

CHAPTER I PRELIMINARY

1. Short title, extent and commencement.--(1) This Act may be called the Customs Act, 1969.

(2) R extends to the whole of Pakistan.

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

NOTES

General.--This section corresponds to Section 1 of the Sea Customs Act and Section 1 of the Land Customs Act. Provisions have been made for bringing into force the new Act from such date as may be considered expedient by the Federal Government.

Extent.--This Act extends to the whole of Pakistan. The Territories of Pakistan comprises of--

- (a) the provinces of Baluchistan, the North West Frontier, the Punjab and Sind;
- (b) the Islamabad Capital Territory (i.e. Federal Capital);
- (c) the Federally Administered Tribal Areas; and
- (d) such States and territories as are or may be included in Pakistan, whether by accession or otherwise. (Article 1 (2) of the Constitution of the Islamic Republic of Pakistan, 1973).

Tribal Areas.--The laws of National Assembly or the Provincial Assemblies do not initially apply to Tribal Areas, but the-President has the power to extend the operation of the Act of Parliament to the Tribal Areas. Tribal Areas are defined in Article 246 of the Constitution of the Islamic Republic of Pakistan, 1973, as under:--

"An. 246(a). "Tribal Areas".--mean the areas in Pakistan which, immediately before the commencing day, were Tribal Areas, and includes--

- (i) the Tribal Areas of Baluchistan and the North West Frontier Province; and
- (ii) the former States of Amb, Chitral, Dir and Swat;

(b) "Provincially Administered Tribal Areas" means--

- (i) the districts of Chitral, Dir and Swat (which include Kalam), The Tribal Area in Kohistan districts, Malakand Protected Area, the Tribal Area adjoining Mansehra district and the former State of Amb; and
- (ii) Zhob district, Loralai district (excluding Duki Tehsil). Dalbandin Tehsil of Chagai district and Marri and Bugti tribal territories of Sibi district; and

(c) "Federally Administered Tribal Areas" include--

- (i) Tribal Areas adjoining Peshawar district;
- (ii) Tribal Areas adjoining Kohat district;
- (iii) Tribal Areas adjoining Bannu district;
- (iv) Tribal Areas adjoining Dera Ismail Khan district;
- (v) Bajaur Agency;
- (v-a) Orakzai Agency;
- (vi) Mohmand Agency;
- (vii) Khyber Agency;
- (viii) Kurram Agency;
- (ix) North Waziristan Agency; and
- (x) South Waziristan Agency."

Article 247 provides for the administration of Tribal Areas and procedure for the application of Laws of Pakistan to the said Areas. Article 247 is also reproduced as under--

"Article 247. Administration of Tribal Areas.--(1) Subject to the Constitution, the executive authority of the Federation shall extend to the Federally Administered Tribal Areas, and the executive authority of a Province shall extend to the Provincially Administered Tribal Areas therein.

(2) The President may, from time to time, give such directions to the Governor of a Province relating to the whole or any pan of a Tribal Area within the Province as he may deem necessary, and the Governor shall, in the exercise of his functions under this Article, comply with such directions.

(3) No Act of Majlis-e-Shoora (Parliament) shall apply to any Federally Administered Tribal Area or to any pan thereof, unless the President so directs, and no Act of Majlis-e-Shoora (Parliament) or a Provincial Assembly shall apply to a Provincially Administered Tribal Area, or to any pan thereof, unless the Governor of the Province in which the Tribal Area is situated, with the approval of the President, so directs; and in giving such a direction with respect to any law, the President or, as the case may be, the Governor, may direct that the law shall, in its application to a Tribal Area, or to a specified pan thereof, have effect subject to such exceptions and modifications as may be specified in the direction.

(4) Notwithstanding anything contained in the Constitution, the President may, with respect to any matter within the legislative competence of Majlis-e-Shoora (Parliament), and the Governor of a Province, with the prior approval of the President, may, with respect to any matter within the legislative competence of the Provincial Assembly make regulations for the peace and good government of a Provincially Administered Tribal Area or any pan thereof, situated in the Province.

(5) Notwithstanding anything contained in the Constitution, the President may, with respect to any matter, make regulations for the peace and good government of a Federally Administered Tribal Area or any pan thereof.

(6) The President may, at any time, by Order, direct that the whole or any part of a Tribal Area shall cease to be Tribal Area, and such Order may contain such incidental and consequential provisions as appear to the President to be necessary and proper:

Provided that before making any Order under this clause, the President shall ascertain, in such manner as he considers appropriate, the views of the people of the Tribal Area concerned, as represented in tribal jirga.

(7) Neither the Supreme Court nor a High Court shall exercise any jurisdiction under the Constitution in relation to a Tribal Area, unless Majlis-e-Shoora (Parliament) by law otherwise provides:

Provided that nothing in this clause shall affect the jurisdiction which the Supreme Court or a High Court exercised in relation to a Tribal Area immediately before the commencing day."

The President extended the application of the Sea Customs Act, 1878 to the Tribal Areas vide the Tribal Areas (Application of Acts) Regulation, 1965. After coming into force of the new Customs Act on 1st January, 1970 no such extension was re-enacted. The matter was referred by the Central Board of Revenue to the Ministry of Law regarding the application of the present Act to the Tribal Areas. The legal position as confirmed by the Law Ministry was that the Customs Act, 1969 would apply to the settled districts of Pakistan only. The old laws namely the Sea Customs Act, 1878 and the Rules made thereunder would continue to apply un-interrupted to the Tribal Areas to the extent they are already applicable there until the President issues the directions to the contrary. It was further pointed out that the Customs Act, 1969 would not create any difficulty in the operation of Customs Stations in the Tribal Areas. (CBR's letter C. No. 9(26) SS (I & P) 69, dated 23rd December, 1969 addressed to all Collectors).

The President has extended the application of the Customs Act, 1969 (IV of 1969), all Rules, Notifications

and Orders made or issued thereunder, to the Provincially Administered Tribal Areas of the North West Frontier Province, namely districts of Chitral, Dir and Swat and Malakand Protected Area etc. through various Regulations and Orders which are being reproduced hereinafter:--

**"REGULATION III OF 1975
PROVINCIALY ADMINISTERED TRIBAL AREAS OF THE NORTH-WEST FRONTIER PROVINCE
(APPLICATION OF LAWS) REGULATION, 1975**

A Regulation to apply certain laws to the Provincially Administered Tribal Areas of the North-West Frontier Province

Notification No. F. I(6)-Sec. III/72, dated 22nd July, 1975.--The following Regulation made by the President on the 15th July, 1975, is hereby published for general information:--

Whereas it is expedient to apply certain laws to the Provincially Administered Tribal Areas of the North-West Frontier Province;

Now, therefore, in exercise of the powers conferred by clause (4) of Article 247 of the Constitution of the Islamic Republic of Pakistan, the President is pleased to make the following Regulation, namely:--

1. Short title, extent and commencement.--(1) This Regulation may be called the Provincially Administered Tribal Areas of the North-West Frontier Province (Application of Laws) Regulation, 1975.

