

MARITIME SECURITY AGENCY ACT, 1994

ACT No. X OF 1994

An Act to provide for constitution and regulation of the Maritime Security Agency

WHEREAS it is expedient to constitute a Maritime Agency to provide for the regulation of maritime activities and to safeguard the maritime interests of Pakistan 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 Maritime Security Agency Act, 1994.

(2) It applies to all officers and members of the staff of the Maritime Security Agency wherever they may be.

(3) It shall come into force at once.

2. Definition.-

(1) In this Act, unless there is anything repugnant in the subject or context,-

(a) "Agency" means the Maritime Security Agency constituted under section 3;

(b) "Commanding Officer" means an officer appointed in command of a ship, vessel or establishment of the Agency or the officer on whom such command may devolve under this Act or the rules;

(c) "Director-General" means the Director-General of the Maritime Security Agency appointed under sub-section (2) of-section 3;

(d) "establishment" means an establishment or station belonging to, or under the control of, the Agency, whether within or outside Pakistan;

(e) "maritime interests of Pakistan" means rights, control, jurisdiction and sovereignty over Maritime Zones and includes the sovereign rights of Pakistan to explore, exploit, conserve, manage the living and non-living resources and other activities for economic exploitation, exploration and to safeguard the unauthorised exploitation of resources of Pakistan seas and prevention thereto from damage through pollution;

(f) "Maritime Zones" means the territorial waters,- the Contiguous Zone, Continental Shelf, Exclusive Economic Zone of Pakistan or any other zone or area declared as such by the Federal Government;

(g) "member of the staff" includes a Chief Petty Officer, Petty Officer, junior commissioned officer, sailor and other ministerial staff of the Agency;

(h) "officer" means a person appointed in a pay scale as an officer of the Agency, but does not include a member of the staff;

(i) "prescribed" means prescribed by rules made under this Act; "regulations" means regulations made under this Act;

(k) "rules" means rules made under this Act; and

(1) "territorial waters", "Continuous Zone", "Continental Shelf" and "Exclusive Economic Zone" shall have the meanings respectively assigned to them in the Territorial Waters and Maritime Zones Act, 1976 (LXXXII of 1976).

(2) All words and expressions used but not defined in this Act shall, unless the context otherwise requires, have the same meanings as assigned to them in the Pakistan Navy Ordinance, 1961 (XXXV of 1961).

3. Constitution of Agency.-

(1) As soon as may be, after the commencement of this Act, the Federal Government shall, by notification in the official Gazette, constitute an agency to be called the Maritime Security Agency for carrying out the purposes of this Act.

(2) The Agency shall consist of a Director-General to be appointed by the Federal Government from amongst the officers of Pakistan Navy who shall not be below the rank of Commodore and such other officers and members of the staff as may be appointed by the Federal Government, from time to time, including-

- (a) Deputy Director-General;
- (b) Director (Operation);
- (c) Director (Administration);
- (d) Director (Technical);
- (e) Director (budget and Accounts); and
- (f) Director (Legal Affairs).

4. Control, superintendence, command and administration of the Agency.-

Subject to overall control and superintendence of the Federal Government, the command and administration of the Agency shall vest in, and be exercised by, the Director-General as its chief executive in accordance with the provisions of this Act and the rules and regulations made thereunder.

5. Appointment of members of staff.-

(1) The Federal Government may authorize the Director-General or any other officer to appoint any officer and other members of the staff and. determine the duties to be performed by them.

(2) Appointments under sub-section (1) shall be made by direct recruitment or promotion or from personnel on deputation from the Pakistan Navy or any other department of the Government in such manner as may be prescribed.\

(3) The terms and conditions of service of the officers and members of the staff shall be such as may be prescribed.

6. Oath of allegiance.-

(1) Every member of the Agency shall, as soon as possible after appointment or enrolment to the Agency, make and subscribe before his Commanding Officer or any other -officer appointed by the Commanding Officer in this behalf, an oath in the form set out in the Schedule.

(2) The oath referred to in sub-section (1) shall be read out and, if necessary, explained to him who shall, in acknowledgement, of the oath having been so read out to him, put his signature to it.

(3) When the oath set out in the Schedule is read out, it shall be repeated by the person taking oath before he signs it.

7. Liability for service.-

Every officer and member of the staff shall be liable to serve in the Agency within and outside Pakistan, until he reaches the age of superannuation or his services are terminated by the competent authority in accordance with this Act or the rules made thereunder, or on reversion to his original service or office being a transferee to the Agency on deputation or on secondment.

8. Resignation and Withdrawal from the service.-

No member of the Agency shall-

- (a) resign from his service during the term of his appointment; or
- (b) withdraw himself from all or any of the duties of his appointment.

9. Application of the Pakistan Navy Ordinance, 1961, etc.-

(1) Subject to the provisions of this Act, every officer and member of the staff -shall, whether appointed through Initial recruitment or otherwise, unless he is already so subject, be subject to the Pakistan Navy Ordinance, 1961 (XXXV of 1961), hereinafter referred to as the said Ordinance.

