

NATIONAL ASSEMBLY SECRETARIAT

REPORT OF THE STANDING COMMITTEE ON INTERIOR ON THE PREVENTION OF SMUGGLING OF MIGRANTS, BILL, 2018.

1. Chairman of the Standing Committee on Interior, have the honor to present this report on the Bill to Prevent the Smuggling of Migrants [The Prevention of Smuggling of Migrants Bill, 2018] referred to the Committee on 11th April, 2018.

2. The Committee consists of the following: -

1) Rana Shamim Ahmad Khan	Chairman
2) Malik Abdul Ghaffar Dogar	Member
3) Malik Sultan Mehmood Hanjra	Member
4) Dr. Ibadullah	Member
5) Sheikh Muhammad Akram	Member
6) Syed Iftikhar-ul-Hassan	Member
7) Makhdoomzada Basit Bokhari	Member
8) Mian Shahid Hussain Khan Bhatti	Member
9) Makhdoom Syed Ali Hassan Gillani	Member
10) Ms. Tahmina Daultana	Member
11) Mir Dostain Domki	Member
12) Mr. Nauman Islam Shaikh	Member
13) Mr. Ehsan-ur-Rehman Mazari	Member
14) Nawab Muhammad Yousuf Talpur	Member
15) Mr. Khial Zaman Orakzai	Member
16) Dr. Arif Alvi	Member
17) Kanwar Naveed Jameel	Member
18) Shaikh Salahuddin	Member
19) Ms. Naeema Kishwer Khan	Member
20) Mr. Sher Akber Khan	Member
21) Mr. Ahsan Iqbal, Minister for Interior	Ex-officio Member

3. The Committee considered the Bill as introduced in the National Assembly placed at Annex-A in its meeting held on 11-04-2018 and proposed the following amendments therein:

(1)

Preamble

In the preamble.-

(i) after the words "to provide", the word "for" shall be inserted; and

(ii) after the word "co-operation", the words "in this regard" shall be inserted.

(2)

Clause 2

In clause 2, after sub-clause (e), the following new sub-clause (f) shall be inserted and remaining sub-clauses shall be re-numbered:-

"(f) 'migrant' means a person who travels or intends to travel from one country to another;" .

(3)

Clause 3

In clause 3, for the words “five hundred thousand” the words “one million” shall be substituted.

(4)

Clause 4

In clause 4, in sub-clause (2), for the words “five hundred thousand” the words “one million” shall be substituted.

(5)

Clause 5

In clause 5, for the words “five hundred thousand” the words “one million” shall be substituted.

(6)

Clause 6

In clause 6, after the words “fourteen years”, the words “but which shall not be less than five years” shall be inserted.

(7)

Clause 8

In clause 8, after the expression “section 3,4,5,6 or 7” the words “and may be a witness in the case”, shall be inserted.

(8)

Clause 10

For the clause 10, the following shall be substituted:-

“10. Cognizance of offences.- Notwithstanding anything contained in the Code, a Magistrate of the First Class shall try an offence punishable under this Act and may impose any punishment provided under the Act.”

(9)

Clause 12

In clause 12, in sub-clause (b), the expression “in such conferences, seminars and workshops arranged by any such organization on smuggling of migrants related matters”, shall be omitted.

(10)

Insertion of Clause 17

After clause 16, the following new clause 17, shall be inserted:-

“17. Repeal.- The Prevention of Smuggling of Migrants Ordinance, 2018 (VII of 2018) is hereby repealed.”

4. The Committee recommended that the Bill as reported by the Committee placed at Annex-B may be passed by the National Assembly. Note of dissent of Dr. Arif Alvi, MNA is placed at Annex-C.

