

[AS INTRODUCED IN THE SENATE]

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BILL

to prevent and Combat Trafficking in persons, especially Women and Children

WHEREAS, this Act is not discriminatory on any ground, such as race, colour, sex, language, religion, political or other opinion, national or social origins, property, birth or other status;

AND WHEREAS, it takes into account the special needs of victims of trafficking in persons who are women and children or who otherwise have special needs;

AND WHEREAS, it is consistent with the obligations arising from Pakistan's obligations under international laws;

It is hereby enacted as follows:-

**Part I
General Provisions**

1. Short Title, extent, and commencement.- (1) This Act may be called the Trafficking in Persons Act, 2016.

(2) It extends to the whole of Pakistan.

(3) It shall come into force at once.

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

(a) "Abuse of power or a position of vulnerability" means taking advantage of the vulnerable position a person is placed in as a result of:-

(i) Having entered Pakistan illegally or without proper documentation;

(ii) Pregnancy or any physical or mental disease or disability of the person, including addiction to the use of any substance;

(iii) Reduced capacity to form judgements by virtue of being a child, illness, infirmity or a physical or mental disability;

(iv) Promises or giving sums of money or other advantages to those having authority over a person;

(v) Being in a precarious situation from the standpoint of social survival; or

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- (vi) Other relevant factors;
- (b) "Child" means any person under 18 years of age;
- (c) "Coercion" means use or threat of force, or other forms of non-violent or psychological use of force or threat thereof, including, but not limited to:-
 - (i) Threats of harm or physical restraint of any person;
 - (ii) Any scheme, plan or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person;
 - (iii) Abuse or any threat linked to the legal status of a person; or
 - (iv) Psychological pressure;
- (d) "Deception" means any deception by words or by conduct as to fact or as to law, about:-
 - (i) The nature of work or services to be provided;
 - (ii) The conditions of work;
 - (iii) The extent to which the person will be free to leave his or her place of residence; or
 - (iv) Other circumstances involving exploitation of the person;
- (e) "Exploitation" includes the exploitation of the prostitution of others, sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude, inhuman sports, forced or coerced begging, or the removal of organs;
- (f) "Forced labour or services" includes all work or service that is exacted from any person under the threat of any penalty and for which the person concerned has not offered him- or herself voluntarily;
- (g) "Harbour" means the supplying of a person with shelter, food, drink, money, clothes, arms, ammunition or means of conveyance, or assisting a person by any means, whether of the same kind as those enumerated in this section or not to evade apprehension;
- (h) "Inhuman sports" includes all sports involving, as a matter of normal course, infliction of physical or mental injury on a person against his or her will, intention, or reasonable expectation;

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- (i) "Organized criminal group" means a structured group of two or more persons, existing for a period of time and acting in concert with the aim of committing any offence under this Act, in order to obtain, directly or indirectly, any financial or other material benefit;
- (j) "Servitude" means debt bondage, forced or servile marriage, or the labour conditions and/or the obligation to work or to render services from which the person in question cannot escape and which he or she cannot change;
- (k) "Slavery" means the status or condition of a person over whom control is exercised to the extent that the person is treated like property; and
- (l) "Victim of trafficking in persons" means any human being who has been subject to the offences under Part II of this Act, or whom the competent authority reasonably believes is a victim of trafficking in persons, regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted.

3. Territorial Jurisdiction,-

- (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 the offence was committed;
- (c) The offence is committed outside the territory of Pakistan by a citizen of Pakistan as specified in the *Citizenship Act, 1951*;
- (d) The offence is committed outside the territory of Pakistan against a person who is a citizen of Pakistan as specified in the *Citizenship Act, 1951*; or
- (e) The offence is committed by a citizen of Pakistan as specified in the *Citizenship Act, 1951* whose extradition is refused on the grounds of nationality.

Part II Offences

4. Offence of Trafficking in Persons.- (1) Any person who intentionally –

- (a) Recruits, transports, transfers, harbours or receives another person, or attempts to do so; and does so

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(b) By means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability, or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person; and does so

(c) For the purpose of exploitation of that person;

commits an offence of trafficking in persons and shall be punishable by imprisonment of up to 14 years, a fine, or both.

(2) The consent of a victim of trafficking in persons to the intended exploitation set forth in paragraph (c) of sub-section (1) of this section shall be irrelevant where any of the means set forth in paragraph (b) of sub-section (1) of this section have been used.

5. Offence of Trafficking in Children.-Any person who intentionally: -

(a) Recruits, transports, transfers, harbours or receives another person, or attempts to do so; and

(b) The other person is a child; and does so

(c) For the purpose of exploitation of the child;

commits an offence of trafficking in children and shall be punishable by imprisonment of 14 years, a fine as a Court may deem and proper to the crime, or both.