(2) Notwithstanding anything contained in sub-section (1), a civil servant transferred to the Agency on deputation or a person subject to the Pakistan Army Act, 1952 (XXXIX of 1952), or the Pakistan Air Force Act, 1953 (XXXV of 1953), on secondment to the Agency, not otherwise subject to this Act, shall be so subject to this Act and the said Ordinance to the extent and under such conditions as the Federal Government may direct:

Provided that such civil servant and other person shall be subject to the said Ordinance when they-

- (a) seduce or attempt to seduce any person subject to this Act from his duty or allegiance to the Government-
- (b) commit any offence in relation to any work of defence, arsenal, naval, military, air force or Agency's establishment, station, ship, or aircraft;
- (c) commit any offence under the Official Secret Act, 1923 (XIX of 1923). in relation to the affairs of the Agency.
- (d) commit any offence punishable under any law for the time being in force on the vessel, ship, aircraft or property of the Agency or in relation thereof; and
- (e) embark as passenger on board of the Agency's vessel, ship or aircraft.

Explanation-The expression 'civil servant' shall have the same meaning as is assigned to it in The Civil Servants Act, 1973 (LXXI of 1973).

(3) The Director-General shall, in respect of all officers and members of the staff, have all the powers conferred by or under the said Ordinance on an officer empowered to convene courts martial.

(4) Where anything is not provided for in this Act or the rules or regulations, the provisions of the said Ordinance and the rules and regulations made thereunder shall apply.

10. Powers and functions of the Agency.-

(1) The Agency shall be responsible for the regulation and protection of the maritime interests of Pakistan and to assert and enforce national jurisdiction and sovereignty in the Maritime Zones.

(2) Without prejudice to the generality of the provisions of sub-section (1), the functions of the Agency shall be to-

- (a) prevent unauthorised exploitation of any economic resources by any person, agency, vessel or device within the Maritime Zones;

(b) protect Pakistani fishing vessels and crew against any threat, intrusions or interference within the Maritime Zones;

(e) enforce the national and international laws, agreements and conventions on and under the water in the Maritime Zones;

(d) assist and coordinate search and rescue for the vessels, property and lives in distress and render such assistance which may be necessary in any emergency in the Maritime Zones and on high seas;

(e) assist other departments and agencies of the Government to maintain and preserve the quality of marine life and to prevent and control the effects of marine disasters including marine pollution in and around the ports, harbours, coastal areas, estuaries and other areas of Maritime Zones;

(f) assist and co-ordinate with national and international agencies in hydrographic and oceanographic research, navigation, weather reporting and other scientific activities in the Maritime Zones;

(g) assist other departments and agencies of the Government in safe guarding and protecting artificial islands, offshore terminal. installations and other structures and devices in the Maritime Zones;

(h) provide assistance for petroleum exploration and production in the Maritime Zones;

(i) render assistance to other agencies in acquisition of mineral exploration, seismic studies and assessment data in the Maritime Zones;

(j) cooperate with, and provide assistance to Customs, Coast Guards and other departments, agencies and authorities in Maritime Zones in the discharge of their duties and functions;

(k) provide an effective secondary maritime force for deployment in any emergency, war or conflict; and

(l) perform such other functions as may be assigned to it by the Federal Government from time to time, to protect maritime interests of Pakistan.

11. Other functions of the officers of Agency, etc.-

(1) In addition to the powers and functions as officers of the Agency, such officers may perform functions of-

(i) Officers of customs as may be entrusted to them and exercise such powers under the Customs Act, 1969 (IV of 1969), as may be delegated to them under section 6 of that Act; and

(ii) Fishery Officers as, may be entrusted to them under the Exclusive Fishery Zone (Regulation of Fishing) Act, 1975 (XXXII of 1975), and exercise such powers under the said Act as may be delegated to them under section 14 thereof.

(iii) Police Officer, and exercise all the powers conferred on an officer in charge of a Police Station under the Police Act, 1861 (V of 1861), and under the Code of Criminal Procedure, 1898 (Act V of 1898).

(2) The Government may, at any time, assign or delegate any other functions or powers upon any officer of the Agency under any law for the time being in force in the Maritime Zones.

12. Power of searches, arrest, etc.-

In exercise of the powers and performance of their functions under this Act, the officers and members of the staff may make inquiries, examinations, inspections, investigation, searches, seizures, and arrests for prevention, detection and suppression of contravention of any law for the time being in force within the Maritime Zones and for that purpose, the officers and members of the staff may board any vessel except ships, vessels or crafts of Pakistan Armed Forces.

13. Indemnity.-

No suit, prosecution or other legal proceedings shall lie against any person for anything which is in good faith done or intended to be done under this Act or any rules or regulations made thereunder.

14. Capture of deserters.-

(1) Whenever any person subject to this Act deserts, the Director-General or any other officer authorised by him in this behalf, shall give written information of the desertion to such authorities as in his opinion may be able to afford assistance towards the capture of the deserter and such authorities shall thereupon take steps for the apprehension of the deserter in like manner as if he was a person for whose apprehension a warrant had been issued by the Magistrate, and shall deliver the deserter, when apprehended into the custody of the Agency.

