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THE TRANSFER OF OFFENDERS ORDINANCE, 2002

ORDINANCE NO. XXXVII OF 2002

AN

ORDINANCE

to provide for transfer of a citizen of Pakistan convicted of an offence in a foreign country to Pakistan and a citizen of a foreign country convicted of an offence in Pakistan to that country.

WHEREAS it is expedient to provide for transfer of a citizen of Pakistan convicted of an offence in a foreign country to Pakistan and a citizen of a foreign country convicted of an offence in Pakistan to that country and for matters connected therewith or ancillary thereto;

AND WHEREAS the President is satisfied that circumstances exist which render it necessary to take immediate action;

NOW, THEREFORE, in pursuance of the Proclamation of Emergency of the fourteenth day of October, 1999, and the Provisional Constitution Order No. 1 of 1999, read with the Provisional Constitution (Amendment) Order No. 9 of 1999, and in exercise of all powers enabling him in that behalf, the President of the Islamic Republic of Pakistan is pleased to make and promulgate the following Ordinance:—

1. Short title, extent and commencement:— (1) This Ordinance may be called the Transfer of Offenders Ordinance, 2002.

(2) It shall come into force at once.

(3) It extends to the whole of Pakistan

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

(a) “agreement” means an agreement entered into between Pakistan and any other country relating to the mutual transfer of offenders between the two countries;

(b) “appropriate authority” in relation to a specified country, means a person or body of persons in a specified country referred to in the agreement as the authority responsible for administering the transfer of offenders to, and from, such country;

(c) “Competent Authority” means the Secretary, Ministry of Interior and Narcotics Control (Interior Division) or any other person as the Competent Authority may, by notification in official Gazette, authorize to exercise powers and perform functions, of the Competent Authority under this Ordinance;

(d) “Inspector-General of Prisons” means the person who is for the time being holding office as the Inspector-General of Prisons in a Province;

(e) “offender” means a person who is convicted of an offence whether committed before or after the commencement of this Ordinance and is for the time being serving a sentence of imprisonment by virtue of an order made either by any

court in Pakistan or by a court or other institution exercising judicial powers which is empowered to make such order, in any specified country;

(f) "prescribed" means prescribed by rules;

(g) "rules" means rules made under this Ordinance; and

(h) "specified country" means a country which entered into an agreement for

mutual transfer of offenders with Pakistan and notified as such by the Federal Government by notification in the official Gazette.

3. Application of the Ordinance:— Where an agreement for mutual transfer of offenders has been entered into between Pakistan and any specified country, whether before or after the commencement of this Ordinance, the Competent Authority shall, by notification in the official Gazette, declare that the provisions of this Ordinance shall apply in respect of such country.

4. Competent Authority to make an application requesting the transfer of an offender:—

(1) The Competent Authority may make an application to an appropriate authority in a specified country, requesting the transfer to that country of any offender who is, or is suspected to be, a citizen of that country.

(2) Notwithstanding anything contained in sub-section (1), any offender who claims to be a citizen of a specified country may, through the concerned Inspector-General of Prisons, make an application to the Competent Authority to be transferred to the specified country of which he claims to be a citizen and the Competent Authority may, where considers it appropriate, make a request on behalf of such offender under sub-section (1) to the appropriate authority of such specified country.

(3) Every application for a request under this section shall be made in such form and be accompanied by such documents as may be prescribed.

(4) Where the Competent Authority makes an application at the request of an offender, it shall inform such offender in writing of the action or decision taken both by the Competent Authority and the appropriate authority of the specified country in relations to his request for a transfer.

5. Application to be made by an appropriate authority:— (1) An application made to the Competent Authority by an appropriate authority of specified country for the transfer to Pakistan of an offender who claims to be a citizen of Pakistan shall be entertained if-

(a) such application is made in the form prescribed for that purpose;

(b) a copy of the order, decision or judgment by which such offender was sentenced to the term of imprisonment, certified as correct by the appropriate authority of such specified country, is attached to the application.

(2) Where the Competent Authority, by order, allows an application made under sub-section (1), the copy of the order, decision or judgment, as the case may be, attached to an application shall be proof of the facts stated therein and shall have effect as if it were an order, decision or judgment, as the case may be, passed by a court of competent jurisdiction in Pakistan.

6. Condition of transfer:— The transfer of any offender on an application made under this Ordinance shall be subject to the following conditions, namely:-

- (a) that the offender is a citizen of Pakistan or of the specified country, notwithstanding he may also be a citizen of any other country;
- (b) that the order, decision or judgment by which the sentence of imprisonment was imposed on the offender is a final order, decision or judgment;
- (c) that at the time of the application for the transfer is made, the offender concerned has more than six months left to serve of the term of imprisonment imposed on him or that the term of imprisonment imposed was for an unspecified period;
- (d) that the offender consents to the transfer or where, in view of his age or physical or mental status, he is unable to give his consent, the consent shall be given by such other person who is designated either by the Competent Authority or the appropriate authority of a specified country as being competent to give consent on behalf of the offender; and
- (e) that both the Competent Authority and the appropriate authority of the specified country consent to his transfer.

