

REPORT NO. 21/2022-23

SENATE OF PAKISTAN



REPORT OF THE SENATE STANDING COMMITTEE ON INTERIOR

ON

**A BILL FURTHER TO AMEND THE PAKISTAN PENAL CODE, 1860 AND THE
CODE OF CRIMINAL PROCEDURE, 1898
[THE CRIMINAL LAWS (AMENDMENT) BILL, 2021]
(Government Bill passed by the National Assembly and transmitted to the Senate)**

PRESENTED BY

**SENATOR MOHSIN AZIZ
CHAIRMAN SSC ON INTERIOR**

SENATE SECRETARIAT

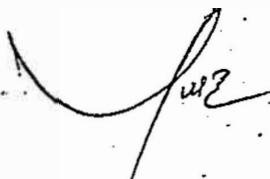
SUBJECT: REPORT OF THE SENATE STANDING COMMITTEE ON INTERIOR ON THE CRIMINAL LAWS (AMENDMENT) BILL, 2021

I, Senator Mohsin Aziz, Chairman Senate Standing Committee on Interior, have the honor to present report of the Committee on a Bill further to amend the Pakistan Penal Code, 1860 and The Code of Criminal Procedure, 1898 [The Criminal Laws (Amendment) Bill, 2021]. The Government Bill was passed by the National Assembly and transmitted to the Senate which was laid in the Senate on 29th July, 2022 and referred to the Senate Standing Committee on Interior for consideration and report.

2. The composition of the Committee is as under: -

Senator Mohsin Aziz	Chairman
Senator Syed Yousuf Raza Gillani	Member
Senator Azam Nazeer Tarar	Member
Senator Samina Mumtaz Zehri	Member
Senator Moula Bux Chandio	Member
Senator Saifullah Abro	Member
Senator Rana Maqbool Ahmad	Member
Senator Faisal Saleem Rehman	Member
Senator Shahadat Awan	Member
Senator Faisal Subzwari	Member
Senator Fawzia Arshad	Member
Senator Sarfraz Ahmed Bugti	Member
Senator Dilawar Khan	Member
Senator Kamil Ali Agha	Member
<u>Minister for Interior</u>	<u>Ex-Officio Member</u>

3. The Committee considered the Bill in its meetings held on 22nd August, 26th August, 30th September, 7th October and finally on 17th October, 2022. It is pertinent to mention here that on 22nd August, 2022 Secretary, Ministry of Interior, appeared in person and requested the Committee to recommend the Bill as passed by the National Assembly as it is an important legislation in the context of International Obligations as well as longstanding demands from various Bodies of Human Rights but Bill was deferred on request of Senator Shahadat Awan as he was of the view that the Bill needs some amendments. However, surprisingly, in the



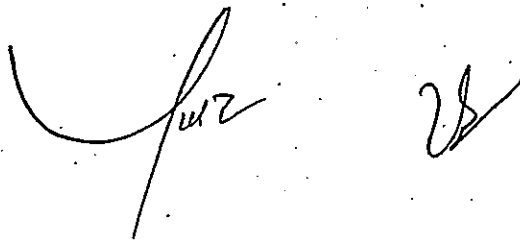
subsequent meetings of the Committee held on 26th August, 30th September and 7th October, the Ministry of Interior sought deferments of the Bill on the pretext that a Cabinet Committee on enforced disappearances has already been constituted by the Government, therefore, the Standing Committee may either refer the Bill to the said Cabinet Committee or keep the Bill pending till the finalization of the proceedings of the said Cabinet Committee. The Ministry of Interior was repeatedly briefed that the Bill has been passed by the National Assembly and transmitted to the Senate under Article 70 of the Constitution, so the Senate has to pass/reject/amend the said Bill within ninety days of its laying in the Senate which in the instant case is 26th October, 2022. Since the Committee had only sixty days for consideration of the Bill out of the ninety days time, therefore, the Committee also sought extension on two occasions for presentation of report of the said Bill. The Committee clarified that the report on the Bill will be presented to the House within the stipulated time of ninety days so that the record may not reveal in future that the Bill was not recommended by the Standing Committee of the Senate.

