

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

been received, the Special Judge shall proceed under section 8.

(3) If the report discloses no sufficient ground for proceeding against the person under any provision of this Act, the Special Judge may file the report.

10. Power to proceed against person accused of smuggling—(1) When the Special Judge acting under section 8 deems it necessary to proceed against the person in respect of whom such information has been received, he shall make an order in writing setting forth the substance of such information and his reasons for taking action.

(2) If the person in respect of whom such order is made is present in court, it shall be read over to him and, if he so desires, the substance thereof shall be explained to him.

(3) If such person is not present in court, the Special Judge shall issue a summons requiring him to appear or, if such person is in custody, make an order directing the officer in whose custody he is to bring him before the Court:

Provided that the Special Judge may, at any time, issue a warrant, bailable or non-bailable, for the arrest and production of such person before him if he is satisfied that—

- (i) such person is purposely avoiding service of summons; or
- (ii) such person does not appear in spite of service of the summons; or
- (iii) for any other reason to be recorded, it is necessary to issue a warrant.

11. Report to Magistrate in respect of absconder, etc. If the Special Judge has reason to believe that a person against whom a warrant of arrest has been issued under sub-section (3) of section 10 has absconded or is concealing himself to avoid the execution of the warrant, the Special Judge may make a report to the Magistrate having jurisdiction in the area where such person ordinarily resides or has property, and the Magistrate shall take proceedings under sections 87, 88 and 89 of the Code of Criminal Procedure, 1898 (Act V of 1898), in respect of such person and his property as if the warrant were a warrant issued by such Magistrate.

12. Summons, etc., to embody substance of order. Every summons or warrant issued under sub-section (3) of section 10 shall, so far as possible, embody the substance of the order made under sub-section (1) of that section.

13. Power to dispense with personal appearance. The Special Judge may, for sufficient reason, dispense with the personal attendance of any person called upon to show-cause under section 10 and may permit him to appear by an advocate, subject to such conditions, if any, that the Judge may deem fit to impose and may, at any time, revoke the order dispensing with such attendance.

14. Inquiry by Special Judge.—(1) When an order made under sub-section (1) of section 10 has been read over under sub-section (2) thereof, or when any person appears or is brought before the Special Judge in compliance with, or its execution of, a summons or a warrant issued under sub-section (3) of that section, the Special Judge shall proceed to inquire into the truth of the information upon which the action has been taken and to take such further evidence as may appear necessary:

Provided that, if, before the commencement of evidence, the person complained against requests for a copy of such information, it shall be supplied to him free of cost.

(2) Such inquiry shall, subject to the provisions of this Act, be made, as nearly as may be practicable, in the manner prescribed in the Code of Criminal Procedure, 1898 (Act V of 1898) for conducting trials and recording evidence in cases triable by a Court of Session, except that no charge need be framed:

Provided that any omission or failure to follow that procedure shall not, unless it has occasioned a failure of justice, vitiate the proceedings.

(3) For the purpose of conducting inquiry under this Chapter, the Special Judge shall have all the powers of a Sessions Judge for issuing summons and warrants, compelling the attendance of witnesses and production of documents, examination of witnesses and issuing commissions for examination of witnesses.

(4) Pending the completion of the inquiry under sub-section (1), the Special Judge may direct the person against whom the inquiry is pending to execute a bond, with or without sureties, undertaking therein to desist from indulging in smuggling until the conclusion of the inquiry and to appear before the Special Judge on every date of hearing, and may detain him in custody until such bond is executed or, in default of execution, until the inquiry is concluded:

Provided that the Special Judge may, for reasons to be recorded, instead of taking a bond as aforesaid, order the detention of such person in such prison as the Special Judge thinks suitable, but such detention shall not exceed three months.

(5) Where two or more persons have been associated in the matter under inquiry, they may be dealt within the same or a separate inquiry as the Special Judge deems fit.

15. Power to require bond.—(1) If, upon such inquiry, the Special Judge is satisfied that, with a view to preventing such person from indulging in smuggling, it is necessary that he should be required to execute a bond with sureties for a period not exceeding three years, the Special Judge shall make an order accordingly :

Provided that—

- (a) the amount of each bond shall be fixed with due regard to the circumstances of the case; and
- (b) if such person is a minor, the bond shall be executed only by his sureties.