(2) It extends to the Provincially Administered Tribal Areas of the North-West Frontier Province.

(3) It shall come into force at once.

2. Application of certain laws to the Provincially Administered Tribal Areas of the North-West Frontier Province.--The laws specified in the second column of the Schedule as in force in the North-West Frontier Province immediately before the commencement of this Regulation, and, so far as may be, all rules, notifications and orders made or issued thereunder, shall apply to such of the Provincially Administered Tribal Areas of the North-West Frontier Province as are specified in the third column of the Schedule.

**THE SCHEDULE
(See section 2)**

S. No.	Laws	Extent of application
1	2	3
1.	The Negotiable Instruments Act, 1881(XXVI of 1881).	Districts of Chitral, Dir. and Swat and Malakand Protected Area.
2.	The Bankers' Books Evidence Act, 1891 (XVIII of 1891).	Do.
3.	The Dangerous Drugs Act, 1930 (II of 1930).	Do.
4.	The Insurance Act, 1938 (IV of 1938).	Do.
5.	The National Bank of Pakistan Ordinance, 1949 (XIX of 1949).	Do.

6.	The House Building Finance Corporation Act, 1952 (XVIII of 1952).	Do.
7.	The State Bank of Pakistan Act, 1956 (XXXIII of 1956). Protected Area.	Districts of Chitral, Dir. and Swat and Malakand
8.	The Agricultural Development Bank of Pakistan Ordinance, 1961 (IV of 1961).	Do.
9.	The Industrial Development Bank of Pakistan Ordinance, 1961 (XXXI of 1961).	Do.
10.	The Banking Companies Ordinance, 1962 (LVII of 1962).	Do.
11.	The Customs Act, 1969 (IV of 1969).	Do.
12.	The National Registration Act, 1973 (LVI of 1973).	Do.
13.	The North West Frontier Constabulary Act, 1915 (XIII of 1915).	All the Provincially Administered Tribal Areas of the North-West Frontier Province.
14.	The Foreign Exchange Regulation Act, 1947 (VII of 1947).	Do.
15.	The Central Government Lands and Buildings (Recovery of Possession) Ordinance, 1965 (LIV of 1965).	Do."

**"REGULATION 1 OF 1977
THE CUSTOMS ACT (APPLICATION TO THE PROvinciALLY ADMINISTERED TRIBAL AREAS)
REGULATION, 1977**

A Regulation to apply the Customs Act, 1969, to the Provincially Administered Tribal Areas of Baluchistan

Notification No. 1(2) Sec. III/75, dated 28th February, 1977.--The following Regulation made by the President on the 16th February, 1977, is hereby published for general information:-

Whereas it is expedient to apply the Customs Act, 1969 (IV of 1969), to the Provincially Administered Tribal Areas of Baluchistan;

Now, therefore, in exercise of the powers conferred by clause (4) of Article 247 of the Constitution of the Islamic Republic of Pakistan, the President is pleased to make the following Regulation, namely:-

1. Short title, extent and commencement.--(1) This Regulation may be called the Customs Act (Application to the Provincially Administered Tribal Areas) Regulation, 1977.

(2) It extends to the whole of the Provincially Administered Tribal Areas of Baluchistan.

(3) It shall come into force at once.

2. Application of the Customs Act, 1969 (IV of 1969), to the Provincially Administered Tribal Areas of Baluchistan.---The provisions of the Customs Act, 1969 (IV of 1969), and, so far as may be, all rules, notifications and orders made thereunder shall apply to the Provincially Administered Tribal Areas of Baluchistan."

**"REGULATION 1 OF 1984
THE CUSTOMS ACT, 1969 (APPLICATION TO THE FEDERALLY ADMINISTERED TRIBAL AREAS)
REGULATION, 1984**

A Regulation to apply the Customs Act, 1969, to the Federally Administered Tribal Areas

Notification No. F. 5(1)-F. III/82-Vol. III, dated 7th January, 1984.--The following Regulation made by the president is hereby published for general information:--

Whereas it is expedient to apply the Customs Act, 1969 (IV of 1969), to the Federally Administered Tribal Areas;

Now, therefore, in pursuance of the Proclamation of the fifth day of July, 1977, and in exercise of all powers enabling him in that behalf, the President is pleased to make the following Regulation:--

1. Short title, extent and commencement.--(1) This Regulation may be called the Customs Act, 1969 (Application to the Federally Administered Tribal Areas) Regulation, 1984.

2. It extends to the whole of the Federally Administered Tribal Areas.
3. It shall come into force at once.

2. Application of Customs Act, 1969 (IV of 1969), to the Federally Administered Tribal Areas.--The Customs Act, 1969 (IV of 1969), as in force in Pakistan immediately before the commencement of this Regulation, and all amendments which may be made therein after such commencement, and all rules, notifications and orders which may have been, or may be, made or issued thereunder, shall apply to the Federally Administered Tribal Areas, subject to the modification that Section 185 thereof shall have effect as if, in sub-section (2), after the word "he", the words "is a Political Agent or" were inserted."

"AN ORDER

to adapt and enforce the Customs Act, 1969, in the Northern Areas

[Islamabad, the 16th October, 1980]

Whereas it is expedient to adapt and enforce the Customs Act, 1969 (IV of 1969), in the Northern Areas;

Now, therefore, the Government of Pakistan is pleased to make the following Order:--

1. Short title, extent and commencement.--(1) This Order may be called the Customs Act, (Adaptation) Order, 1980.

- (2) It extends to the whole of the Northern Areas.
- (3) It shall come into force at once.

2. Adaptation of the Customs Act, 1969.--The Customs Act, 1969 (IV of 1969), as in force immediately before the commencement of this Order, and all amendments which may be made after such commencement, and all rules, notifications and orders which may have been, or may be, made or issued thereunder shall as far as practicable, be in force in the Northern Areas."

Inclusion of offences punishable under Customs Act, 1969 in 2nd Schedule to the Frontier Crimes Regulation, 1901.--The President made the Regulation No. I of 1995, self explanatory and is reproduced below:--

**"REGULATION NO. 1 OF 1995
A REGULATION**

further to amend the Frontier Crimes Regulation, 1901.

