealed ;

Provided that if the officer or person making the arrest under this section be not empowered under Section 26 to admit to bail, the person arrested shall be forthwith forwarded to an officer so empowered, if such an officer is known to be within a distance of five miles from the place where such arrest took place. And it shall be the duty of such officer empowered as aforesaid to admit such person to bail if sufficient bail be tendered for his appearance before a Police or Prohibition Officer or Magistrate having jurisdiction to inquire into the case.

32. Arrest of persons refusing to give name or giving false name.

Any person, who may be accused or reasonably suspected of committing an offence against this Act, and who on demand made by any Prohibition Officer or any officer of the Police or Land Revenue Departments, or by any other person authorized in that behalf refuses to give his name and residence or who gives a name or residence which such officer or person has reason to believe to be false, may be arrested by such officer or person in order that his name and residence may be ascertained.

33. Searches how to be made. All searches under the provisions of this Act shall be made in accordance with the provisions of the Code of Criminal Procedure, 1898 (V of 1898).

34. Duty of officials of all departments and local bodies to assist.

Officials of all departments of the Provincial Government and of all local bodies shall be legally bound to assist the Prohibition or Police Officer in carrying out the provisions of this Act.

35. Offences to be reported, etc.

Every official employed by the Provincial Government or by any local body, other than a Police or Prohibition Officer, shall be bound to give immediate information at the nearest police station or to a Prohibition Officer, of all breaches of any of the provisions of this Act, which may come

to his knowledge ; and all such officials shall be bound to take all reasonable measures in their power to prevent the commission of any such breaches which they may know or have reason to believe are about or likely to be committed.

36. Landholders and others to give information. All zamindars, proprietors, tenants, under-tenants and cultivators who own or hold land or house property on or in which there shall be any manufacture of liquor or intoxicating drugs shall in the absence of a reasonable excuse be bound to give notice of the same to Magistrate or to a Prohibition Officer or to an Officer of the Police or Land Revenue Departments immediately the same shall have come to their knowledge.

37. Persons arrested how to be dealt with. (1) When any person arrested under the provisions of section 27, 28, 31, or 32 the person arresting him shall, unless bail shall have been accepted under the provisions of section 27, 28 or 31, forthwith forward him to the nearest police station or to a Prohibition Officer, with a report of the circumstances under which such arrest was made.

(2) *Procedure of Police Station Officer.* On any such person being brought to a police station as aforesaid, the officer in charge thereof shall either admit him to bail to appear when summoned before himself, or before the Prohibition Officer, if any, or any Police Officer within the limits of the jurisdiction of which Prohibition or Police Officer, the offence with which he is charged, is suspected to have been committed, or, in default of bail, shall forward him in custody to such officer.

(3) *Procedure of Police or Prohibition Officer empowered to enquire.* On any such person being brought in custody before a Prohibition or Police Officer as aforesaid or appearing before such office on bail or when such officer as aforesaid has himself made the arrest such officer shall hold such inquiry as he may think necessary and shall either release such person, or forward him in custody to, or admit him to bail to appear before the Magistrate having jurisdiction to inquire into or try the case :

Provided that if such inquiry is not commenced and completed on the day on which such person is arrested by or is brought or appears before such officer, he shall, if sufficient bail be tendered for the appearance of the person arrested, admit such person to bail to appear on any subsequent day before himself or any other officer having jurisdiction to inquire into the case.

38. Persons arrested to be admitted to bail. It shall be the duty of any officer arresting any person under the powers conferred by Section 27 or 28 and of any officer in charge of a police station or any Police or Prohibition officer before whom a person arrested in brought or appears under the provisions of Section 37 to release such person on bail if sufficient bail be tendered for his appearance before a Police or Prohibition Officer or before a Magistrate as the case may be.

39. Bond of accused and sureties. (1) Before any person is released on bail a bail bond in such sufficient but not excessive sum of money as the officer admitting him to bail thinks proper shall be executed by such person and by one or more sureties, on condition that such person shall attend in accordance with the terms

of the bond and shall continue to attend until otherwise directed by the Police or Prohibition Officer before whom he was bailed to attend, or by the Magistrate, as the case may be :

Provided that the officer admitting any such person to bail may in his discretion dispense with the requirement of a surety or sureties to the bond executed by such person.

(2) The Provincial Government shall from time to time determine the form of the bond to be used in any local area.

40. Procedure in case of default of persons admitted to bail to appear before a Police or Prohibition Officer. When by reason of default of appearance of a person bailed to appear before a Police or Prohibition Officer, such officer is of opinion that proceedings should be had to compel payment of the penalty or penalties mentioned in the bond of the person bailed or of the surety or sureties, he shall forward the bond to the Magistrate having jurisdiction to inquire into or try the offence of which the person bailed was accused, and the Magistrate shall proceed to enforce the payment of the penalty or penalties in the manner provided by the Code of Criminal Procedure, 1898, for the recovery of penalties in the like case of default of appearance by a person bailed to appear before his own court.

