

SENATE OF PAKISTAN

REPORT NO.30 OF 2020



House of the Federation

REPORT OF THE STANDING COMMITTEE ON FINANCE, REVENUE AND ECONOMIC AFFAIRS

ON

**THE COVID-19 (PREVENTION OF SMUGGLING) BILL, 2020, LAID IN
THE HOUSE ON 19TH JUNE, 2020, UNDER ARTICLE 73
OF THE CONSTITUTION**

PRESENTED BY:

SENATOR FAROOQ HAMID NAEK

SENATE SECRETARIAT

REPORT OF THE STANDING COMMITTEE ON FINANCE, REVENUE, AND ECONOMIC AFFAIRS ON THE COVID-19 (PREVENTION OF SMUGGLING) BILL, 2020

I, Senator Farooq Hamid Naek, Chairman, Standing Committee on Finance, Revenue and Economic Affairs, have the honour to present, on behalf of the Committee, this report on the COVID-19 (Prevention of Smuggling) Bill, 2020, laid on the table of the House on 19th June, 2020, under Article 73 of the Constitution for making recommendations, if any, thereon to the National Assembly and referred to the Standing Committee for consideration and report.

2. The composition of the Standing Committee is given as under: -

(1)	Senator Farooq Hamid Naek	Chairman
(2)	Senator Ayesha Raza Farooq	Member
(3)	Senator Mushahid Ullah Khan	Member
(4)	Senator Musadik Masood Malik	Member
(5)	Senator Dilawar Khan	Member
(6)	Senator Muhammad Akram	Member
(7)	Senator Muhammad Talha Mahmood	Member
(8)	Senator Imam-ud-Din Shouqeen	Member
(9)	Senator Mohsin Aziz	Member
(10)	Senator Mian Muhammad Ateeq Shaikh	Member
(11)	Senator Anwar ul Haq Kakar	Member
(12)	Senator Sherry Rehman	Member
(13)	Senator Zeeshan Khanzada	Member
(14)	Advisor the Prime Minister for Finance and Revenue	Ex-Officio Member



3. The Committee considered the said Bill in its meeting held on 29th June, 2020, at Parliament House, Islamabad. The meeting of the Committee was attended by the following Senators:-

(1)	Senator Farooq Hamid Naek	Chairman
(2)	Senator Mohsin Aziz	Member
(3)	Senator Mian Muhammad Ateeq Shaikh	Member
(4)	Senator Musadik Masood Malik	Member
(5)	Senator Mushahid Ullah Khan	Member
(6)	Senator Muhammad Akram	Member
(7)	Senator Zeeshan Khanzada	Member

4. At the outset, the Chairman Committee apprised the Committee Members that it has been clearly mentioned in the statement of objects and reasons of the Bill that:-


"The purpose of this Bill is to lay the Covid-19 (Prevention of Smuggling) Ordinance, 2020 (III of 2020) in the National Assembly under clause (1) of Article 70 of the Constitution of the Islamic Republic of Pakistan, 1973. Since the Bill's prime objective is imposition of heavy fines and pecuniary penalties to deter smuggling within the meaning of sub-clause (a) of clause (3) of Article (73) of Constitution of the Islamic Republic of Pakistan, 1973, **the same is not a money Bill**"

5. The representatives from the Federal Board of Revenue (FBR) and M/o Law and Justice also agreed with the observation of the Committee. The Committee observed that in view of the Para-1, of the statements of objects and reasons of the said Bill, admittedly the same is not a Money Bill, consequently **the Committee unanimously recommends to the National Assembly that the Covid-19**



(Prevention of Smuggling) Bill, 2020, may be withdrawn by the Government and the same be brought under Article 70 of the Constitution of Pakistan 1973.