(2) Any police officer may arrest without warrant any person whom he reasonably believes to be subject to this Act and a deserter or absentee without leave. and bring him without delay before the nearest Magistrate, to be dealt with according to law.

15. Court of Appeal.-

(1) There shall be a Court of Appeal which shall hear appeals against the findings and sentence of court martial-

(a) in offences punishable under Hudood laws,

(b) in which an officer or member of the staff is sentenced to death or imprisonment for a term exceeding three months;

(c) in a case in which an officer or member of the staff is dismissed from service; and

(d) in such other cases as may be referred to it by the Director-General.

Explanation.- The expression "Hudood laws" means the Offences Against (Enforcement of Hudood) Ordinance, 1979 (VI of 1979), the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 (VII of 1979), the Offence of Qazf (Enforcement of Hadd) Ordinance, 1979 (VIII of 1979), the Zakat and Ushr Ordinance, 1980 (XVIII of 1980),-The Prohibition (Enforcement of Hadd) Order, 1979 (P.O- No. 4 of 1979), and the laws based on the principles of Qisas and Diyat.

(2) -Subject to the provisions of sub-section (1), an aggrieved person may, within thirty days of the promulgation of the sentence, file an appeal before the Court of Appeal.

(3) The Court of Appeal shall be appointed by the Federal Government and shall consist of officers of suitable ranks and qualifications who are eligible to serve on a court martial.

(4) The Court of Appeal shall have the power to-

(i) confirm the findings, sentence or both; or

(ii) quash, alter, revise or substitute the findings and sentence; and

(iii) order retrial of the case:

Provided that no order under this sub-section shall be made to the prejudice of the accused or any other person unless he has been afforded an opportunity of being heard either personally or by his defending officer or his counsel.

(5) Where an offence has been waived or compounded under sub-section (2) of section 16, the Court of Appeal may, in its discretion having regard to the facts and circumstances of the case acquit or award, ta'zir to the offender according to the nature of the offence.

(6) Subject to the provisions of sections 16 and 17 the decision of the Court of Appeal shall be final and shall not be called in question before any court or other authority.

16. Provisions regarding waiver and compounding of qisas, etc., shall apply.-

(1) Subject to the provisions of Chapter XVI of the Pakistan Penal Code and section 345 of the Code of Criminal Procedure, 1898, all offences failing under the said Chapter may be waived or compounded and the provisions of sections 309 and 310 of the Pakistan Penal Code shall, mutatis mutandis, apply to the waiver or compounding of offences awarded to officers and members of staff subject to this Act.

(2) Where an offence has been waived or compounded, the Court may, in its discretion having regard to the facts and circumstances of the case acquit or award ta'zir to the offender according to nature of the offence:

Provided that, in a case in which sentence of death or imprisonment for life shall have been passed against an offender convicted for an offence of qatl or jurh, such Sentence shall not be commuted without the consent of the heirs of the victim or, as the case may be, of the victim.

Explanation.- For the purpose of this section, court includes the Court of Appeals under this Act.

17. Revision.-

The Federal Government may, either on its own accord or on an application made to it, call for the record of any case decided by the court martial or in which no appeal lies and may make such order in the case as it thinks fit.

18. Power to make rules.-

(1) The Federal Government may, by notification in the official Gazette make rules for the purpose of carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of foregoing power, such rules may provide for-

(a) the command, administration and discipline of the Agency;

(b) the appointment of officers and members of the staff and their terms and conditions of service;

(c) the terms and conditions of service applicable to the civil servants or other persons transferred to the Agency on deputation or on secondment;

(d) the appointment of authority or authorised officers for case of disciplinary proceedings against civil servants and other persons specified in sub-clause (c);

(e) the convening, constitution, adjournment, dissolution and sitting of court martial and Court of Appeal and the procedure to- be observed by such Courts;

(f) the carrying into effect of sentence of court martial and Court of Appeal;

(g) investigation, arrest, custody, trial and punishment of offences; and

(h) the procedure relating to the exercise of powers of revision under this Act.

19. Power to make regulations.-

The Director-General may, with the approval of the Federal Government, make regulations by notification in the official Gazette not inconsistent with this Act or the rules.

20. Exemption of Agency vessels, etc., from port-charges.-

The exemption from the levy of any port tax, toll, rate or other charges in any part of Pakistan allowed to the vessels, ships and crafts of the Pakistan Navy, shall to the same extent and manner, be admissible to the vessels, ships and crafts of the Agency.

SCHEDULE

(See section 6)

I _____, do solemnly swear that I will bear true faith and allegiance to Pakistan:

That as an officer/member of the staff of maritime Security Agency, I will discharge my duties and perform my functions honestly, to the best of my ability and faithfully in accordance with the laws of the Islamic Republic of Pakistan, and without fear or favour, affection, or ill-will;

That I will not allow my personal interest to influence my official conduct or my official decisions;

And that I will observe and obey all commands of my seniors without any hesitation or objection.

May Allah Almighty help and guide me (Amen).

Signed in acknowledgement of the above having been read.

Date _____

Signed in my presence after I had ascertained that the person understand the purport of what he signed.

Date _____