



## **THE CLAIMS FOR MAINTENANCE (RECOVERY ABROAD) ORDINANCE, 1959.**



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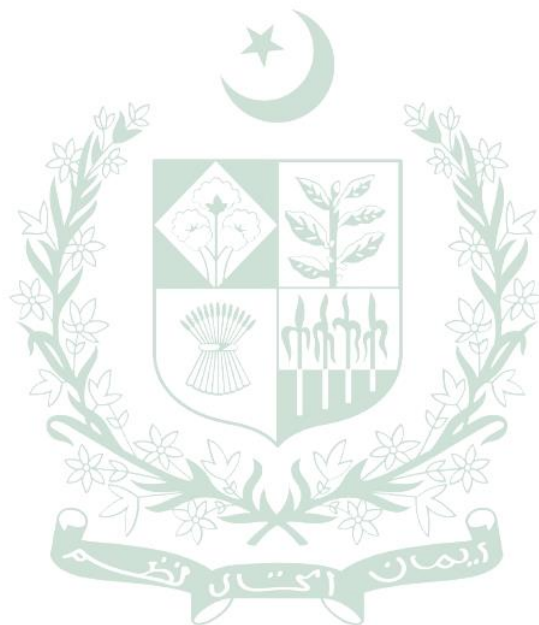
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# THE CLAIMS FOR MAINTENANCE (RECOVERY ABROAD) ORDINANCE, 1959

ORDINANCE NO. L OF 1959

[10<sup>th</sup> September, 1959]

*An Ordinance to give effect to the United Nations Convention on the Recovery Abroad of Claims for Maintenance.*

WHEREAS the United Nations Conference on Maintenance Obligations held at New York from the 29<sup>th</sup> May, 1956, to the 20<sup>th</sup> June, 1956, adopted the Convention on the Recovery Abroad of Maintenance;

AND WHEREAS Article 13 of the said Convention provides that the Convention may be acceded to at any time on behalf of any Member of the United Nations;

AND WHEREAS Pakistan, being a Member of the United Nations, has, in pursuance of the aforesaid Article, acceded to the Convention on the fourteenth day of July, 1959;

AND WHEREAS it is expedient to give effect to the Convention;

NOW, THEREFORE, in pursuance of the Proclamation of the seventh day of October, 1958, and in exercise of all powers enabling him in that behalf, the President is pleased to make and promulgate the following Ordinance.

**1. Short title and commencement.**—(1) This Ordinance may be called the Claims for Maintenance (Recovery Abroad) Ordinance, 1959.

(2) It shall come into force at once.

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

- (a) “Article” means an article of the Convention;
- (b) “Contracting Party” means Pakistan, and any other state whose instrument of ratification or accession is deposited under Article 13 and which is notified by the <sup>1</sup>[Federal Government] in the official Gazette to be a contracting Party;
- (c) “Convention” means the United Nations Convention on the Recovery Abroad of Maintenance; and
- (d) “Transmitting Agency” and “Receiving Agency” for a Contracting Part shall mean respectively the judicial or administrative authority and the public or private body designated under Article 2 to be the Transmitting Agency or the Receiving Agency, as the case may be, and notified as such by the <sup>2</sup>[Federal Government] in the official Gazette.

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<sup>1</sup>Subs. by F.A.O., 1975, Art. 2 and Table.

**3. Publication of information.** —The <sup>1</sup>[Federal Government] shall, from time to time, publish in the official Gazette any information received by it from the Secretary- General of the United Nations in pursuance of Article 19.

**4. The Convention to have the force of law in Pakistan.**—(1) Notwithstanding anything to the contrary contained in any other law, the provisions of the Convention set out in Schedule shall have the force of law in Pakistan.

(2) The <sup>1</sup>[Federal Government] may amend the Schedule in conformity with such amendments as may, from time to time, be made in the Convention.

**5. Power to make rules.** —The <sup>1</sup>[Federal Government] may make rules for carrying out the purposes of this Ordinance.

## THE SCHEDULE

(See section 4)

### CONVENTION ON THE RECOVERY ABROAD OF MAINTENANCE.

#### *Article 1*

#### SCOPE OF THE CONVENTION

1. The purpose of this Convention is to facilitate the recovery of maintenance to which person, hereinafter referred to as claimant, who is in the territory of one of the Contracting Parties, claims to be entitled from another person, hereinafter referred to as respondent, who is subject to the jurisdiction of another Contracting Party. This purpose shall be effected through the offices of agencies which will hereinafter be referred to as Transmitting and Receiving Agencies.