[Islamabad, the 22nd August, 1995]

WHEREAS it is expedient further to amend the Frontier Crimes Regulation, 1901 (Regulation No. III of 1901), for proper implementation of the Customs Act, 1969 (IV of 1969), in its application to the Federally Administered Tribal Areas;

AND WHEREAS clause (5) of Article 247 of the Constitution of the Islamic Republic of Pakistan provides that the President may, with respect to any matter, make regulation for the peace and good Government of a Federally Administered Tribal Area or any part thereof;

NOW, THEREFORE, in exercise of the powers aforesaid, the President is pleased to make the following regulation:-

1. Short title, extent and commencement.--(1) This Regulation may be called the Frontier Crimes (Amendment) Regulation, 1995.

(2) It shall extend to the whole of the Federally Administered Tribal Areas.

(3) It shall come into force at once.

2. Amendment of Second Schedule to Regulation No. III of 1901.--In the Frontier Crimes Regulation, 1901 (Regulation No. III of 1901), in the Second Schedule, after the existing entry at S. No. 2 the following new entry shall be inserted, namely:--

"2A. Any offence punishable under any of the provisions of the Customs Act, 1969 (Act No. IV of 1969)".

Act not applicable in Azad Kashmir.--The territory of Azad Kashmir is not a part of Pakistan. Therefore this Act is not applicable to Azad Kashmir unless it is adapted by the Azad Kashmir Government (PLD 1968 Azad J & KI + PLD 1966 S.C. 88).

Application of Customs Act, and its Rules to Export Processing Zones.--The application of the Customs Act and its rules are restricted to the extent that till such time the exemption SRO (S.R.O. No. 881(1)/80) or any of its like provisions holds the field the Customs authorities have no jurisdiction to scrutinize the questions of undervaluation, calculation of duties and misdescription of goods imported into the E.P.Z. However, the Customs authorities shall have the jurisdiction to refuse clearance of goods until a bill of entry is filed under sub-rule (2) of Rule 3 of the Customs Export Processing Zones Rules, 1981 and if the goods fall under the prohibitory category under sub-rule (7) of Rule 3 of the said rules (PTCL 1996 CL. 1).

Application of Customs Act to goods in transit.--The provisions of Customs Act do not deal with goods in transit. (PTCL 1996 CL. 507 + PTCL 1996 CL. 534).

Extent of Rules.--The necessary rules under the Act also came into force in the territory from the date when the Act is extended to that territory (AIR 1953 Raj. 145).

Commencement.--The Customs Act, 1969 came into force with effect from 1st January, 1970 vide Notification No. S.R.O. 276(I)/69, dated 31st December, 1969. (For Notification see page 1 of the Customs Rules and Notifications, 1998-99 Edition -- An allied publication).

2. Definitions.--In this Act, unless there is anything repugnant in the subject or context--

(a) "adjudicating authority" means any authority competent to pass any order or decision under this Act, but does not include the Board, the Collector (Appeals) or the Appellate Tribunal;

(aa) "agent" means a person licensed under section 207 or permitted to transact any business under section 208;

(aaa) "Appellate Tribunal" means the Customs, Excise and Sales Tax Appellate Tribunal constituted under section 194;]

(b) "appropriate officer", in relation to any functions to be performed under this Act, means the officer of customs to whom such functions have been assigned by or under this Act;

(bb) "assessment" includes provisional assessment, reassessment and any order or assessment in which the duty assessed is nil;

(bbb) "baggage" includes unaccompanied baggage but does not include motor vehicles;

(c) "bill of entry" means bill of entry delivered under section 79;

(d) "bill of export" means bill of export delivered under section 131;

(e) "Board" means the Central Board of Revenue, constituted under the Central Board of Revenue Act, 1924 (IV of 1924);

(f) "coastal goods" means goods transported in a vessel from one port in Pakistan to another, but does not include imported goods on which customs duty has not been paid;

(ff) "Collector (Appeals)" means a person appointed to be a Collector of Customs (Appeals) under section 3;]

(g) "conveyance" means any means of transport used for carrying goods or passengers such as a vessel, aircraft, vehicle or animal;

(h) "customs-airport" means any airport declared under section 9 to be a customs-airport;

(i) "customs-area" means the limits of the customs-station specified under section 10 and includes any area in which imported goods or goods for export are ordinarily kept before clearance by the customs authorities;

(ia) "customs documents" include bill of entry, bill of export, applications for claim for refund, duty drawback and repayment of duty, baggage declaration form or similar other forms used for customs clearance;

(j) "customs-port" means any place declared under section 9 to be a customs-port;

(jj) "customs-practitioner" means a person registered as a customs-practitioner in accordance with the rules made by the Central Board of Revenue in this behalf;

(k) "customs-station" means any customs-port, customs-airport or any land customs-station;

(kk) "detain", in relation to goods, means to prohibit the disposal or use of the goods, pending the finalisation of any proceedings under this Act in relation to the goods or the owner thereof;

(1) "goods" means all movable goods and includes--

- (i) conveyances,
- (ii) stores and materials,
- (iii) baggage, and
- (iv) currency and negotiable instruments;

(m) "land customs-station" means any place including an inland river port declared under section 9 to be

a land customs-station;

(n) "master" when used in relation to any vessel, means any person, except a pilot or harbour master, having command or charge of such vessel;

(o) "officer of customs" means an officer appointed under section 3;

(p) "Pakistan customs waters" means the water extending into the sea to a distance of twelve nautical miles measured from the appropriate base line on the coast of Pakistan;

(q) "person-in-charge" means--

(i) in relation to a vessel, the master of the vessel;

(ii) in relation to an aircraft, the commander or pilot in-charge of the aircraft;

(iii) in relation to a railway train, the conductor, guard or other person having the chief direction of the train;

(iv) in relation to any other conveyance, the driver or any other person having control of the conveyance;

(r) "rules" means the rules made under this Act;

(rr) "seize" means to take into custody, physically or otherwise, goods in respect of which some offence has been committed or is believed: to have been committed under this Act or the rules; and all cognate words and expressions shall be construed accordingly;

(s) "smuggle" means to bring into or take out of Pakistan, in breach of any prohibition or restriction for the time being in force, or evading payment of customs-duties or taxes leviable thereon,--

(i) gold bullion, silver bullion, platinum, palladium, radium, precious stones, antiques, currency, narcotics and narcotic and psychotropic substances; or

(ii) manufactures of gold or silver or platinum or palladium or radium or precious stones, and any other goods notified by the Federal Government in the official Gazette, which, in each case, exceed fifty thousand rupees] in value; or

(iii) any goods by any route other than a route declared under section 9 or 10 or from any place other than a customs-station and includes an attempt, abetment or connivance of so bringing in or taking out of such goods; and all cognate words and expressions shall be construed accordingly],

(ss) "Special judge" means a special judge appointed under section 185;

(sss) "Special Appellate Court" means a Special Appellate Court constituted under section 46 of the Prevention of Smuggling Act, 1977;]

(t) "warehouse" means any place appointed or licensed under section 12 or section 13;

(u) "warehousing station" means a place declared as a warehousing station under section 11;

(v) "wharf" means any place in customs-port approved under clause (b) of section 10 for the loading and unloading of goods or any class of goods.