6. Aggravating Circumstances.-The offences under sections 4 and 5 of this Act shall be punishable by imprisonment of 20 years, a fine as a Court may consider proper, or both in any of the following circumstances:-

(a) Where the offence involves serious injury, life-threatening illness, or death of the victim of trafficking in persons or another person, including death as a result of suicide;

(b) Where the offence was committed as part of the activity of an organized criminal group.

7. Extensions of Criminal Liability.- (1) Any person who participates as an accomplice, aids, or abets any of the offences under sections 4, 5, and 6 of this Act shall be punished in accordance with Chapter V of the Pakistan Penal Code.

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

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

(3) Any person who organizes or directs one or more other persons to commit any of the offences under sections 4, 5, and 6 of this Act shall be punishable by imprisonment of 14 years, a fine as Court may deem and proper to crime, or both.

8. Criminal Liability of Victims of Trafficking in Persons.- (1) A victim of trafficking in persons shall not be held criminally liable or otherwise penalized for offences that were committed by her or him as a direct consequence of her or his situation as a victim of trafficking in persons or where the victim was compelled to commit such offences.

(2) The provision in sub-section (1) of this section applies to offences under any law in Pakistan.

(3) The provisions of this section shall be without prejudice to general defences available at law to the victim of trafficking in persons.

9. Offences to be Cognizable Offences.- All offences under this Act shall be cognizable, non-bailable, and non-compoundable offences as construed by the Code of Criminal Procedure of Pakistan.

10. Cognizance of Offences.- (1) No court inferior to that of a Magistrate of the First Class shall try an offence punishable under this Act.

(2) Notwithstanding anything contained in section 32 of the Code of Criminal Procedure of Pakistan, it shall be lawful for a Magistrate of the First Class to pass any sentence authorized by this Act.

Part III Victim Protection and Assistance

11. Safety of Victims and Witnesses of Trafficking in Persons.- (1) The Competent authority shall take all appropriate measures to ensure that a victim or witness of trafficking in persons, and his or her family, is provided adequate protection if his or her safety is at risk, including measures to protect him or her from intimidation and retaliation by traffickers and their associates.

(2) The competent authority may, when necessary to safeguard the physical safety of a victim or witness of trafficking in persons, at the request of the victim or witness or in consultation with him or her, take all necessary measures to relocate him or her and to limit the disclosure of his or her name, address and other identifying personal information to the extent possible.

(3) Victims and witnesses of trafficking in persons shall have access to any existing witness protection measures or programmes in Pakistan.

12. Protection of Victims and Witnesses of Trafficking in Persons in Court.- (1) A judge may order on application, or where the judge determines it is necessary in the interest of justice, and without prejudice to the rights of the accused, that –

- (i) Court proceedings be conducted in camera, away from the presence of media and public;
- (ii) Records of the court proceedings be sealed;
- (iii) Evidence of a victim of trafficking in persons or a witness be heard behind a screen or similar adequate means out of view of the accused, or through a video link or the use of other communications technology; and/or
- (iv) The victim of trafficking in persons or witness use a pseudonym.

(2) In a prosecution for offences under Part II of this Act, evidence of the victim of trafficking in persons' past sexual behaviour is irrelevant and inadmissible for the purpose of proving that the victim engaged in other sexual behaviour, or to prove the victim's sexual predisposition.

(3) In the case of child victims of trafficking in persons and child witnesses, court proceedings shall always be conducted in camera away from the presence of media and public. Evidence of a child victim of trafficking in persons or a child witness shall always be heard behind a screen or similar adequate means out of view of the accused, or through a video link or the use of other communications technology.

13. Victim Participation in the Criminal Justice Process.- The relevant court and the competent authority shall provide the victim of trafficking in persons with the opportunity to present his or her views, needs, interests and concerns for consideration, either directly or through his or her representative and without prejudice to the rights of the defence, at appropriate stages of any judicial or administrative proceedings relating to offences committed against the victim.

14. Assistance available to Victims of Trafficking in Persons.- (1) In appropriate cases, the competent authority, in conjunction with other relevant government agencies and, where possible, in cooperation with non-governmental organizations, shall provide assistance to victims of trafficking in persons in Pakistan to provide for their physical, psychological and social recovery. Such assistance shall include:-

- (i) Safe and appropriate accommodation and food;

- (ii) Counselling and psychological assistance, on a confidential basis and with full respect for the privacy of the person concerned, in a language that the victim of trafficking in persons can understand;
- (iii) Information on relevant court and administrative proceedings and information regarding their legal rights and legal assistance to represent his or her interests in any criminal investigation or judicial proceeding, including the obtaining of compensation, in a language that the victim of trafficking in persons can understand; and
- (iv) Necessary medical assistance and health care.