4. The Committee also clarified that the Ministry of Commerce, Ministry of Parliamentary Affairs and the Prime Minister's Office is continuously writing to the Committee to clear the Bill as it needs to be passed as requirement of GSP+ status.

5. On 17th October, 2022, the Additional Secretary, Ministry of Interior appeared before the Committee and submitted the following brief:

"The Bill was drafted by the Ministry of Human Rights and later on forwarded to Ministry of Interior for further processing. It was placed before the National Assembly on 07-06-2021, passed on 09-11-2021 and referred to the Senate Committee. The Senate Standing Committee on interior in its meeting held on 30-09-2022 deferred the subject bill with the direction that Ministry of Interior (being the mover) may come up with a clear stance as to whether the Bill may be processed further or otherwise.

Regarding the bill on enforced disappearances, a meeting was held on 12-10-2022 under the Chairmanship of Minister for Parliamentary Affairs and the contents of the Bill were discussed. The Secretary, Parliamentary Affairs suggested that the words "by an agent of the state or by person or group of persons acting with the authorization, support of acquiescence of the State"

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appearing under section 52B and its explanation, may be substituted with the words "public official".

The Ministry of Interior has endorsed the proposal and in the next meeting of the Senate Standing Committee on Interior, MOI will propose the above substitutions in the Bill, which is already under consideration of the Committee."

6. As per the amendment proposed by the Ministry of Interior, clause 2 of the Bill as amended will be as under:

"52B. Enforced disappearance.- The term enforced disappearance relates to illegal and without lawful authority arrest, detention, abduction or any other form of deprivation of liberty by a public official, followed by refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which places such a person outside the protection of the law.

Explanation.- There are three consecutive elements required to be present in order for an act to be classified as an enforced or involuntary disappearance and include:

- (a) an unlawful or illegal deprivation of liberty, or a deprivation of liberty that was legal but no longer is;
- (b) an act allegedly carried out by a public official; and
- (c) refusal to acknowledge the deprivation of liberty or concealment of the fate or whereabouts of the disappeared person."

7. The above referred amendments proposed by the Ministry of Interior were put to the Committee which were unanimously supported by the Committee and the Committee unanimously recommended that the Bill as reported by the Committee may be passed by the Senate. The Bill as passed by the National Assembly is at Annexure-A and the Bill as reported by the Committee is at Annexure-B. The Committee also gave approval of presentation of report of the Committee to the House. Hence, this report is presented to the House.


(MUHAMMAD AZAM)
Secretary Committee


(SENATOR MOHSIN AZIZ)
Chairman Committee

[AS PASSED BY THE NATIONAL ASSEMBLY]

A

BILL

further to amend the Pakistan Penal Code, 1860 and the Code of Criminal Procedure, 1898

WHEREAS it is further to amend the Pakistan Penal Code, 1860 (Act XLV of 1860) and the Code of Criminal Procedure, 1898 (Act V of 1898);

It is hereby enacted as follows: -

1. **Short title and commencement.** — (1) This Act shall be called the Criminal Laws (Amendment) Act, 2022.

(2) It shall come into force at once.

2. **Insertion of new section 52B, Act XLV of 1860.** — In the Pakistan Penal Code, 1860 (Act XLV of 1860) hereinafter referred to as the Penal Code, after section 52A, the following new section 52B shall be inserted, namely: -

“52B. Enforced disappearance.- The term enforced disappearance relates to illegal and without lawful authority arrest, detention, abduction or any other form of deprivation of liberty by an agent of the State or by person or group of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.

Explanation.- There are three constitutive elements required to be present in order for an act to be classified as an enforced or involuntary disappearances and include:

- (a) an unlawful or illegal deprivation of liberty, or a deprivation of liberty that was legal but no longer is;
- (b) an act allegedly carried out by agents of the State or by person or group of persons acting with the support, authorization or acquiescence of the State; and
- (c) refusal to acknowledge the deprivation of liberty or concealment of the fate or whereabouts of the disappeared person.”