NOTES

General.--This section corresponds to Section 3 of the Sea Customs Act, 1878 and Section 2 of the Land Customs Act, 1924. A number of new definitions of certain terms have been added in the present section. This is the usual definition clause which defines some basic words and phrases used in the Act. They

have limited scope and only for the purposes of the Act unless specially extended.

Agent.--For the Customs Clearing Agents Rule 1971 see Notification No. S.R.O. No. 13(1)/71, dated 8th January, 1971 at page 29 of the Customs Rules and Notifications, 1998-99 Edition - An allied publication.

Revocation of a licence of Customs House Agent.--The revocation of a licence of a Customs House Agent without affording such person an opportunity to show cause against the proposed action is illegal, being in disregard of the principles of natural justice. It has further been ruled by the Dacca High Court that cancellation of a licence of a Clearing Agent on a ground other than that mentioned in the rules is not warranted. In that case the Customs Authority demanded payment of duty and sales tax from a Clearing Agent on pain of cancellation of licence and on the failure of the Clearing Agent to comply with the demand, his licence was cancelled. It was held that since the cancellation of the Agent's licence was not a ground mentioned in the rules, the order of cancellation was unlawful. (20 D.L.R. 300).

Duties and responsibilities of clearing and forwarding agents.--Duties and responsibilities of clearing and forwarding agent are governed under the Contract Act, 1872. He is bound under section 211 of the Contract Act, 1872 to act by instructions of the principal.

"Customs Agents" and "Customs Practitioners "--Customs Agents are different from Customs Practitioners. Customs Practitioners are defined in clause (jj) of Section 2.

Appellate Tribunal.--Appellate Tribunal has been constituted.

Appropriate Officer.--The Customs Act confers certain powers, imposes various duties and provides for the performance of various functions by the different categories of officers of customs. The Central Board of Revenue however under Sections 4, 5 and 6 has certain powers.

(a) Under Section 4 it can impose limitation or certain conditions on the exercise of his powers and on discharge of his duties.

(b) Under section 5 it can delegate the powers to different categories of officers of customs; and

(c) Under Section 6 it can assign any of the functions and powers of customs officer to other officers of Federal Government, Provincial Government, State Bank of Pakistan and Scheduled Banks.

Assignment of Function of Appropriate Officer.--The Central Board of Revenue has assigned the function of appropriate officer vide Notification No. S.R.O. 56(I)/93, dated 19th January, 1993. The Notification is reproduced below:--

"In exercise of the powers conferred by clause (b) of section 2 of the Customs Act, 1969 (IV of 1969), and in supersession of its Notification No. S.R.O. 806(I)/84, dated 20th September, 1984, the Central Board of Revenue is pleased to assign the functions of the "appropriate officer", referred to in various provisions of the Customs Act, 1969, given in column 2 of the table below, to the officers of customs mentioned in the corresponding entry in column 3 of the said table.

TABLE

S. No.	Provisions of the Customs Act, 1969	Officers of Customs
1	2	3
1.	[Omitted]	

2.	Section 24	Superintendent / Principal Appraiser.
3.	Section 25A	Deputy Collector.
4.	Section 26	Deputy Superintendent / Inspector Preventive Service / Appraiser.
5.	Section 32 (4)	Officers of Customs competent to adjudicate the case under section 179
	(i) read with section 32 (2)	of the Customs Act, 1969.
	(ii) read with section 32 (3)	Superintendent/Principal Appraiser.
6.	Section 35	Ministerial Clerk / Inspector/ Preventive officer/Examiner.
7.	Section 44	Inspector / Preventive Officer.
8.	Section 45	Superintendent/Principal Appraiser.
9.	Section 47	Deputy Superintendent / Inspector Preventive Service/Appraiser.
10.	Section 48	Inspector / Preventive Officer/ Examiner.
11.	Section 49	Superintendent/Principal Appraiser.
12.	Section 51	Inspector / Preventive Officer/ Examiner.
13.	Section 51	Inspector / Preventive Officer/ Examiner.
14.	Section 52	Inspector/Preventive Officer.
15.	Section 53(2):	
	(i) clauses (a) and (b)	Ministerial Clerk / Inspector/ Preventive Officer/Examiner.
	(ii) clause (c)	Inspector/Preventive Officer/ Examiner.
16.	Section 54 (2):	
	(i) clauses (a) and (b)	Ministerial Clerk / Inspector / Preventive Officer/Examiner.
	(ii) clause (c)	Inspector / Preventive Officer/ Examiner.
17.	Section 55 (1):	
	(i) clauses (a) and (b)	Inspector / Preventive Officer/ Examiner.
	(ii) clauses (c), (d) and (e)	Superintendent/Principal Appraiser.
18.	Section 56	Inspector / Preventive Officer/ Examiner.

19.	Section 57	Assistant Collector.
20.	Section 58	Inspector / Preventive Officer/ Examiner.
21.	Section 60	Deputy Superintendent/Inspector Preventive Service/Appraiser.
22.	Section 62	Deputy Superintendent / Inspector Preventive Service/Appraiser.
23.	Section 64	Superintendent / Principal Appraiser.
24.	Section 65	Superintendent/Principal Appraiser.
25.	Section 66	Superintendent/Principal Appraiser.
26.	Section 68	Deputy Superintendent / Inspector Preventive Service/Appraiser.
27.	Section 74	Inspector/Preventive Officer.
28.	Section 75	Inspector / Preventive Officer/ Examiner.
29.	Section 76	Inspector / Preventive Officer/ Examiner.
30.	Section 77	Superintendent/Principal Appraiser.
31.	Section 78 (1)	Superintendent / Principal Appraiser.
	Section 78 (3)	Inspector / Preventive Officer/ Examiner.
	Section 78 (4)	Superintendent/Principal Appraiser.
32.	Section 79 (1)	Ministerial Clerk / Inspector/ Preventive Officer / Examiner.
	Section 79 (1) proviso	Superintendent / Principal Appraiser.
	Section 79 (2)	Assistant Collector.
33.	Section 80	Superintendent/Principal Appraiser.
34.	Section 81	Assistant Collector.
35.	Section 82	Assistant Collector.
36.	Section 83	Superintendent/Principal Appraiser.
37.	Section 86	Assistant Collector.
38.	Section 88 (1)	Inspector / Preventive Officer/ Examiner.
	Section 88(4)	Deputy Superintendent/ Inspector Preventive Service/Appraiser.
39.	Section 91	Inspector / Preventive Officer/ Examiner.