7. Issue of warrant by the Competent Authority:—(1) Subject to sub-section (3), the Competent Authority may, if considers it appropriate issue or cause to be issued, a warrant authorizing the transfer out of Pakistan to a specified country of any offender.

(2) The warrant to be issued under sub-section (1) shall be in the prescribed form under the hand of the Competent Authority.

(3) The Competent Authority shall not issue a warrant under sub-section (1) unless it is satisfied that all reasonable steps have been taken to inform the offender being transferred, in writing, in his own language, or a language he understands, of the effects and consequences of such transfer in relation to such offender.

(4) The Competent Authority shall on the date of issuing of a warrant under subsection (1) cause a copy thereof to be served on the concerned Inspector-General of Prisons.

(5) A warrant issued under sub-section (1) shall be deemed to be sufficient authority for the concerned Inspector-General of Prisons to deliver, or cause the delivery of, such offender to any person authorized to receive such offender and to keep him in custody and deliver him to the custody of a person, duly authorized by the appropriate authority in the specified country, to take the custody of such offender.

8. No withdrawal of consent after issue of warrant:— On or after the issue of a warrant under section 7, the consent given under clause (d) of section 6 by the offender, in respect of whom such warrant was issued, shall be final and revocable and any purported withdrawal of a consent given after the issue of a warrant shall not affect the validity of such warrant or any directions given in relation to such warrant.

9. Inspector-General of Prisons to have the custody of an offender transferred to Pakistan:— (1) Every offender being transferred to Pakistan from any specified country, upon an order under section 4 shall be formally handed over to the Inspector-General of Prisons so nominated by the Competent Authority and the concerned Inspector-General of Prisons shall have the authority to keep such offender in custody in any place as may appear to him to be appropriate for giving effect to the

sentence of imprisonment imposed on such offender in such specified country for the period of the sentence as if it were a sentence imposed by a court in Pakistan.

(2) The enforcement of the sentence of imprisonment imposed on any offender who is transferred to Pakistan under sub-section (1) shall be governed by the laws of Pakistan.

(3) Notwithstanding anything contained in sub-section (2) the Competent Authority shall, unless otherwise specified in the agreement, be bound by the legal nature and duration of the sentence of imprisonment imposed on any offender transferred to Pakistan under sub-section (1).

(4) Where the legal nature and duration of the sentence of imprisonment imposed on any offender transferred under sub-section (1), is incompatible with any law of Pakistan, it shall be lawful for a court of competent jurisdiction in Pakistan to adopt such sentence to make it compatible with laws of Pakistan provided however that the sentence as adopted by such court in Pakistan corresponds, as far as practicable, to the sentence imposed on such offender in the specified country from which such offender was transferred to Pakistan.

10. Effect of any warrant issued by the Competent Authority:— The effect of a warrant issued by the Competent Authority under section 7 shall be to authorize—

(a) the taking of the offender to any place within Pakistan and his delivery at a place of departure from Pakistan into the custody of person duly authorized by the appropriate authority in the specified country to which he is being transferred to, take such custody of the offender; and

(b) the removal of the offender, by the person into whose custody he was delivered, to any place outside Pakistan.

11. Removal of an offender in custody to any other place in Pakistan:— (1) Any offender committed to custody under section 9 or 10 who escapes from such custody, may be sent to any place in Pakistan in like manner as a person escaping from custody under a warrant for his arrest issued in that place in respect of an offence committed therein.

(2) Where any offender, who is in custody under section 9 or 10, is required to be removed from the place where he is held in custody to any other place in Pakistan he shall be deemed to continue to be in legal custody until he reaches the place to which he is required to be transferred.

12. Remission and President's powers to grant pardon:— (1) An offender who is transferred to Pakistan in terms of section 9 shall be subject to any remission of the sentence of imprisonment, imposed on him in the specified country where he was convicted, to which he may have become entitled to on the date of his transfer in accordance with the laws relating to remission of a sentence in force in such specified country.

(2) Nothing in this Ordinance shall be so construed as to limit or take away the power of the President to grant pardon or remission of sentence to any offender under Article 45 of the Constitution of the Islamic Republic of Pakistan or by any other authority under any law of Pakistan for the time being in force.

13. No appeal or revision of a sentence of imprisonment imposed upon an offender who is a citizen of Pakistan:— The sentence of imprisonment imposed on any offender who is a citizen of Pakistan in any specified country shall not be subject to any appeal or revision in any court in Pakistan,

notwithstanding the fact that the order, decision or judgment imposing such sentence is deemed to be an order, decision or judgment imposed by a court of competent jurisdiction in Pakistan.

14. Power to make rules:— The Competent Authority may by notification in the official Gazette, make rules for carrying out the purposes of this Ordinance.