3. **Insertion of new sections 512, 513 and 514 (Act XLV of 1860).** — In the said Penal Code, after section 511, the following new sections shall be added, namely: -

“512. Forcible or involuntary disappearances.- Whoever illegally and without lawful authority commits, orders, solicits or induces the commission of attempts to commit, is an accomplice to or participation in the forcible or involuntary disappearances of a person or group of persons is said to cause forcible or involuntary disappearances of that person.

513. Punishment for forcible or involuntary disappearances.- Whoever illegally and without lawful authority causes forcible or involuntary disappearance of any person from Pakistan or within Pakistan shall be punished with imprisonment of either description for a term which may extend to ten years and shall also be liable to a fine.

514. That allegation or complaint in respect of Enforced Disappearance etc.- Whoever files a complaint or gives information that proves to be false he or another person has been subjected to Enforced, Forcible or Involuntary Disappearance, or an attempt has been made in this regard, he shall be guilty of an offence punishable up to five years imprisonment and fine up to Rupees One hundred thousand.”

4. Amendment of Schedule II, Act V of 1898. — In the Code of Criminal Procedure, 1898 (Act V of 1898), in Schedule II, after section 511, in column 1 and the corresponding entries relating thereto in columns 2 to 8, the following shall be added, namely: -

512	Forcible or involuntary disappearance	May arrest without warrant	Ditto	Not bailable	Not compoundable	Imprisonment of either description for a term which may extend to ten years and fine	Court of Session
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STATEMENT OF OBJECTS AND REASONS

It is the rule of law, specifically adherence to Rule of Law that is the hallmark of any democratic society. The practice of enforced disappearances is a particularly heinous crime not only because it removes human rights from the protection of the law but also due to the inherent cruelty inflicted upon families as a consequence of denial of information concerning the disappeared person. Enforced disappearance is specifically against the Constitution and international commitments made by Pakistan through ratification of the ICCPR.

Additionally, the United Nations General Assembly, in its resolutions 477/133 of 18th December, 1992 has emphasized that enforced disappearances undermine the "deepest values of any society committed to respect for the rule of law, human rights and fundamental freedoms."

The objects of this bill is to criminalize the heinous crime of enforced disappearance with impunity that surrounds the practice of enforced disappearances and bring the perpetrators of these crimes to justice so as to provide closure to the families who are in immense pain owing to the fact that the fate and whereabouts of their loved ones are still unknown.

In order to carry out the mandate of the law, the draft bill has been prepared to achieve the above said objects.

(Sheikh Rashid Ahmed)
Minister for Interior

[AS REPORTED BY THE COMMITTEE]

A

BILL

further to amend the Pakistan Penal Code, 1860 and the Code of Criminal Procedure, 1898

WHEREAS it is expedient further to amend the Pakistan Penal Code, 1860 (Act XLV of 1860) and the Code of Criminal Procedure, 1898 (Act V of 1898), for the purposes hereinafter appearing;

It is hereby enacted as follows:-

1. Short title and commencement.- (1) This Act may be called the Criminal Laws (Amendment) Act, 2022.

(2) It shall come into force at once.

2. Insertion of new section 52B, Act XLV of 1860.- In the Pakistan Penal Code, 1860 (Act XLV of 1860), hereinafter referred to as the Penal Code, after section 52A, the following new section 52B shall be inserted, namely:-

"52B. Enforced disappearance.- The term enforced disappearance relates to illegal and without lawful authority arrest, detention, abduction or any other form of deprivation of liberty **by a public official**, followed by refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which places such a person outside the protection of the law.

Explanation.- There are three consecutive elements required to be present in order for an act to be classified as an enforced or involuntary disappearance and include:

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"512. Forcible or involuntary disappearances.- Whoever illegally and without lawful authority commits, orders, solicits or induces the commission of attempts to commit, is an accomplice to or participation in the forcible or involuntary disappearance of a person or group of persons is said to cause forcible or involuntary disappearances of that person.

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