40.	Section 92	Inspector / Preventive Officer/ Examiner.
41.	Section 93	Deputy Superintendent / Inspector Preventive Service/Appraiser.
42.	Section 94 (1)	Superintendent / Principal Appraiser.
	Section 94 (2)	Assistant Collector.
43.	Section 96	Assistant Collector.
44.	Section 98	Deputy Collector.
45.	Section 101	Deputy Superintendent / Inspector Preventive Service/Appraiser.
46.	Section 107	Superintendent/Principal Appraiser.
47.	Section 111	Assistant Collector.
48.	Section 112	Assistant Collector.
49.	Section 113	Inspector / Preventive Officer/ Examiner.
50.	Section 114	Superintendent/Principal Appraiser.
51.	Section 115	Assistant Collector.
52.	Section 116	Collector of Customs.
53.	Section 117	Inspector / Preventive Officer/ Examiner.
54.	Section 119	Inspector / Preventive Officer/ Examiner.
55.	Section 121	Superintendent/Principal Appraiser.
56.	Section 124	Superintendent/Principal Appraiser.
57.	Section 129	Superintendent/Principal Appraiser.
58.	Section 130	Deputy Superintendent / Inspector Preventive Service/Appraiser.
59.	Section 131:	
	(i) clause (a) sub-clause (I) (ii) clause (a) sub-clause (iii) (iii) clause(b)	Ministerial Clerk / Inspector/ Preventive Officer / Examiner. Superintendent / Inspector Preventive Service/Principal Appraiser. Deputy Superintendent / Inspector Preventive Service/Appraiser.
60.	Section 132	Superintendent/Principal Appraiser.
61.	Section 133	Assistant Collector.
62.	Section 134	Assistant Collector.

63.	Section 135	Superintendent/Principal Appraiser.
64.	Section 137	Superintendent/Principal Appraiser.
65.	Section 139	Inspector/Preventive Officer.
66.	Section 143	Deputy Superintendent / Inspector Preventive Service.
67.	Section 145	Ministerial Clerk, Inspector/ Examiner.
68.	Section 147	Ministerial Clerk / Inspector/ Preventive Officer/Examiner.
69.	Section 148	Superintendent/Principal Appraiser.
70.	Section 149	Superintendent/Principal Appraiser.
71.	Section 151	Inspector / Preventive Officer/ Examiner.
72.	Section 153	Superintendent/Principal Appraiser.
73.	Section 156 (5)	Superintendent/Principal Appraiser.
74.	Section 156 (16)	Superintendent/Principal Appraiser.
75.	Section 156 (26)	Inspector / Preventive Officer/ Examiner.
76.	Section 156 (27)	Inspector/Preventive Officer / Examiner.
77.	Section 156 (28)	Inspector / Preventive Officer/ Examiner.
78.	Section 156 (37)	Inspector / Preventive Officer/ Examiner.
79.	Section 156 (49)	Superintendent/Principal Appraiser.
80.	Section 156 (50)	Inspector / Preventive Officer/ Examiner.
81.	Section 156 (54)	Inspector / Preventive Officer/ Examiner.
82.	Section 156 (58)	Inspector / Preventive Officer/ Examiner.
83.	Section 156(61):	
	(i) Appropriate Officer to sanction removal from one warehouse to another under sections 99 & 100	Collector of Customs.
	(ii) Removal of such goods as samples under section 94	Assistant Collector.
	(iii) In all other cases of removal of goods from a warehouse	Superintendent/Principal Appraiser.

84.	Section 156 (70)	Inspector/Preventive Officer.
85.	Section 157	Officer of Customs competent to adjudicate the case under section 179 of the Customs Act, 1969.
86.	Section 158	Inspector / Preventive Officer/ Examiner.
87.	Section 160	Inspector / Preventive Officer/ Examiner.
88.	Section 164	Inspector / Preventive Officer/ Examiner.
89.	Section 165	Inspector / Preventive Officer/ Examiner.
90.	Section 168	Inspector / Preventive Officer/ Examiner.
91.	Section 169	Inspector / Preventive Officer/ Examiner.
92.	Section 174	Inspector / Preventive Officer/ Examiner.
93.	Section 183 (1)	Officers of Customs competent to adjudicate the case under section 177 of the Customs Act, 1969.
	Section 183 (2)	Superintendent/Principal Appraiser.
94.	Section 186	Inspector / Preventive Officer/ Examiner.
95.	Section 194	Assistant Collector.
96.	Section 197	Inspector / Preventive Officer/ Examiner.

Contd.

97.	Section 198	Inspector / Preventive Officer/ Examiner.
98.	Section 199	Inspector / Preventive Officer/ Examiner.
99.	Section 202	Assistant Collector.
100.	Section 208	Inspector / Preventive Officer/ Examiner.
101.	Section 210	Superintendent/Principal Appraiser.
102.	Section 223	Officer of Customs competent to adjudicate the case under section 179 of the Customs Act, 1969/Collector Appeals.
103.	Section 224:	
	(i) read with section 22 proviso (delay in re-importation of goods produced or manufactured in Pakistan)	Upto one year; Collector of Customs.

	(i-a) read with section 33 (delay in claiming refund of customs-duties)	Upto one year; Collector of Customs.
	(ii) read with section 96(3) (delay in discharge of demand for rent for dues)	Assistant Collector.
	(iii) read with section 107(2) (delay in submission of application for clearance of warehoused goods).	Superintendent/Principal Appraiser.
	(iv) read with section 112 (2) (delay in payment of duty etc.)	Assistant Collector.
	(v) read with section 193 (delay in filing of appeal)	Collector Appeals
	(vi) read with section 199(2) (delay in taking delivery of samples).	Superintendent/Principal Appraiser.

Customs Practitioner.--The Customs Act is a special statute. It provides for registering and regulation the conduct of the Customs Practitioners, appearing before any officer of customs, the Central Board of Revenue or the Federal Government in connection with any proceedings under the Customs Act or the Rules made thereunder. The provisions of the Customs Act will override the provisions of the General Law namely the provisions of the Legal Practitioners and Bar Councils Act, 1973 so far as right of practice of the Customs Law other than by an advocate is concerned. (Based on 1971 SCMR 686).