(2) The assistance under sub-section (1) shall be provided to victims of trafficking in persons without regard to their nationality, immigration status or their willingness to participate in the investigation or prosecution of the alleged trafficker.

(3) In appropriate cases and to the extent possible, assistance shall be provided to the accompanying dependants of victims of trafficking in persons.

15. Special Needs and Vulnerabilities of Victims of Trafficking in Persons, especially Children.- (1) All assistance provided to victims of trafficking in persons shall take due account of the special needs of children and other persons in a vulnerable position.

(2) When the age of the victim of trafficking in persons is uncertain and there are reasons to believe that the victim is a child, he or she shall be presumed to be a child and shall be treated as such, pending verification of his or her age.

(3) Assistance to child victims of trafficking in persons shall be provided by specially trained professionals and in accordance with their special needs, especially with regard to accommodation, education and care.

(4) If the victim is an unaccompanied child the competent authority shall:-

- (i) Appoint a legal guardian to represent the interests of the child;
- (ii) Take all necessary steps to establish his or her identity and nationality; and
- (ii) Make every effort to locate his or her family when this is in the best interest of the child.

(5) Information may be provided to child victims of trafficking in persons through their legal guardian or, in case the legal guardian is the alleged offender, a support person.

(6) Child victims of trafficking in persons shall be provided with information in a language that they use and understand and in a manner that is understandable to them.

(7) In the case of child victims of trafficking in persons or child witnesses, interviews, examinations and other forms of investigation shall be conducted by specially trained professionals in a suitable environment and in a language that the child uses and understands and in the presence of his or her parents, legal guardian or a support person.

16. Cooperation with Non-Governmental Organizations.- In the development and implementation of policies, programmes and measures to assist and protect victims of trafficking in persons and to prevent and combat trafficking in persons, the competent authority shall cooperate, as appropriate, with non-governmental organizations, other civil society institutions, and international organizations.

17. Compensation of Victims of Trafficking in Persons.- (1) Where an offender is convicted of an offence under Part II of this Act, the court may, in addition to, or in place of, any other punishment ordered by the court, order the offender to pay compensation to the victim of trafficking in persons in accordance with section 545 of the *Code of Criminal Procedure* of Pakistan.

(2) When imposing an order for compensation, the court shall take into account the offender's means and ability to pay compensation and shall give priority to a compensation order over a fine.

(3) The aim of an order for compensation shall be to make reparation to the victim of trafficking in persons for the injury, loss or damage caused by the offender. An order for compensation may include payment for or towards:

- (i) Costs of medical, physical, psychological or psychiatric treatment required by the victim;
- (ii) Costs of physical and occupational therapy or rehabilitation required by the victim;
- (iii) Costs of necessary transportation, temporary childcare, temporary housing or the movement of the victim to a place of temporary safe residence;
- (iv) Lost income and due wages according to national law and regulations regarding wages;

- (v) Legal fees and other costs or expenses incurred, including costs incurred related to the participation of the victim in the criminal investigation and prosecution process;
- (vi) Payment for non-material damages, resulting from moral, physical or psychological injury, emotional distress, pain and suffering suffered by the victim as a result of the crime committed against him or her; and
- (vii) Any other costs or losses incurred by the victim as a direct result of being trafficked and as reasonably assessed by the court.

(4) An order for compensation under this section may be enforced by the Government of Pakistan with all means available under domestic law.

(5) The immigration status or the return of the victim of trafficking in persons to his or her home country or other absence of the victim from Pakistan shall not prevent the court from ordering payment of compensation under this section.

18. Temporary Stay of Victims of Trafficking in Persons.- (1) A victim of trafficking in persons shall be issued a temporary residence permit for a period of no less than ninety days, with the possibility of renewal, irrespective of whether he or she cooperates with the competent authority.

(2) If the victim of trafficking in persons cooperates with the competent authority, and upon the request of the victim, he or she shall be issued a temporary residence permit for not less than six months or for the duration of any relevant legal proceedings, whichever is longer, with the possibility of renewal.

(3) If a temporary residence permit is issued, the victim of trafficking in persons shall be entitled to apply to the National Alien Registration Authority of Pakistan for a work permit.

(4) In appropriate cases, accompanying dependants of the victim of trafficking in persons shall be issued a temporary residence for the same period as the victim.