16. Contents of bond, etc. In the bond to be executed under section 15, such person shall undertake to desist from indulging in smuggling for the period specified in the bond and the commission or abetment of, or attempt to commit, the offence of smuggling, shall be a breach of the bond.

17. Habitual offenders.—(1) If, upon such inquiry, the Special Judge is satisfied that such person—

- (a) habitually indulges in smuggling; or

- (b) habitually receives smuggled goods; or
- (c) habitually protects, harbours or aids, financially or otherwise, persons indulging in smuggling;

such Judge may, in addition to, or in substitution of, requiring such person to execute a bond under section 15, direct—

- (i) that his movements be restricted to any place or area and that he shall report himself at such time and place and in such mode as may be specified in the order; or
- (ii) that he shall not reside within the area specified in the order and shall report himself at such time and place and in such mode as may be specified in that order:

Provided that, if such person, at the time when an order is made under this sub-section, is sentenced to, or is under going a sentence of, imprisonment or is detained under any law providing for preventive detention, the operation of the order shall be deferred till the expiry of the period of imprisonment or detention.

(2) No order made under sub-section (1) shall be operative for a period exceeding three years.

(3) If a person against whom an order has been made under sub-section (1) fails, without reasonable cause, to comply with such order, he shall be punished with imprisonment for a term which may extend to three years, or with fine, or with both.

(4) An offence under sub-section (3) shall be cognizable and non-bailable.

18. Action where Special Judge does not proceed under section 15 or 17. If, upon such inquiry, the Special Judge does not consider it necessary to take any action under section 15 or section 17, he shall make an order accordingly and the person against whom the inquiry has been conducted shall be discharged and, if he is in custody only for the purpose of the inquiry, he shall be released forthwith.

19. Order in respect of person in custody or detention. If any person in respect of whom an order requiring security has been made under section 15 is, at the time when such order is made, sentenced to, or undergoing a sentence of imprisonment or is detained under any law providing for preventive detention, the period for which such security is required shall commence on the expiration of such sentence or detention.

20. Power to reject surety.—(1) A Special Judge may refuse to accept any surety offered, or may reject any surety previously accepted by him or his predecessor, on the ground that such surety is an unfit person for the purpose of the bond:

Provided that, before so refusing to accept or rejecting any such surety, he shall either himself hold an inquiry on oath into the fitness of the surety or cause such inquiry to be made by any Magistrate.

(2) The Special Judge, or as the case may be, the Magistrate who has been directed to hold such inquiry, shall, before holding the inquiry, give reasonable notice to the surety and the person by whom the surety was or has been offered and shall in making the inquiry record the substance of the evidence adduced before him.

(3) If the Special Judge is satisfied after considering the evidence so adduced before him, or before a Magistrate deputed under sub-section (1) and the report of such Magistrate, that the surety is an unfit person for the purpose of the bond, he shall make an order refusing to accept or rejecting, as the case may be, such surety after recording his reasons there for:

Provided that, before making an order rejecting any surety who has previously been accepted, the Special Judge shall issue a summons or warrant as he thinks fit and cause the person for whom the surety is bond to appear or to be brought before him.

21. Person failing to give security. —(1) If any person ordered to give security under section 15 does not give such security on or before the date on which the period for which such security is to be given commences, he shall be committed to prison or, if he is already in prison, be detained in prison until he gives the security or such period expires:

Provided that the period for which any person is imprisoned for failure to give security shall not exceed three years.

(2) If the security is tendered to the officer-in-charge of the prison, he shall forthwith refer the matter to the Special Judge who made the order and shall await his orders.

(3) Imprisonment for failure to give security may be simple or rigorous as the Special Judge may direct.

(4) Whenever the Special Judge is of the opinion that for reasons of health or otherwise it is expedient to release any person imprisoned for failing to give security under section 15, he may direct the release of such person either without conditions or upon any condition which such person accepts:

Provided that any condition imposed: shall cease to be operative on the expiration of the period for which such person was ordered to give security.

(5) If the condition, if any, upon which any such person has been released is, in the opinion of the Special Judge by whom the order of release was made or of his successor, not fulfilled, he may cancel the conditional order passed under sub-section (4) and direct that such person may be arrested and produced before him.

(6) When such person is brought before the Special Judge, he may be directed to give security in accordance with the terms of the original order for the unexpired portion of the term for which he was in the first instance ordered to be detained for his failure to give security and, if he fails to give such security, the Special Judge may remand such person to prison to undergo the unexpired portion of the term, after deducting such period of conditional discharge as the Special Judge may deem fit to specify.

