

THE PREVENTION OF SMUGGLING ACT, 1977

An Act to provide for effective prevention of smuggling and for matters connected therewith.

WHEREAS it is expedient to provide for effective prevention of smuggling and for matters connected therewith.

It is hereby enacted as follows:—

CHAPTER I

PRELIMINARY

1. Short title, extent and commencement.—(1) This Act may be called the Prevention of Smuggling Act, 1977.

(2) It extends to the whole of Pakistan.¹

(3) It shall come into force on such May as the Federal Government may, by notification in the official Gazette, appoint.

2. Definitions.—(1) In this Act, unless there is anything repugnant in the subject or context,—

(a) "associate" in relation to a person, means—

(i) any individual who is or has been residing in the residential premises, including out-houses and servant-quarters, of such person;

(ii) any individual who is or has been managing the affairs or keeping the accounts of such person;

(iii) any association of persons, body of individuals, partnership firms, or private limited company within the meaning of companies Act, 1913 (VII of 1913), of which such person is or has been a member, partner or director;

(iv) any individual who is or has been a member, partner or director of an association of persons, body of individuals, partnership firm or a private "limited company referred to in sub-clause (iii);

(v) a trustee of any trust created by such person; or

(vi) where the Special Judge, for-reasons to be recorded, considers that any property of such person is held on his behalf by any other person, such other person;

(b) "prescribed" means prescribed by rules made under this Act;

(c) "property" includes property held outside Pakistan and any interest in property;

(d) "property acquired by smuggling" means property acquired, whether before or after the commencement of this Act, by any person the aggregate value of the property held by whom exceeds one lac rupees, either wholly or partly.

¹I.e. the 16th day of May, 1977, see Gaz. of P., 1977, Ext. (Islamabad), Pt. II, p. 829.

Explanation.—In this clause, "value" means the market-value at the time the property in question was acquired;

- (e) "relative", in relation to a person, means—
 - (i) spouse of the person;
 - (ii) brother or sister of the person; .
 - (iii) brother or sister of the spouse of the person;
 - (iv) any lineal ascendant or descendant of the person;
 - (v) any lineal ascendant or descendant of the spouse of the person;
 - (vi) spouse of a person referred to in sub-clauses (ii), (iii), (iv) or (v); or
 - (vii) any lineal descendant of a person referred to in sub-clause (ii) or (iii);
- (f) "smuggling" has the same meaning as in clause (s) of section 2 of the Customs Act, 1969 (IV of 1969), but, in Chapter II, relates only to the taking of goods out of Pakistan;
- (g) "Special Appellate Court" means a Special Appellate Court constituted under section 46; and
- (h) "Special Judge" means a Special Judge appointed under section 44.

(2) Expressions used in this Act but not herein defined shall have the same meaning as are assigned to them in the Code of Criminal Procedure, 1898 (V of 1898) or the Customs Act, 1969 (IV of 1969).

CHAPTER II

PREVENTIVE DETENTION

3. Preventive detention.—(1) In order to maintain supplies essential to the community, if the Federal Government or a Provincial Government is satisfied that, for preventing any person from indulging in smuggling, it is necessary to detain him, it may, by an order in writing, direct the arrest and detention of such person for such period as may, subject to the provisions of this Act, be specified in the order.

(2) When an order of detention is made by the Provincial Government, it shall immediately forward to the Federal Government a report in respect of that order and, when such order is made by the Federal Government, it shall immediately intimate this fact to the Provincial Government of the Province in which such person ordinarily resides.

(3) An order of arrest under sub-section (1) may be addressed to a police officer or any other person and such officer or person shall have the power to arrest the person mentioned in the order-and, in doing so, he may use such force as may be necessary.

(4) The police officer or other person, as the case may be, arresting a person in pursuance of an order under sub-section (1) shall commit the arrested person to such custody as may be specified under sub-section (5).

(5) Every person in respect of whom a detention order has been made shall be detained in such custody and under such conditions as to maintenance, interviews or communication with others, discipline and punishment for breach of discipline as the Federal Government may, by general or special order, specify.

(6) Where a detention order has been made under subsection (1) against any person, the Government making the order shall, as soon as may be, but not later than fifteen days from the date of detention, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order:

Provided that the Government may refuse to disclose facts the disclosure of which it considers to be against the public interest.

(7) Where a representation is made to the Government under sub-section (6), it may, on consideration of the representation and giving the person detained an opportunity of being heard, modify, rescind or confirm the order.

4. Powers to deal with an absconding person.—(1) If the Federal Government, or as the case may be, a Provincial Government has reason to believe that a person in respect of whom a detention order has been made is absconding or is concealing himself so that the order cannot be executed that Government may:—

- (a) send a report in writing of the fact to the Magistrate having jurisdiction in the place where such person ordinarily resides or has his property, and thereupon the Magistrate shall take proceedings under sections 87, section 88 and section 89 of the Code of Criminal Procedure, 1898 (Act V of 1898) in respect of such person and his property as if the detention order were a warrant issued by such Magistrate ; or
- (b) by order published in the official Gazette or any news paper, direct such person to appear before such officer, at such place and within such period as may be specified in the order; and if such person fails to comply with such direction, he shall, unless he proves that it was not possible for him to comply therewith and that he had, within the period specified in the order, informed the officer mentioned in the order of the reason which rendered compliance therewith impossible and of his whereabouts, be punishable with imprisonment for a term which may extend to two years, or with fine, or with both.