6. The Bill as laid in the Senate is annexed.


(HYDER ALI)
JS/Secretary (Committee)


(SENATOR FAROOQ HAMID NAEK)
Chairman (Committee)

Islamabad, the
29th June, 2020

[Published in the Gazette of Pakistan, Extraordinary, Part-I,
dated the 27th April, 2020]

ORDINANCE NO.III OF 2020

AN

ORDINANCE

*to provide for the prevention of smuggling of scheduled articles,
in the wake of an emergent situation resulting from the outbreak
of the corona virus pandemic (COVID-19)*

WHEREAS it is expedient to provide for the prevention of smuggling in respect of scheduled articles, in an emergent situation resulting from the outbreak of the corona virus pandemic (COVID-19) and for matters connected therewith and ancillary thereto;

WHEREAS smuggling of scheduled articles is a big menace in the society, which has exacerbated during lockdowns in the wake of the corona virus (COVID-19) pandemic.

WHEREAS Pakistan is a state party to the International Health Regulations, 2005, issued by the World Health Organization, according to which Pakistan is under a direct obligation to prevent, protect against, control and provide a public health response to international diseases;

WHEREAS the World Health Organization has declared corona virus (COVID-19) to be a pandemic requiring multifaceted responses;

WHEREAS smuggling of scheduled articles, causes exponential hardship to the people at large, especially in circumstances of partial or complete lock-down;

AND WHEREAS, the Senate and the National Assembly are not in session and the President of the Islamic Republic of Pakistan is satisfied that circumstances exist which render it necessary to take immediate action;

NOW, THEREFORE, in the exercise of powers conferred by clause (1) of Article 89 of the Constitution of the Islamic Republic of Pakistan, 1973, the President is pleased to make and promulgate the following Ordinance:—

1. **Short title, extent and commencement.**—(1) This Ordinance shall be called COVID-19 (Prevention of Smuggling) Ordinance, 2020.

(2) It extends to the whole of Pakistan.

(3) It shall come into force at once.

2. **Definitions.**—In this Ordinance, unless there is anything repugnant in the subject or context:—

(a) "code" means the code of criminal procedure, 1898 (Act V of 1898);

(b) "conveyance" includes any means of transport used for carrying goods or passengers such as vessel, aircraft, vehicle, train, cart, animals, etc.;

(c) "Deputy Commissioner" means the Deputy Commissioner of the district concerned;

(d) "district administration" means the Deputy Commissioner of the district concerned and such other officers, subordinate to him, as

may be designated by the Deputy Commissioner concerned in respect of any particular areas or subject;

- (e) "goods" means scheduled articles;
- (f) "government" means the Federal Government;
- (g) "officer" means an Assistant Collector of Customs or an officer of any other department, authority or agency including the security or law enforcement agencies, notified by the Federal Board of Revenue to implement the provisions of this Ordinance to the extent, for areas and jurisdictions as deemed fit:

Explanation.—"security or law enforcement agencies" include the police, Inter-Services Intelligence, Military Intelligence, Federal Investigation Agency, Coast Guards, Intelligence Bureau, Frontier Constabularies, Frontier Corps, Levies, Rangers, etc;

- (h) "prescribed" means prescribed by rules made under this Ordinance;
- (i) "scheduled articles" means any of the articles specified in the schedule to this Ordinance; and,
- (j) "smuggling" means to take out or attempt to take out of Pakistan the scheduled articles through all routes, whether notified under sections 9 and 10 of the Customs Act, 1969 (IV of 1969) or otherwise, without formal approval or authorization.

3. **Offence of smuggling.**—(1) Any person who smuggles or attempts to smuggle or is concerned with or connected to the smuggling of scheduled articles shall be guilty:—

- (a) if the scheduled articles comprise other than foreign currency,—
 - (i) of an offence punishable with simple imprisonment for a term not exceeding two years, if the value of the goods is between five lacs and one rupees to thirty lacs rupees;
 - (ii) of an offence punishable with simple imprisonment for a term not exceeding three years, if the value of the goods is between thirty lacs and one rupees to fifty lacs rupees;

Provided that the sentence of imprisonment shall not be less than two years;

- (iii) of an offence punishable with simple imprisonment for a term not exceeding five years, if the value of the goods is between fifty lacs and one rupees to seventy five lacs rupees:

Provided that the sentence of imprisonment shall not be less than two and a half years;