(7) A person remanded to prison under sub-section (6) shall be released on his given security in accordance with the terms of the original order for the unexpired portion of the term specified in that order.

22. Surety may ask for cancellation of bond. Any surety may at any time apply to the Special Judge for the cancellation of a bond executed by him under this Chapter and the Special Judge may issue a summons or warrant, as he thinks fit, requiring the person for whom such surety is bound to appear or to be brought before him.

23. Cancellation of bond and execution of fresh bond. When a person for whose appearance a summons or warrant has been issued under the proviso to sub-section (3)-of section 20 or under section 22 appears or is brought before him, the Special. Judge shall cancel the bond executed by such person and shall direct such person to give, for the unexpired portion of the period of such bond, fresh security of the same description as the original security and every such direction shall, for the purpose of sections 20, 21 and 22, be deemed to be an order made under section 17.

24. Deposit of money in lieu of execution of bond. A person required to execute a bond, with or without sureties, under this Chapter, may be permitted by the Special Judge to deposit in such manner a sum of money or Government promissory notes or bank guarantee to such amount as the Special fudge may specify, in-lieu of executing a bond.

25. Forfeiture of bond.—(1) Whenever it is proved to the satisfaction of the Special Judge that a bond executed under this Chapter has .been forfeited, he may call upon any person bound to pay the penalty thereof.

(2) If the penalty of any part thereof is not paid, the Special Judge may proceed to recover the same by issuing a warrant for the attachment and sale of the movable or immovable property, or both, belonging to such person, or his estate if he dies after the order for forfeiture of the bond is passed.

() When executing the warrant for the attachment and sale of the property or estate of 3such person, the Special Judge shall, as nearly as possible, follow the procedure for attachment and sale of property as laid down in section 88 of the Code of Criminal Procedure, 1898 (Act V of 1898):

Provided that, if such person, after the attachment of his property, pays the penalty, the order of attachment shall be withdrawn.

(4) If such penalty or any part thereof is not paid and cannot be recovered by such attachment and sale, such person shall be liable, by order of the Special Judge who issued the warrant, to imprisonment for a term which may extend to one year; and such imprisonment may either be simple or rigorous, as the judge may direct.

(5)The Special Judge may, for reasons to be recorded, remit any portion of the penalty and enforce payment in part only.

26. Execution of fresh bond in certain circumstances. When a surety to a bond under this Chapter becomes insolvent or dies, or when the bond is forfeited under section 25, the Special Judge by whose order such bond was taken may order the person from whom the bond was demanded to execute a fresh bond in accordance with the directions of the original order and, if such person fails to do so, the Special Judge may proceed as if there had been a default in compliance with such original order.

27. Recovery of amount of penalty. For recovering the amount of penalty or any portion thereof under section 25, the Special Judge may direct that it may be rcovered as an

arrears of land revenue or may call upon the Magistrate having jurisdiction to assist him in effecting such recovery and the Magistrate shall render all necessary assistance in this regard.

28. Person required to execute bond may be photographed, etc. Every person in respect of whom an order has been made under section 15 or section 17 shall, if so directed by the Special Judge, present himself before such officer and at such time and place as may be specified in the order for being photographed, for giving his finger-impressions or specimens of his handwriting and signatures and he shall allow himself to be photographed and affix his finger impressions or supply specimens of his handwriting and signatures.

29. —(1) An appeal Against an order made by a Special Judge under sub-section (4) of section 14, section 15, section 17, sub-section (3) of section 20, section 21 or sub-section (2) of section 25 shall lie to the Special Appellate Court, within thirty days from the date of the order.

(2) The Special Appellate Court on hearing the appeal may—

- (a) accept the appeal and set aside the order appealed against; or
- (b) dismiss the appeal; or
- (c) subject to the provisions of this Act, modify the order appealed, against in such manner as it may think fit.

(3) The provisions of the Limitation Act, 1908 (IX of 1908), shall apply to an appeal under sub-section (1).

CHAPTER IV

FORFEITURE OF PROPERTY

30. Property acquired by smuggling not to be held.—(1) It shall not be lawful for any person to hold, either in his own name or in the name of any relative or associate, any property acquired by smuggling.

(2) Any such property held in contravention of the provisions of sub-section (1) shall be liable to be forfeited to the Federal Government in the manner hereinafter provided.