(2) A police officer, not below the rank of sub-inspector, if satisfied on the receipt of credible information that a person against whom an order of arrest and detention has been made under sub-section (1) of section 3 is present within his jurisdiction, may arrest him without a warrant in the same manner as he would have done if such order of arrest had been addressed to him and thereupon commit the arrested person to such custody as may be specified under sub-section (5) of section 3, or, if he receives any requisition in this behalf from the police officer or other person to whom the detention order has been addressed for execution, he shall commit the person arrested to the custody of such police officer or other person.

(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (Act V of 1898), an offence under clause (b) of subsection (1) shall be cognizable and non-bailable.

5. Review Boards. —(1) As soon as may be, the Federal Government and each Provincial Government shall constitute one or more Review Boards, each consisting of a Chairman and two other persons, each of whom is or has been a Judge of the Supreme Court or a High Court to be appointed by the Chief Justice of Pakistan.

(2) The opinion of the Review Board shall be expressed in terms of the views of the majority of its members, including the Chairman.

(3) A person shall not be detained under an order made under section 3 for a period exceeding three months unless the Review Board, to which a reference shall be made by the Government making such order, has reported, before the expiration of the said period, that there is, in its opinion, sufficient cause for such detention, and, if the detention is continued after the said period of three months, unless the Review Board has again reviewed his case and reported, before the expiration of each period of three months, that there is, in its opinion, sufficient cause for such detention.

(4) For the purpose of the proviso to clause (7) of Article 10 of the Constitution, smuggling shall be an anti-national activity.

(5) Where a person is to be detained for a period exceeding three months, the Federal Government, or as the case may be, the Provincial Government shall, before the expiration of that period, refer his case to the Review Board and shall furnish to the Review Board all documents relevant to the case unless a certificate, signed by a Secretary to the Government concerned, to the effect that it is not in the public interest to furnish any documents, is produced.

(6) The Review Board shall, after affording the person detained an opportunity of being heard in person and considering the material placed before it, including the representation, if any, made by such person and, if necessary, calling for any further information from the Government, submit its report, before the expiration of the period of three months mentioned in sub-section (3), to the Government.

(7) If, in any case, the Review Board reports that there is, in its opinion, no sufficient cause for further detention of the person whose case has been referred to it, the Government concerned shall revoke the detention order and direct that such person be released immediately or on the expiry of the period of detention.

(8) If the Board reports that there is, in its opinion, sufficient cause for the detention of such person, the Government concerned may, subject to the provisions of sub-section (3), continue to detain him for such period as it may deem fit.

(9) The Review Board shall determine the place of detention of the person detained and fix a reasonable subsistence allowance for his family; and thereupon such person shall, if he is detained elsewhere in pursuance of an order made under sub-section (4) of section 3, immediately be shifted to and detained at the place specified by the Board.

(10) A person whose case has been referred to the Review Board under sub-section (5) shall not be entitled to be represented or defended by a legal practitioner before the Board,

and the proceedings and the report of the Board, excepting that part of the report in which the opinion of the Board is specified, shall be confidential.

6. Power to revoke or modify detention order.—(1) Without prejudice to the provisions of section 21 of the General Clauses Act, 1897 (X of 1897), a detention order may, at any time, be revoked or modified:—

- (a) by the Government by which such order was made; or
- (b) by the Federal Government if the order was made by any of its officers or by any Provincial Government or any officer of that Government.

(2) The revocation, otherwise than on the recommendation of the Review Board, of a detention order against any person, or the expiry of any such order, shall not bar the making, against the same person and on the same grounds, of a fresh detention order:

Provided that a person shall not be detained under successive orders on the same grounds for a period-exceeding three months in the aggregate unless the Review Board has reported before the expiration of the said period that there is, in its opinion, sufficient cause for such detention.

Explanation.—In computing the aggregate period of three months, there shall be excluded any period for which the person concerned has been detained with the authority of the Review Board under section 5.

7. Delegation. The Federal Government or, as the case may be, a Provincial Government may, by notification in the official Gazette, delegate all or any of its powers under this Chapter to any of its officers, not below the rank of a Joint Secretary, in case the delegation is to be made by the Federal Government, and, not below the rank of a Secretary, if the delegation is to be made by a Provincial Government.

CHAPTER III

SECURITY AND OTEHR PROCEEDINGS

8. Power to require person suspected of smuggling to appear. Whenever a Special Judge has information that there is within the limits of his jurisdiction any person who, within or without such limits, is indulging in smuggling, such Judge may, if he is of the opinion that there is sufficient ground for proceeding, require such person, in the manner hereinafter provided, to appear before him.

9. Power of Special Judge to have inquiry conducted by Magistrate, etc.—(1) If the Special Judge receives credible information that any person within his jurisdiction is indulging in smuggling but there is no sufficient ground for proceeding against him under section 8, the Special Judge may direct any Magistrate or police officer or officer of any other Department to hold a preliminary inquiry into the truth of such information and submit his report within such period as the Special Judge may specify and such Magistrate or officer shall comply with such direction.

(2) On the-receipt of such report, if the Special Judge is satisfied that there is sufficient ground for proceeding against *the* person in respect of whom the report has