The Customs Practitioners are to be registered in accordance with rules made by the Central Board of Revenue for this purpose. In the absence of such rules no one can appear before a tribunal for practising the profession of law unless he is an advocate. (Based on PLD 1986 Dacca 894 (910) + PLD 1964 Dacca 671). Section 22 of the Legal Practitioners and Bar Councils Act, 1973 specifically bars any person to practise the profession of law unless he is an advocate. Section 22 of the said Act runs as under:-

"Section 22. Right of advocates to practise.--(1) Save as otherwise provided in this Act, no person shall be entitled to practise the profession of law unless he is an advocate.

(2) Subject to the provisions of this Act, the rules made thereunder and any other law for the time being in force--

(a) an advocate of the Supreme Court or a High Court shall be entitled as of right to practise throughout Pakistan, and to appear, act and plead before any Court or Tribunal in Pakistan; and

(b) any other advocate shall be entitled as of right to practise throughout the Province or Provinces for which the Bar Council, on whose roll his name is entered, has been constituted and to appear, act and plead before any Court or Tribunal in such Province or Provinces other than the High Court.

No advocate shall appear or act for any person in any Court or Tribunal unless he has been appointed for the purpose by such person by a document in writing signed by such person or his recognized agent or some other person duly authorised by him to make such appointment and such documents have been filed in such Court or Tribunal:

Provided that nothing in this sub-section shall apply to--

(a) a Public Prosecutor or any advocate appointed by the State; or

(b) an advocate when appearing on behalf of another advocate, if the advocate so appearing has filed a memo of appearance:

Provided further that an advocate may be allowed to appear for an accused in custody on his undertaking to file the document required under this sub-section."

Any person who is not an advocate if he adopts the profession of law he commits an offence punishable under Section 58 of the Legal Practitioners and Bar Councils Act, 1973, which section runs as under:--

"Section 58. Penalty for illegal practice.--(1) Any person who is not an advocate and practises the profession of law and any person who is not entitled under this Act to practise in a High Court or Supreme Court practises before that Court, shall be punished with imprisonment for a term which may extend to one year, or with fine, or with both.

(2) Any Advocate who practises the profession of law, or acts or appears as agent for any other person, while he is suspended from practice shall be punished with imprisonment for a term which may extend to one year, or with fine, or with both."

The presiding officer who knowingly permits such person to practise profession of law and to represent the assessee abets the offence.

The Customs Clearing Agents are also debarred to appear, plead or act in any proceedings under sections 179, 193, 194 or 196 of the Customs Act, on behalf of the persons to whom they have not pleaded or acted before lower officer in relation to the matters out of which the proceedings have arisen. (See Rule 18 of the Customs Agent (Licencing) Rules, 1971).

Smuggle.--The definition did not exist in the old laws. For the first time the word "smuggle" has been defined by the Legislature in the present Act. Prior to the insertion of this definition it was judicially defined in the case of *M/s. Shew Pujan Rai Indrasen Rai Ltd. vs. Collector of Customs* (AIR 1962 Cal. 789=1952 Cr. L. J. 1951) as under:--

"Smuggling is nothing but importation or exportation of goods secretly or clandestinely without payment of duty".

The clause (s) of Section 2 of the Customs Act, 1969 refers only to goods specified therein and other goods notified by the Federal Government. It does not refer to goods the importation or exportation of which is prohibited elsewhere, which situation is governed by clause (9) of Section 156. If the goods are one not specified in this clause or notified by the Federal Government under this clause, notwithstanding that its export or import may be prohibited or restricted by any law, there cannot be any offence of smuggling in respect thereof. This is clear from clause (9) of Section 156 which makes an offence to import or export goods in violation of any prohibition or restriction on the importation or exportation of such goods imposed by or under this Act or any other law. Clause (9) makes it clear that it will not include goods which come within clause (8) of Section 156 and, therefore, merely because importation or exportation of goods is prohibited by any law, it will not follow that its importation or exportation will amount to smuggling in the absence of its inclusion under a Notification by the Federal Government under sub-clause (ii) of clause (s) of Section 2 of the Act. Clause (8) and (9) of Section 156 must run parallel for the goods covered by the former are excluded from the latter. If these clauses are not so read they will be destructive of each other. To give an example, if an import policy prohibits import of furniture, such import will be in contravention of law and if it is, as was argued by the learned Additional Advocate General, punishable under clause (8) of Section 156 it will make its clause (9) redundant. The law clearly contemplates two separate categories of goods, one clause (s) of Section 2 and the other goods the import or export of which is prohibited under any other law or for that matter under any other section of

the Customs Act, and the offence of smuggling is limited to the former category. It is further fortified in this view by the fact that the Federal Government, at a later date deemed it necessary to notify charas an additional item under the said clause (s) of Section 2. Therefore, the fact that importation and exportation of charas is prohibited under the Dangerous Drugs Act, 1930 which will be deemed to be a prohibition or restriction notified under Section 16 of Act, in the absence of inclusion of charas as one of the items notified under clause (s) of Section 2 then there cannot be any smuggling of charas though of course it is an offence under clause (9) of Section 156. (PLD 1978 Kar. 774 = PLJ 1978 Cr. C. 580 + Re-affirmed in 1980 P. Cr. L. J. 349 = PLD 1979 Kar. 68 and PLD 1981 Quetta 1 + PLD 1980 Kar. 44).

Goods neither covered under clause (i), (ii) nor notified nor brought through unauthorised route cannot be treated as smuggled (PTCL 1988 CL 429 = 1988 P. Cr. L.J. 435).

The first part of clause (s) of Section 2 of the Act qualifies and controls the categories of goods listed in sub-clauses (a) and (b). This means that every goods which are brought into Pakistan, or are taken out of it must be either prohibited or restricted goods or should be so brought in or taken out for the purposes of evading customs duties or taxes. Either of these two conditions must be fulfilled by the categories of goods listed in sub-clauses (a) and (b). Sub-clause (a) is related to the goods mentioned therein or notified separately in an official Gazette whereas sub-clause (b) (now clause (c)) speaks of the goods imported or exported through unspecified routes. Such goods may be prohibited or restricted goods and if they are brought through unspecified routes they became smuggled goods in terms of this sub-clause and so also if they are brought into such route to evade duty or taxes. (PLD 1981 Quetta 1 = PLJ 1980 Quetta 102).

If notified goods even of Pak-origin are found in the border area it leads to a strong inference that offence is one of an attempting to smuggle out of country. (PTCL 1988 CL. 74 = 1988 P. Cr. L.J. 449).

An example to the contrary would be goods whose import or export is not prohibited or restricted say for instance Zamzam water, nor there is any customs duty or tax, leviable on its import. If such water is brought into Pakistan, through a route not specified under Section 9 or 10 of the Customs Act, then though such import may be illegal, no smuggling would take place. Thus, it would be seen that if the conditions laid down in the controlling part are not fulfilled, the act of smuggling is not committed. Vice-versa is also true. In order to be smuggled goods, the goods qualifying either of the two conditions laid down in the controlling part have also to fall in one of the categories listed in sub-clauses (a) and (b) of Section 2 (s). (PLD 1981 Quetta 1 = PLJ 1980 Quetta 102).