31. Notice to person holding property suspected to be acquired by smuggling. —
(1) Whenever a Special Judge receives information that within the limits of his jurisdiction any person, either in his own name or in the name of any relative or associate, is holding property which is reasonably suspected to be acquired by smuggling, the Special Judge may issue to such person a notice calling upon him to show cause, within such time as may be specified in the notice, which shall not be less than thirty days, why the whole or any part of such property should not be declared to be property acquired by smuggling and to be forfeited to the Federal Government:

Provided that no such notice shall be issued unless, having regard to the value of his assets, his known sources of income, his style of living, his previous involvement in

smuggling or conviction under any law relating to the prevention of smuggling and other similar factors, the Special Judge has reason to believe (which reason he shall record in writing) that there is sufficient ground for proceeding against such person.

(2) A notice issued under sub-section (1) shall, among other things, require such person to indicate the sources of his income the income and assets out of which, or by means of which, he has acquired such property, the-evidence he relies upon and other relevant information and particulars.

(3) Where a notice under sub-section (1) issued to any person specifies any property as being held on his behalf by any of his relatives or associates, a copy of the notice shall also be served upon such relative or associate.

32. Order of Special Judge.—(1) The Special Judge may, after considering the explanation, if any, to the notice issued under section 31 and the evidence recorded or produced before him, and after giving the relative or associate of such person, in case a copy of the notice has also been served on him, a reasonable opportunity of being heard, by an order, record a finding whether the property to which the notice relates is property acquired by smuggling.

(2) Where the Special Judge, is satisfied that any of the properties mentioned in the notice issued under section 31 are properties acquired by smuggling but he is not able to specifically identify such property, then, it shall be lawful for him to specify the properties which, to the best of his judgement, are properties acquired by smuggling and to record a finding accordingly under sub-section (1).

(3) Where a Special Judge records the finding under subsection (1) that any property is property acquired by smuggling, he shall declare that such property shall, subject to the provisions of this Chapter, stand forfeited to the Federal Government and vest in that Government free from all encumbrances.

(4) Where an order of forfeiture of property passed under sub-section (3) is in respect of any share in a company registered under the Companies Act, 1913 (VII of 1913), then the company shall, notwithstanding anything contained in that Act or its memorandum or articles of association, forthwith register the Federal Government as transferee of such shares.

33. Burden of proof. In any proceedings under this Chapter, the burden of proving that any property specified in a notice issued under section 31 is not property acquired by smuggling shall be on the person to whom such notice is issued and on his relatives or associates, if any, on whom a copy of such notice has been served.

34. Option to pay fine in lieu of property forfeited.—(1) Where by virtue of a declaration made by a Special Judge under section 32 only less than half of any property stands forfeited to the Federal Government and such property is indivisible or cannot be easily separated from the rest without substantially impairing the value of the property, the person holding it prior to such declaration shall be given by the Special Judge an option to pay in lieu of forfeiture of that part of the property a fine equal to the market value of the property prevalent at the time of its forfeiture.

(2) Where such person pays the fine in lieu of forfeiture, within such time as may be allowed to him, the Special Judge may, by order, revoke the declaration of forfeiture made under section 32 and thereupon such property shall stand released.

35. Transfer of certain property void.—(1) After the issue of a notice or copy of a notice under section 31, the property mentioned in such notice shall not be transferred by any mode whatsoever, nor shall any charge be created thereon, which proceedings under this Chapter are pending and any transfer of such property or creation of charge in contravention of this section shall be void; and if such property is subsequently forfeited to the Government under section 32, it shall vest in that Government free of any encumbrances created after the issue of the notice.

(2) Any person who transfers any property, or creates a charge thereon, in contravention of sub-section (1) shall be punishable with imprisonment for a term which may extend to three years and shall also be liable* to fine.

36. Notice, etc., not to be called in question. Notice, etc. not to be called in question. No notice issued or served declaration made and order passed under this Chapter shall be called in question by any court, except as provided in this Chapter, nor shall such notice, declaration or order be invalid by reason of any error in the description of the property or person mentioned therein if such property or person is identifiable from such description.

37. Special Judge, etc., to have certain powers of Civil Court. The Special Judge and the Special Appellate Court shall have all the powers of a Civil Court while trying a suit under the Code of Civil Procedure, 1908 (Act V of 1908), in respect of the following matters, namely :—

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of documents;
- (c) receiving evidence on affidavits;
- (d) requisitioning any public record or copy thereof, from any court or office;
- (e) issuing commissions for examination of witnesses or documents; and
- (f) any other matter which may be prescribed.