41. Power of Police or Prohibition Officers to summon witness. Any Police or Prohibition Officer holding an inquiry in the manner provided in Section 37 may summon any person to appear before himself to give evidence at such inquiry or to produce any document relevant thereto which may be in his possession or under his control :

Provided that no such officer shall so summon any person to appear before him if the journey to be made for complying with such summons exceeds ten miles by road or fifty miles by rail or such other limits as the Provincial Government may fix.

42. Terms of summons. Every summons issued under Section 14 shall state whether the person summoned is required to give evidence or to produce a document, or both, and shall require him to appear before the said officer at a stated time and place.

43. Examination of witnesses. Persons so summoned shall attend as required and shall answer all questions relating to such inquiry put to them by such officer. Such answers shall be reduced to writing and shall be signed by such officer.

44. When attendance of witness to be dispensed with, and procedure in such cases. It shall be lawful for a Police or Prohibition Officer instead of summoning to appear before him any person who, from sickness or other infirmity, may be unable so to do, or whom by reason of rank or sex, it may not be proper to summon to proceed to the residence of such person and there to require him to answer such questions as he may consider necessary with respect to such inquiry ; and such person

shall be bound so to answer accordingly, and the provisions of Section 43 shall apply to such answer.

45. Powers of Police or Prohibition Officer to summon suspected persons. Any Police or Prohibition Officer may after recording his reasons in writing summon any person to appear before him whom he has good reason to suspect of having committed an offence under his Act. On such person appearing before such officer, the procedure prescribed by sections 47 to 44 shall become applicable.

The Officer may also, if he considers it necessary for the investigation the case, exercise the powers conferred by Section 41 to 44 before summoning the person suspected.

46. Law relating to criminal courts as to summoning of witnesses to apply. The law for the time being in force as to summons and compelling the attendance of persons summoned in criminal Courts shall, so far as the same may be applicable, apply to any summons issued by a Police or Prohibition Officer and to any person summoned by him to appear under the provisions of this Act.

47. Report of Police or Prohibition Officer to give jurisdiction to competent Magistrate. When a Police or Prohibition Officer forwards in custody any person accused of an offence under this Act to the Magistrate having jurisdiction to inquire into or try the case, or admits any such person to bail to appear before such Magistrate such officer shall also forward to such Magistrate a report setting forth the name of the accused person and the nature of the offence with which he is charged and the names of the persons who appear to be acquainted with the circumstances of the case, and shall send to such Magistrate any article which it may be necessary to produce before him. Upon receipt of such report the Magistrate shall inquire into such offence and try the person accused thereof in like manner as if complaint had been made before him as prescribed in the Code of Criminal Procedure, 1898 (V of 1898).

48. Powers of Police or Prohibition Officers to cause attendance of witnesses before Magistrate. When a Police or Prohibition Officer forwards in custody any person accused of an offence against this Act to the Magistrate having jurisdiction to inquire into or try the case, or admits him to bail to appear before such Magistrate, such officer shall exercise the appearance before such Magistrate of such persons acquainted with the facts and circumstances of the case as he considers it necessary that such Magistrate shall examine as witnesses for the prosecution of such case.

49. Accused not to be detained in custody for a longer period than twenty four hours without special authority.—No person accused or suspected of having committed an offence under this Act shall be detained for a longer period than under all the circumstances of the case is reasonable : and such period shall not, in the absence of the special order of a Magistrate, whether having jurisdiction

to try the case or not, exceed twenty-hours, exclusive of the time necessary for the journey of such person to the place where a Police or Prohibition Officer may be and from thence to the Court having jurisdiction to try the case.

50. Police to take charge of articles seized. All officers in charge of police stations shall take charge of and keep in safe custody pending the orders of a Magistrate, or of a Prohibition Officer, all articles seized under this Act which may be delivered to them ; and shall allow any Prohibition Officer who may accompany such articles to the police station or who may be deputed for the purpose by his superior officer, to affix his seal to such articles and to take samples of and from the. All samples so taken shall also be sealed with the seal of the officer in charge of the police station.

51. Power of District Magistrate to transfer cases. The District Magistrate shall have power to transfer any case under the Act pending inquiry or trial before any Magistrate or officer therein.

52. Operation of the Code of Criminal Procedure, 1898. Nothing contained in this Act shall affect the operation of the Code of Criminal Procedure, 1898 (V of 1898).

CHAPTER IV—RULES AND NOTIFICATIONS

53. Power to make rules. (1) The Provincial Government may make rules for the purpose of carrying into effect the provisions of this Act.