Goods imported against Import Licence.--Goods falling under clause (s) if imported against import licence in violations of Import Policy Order, does not amount to smuggling (PTCL 1984 CL. 7). Mis-declaration of goods according to the description of goods for which licence is issued, does not save the importer if the goods are actually not of that description but are of the description as given in clause (s) or notified thereunder.

Goods neither dutiable or taxable nor prohibited or restricted.--If there is neither prohibition or restriction of import or export and nor evasion of duty or tax the fact that the goods are originally imported from an-unspecified route does not constitute smuggling. (PTCL 1987 CL. 36).

Banned goods imported in baggage.--Simply bringing of banned goods in baggage upto customs point does not constitute the offence of smuggling (Position prior to addition of proviso to Section 156(1) after explanation).

Value of the goods.--Value for the purpose of Section 2(s) and 156(1)(89) means the value obtaining under Section 25 i.e. CIF value (PTCL 1988 CL. 131).

Change in the definition.--The definition of "smuggle" has been amended by the Finance Ordinance, 1982. The goods have now been divided into three categories namely (i) Goods of any value, (ii) Goods of the value exceeding Rs. 5000/-; and any goods including goods at serial Nos. (i) and (ii) of any value if brought into or taken out through unauthorised routes.

If importer is not liable for smuggling the subsequent possessor of the same goods is also not liable.--The offence of smuggling as defined in section 2(s) of the Customs Act, can be committed only if the goods expressly mentioned in Section 2(s) or any other goods notified therein by the Government or brought into or taken out of Pakistan in breach of prohibition or by evading of payment of customs duty leviable therein. The offence can only be established if it is shown that the goods are smuggled goods if the persons who imported the goods is not liable for smuggling, the person found in possession of those goods cannot be said to be in possession of the smuggled goods. (PLJ 1981 Cr. C. Kar. 157).

Importation of cars by unapproved routes.--Cars imported by routes other than those declared under sections 9 or 10 or from any place other than a customs station is smuggled one. Goods chargeable with duty but such duty is not paid, or importation or exportation of which reasonably suspected to have been contravened are liable to confiscation. They can be seized under Section 168 (1) of the Customs Act, 1969 by an authorised officer only. (PLD 1977 Lah. 300). Motor car is not a notified item. No smuggling can take place in the absence of any evidence that the car has been brought into the country by unspecified route. (PLD 1980 Kar. 44).

Exporting of currency.--Exporting of Pakistani Currency and foreign currency amounts to smuggling (PTCL 1986 CL. 209= NLR 1985 Cr. 599 = 1986 P. Cr. L.J. 137). (Now export of foreign currency is not prohibited).

Notified goods under sections 2 (s) and 156 (2).--The goods specified for the purpose of sections 2(s) and 156(2) of the Customs Act, 1969, are as follows:--

- (1) Gold bullion, silver bullion and manufactures of gold and silver.
- (2) Platinum, palladium and radium and manufactures thereof.
- (3) Precious stones and manufactures thereof.
- (4) Imitation jewellery and stones.
- (5) Currency.
- (6) Antiques.
- (7) Narcotic and psychotropic substances.
- (8) Alcoholic drinks.
- (9) Arms and ammunition.
- (10) Foodgrains and food items, all sorts.
- (11) Edible oils, all sorts.
- (12) Perfumery, cosmetics and toilet preparations.
- (13) Cotton, cotton yam and cloth.
- (14) Man-made fibres and fabrics.
- (15) Wool, woollen yam and woollen fabrics.
- (16) Transmission apparatus whether or not incorporating reception apparatus.
- (17) Electrical and electro-thermic domestic appliances.
- (18) Airconditioners.
- (19) Video recording or reproducing apparatus.
- (20) Audio cassettes and video cassettes.
- (21) Heads of VCRs, VCPs or tape recorders.
- (22) Auto-parts.
- (23) Spark plugs.
- (24) Lead-acid batteries.
- (25) Tyres and tubes.
- (26) Cigarette lighters.
- (27) Cigarettes and cigars.
- (28) Tendu leaves.
- (29) Betelnuts and betel leaves.
- (30) Watches and watch-bands.
- (31) Razor blades.
- (32) Medicines and pharmaceutical products.

(33) Acetic anhydride.

(34) Vehicles falling under Chapter 87 of the First Schedule excluding non-motorised vehicles.

(For Notification No. S.R.O. 491(1)/85, dated 23rd May, 1985 reported as PTCL 1985 St. 783 (iii) or page 387 of the Customs Rules and Notifications 1998-99 Edition -An allied publication).

Scope of smuggling.--Bare perusal of definition of smuggling suggests that even attempt, abetment or connivance for taking away Pakistani currency in breach of any prohibition or restriction, like any other items, specified in the law, constitutes act of smuggling. It may further be noticed that scope of smuggling is very wide, encompassing all possible factors which may connote attempt, abetment or connivance for bringing in or taking out of country any of specified goods including currency. (PTCL 1991 CL. 311).

Abetment.--The term "smuggling", also includes "attempt" as well as "abetment" or "connivance". Taking out of Pakistan a Bank draft in violation of restriction contained in the Foreign Exchange Regulation Act, 1947 constitute an offence of smuggling. Accused, a foreign national giving a Bank draft drawn on a foreign Bank to be paid in foreign currency. Accused, held abetted commission of offence of smuggling in the circumstances and the conviction awarded by the Special Judge was maintained by the Customs Appellate Tribunal (1981 P. Cr. L.J. 958).

Attempt as defined by Law of Lexicon Fourth Volume, suggests intentional act which a person does towards the commission of offence, but which fails in its object through circumstances independent of such violation. It is obviously an effort of the person to accomplish illegal action which otherwise is frustrated by the happening of certain events (PTCL 1991 CL. 311).

Who is abettor.--Abettor is a person who instigates, promotes, commands or procures commission of crime. It presupposes that such person may merely command, advise, instigate or encourage another to do the crime, and thus would be equally responsible with main culprit (PTCL 1991 CL. 311).