19. Return and Repatriation of Victims of Trafficking in Persons from Pakistan.- (1) When a victim of trafficking in persons who is not a citizen of Pakistan requests to return to his or her country of origin or the country in which he or she had the right of permanent residence at the time he or she was trafficked, the competent authority shall facilitate such return, including arranging for the necessary travel documents, without undue delay and with due regard for his or her rights, safety privacy, dignity and health.

(2) When, upon the decision of the competent authority a victim of trafficking in persons who is not a citizen of Pakistan, is returned to the State of which he or she is a national or in which he or she had the right of permanent residence at the time he or she was trafficked, the competent authority shall ensure that such return shall be with due regard for his or her safety and for the status of any legal proceedings related to the fact that the person is a victim of trafficking in persons.

(3) Any decision to return a victim of trafficking in persons to his or her country shall be considered in the light of the principle of non-refoulement and the prohibition of cruel, inhuman or degrading treatment.

(4) When a victim of trafficking in persons raises a substantial allegation that he or she or his or her family may face danger to life, health or personal liberty if he or she is returned to his or her country of origin, the competent authority shall conduct a risk and security assessment before returning the victim.

(5) Child victims of trafficking in persons or witnesses shall not be returned to their country of origin if a risk and security assessment indicates that their return would not be in their best interest.

(6) The competent authority shall, to the extent possible and where appropriate, in cooperation with non-governmental organizations, make available to the victim contact information of organizations that can assist him or her in the country to which he or she is returned or repatriated, such as law enforcement offices, non-governmental organizations, legal professionals able to provide counselling and social welfare agencies.

20. Return of Victims of Trafficking in Persons to Pakistan.- (1) The competent authority shall facilitate and accept the return of a victim of trafficking in persons, who is a citizen of Pakistan or had the right of permanent residence in Pakistan at the time he or she was trafficked, without undue or unreasonable delay and with due regard to his or her rights, safety, privacy, dignity, and health.

(2) If the victim of trafficking in persons under sub-section (1) of this section is without proper documentation, the Government of Pakistan shall issue, at the request of the victim or the relevant authorities of the State to which the person was trafficked, such travel documents or other authorization as may be necessary to enable the person to travel and re-enter the territory of Pakistan.

21. Verification of Nationality, Residence, and Legitimacy and Validity of Documents.- At the request of the appropriate authority or representative of another State, the competent authorities and the diplomatic and consular authorities abroad of Pakistan shall verify without undue or unreasonable delay:-

- (a) Whether a person who is a victim of trafficking in persons is a citizen of or had the right of permanent residence in Pakistan at the time of entry into the territory of the requesting State; and
- (b) The legitimacy and validity of travel or identity documents issued or purported to have been issued in the name of Pakistan and suspected of being used for trafficking in persons.

Part IV
National Coordination and Prevention

22. Competent Authority.-Only such persons or agencies shall carry out the investigation of offences under this Act as are specially empowered by the Government of Pakistan. The Federal Investigation Agency shall be the competent authority responsible for the investigation of offences under this Act and for the support of victims of trafficking in persons under this Act.

23. Awareness Raising and Prevention.-The National Coordinating Committee shall,-

- (a) Develop and disseminate information programmes to increase public awareness of the fact that trafficking in persons is a criminal activity and that it involves serious dangers to victims of trafficking in persons;
- (b) Promote and strengthen development programmes and national and international cooperation in order to address the root-causes of trafficking in persons, such as gender inequality, poverty and underdevelopment, paying special attention to economically and socially depressed areas and the special vulnerabilities of women and children; and
- (c) Establish procedures to collect data and to promote research on the levels and characteristics of trafficking in persons in Pakistan, the factors that cause trafficking in persons, and on the best practices to prevent trafficking in persons, prosecute offenders, and protect victims of trafficking in persons in Pakistan.

24. Power to Make Rules.- The Government of Pakistan may, by a notification in the official gazette, make rules to carry out the purposes of this Act.

STATEMENT OF OBJECT AND REASONS

The aim of this Act is to target the criminals who exploit desperate people and to protect and assist victims of trafficking, many of whom endure unimaginable hardships in their bid for a better life. To achieve this aim three separate but equally important purposes of this Act: (a) the prevention and combatting of trafficking in persons in Pakistan; (b) the protection and assistance of victims of such trafficking and the respect for their human rights; and (c) the promotion and facilitation of international cooperation to enable and further purposes (a) and (b). While trafficking in persons may involve men and women of any age, the specific reference to 'women and children' in subsection (a) highlights the gendered nature of this offence and the fact that women and children are most vulnerable.

SENATOR MUSHAHID HUSSAIN SYED
Member-In-Charge