- (iv) of an offence punishable with simple imprisonment for a term not exceeding ten years, if the value of the goods is between seventy five lacs and one rupees to one crore rupees:

Provided that the sentence of imprisonment shall not be less than three years; or

- (v) of an offence punishable with simple imprisonment for a term not exceeding fourteen years, if the value of the goods exceeds one crore rupees:

Provided that the sentence of imprisonment shall not be less than five years; or

- (b) if the scheduled articles comprise foreign currency:-

- (i) of an offence punishable with simple imprisonment for a term not exceeding two years, if the amount of the currency is upto ten thousand US dollars or equivalent in value:

Provided that this provision shall not be applicable in case the value of currency upto ten thousand US dollars and is being taken out of Pakistan through routes notified under sections 9 and 10 of the Customs Act, 1969 (TV of 1969);

- (ii) of an offence punishable with simple imprisonment for a term not exceeding three years, if the amount of the currency is between ten thousand US dollars to twenty thousand US dollars or equivalent in value:

Provided that the sentence of imprisonment shall not be less than two years;

- (iii) of an offence punishable with simple imprisonment for a term not exceeding five years, if the amount of the currency is twenty thousand and one US dollars to fifty thousand US dollars or equivalent in value:

Provided that the sentence of imprisonment shall not be less than two and a half years;

- (iv) of an offence punishable with simple imprisonment for a term not exceeding ten years, if the amount of the currency is between fifty thousand and one US dollars to one lac US dollars or equivalent in value;

Provided that the sentence of imprisonment shall not be less than three years; or

- (v) of an offence punishable with simple imprisonment for a term not exceeding fourteen years, if the amount of the currency is more than one lac US dollars or equivalent in value;

Provided that the sentence of imprisonment shall not be less than five years.

(2) The value of the scheduled articles for the purposes of clause (a) of sub-section (1) shall be determined in the manner as may be prescribed.

(3) Any person who aids, assists, abets, attempts or conspires in respect of an offence under sub-section (1) or is a beneficiary, agent, carrier or person arranging or running a network for carrying or facilitating goods to cross the border, shall be guilty of the same offence and shall be awarded punishment in the same manner as provided for in sub-section (1).

4. **Power to search and seizure of scheduled article.**—(1) When an officer has reasonable grounds to suspect, either upon information from anyone or on his own, that a person is carrying with him or keeping in a conveyance or have stored scheduled articles meant for smuggling, he may stop and search such person, any baggage, luggage or belongings, or conveyance, without any warrant.

Provided that the powers under sub-section (1) shall only be exercised within a distance of five kilometers from any international border or within the premises of airports:

Explanation.—For the purpose of searching the baggage, luggage or conveyance the officer may break or open any locks or open any package.

(2) Upon search of the person or conveyance under sub-section (1), if scheduled articles are found which are suspected to be meant for smuggling, the officer shall immediately seize the same and prepare a detailed report of the scheduled articles and other relevant material found during the search.

(3) The provisions of the Code shall not be applicable on search and seizure under this Ordinance.

5. Power to auction seized scheduled articles.—(1) Notwithstanding anything contained in any other law for the time being in force and in addition to the prosecution under this Ordinance, the officer may deal with the scheduled articles seized under section 4 in the following manner:-

- (a) where the seized items comprise foreign currency, it shall be deposited in a profit bearing foreign currency account in the National Bank of Pakistan, and if:—
 - (i) the accused person is acquitted of an offence under section 3, the deposited amount along with the profit shall be released to the same accused; or
 - (ii) the accused person is convicted of an offence under section 3, the deposited amount along with the profit shall be transferred and deposited into the government exchequer;
- (b) where the seized items comprise other than foreign currency, the officer may sell the scheduled articles seized under section 4 by auction in the manner as may be prescribed, and the proceeds so collected shall be deposited in a profit bearing bank account in the National Bank of Pakistan, and if:—
 - (i) the accused person whose scheduled articles are auctioned, is acquitted of an offence under section 3, the deposited amount alongwith the profit shall be released to the said accused; or
 - (ii) the accused person whose scheduled articles are auctioned, is convicted of an offence under section 3, the deposited amount alongwith the profit shall be transferred and deposited into the government exchequer.