Attempt.--Attempt to smuggle has not been defined in the Act but clause (8) of Section 156 makes the attempt to smuggle also punishable by virtue of the definition of the word "smuggle" which is inclusive of an attempt to bring in or take out goods coming within the mischief of the main provisions. The classic analysis of the course of conduct of a culprit from the stage of conception to consummation of crime has laid down four distinct stages, namely, (i) intention; (ii) preparation; (iii) attempt; and (iv) completed act. As observed by Sir H.S. Gour, in his commentary on the Penal Law of India, the first of the aforesaid four stages, the Criminal Codes of all countries exempt from punishment. The Penal Code of Pakistan punishes the second stage of certain offences, by constituting them separate and distinct offences. The third, namely, attempt, marks a distinct advance in the development of criminality, so that it is punishable everywhere. Ordinarily then, law allows locus poenitentia only up to the second stage after which it regards the development of the scheme as too far advanced to remain unpunished. But this has led, as the reports of cases indicate, to an important question as to when the preparation ends and an attempt begins.

The case in which mere preparation to commit an offence has not been made punishable present the problem to determine whether the acts or omissions committed by the culprit constitute merely preparation or amount to attempt. Often times in such cases the transition between what is preparation and an attempt is so gradual as to be almost imperceptible. The preparation to commit an offence consists in devising or arranging the means or measures necessary for the commission of the offence. It implies the taking of previous measures necessary for the crime. But it is difficult to give an abstract definition of the term "attempt", in juridical context, for it is largely a mixed question of law and fact depending upon the circumstances of each particular case.

It seems that the modern view of attempt does not make it necessary that the interruption which aborts the consummation of the crime should be the penultimate act for the completion of the crime.

Attempt is defined to mean: "Any overt act immediately connected with the commission of an offence, and forming part of a series of acts which, if not interrupted or frustrated, would end in the commission of the

actual offence, is, if done with a guilty intent, an attempt to commit the offence. A person may be guilty of an attempt to commit an offence though that offence could not in the circumstances, have been committed; but steps on the way to doing something which is in fact done and which when done, does not, amount to a criminal offence, cannot be regarded as an attempt.

An act, in order to be a criminal attempt, must be immediately, and not remotely, connected with an directly tending to the commission of an offence. Merely to make preparations for the commission of an offence, is distinct from an attempt to commit the offence.

In order to constitute an attempt, there has, therefore, to be some overt act on the part of the offender which if not frustrated, would lead to the commission of the offence (PTCL 1986 CL 165 = 1986 PSC 800 = NLR 1986 Cr. 484 = PLD 1986 S. C. 192 = PLJ 1986 S. C. 99. + (PTCL 1984 CL 29 = 1984 P. Cr. L.J. 1133 = NLR 1981 Cr. 576 + PTCL 1991 CL. 311).

Accused purchasing ticket for going to a foreign country was checked in at Airline Counter, he was given the boarding card and the baggage tags and finally he was asked to by the Customs Officer to make declaration. In his declaration in writing the accused suppressed the information regarding the currency or Bank draft or precious stones in his possession. Having regard to all the facts it is clear that but for the interception by the Customs officials the accused had done every thing in his power to take out of Pakistan the contraband articles as under Section 2(s) the offence of smuggling also includes an "attempt", "abetment" or "connivance" of bringing in or taking out of prohibited goods. (1980 P. Cr. L.J. 189+ 1981 P. Cr. L.J. 958).

What constitutes an "attempt" is a mixed question of law and fact, depending largely on the circumstances of the particular case. "Attempt" defines a precise and exact definition. Broadly speaking all crimes which consist of the commission of affirmative acts are preceded by some cover or overt conduct which may be divided into three stages. The first stage exists when the culprit first entertains the idea or intention to commit an offence. In the second stage, he makes preparations to commit it. The third stage is reached when the culprit takes deliberate overt steps to commit the offence. Such overt act or step in order to be "criminal" need not be the penultimate act towards the commission of the offence. It is sufficient if such act or acts were deliberately done, and manifest a clear intention to commit the offence aimed, being reasonably proximate to the consummation of the offence (PTCL 1983 CL 64).

In order to constitute "an attempt", first, there must be an intention to commit a particular offence, second, some act must have been done which could necessarily have to be done towards the commission of the offence, and, third, such act must be "proximate" to the intended result. The measure of proximity is not in relation to time and action but in relation to intention. In other words, the act must reveal, with reasonable certainty, in conjunction with other as distinguished from a mere desire or object, to commit the particular offence, though the act by itself may be merely suggestive or indicative of such intention, but, that it must be, that is, it must be indicative or suggestive of the intention. In the instant case the fact that the truck was driven up to a lonely creek from where the silver could be transferred into a sea-faring vessel was suggestive or indicative though not conclusive, that the accused wanted to export the silver. It might have been open to the accused to plead that the silver was not to be exported but only to be transported in the course on intercostal trade. But, the circumstances that all this was done in a clandestine fashion, at dead of night revealed, with reasonable certainty, the intention of the accused that the silver was to be exported. (PTCL 1983 CL 64).

Distinction between "preparation" and "attempt".--There is a distinction between "preparation" and "attempt". Attempt begins where preparation ends (A quotation from (1962) 2 S.C.R. 241 = AIR 1961 S.C. 1998 = PTCL 1983 CL. 64).

Connivance.--Connivance has been described by Black's Law Dictionary revised Fourth Edition at P-375; "Secret or indirect consent or permission of one person to the commission of an unlawful or criminal act by another. Winking at; voluntary blindness; an intentional failure to discover or prevent the wrong; forbearance or passive consent to co-operate secretly with; or to have secret or clandestine understanding with, to look upon with secret favour; it implies both knowledge and assent,

either active or passive." (PTCL 1991 CL. 311).

Seizure of goods not falling under clause 2(s).--Goods (cars) neither falling in clause (a) or (b) of Section 2(s) of the Customs Act, 1969 nor mentioned in Notification issued under Section 2(s) clause (a), are not liable to seizure for the offence of smuggling or having possession of smuggled goods. Seizure of such goods held illegal and the action based on illegal seizure of the goods is also illegal. Notices, if any, issued by the Customs authorities were thus quashed. (PLD 1975 Kar. 482 + PLD 1978 Kar. 774 + PLD 1979 Kar. 68 + PLD 1981 Quetta 1 + 1980 P Cr. L. J. 186). The goods brought into or taken out of Pakistan, in breach of any prohibition or restriction for the time being in force or evading payment of customs duty or taxes leviable thereon can however be seized for the contravention of the provisions of the Customs Act, 1969 as contained in Section 156(1) clauses (9) or (90). (1980 SCMR 114).

When at the relevant time an item is not notified the provisions of smuggling are not attracted and conviction cannot be based on such goods. (PTCL 1986 CL. 156).

Foreign Exchange Bearer Certificates.--There is no prohibition in importing and exporting the Foreign Exchange Bearer Certificates. (See the Foreign Exchange Bearer Certificate Rules, 1985 reported as PTCL 1985 St. 935 (937)).

Currency Regulations.--See Notes under Section 16 of the Act.