Sd/-

(TAHIR HUSSAIN)

Secretary

Islamabad, the 11th April, 2018

Sd/-

(RANA SHAMIM AHMAD KHAN)

Chairman

Standing Committee on Interior

A

Bill

to prevent the smuggling of migrants

WHEREAS it is necessary to provide effective measures to prevent the smuggling of migrants by land, sea and air, to promote and facilitate national and international co-operation and to protect the smuggled migrants and for matters connected therewith or ancillary thereto;

It is hereby enacted as follows---

1. Short title, extent, and commencement.— (1) This Act may be called the Prevention of Smuggling of Migrants Act, 2018.

(2) It extends to the whole of Pakistan.

(3) It shall come into force at once.

(4) This Act shall apply to any person who commits an offence under section 3, 4, 5, 6 or 7 where —

(a) the offence is committed within the territory of Pakistan;

(b) the offence is committed on board a vessel or aircraft that is registered under the laws of Pakistan at the time of commission of the offence; or

(c) the offence is committed outside the territory of Pakistan by a citizen of Pakistan.

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

(a) **'benefit'** includes monetary profit, proceeds or payment in cash or in kind;

(b) **'Code'** means the Code of Criminal Procedure, 1898;

(c) **'Government'** means the Federal Government;

(d) **'illegal entry'** means crossing borders through any port or place other than the designated port or place or without complying with the legal requirements for entering into Pakistan or another country;

- (e) **'harbour'** shall have the same meaning as in section 52-A of the Penal Code;
- (f) **'organized criminal group'** means a structured group of two or more persons acting in concert for benefit, with the aim of committing any offence under this Act;
- (g) **'Penal Code'** means the Pakistan Penal Code (Act XVI of 1860);
- (h) **'Smuggling of migrants'** means the facilitation, for benefit, of illegal entry of another person who,—
 - (i) is a foreigner, as defined in clause (a) of the Foreigner's Act, 1946 (XXXI of 1946), into Pakistan or from Pakistan into a country of which the person is not a national or a permanent resident; or
 - (ii) is a citizen of Pakistan, as specified in the Pakistan Citizenship Act, 1951 (II of 1951), into another country of which the person is not a national or a permanent resident; and
- (i) **'smuggled migrant'** means any person in relation to whom an offence under section 3,4,5,6 or 7 is committed irrespective of the fact whether or not the perpetrator is identified, apprehended, prosecuted or convicted.

3. Punishment of smuggling of migrants.— Whoever intentionally engages in or attempts to engage in the smuggling of migrants shall be punished with imprisonment which may extend to five years but which shall not be less than three years and with fine up to five hundred thousand rupees.

4. Offences in relation to documents. — (1) Whoever intentionally, for the purpose of getting benefit,—

- (a) produces or attempts to produce a document for the purpose of enabling the smuggling of migrants; or
- (b) procures, provides, or possesses, or attempts to procure, provide, or possess a document for the purpose of enabling the smuggling of migrants, commits an offence.

(2) Whoever commits or attempts to commit an offence under sub-section (1) shall be punished with imprisonment which may extend to three years but which shall not be less than one year and with fine up to five hundred thousand rupees.

5. Offence of harbouring illegal residents for benefit.— Whoever intentionally, for the purpose of getting benefit, harbours or attempts to harbour a person who is not a citizen or permanent resident of Pakistan and who has not complied with the necessary requirements for legally remaining in Pakistan commits an offence and shall be punished with imprisonment which may extend to three years but which shall not be less than one year and with fine up to five hundred thousand rupees.

6. Aggravated offences.— The offences under sections 3, 4, and 5 shall be punished with imprisonment for a term which may extend to fourteen years and with fine up to two million rupee in any of the following circumstances,—

- (a) where the offence involves serious injury, life-threatening illness, or death, or other circumstances that endanger, or are likely to endanger, the life or safety of the smuggled migrant or another person;
- (b) where the offence involves cruel, inhuman or degrading treatment of another person; or
- (c) where the offence was committed as part of the activity of an organized criminal group.

7. Offence of abetment and criminal conspiracy.—(1) Whoever abets any of the offences under section 3,4,5 or 6, shall be punished in accordance with Chapter V of the Penal Code.

(2) Any person who is party to a criminal conspiracy to commit an offence under section 3,4,5 or 6 shall be punished in accordance with Chapter V-A of the Penal Code.