6. Cognizance of offence and arrest without warrant.—(1) Notwithstanding anything contained in the Code, all offences punishable under this Ordinance shall be cognizable and non bailable.

(2) A Special Court provided for in section 8 shall take cognizance of an offence under this Ordinance, upon written information by the officer.

(3) An officer may arrest any person without warrant against whom there is credible information that he has committed an offence under this Ordinance.

7. Power to try offences summarily.—(1) Offences punishable under this Ordinance shall be tried by a Special Court provided for in section 8, in a summary manner as provided in sections 262 to 265 of the Code, so far applicable and with the necessary adaptation:

Provided that sub-section (2) of section 262 of the Code shall not apply.

(2) The trial under this Ordinance shall be concluded within thirty days.

(3) Notwithstanding anything to the contrary contained in this section, the Special Courts established under section 8 shall follow the procedure given in Chapter XXII of the Code and the Special Court shall exercise all the powers vested in the Court of Sessions under the Code for the purposes of awarding punishment to the accused under this Ordinance.

8. Special Courts.—(1) Subject to sub-section (2), the existing Special Courts (Custom, Taxation and Anti-Smuggling), established under section 185 of the Customs Act, 1969 (IV of 1969), shall have jurisdiction to try the offences committed under this Ordinance.

(2) The Federal Government shall, upon consultation with the Chief Justice of Pakistan and by notification in the official Gazette, confer the powers of the Special Court on any Sessions Judge or Additional Sessions Judge and specify their area of jurisdiction.

9. Appeal.—(1) A person aggrieved by an order of conviction and sentence under this Ordinance may file an appeal before the High Court concerned within thirty days of the said order.

(2) An appeal under sub-section (1) shall be heard and disposed of within thirty days by a bench of the High Court comprising two Judges.

10. Reward for informers.—Anyone, other than officials of the federal, provincial or local governments, who provides an information to an officer with regard to any act or acts of smuggling, which results in conviction and transfer of funds into the government exchequer, shall be entitled to a reward equivalent to ten percent of the amount transferred to the government exchequer, in the manner as may be prescribed.

11. Role of District Administration.—(1) Any official of the District Administration, not below the rank of BPS-17, may, upon complaint or information from any quarter or upon his own knowledge or information, communicate such information to an officer with regard to any contravention under this Ordinance.

(2) Upon receipt of information under sub-section (1), the officer shall be under an obligation to process the information and take appropriate action, strictly in accordance with the provisions of this Ordinance.

(3) In case the officer does not satisfactorily comply with the obligations under sub-section (2), the Deputy Commissioner concerned shall forward the report, in this behalf, to the appropriate authority to take action against the delinquent officer in accordance with the law.

12. Preventive detention.--(1) When an officer, has reasonable grounds to suspect, either upon information from any source or on his own, that a person is engaged or is likely to engage in any act or transaction of smuggling or may do anything which may facilitate such an act, or is known as a habitual smuggler, such person may be arrested without warrant and detained by an order in writing.

(2) The detention order under sub-section (1) shall not be issued without prior approval of the Deputy Commissioner concerned, who shall apply his mind based on the reports or information available with him, and where such a detention order has been issued, the officer making the order, 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 to the Commissioner of the Division concerned.

(3) Where a representation is made under sub-section (2), the Commissioner of the Division concerned may, on consideration of the representation and after giving the detained person or his representative an opportunity of hearing, modify, rescind or confirm the order.

(4) The Commissioner of the Division concerned may order a conditional release of the detained person on furnishing of surety bond, the amount of which shall be fixed by him after due regard to the circumstances of the case.

(5) A person shall not be detained under an order made under sub-section (1) for a period exceeding three months.

(6) Save as provided under this Ordinance and rules made thereunder, no order made or proceedings taken under this Ordinance, or the rules made thereunder, shall be called in question in any court and no injunction shall be granted by any court in respect of any decision made, or proceedings taken in pursuance of any power conferred by, or under, this Ordinance or the rules made thereunder.