38. Power of Special Judge to conduct inquiry, investigation, etc.—(1) Notwithstanding anything contained in the ¹[Income-Tax Ordinance, 1979 (XXXI of 1979)] or any other law for the time being in force, for the purpose of any, proceedings under this Chapter, or initiation of any such proceedings, the Special Judge shall have the power to conduct or cause, to be conducted any inquiry, investigation or survey in respect of any person, place property, assets documents, books of accounts and any other relevant matters.

(2) For the purposes of sub-section (1), the Special Judge shall have the power to require any officer or authority of the Federal Government or a Provincial Government or a local authority to furnish any information in relation to such persons, property, assets or other matters as in his opinion are useful for, or relevant to, the purposes of this Chapter.

¹Subs. by the Federal Laws (Revision and Declaration) Ordinance, 1981 (27 of 1981), s. 3 and II Sch.

(3) For the purposes of sub-section (1), the following officers are hereby empowered and required to assist the Special Judge and the Special Appellate Court, namely :—

- (a) officers of Customs and Central Excise;
- (b) officers of Income-tax Department;
- (c) officers of Federal Investigation Agency;
- (d) officers of Pakistan Rangers;
- (e) officers of Police;
- (f) officers of Food Departments of the Provincial Government;
- (g) officers of the Pakistan Public Works Department;
- (h) officers of the Provincial Public Works Department;
- (i) officers of the Revenue Departments of the Provincial Government; and
- (j) such other officers of the Federal Government or Provincial Governments as are specified by the Federal Government in this -behalf by notification in the official Gazette.

39. Forfeited property to be surrendered. —(1) Where any property has been declared to be property acquired by smuggling and forfeited to the Federal Government under this Chapter, or where a person who has been given option under section 34 has not paid the fine within the specified time, the Special Judge may direct such person or any other person who is in possession of such property to surrender or deliver possession thereof to any person authorised in this behalf by the Federal Government within thirty days of the service of such direction, or, where the property is held outside Pakistan, to repatriate the value of such property and the income derived there from within such time as may be specified by the Special Judge and surrender it to the Federal Government.

(2) If any person to whom a direction has been issued under sub-section (1) refuses or fails to comply with such direction, the Special Judge may cause possession of the property to be taken and for that purpose may authorise use of such force as may be necessary.

(3) The property forfeited under section 32 shall, if it is agricultural property, be mutated in the name of the Federal Government, or if it is urban immovable property, be transferred to the Federal Government in such manner as the Special Judge may direct.

(4) For the purpose of taking possession of forfeited property under sub-section (2), the Special Judge may requisition the services of any police officer for assistance and it shall be the duty of such officer to comply with such requisition.

(5) Whoever fails to comply with a direction issued under sub-section (1) shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine.

40. Rectification of mistakes. The Special Judge or the Special Appellate Court may at any time rectify any mistake apparent on the face of the record and amend any order by such rectification :

Provided that, if such amendment is likely to affect any person prejudicially, no such amendment shall be made without giving such person a reasonable opportunity of being heard.

41. Finding of other court, etc. No finding of any court, officer or authority under any law in relation to the property in respect of which any notice has been issued under this Chapter shall be conclusive for the purpose of any proceedings under this Chapter.

42. Service of notice. Any notice issued or order made under this Chapter shall be served by tendering such notice or order or by sending it by registered post to the person on whom it is intended to be served or, if such service is not possible, by affixing it on a conspicuous place in the property in question or on some conspicuous place or part of the premises of such person where he last resided or carried on business or personally worked for gain, or by any other mode as the Special Judge or the Special Appellate Court may direct.

43. Appeal.—(1) Any person aggrieved by an order of the Special Judge passed under section 31, section 32 or section 34 may, within thirty days from the date of such order, prefer an appeal before the Special Appellate Court whose decision thereon shall be final.

(2) The provisions of the Limitation Act, 1908 (IX of 1908), shall apply to an appeal filed under sub-section (1).

CHAPTER V

MISCELLANEOUS

44. Appointment of Special Judges.—(1) The Federal Government may, by notification in the official Gazette, appoint as many Special Judges as it considers necessary and, where it appoints more than one Special Judge, shall specify in the notification the headquarters of each Special Judge and the territorial limits within which he shall exercise jurisdiction under this Act.