8. Non-criminalization of smuggled migrants.— Without prejudice to the applicability of other laws establishing criminal offences, smuggled migrants shall not become liable to criminal prosecution under this Act for the fact of having been the object of conduct set forth in section 3,4,5,6 or 7.

9. Offences to be cognizable offences etc.— All offences under this Act shall be cognizable, non-bailable, and non-compoundable as construed by the Code.

10. Cognizance of offences.— A Magistrate of the First Class shall try an offence punishable under this Act.

11. Investigating agency.— The Federal Investigation Agency, or such other agencies as may be specially empowered by the Government through notification in the official Gazette, shall be responsible for investigation of offences under this Act.

12. National and International Cooperation.— The Federal Investigation Agency, or such other agency notified under section 11 may:

- (a) co-operate with relevant authorities in Pakistan and in other countries of origin, transit and destination of smuggled migrants and make reciprocal arrangements after due administrative process to share, request and receive information relating to smuggling of migrants; and
- (b) maintain liaison with all relevant national or international authorities, organizations, bodies, associations and societies and represent Pakistan in such conferences, seminars and workshops arranged by any such organization on smuggling of migrants related matters.

13. Applicability of Code.— The provisions of this Act shall have effect notwithstanding anything contained in the Code or any other law but, save as expressly provided in this Act, the provision of the Code shall, in so far as they are not inconsistent with the provisions of this Act, apply to the proceedings under this Act.

14. Power to make rules.— The Government may, by a notification in the official Gazette, make rules to carry out the purposes of this Act.

15. Indemnity.— No suit prosecution or any other legal proceedings shall lie against the Government or any other person exercising any power or performing any function under this Act or the rules made thereunder for anything done in good faith.

16. Provisions of this Act to be in addition to and not in derogation of any other law.— The provisions of this Act shall be in addition to and not in derogation of any other law for the time being in force.

STATEMENT OF OBJECTS AND REASONS

The primary purpose of this Act is to prevent and combat smuggling of migrants. Since smuggling of migrants involves multiple international jurisdictions, cooperation between agencies within and among countries is necessary. Migrant smugglers take advantage of desperate people, many of whom endure unimaginable hardships in their bid for a better life. Migrant smugglers place the lives and safety of smuggled migrants in grave danger. This makes it incumbent upon governments to ensure that those who engage in this inhuman crime are punished and that the rights of smuggled migrants are protected. The Act has three important purposes: (a) prevention and combatting of smuggling of migrants; (b) promotion and facilitation of national and international cooperation; and (c) protection of the rights of smuggled migrants.

Minister for Interior
Minister-in-charge

[AS REPORTED BY THE STANDING COMMITTEE]

A

Bill

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(3) It shall come into force at once.

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(a) the offence is committed within the territory of Pakistan;

(b) the offence is committed on board a vessel or aircraft that is registered under the laws of Pakistan at the time of commission of the offence; or

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- (e) 'harbour' shall have the same meaning as in section 52-A of the Penal Code;
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- (g) 'organized criminal group' means a structured group of two or more persons acting in concert for benefit, with the aim of committing any offence under this Act;
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- commits an offence.

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16. Act not in derogation.— The provisions of this Act shall be in addition to and not in derogation of any other law for the time being in force.

17. Repeal.— The Prevention of Smuggling of Migrants Ordinance, 2018 (VII of 2018) is hereby repealed.

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Minister-in-charge

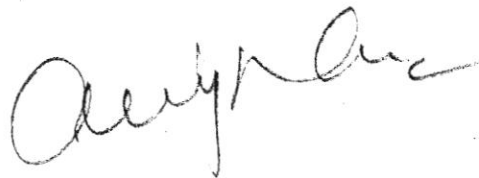
NATIONAL ASSEMBLY OF PAKISTAN

11/4/18

Chairman
Interior Committee

Dear Sir,

I object to
the Bill to prevent the
smuggling of migrants
entering



NA 250