13. **Burden of proof as to lawful authority, etc.**—When any person is alleged to have committed an offence under this Ordinance and any question arises whether he did any act or was in possession of anything with lawful authority or under a permit, licence or other document prescribed by or under any law for the time being in force, the burden of proof that he had such authority, permit, licence or other document shall lie on him.

14. **Persons who may conduct prosecution, etc.**—(1) Notwithstanding anything contained in the Code, a special prosecutor appointed under section 47 of the Prevention of Smuggling Act, 1977 (XII of 1977), shall be competent to conduct prosecution before a Special Court and to withdraw prosecution when so required by the Chairperson, Federal Board of Revenue or any officer authorized by him.

(2) A law officer appointed shall be competent to conduct proceedings before High Court and to withdraw such proceedings when so required by the Chairperson Federal Board of Revenue or any officer authorized by him.

15. **Protection of action taken under the Ordinance.**—(1) No suit, prosecution or other legal proceedings shall lie against any person for anything done, or intended to be done, in good faith.

(2) Except as provided in this Ordinance, no suit or other legal proceedings shall lie to challenge any proceedings under this Ordinance on any ground.

16. **Action in aid of an officer.**—In giving effect to the provisions of this Ordinance, an officer, where he deems fit, may seek the aid of law enforcement agencies.

17. **Power to make rules.**—The Government may, by notification in the official Gazette, make rules to carry out the purpose of this Ordinance.

18. **Ordinance to override other laws.**—The provisions of this Ordinance shall have effect notwithstanding anything contained in any other law for the time being in force.

19. **Power to amend schedule.**—The Government may, by notification in official Gazette, amend the schedule so as to add to, or omit from it, or amend therein any article or commodity or class thereof.

20. **Removal of difficulties.**—If any difficulty arises in giving effect to any of the provisions of this Ordinance, the Federal Government may make such order by notification in the official Gazette, not inconsistent with the provisions of this Ordinance, which is necessary for the purpose of removing the difficulty.

SCHEDULE
[see section 2(i)]

1	Foreign Currency	9	Gur
2	Gold and Silver	10	Rice
3	Precious Stones	11	Wheat, Flour all sorts
4	Sugar	12	Chemical fertilizers all sorts
5	Onions	13	Live Stock
6	Pulses all sorts	14	Maize
7	Salt	15	Edible oil, hydrogenated or otherwise
8	Potatoes	16	Therapeutic Goods as defined in Section 2 (XXXVI) of DRAP Act, 2012

STATEMENT OF OBJECTS AND REASONS

The purpose of this Bill is to lay the Covid-19 (Prevention of Smuggling) Ordinance, 2020 (III of 2020) in the National Assembly under clause (1) of Article 70 of the Constitution of the Islamic Republic of Pakistan, 1973. Since the Bill's prime objective is imposition of heavy fines and pecuniary penalties to deter smuggling within the meaning of sub-clause (a) of clause (3) of Article 73 of Constitution of the Islamic Republic of Pakistan 1973, the same is not a money bill.

2. Due to world wide spread of the Corona Virus Pandemic (COVID-19), there is a likelihood that global supply chain of food commodities and essential articles may be affected and the international prices of these items may increase as compared to domestic market; thus creating an incentive for smuggling to other countries. In order to ensure availability of the food commodities and essential articles in the domestic market to all segments of the society, there is a dire need to adopt measures to mitigate the adverse economic impact of COVID-19 on a priority basis. Besides strengthening the existing laws with respect to taking out of food commodities and essential articles, there is also need for stringent legislation to discourage smuggling and thus to ensure their availability in the domestic market to the general public for their consumption in these difficult times.

3. The Ordinance seeks to curb the menace of smuggling of food and other essential commodities with exemplary punishments to create an effective deterrence in the emergent situation resulting from the outbreak of the Corona Virus Pandemic (COVID-19).

Dr. Abdul Hafeez Shaikh;
Adviser to the Prime Minister on
Finance and Revenue