(2) No person shall be appointed to be a Special Judge unless he is or has been a Sessions Judge.

45. Transfer of cases.—(1) Where more than one Special Judge are appointed within the territorial jurisdiction of a Special Appellate Court, the Special Appellate Court, and where not more than one Special Judge is so appointed, the Federal Government, may, by order in writing, direct the transfer, at any stage of the trial, of any case from the court of one Special Judge to the Court of another Special Judge for disposal, whenever it appears to the Special Appellate Court or, as the case may be, the Federal Government, that such transfer will promote the ends of justice or tend to the general convenience of the parties or witnesses.

(2) In respect of cases transferred to a Special Judge under sub-section (1), such Special Judge shall not, by reason of the said transfer, be bound to recall and rehear any witness whose evidence has been recorded in the case before the transfer and act upon the

evidence already recorded or produced before the court which tried the case before the transfer.

46. Constitution of Special Appellate Courts.—(I) The Federal Government may, by notification in the official Gazette, constitute as many Special Appellate Courts as it may consider necessary each consisting of a person who is a judge of a High Court, to be appointed by the Federal Government in consultation with the Chief Justice of the High Court of which he is a Judge.

(2) The Federal Government shall specify in a notification issued under sub-section (1) the headquarters of the Special Appellate Court and, where it constitutes more than one Special Appellate Court, the territorial limits within which, or the class of cases in respect of which, each Special Appellate Court shall exercise jurisdiction.

(30) If for any reason a vacancy occurs in the said Court, the Federal Government shall appoint another person in accordance with sub-section (1) to fill the vacancy and the proceedings may be continued before the Court from the stage the vacancy occurs.

(4) The Special Appellate Court constituted under this Act shall exercise the powers conferred by or under this Act in accordance with the provisions of this Act, and the powers conferred by or under the Customs Act, 1969 (IV of 1969), in accordance with the provisions of that Act.

(5) When the Judge of a Special Appellate Court is, for any reason, temporarily unable to perform his duties, he may inform the Chief Justice of the High Court of which he is a Judge and the Chief Justice shall nominate another Judge to perform the functions of Special Appellate Court so long as such Judge is unable to perform his duties.

(6) The Federal Government may, on the request of the Judge of a Special Appellate Court, transfer any appeal or revision and entrust the same to the Judge of another Special Appellate Court for disposal; and such Judge shall dispose of such appeal or revision in accordance with law.

47. Special Prosecutors, etc.—(1) For the purposes of conducting proceedings before the Special Judge, the Federal Government may appoint persons who have been advocates of a High Court for a period of not less than five years to be Special Prosecutors on such terms and conditions as may be prescribed and any person so appointed shall be competent to conduct proceedings under this Act before the Special Judge for and on behalf of the Federal Government and, if so directed by the Federal Government, to withdraw such proceedings.

(2) A law officer appointed under the Central Law Officers Ordinance, 1970 (VII of 1970), shall be competent to conduct proceedings before the Special Appellate Court for and on behalf of the Federal Government, and, if so required by the Federal Government, to withdraw such proceedings.

(3) When a Special Prosecutor appointed under sub-section (1), or a law officer referred to in sub-section (2), is, for any reason, temporarily unable to conduct proceedings before the Special Judge or, as the case may be, the Special Appellate Court, the proceedings shall be conducted by such person as may be appointed in this behalf by the Special Judge or, as the case may be, Special Appellate Court.

48. Indemnity. No suit, prosecution or other proceedings shall lie against the Federal Government or a Provincial Government or any officer of the Federal Government or of a

Provincial Government for anything in good faith done or intended to be done in pursuance of this Act or the rules made there under.

49. Act to override other laws. The provisions of this Act except those of Chapter VI, shall have effect notwithstanding anything contained in any other law for the time being in force.

50. Power to make rules.—(1) The Federal Government may, by notification in the official Gazette, make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

- (a) the administration, management and disposal of the property forfeited under Chapter IV;
- (b) the powers of a Civil Court that may be exercised by the Special Judge and the Special Appellate Tribunal;
- (c) terms and conditions of Special Prosecutors; and
- (d) any other matter which is to be, or may be, prescribed.

51. *[Chapter VI. Amendment of the Customs Act, 1969] Omitted by the Federal Laws (Revision and Declaration) Ordinance, 1981 (XXVII of 1981), s. 3 and Sch., II.*

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