(2) In particular and without prejudice to the generality of the forgoing provision, the Provincial Government may make rules :—

- (a) for the issue of licenses and permits and the enforcement of the conditions thereof;
- (b) prescribing the powers to be exercised and the duties to be performed by paid and honorary Prohibitions Officers in furtherance of the objects of the Act ;
- (c) determining the local jurisdiction of Police and Prohibition Officers in regard to inquires and the exercise of preventive and investigating powers ;
- (d) authorising any officer or person to exercise any power or perform any duty under this Act ;
- (e) prescribing ht empowers and duties of prohibition committees and the members thereof and the intervals at which the members of such committees shall make their reports ;
- (f) regulating the delegation by the Revenue and Divisional Commissioner or by Collectors or other District Officers of any power conferred on them by or under this Act ;

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- (g) regulating the cultivation of the hemp plant the collection of those portions of such plant from which intoxicating drugs can be manufactures and the manufacture of such drugs therefrom ;
- (h) declaring how denatured spirit shall be manufactured ;
- (i) declaring in what cases or classes of cases and to what authorities appeals shall lie from orders whether original or appellate, passed under this Act, or under this Act or under any rule 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 ;
- (j) for the diet money to witnesses, and of compensation for loss of time to persons released under sub-section (3) of Section 37 on the ground that they have been improperly arrested and to persons charged before a Magistrate with offences under this Act and acquitted ;
- (k) regulating the powers of Police or Prohibition Officers to summon witnesses from a distance under Section 41 ; and
- (l) for the disposal of articles confiscated and of the proceeds thereof.

COMMENTS

Rules framed under S. 53—Khyber Pakhtunkhwa Prohibition Rules, 1949.—In exercise of the Powers conferred by section 53 of the Khyber Pakhtunkhwa, Prohibition Act (X of 1938) the Governor, Khyber Pakhtunkhwa, has framed the North-West Province, Prohibition Rules, 1949, vide Notification No. 8951-Exc, dated 25th October 1949.]¹³

Subsequent amendment in Khyber Pakhtunkhwa Prohibition Rules, 1949.—The Khyber Pakhtunkhwa Prohibition Rules, 1949, have been amended subsequently by the following notifications:—

1. Notification No. 19730-Ex-XIX-C, 263, dated 21st December, 1949.¹⁴
2. Notification No.S. W. Ex-2.4/61 (*ii*), dated 9th March, 1962.¹⁵
3. Notification No. Ex-27/52-60 XIII, dated 8th December 1961.¹⁶
4. Notification No. S. O. Ex-I-14-61 (*ii*), dated 8th December 1961.¹⁷
5. Notification No. 1302-63/757-Ex-I, dated 17th May 1963.¹⁸

¹³ PLD 1950 KHYBER PAKHTUNKHWA Statutes 22-38.

¹⁴ PLD 1950 KHYBER PAKHTUNKHWA Statutes 40.

¹⁵ PLD 1962 West Pakistan Statutes 463.

¹⁶ PLD 1962 West Pakistan Statutes 14.

¹⁷ PLD 1962 West Pakistan Statutes 16.

¹⁸ PLD 1962 West Pakistan Statutes 244.

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6. Notification No. 4424/632371 Ex-III, dated 24th January 1964.¹⁹
7. Notification No. 1240-64/907-Ex-I, dated 26th June 1964.²⁰
8. Notification No. 3743-64/274-Ex-III, dated 26th March 1965.²¹
9. Notification No. 3601-64/27-Ex-I, dated 9th April, 1965,²² and
10. Notification No. 721/66/2057 Ex-III, dated 18th November, 1966.²³

Grant of rewards—Rules.—In exercise of the powers conferred by clause (1) of subsection (2) of section 53 of the Khyber Pakhtunkhwa Prohibition Act, 1938, the Provincial Government had made the rules for the grant of rewards under this Act in cases of liquor and hemp drugs, etc.²⁴ Under these rules rewards can be granted to the extent of half of value of the sale proceeds of confiscated articles.

54. Publication of rules and notifications.—All rules made and notifications issued under this Act shall be published in the official Gazette and such publication, shall have effect as if enacted in this Act.

55. Actions against the Government, etc.—No action shall lie against the Government or against any Prohibition, Police or other Officer, for damages in any civil Court for any act *bonafide* done or ordered to be done in pursuance of this Act.

56. Court to take judicial notice of appointments.—All Courts shall take judicial notice of all notifications and orders conferring powers, imposing duties had making appointments under this Act.

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Notification No. 895-Exc., dated 25th October 1949.—In exercise of the powers conferred by section 53 of the Khyber Pakhtunkhwa Prohibition Act (XI of 1938) the Governor, Khyber Pakhtunkhwa, is pleased to make the following rules for carrying into effect the provisions of the Act.

¹⁹ PLD 1962 West Pakistan Statutes 125.

²⁰ PLD 1962 West Pakistan Statutes 327.

²¹ PLD 1962 West Pakistan Statutes 127.

²² PLD 1962 West Pakistan Statutes 144.

²³ PLD 1962 West Pakistan Statutes 44.

²⁴ PLD 1949 KHYBER PAKHTUNKHWA Statutes 74.