2. The remedies provided for in this Convention are in addition to, and not in substitution for, any remedies available under municipal or international law.

#### *Article 2*

#### DESIGNATION OF AGENCIES

1. Each Contracting Party shall, at the time when the instrument of ratification or accession is deposited, designate one or more judicial or administrative authorities which shall act in its territory as Transmitting Agencies.

2. Each Contracting Party shall, at the time when the instrument of ratification or accession is deposited, designate a public or private body which shall act in its territory as Receiving Agency.

3. Each Contracting Party shall promptly communicate to the Secretary-General of the United Nations the designations made under paragraphs 1 and 2 and any changes made in respect thereof.

4. Transmitting and Receiving Agencies may communicate directly with Transmitting and Receiving Agencies of other Contracting Parties.

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<sup>1</sup>Subs. by F.A.O., 1975 Art. 2 and Table.

### *Article 3*

#### **APPLICATION TO TRANSMITTING AGENCY**

1. Where a claimant is in the territory of one Contracting Party, hereinafter referred to as the State of the claimant, and the respondent is subject to the jurisdiction of another Contracting Party, hereinafter referred to as the State of the respondent, the claimant may make application to a Transmitting Agency in the State of the claimant for the recovery of maintenance from the respondent.

2. Each Contracting Party shall inform the Secretary-General as to the evidence, normally required under the law of the State of the Receiving Agency for the proof of maintenance claims, of the manner in which such evidence should be submitted and of other requirements to be complied with under such law.

3. The application shall be accompanied by all relevant documents, including, where necessary, a power of attorney authorizing the Receiving Agency to act, or to appoint some other person to act, on behalf of the claimant. It shall also be accompanied by a photograph of the claimant and, where available, a photograph of the respondent.

4. The Transmitting Agency shall take all reasonable steps to ensure that the requirements of the law of the State of the Receiving Agency are complied with; and, subject to the requirements of such law, the application shall include:

- (a) the full name, address, date of birth, nationality, and occupation of the claimant, and the name and address of any legal representative of the claimant;
- (b) the full name of the respondent, and, so far as known to the claimant, his addresses during the preceding five years, date of birth, nationality, and occupation;
- (c) particulars of the grounds upon which the claim is based and of the relief sought, and any other relevant information such as the financial and family circumstances of the claimant and the respondent.

### *Article 4*

#### **TRANSMISSION OF DOCUMENTS**

1. The Transmitting Agency shall transmit the documents to the Receiving Agency of the State of the respondent, unless satisfied that the application is not made in good faith.

2. Before transmitting such documents, the Transmitting Agency shall satisfy itself that they are regular as to form, in accordance with the law of the State of the claimant.

3. The Transmitting Agency may express to the Receiving Agency an opinion as to the merits of the case and may recommend that free legal aid and exemption from costs be given to the claimant.



## *Article 5*

### **TRANSMISSION OF JUDGEMENTS AND OTHER JUDICIAL ACTS**

1. The Transmitting Agency shall, at the request of the claimant, transmit, under the provisions of article 4, any order, final or provisional, and any other judicial act, obtained by the claimant for the payment of maintenance in a competent tribunal of any of the Contracting Parties, and, where necessary and possible, the record of the proceedings in which such order was made.

2. The orders and judicial acts referred to in the preceding paragraph may be transmitted in substitution for or in addition to the documents mentioned in article 3.

3. Proceedings under article 6 may include, in accordance with the law of the State of the respondent, exequatur or registration proceedings or an action based upon the act transmitted under paragraph 1.

## *Article 6*

### **FUNCTIONS OF THE RECEIVING AGENCY**

1. The Receiving Agency shall, subject always to the authority given by the claimant, take, on behalf of the claimant, all appropriate steps for the recovery of maintenance, including the settlement of the claim and, where necessary, the Institution and prosecution of an action for maintenance and the execution of any order or other judicial act for the payment of maintenance.

2. The Receiving Agency shall keep the Transmitting Agency currently informed. If it is unable to act, it shall inform the Transmitting Agency of its reasons and return the documents.

3. Notwithstanding anything in this Convention, the law applicable in the determination of all questions arising in any such action proceedings shall be the law of the State of the respondent, including its private international law.

## *Article 7*

### **THE PAKISTAN CODE LETTERS OF REQUEST**

If provisions is made for letters of request in the laws for the two Contracting Parties concerned, the following rules shall apply:

- (a) A tribunal hearing an action for maintenance may address letters of request for further evidence, documentary or otherwise, either to the competent tribunal of the other Contracting Party or to any other authority or institution designated by the other Contracting Party in whose territory the request is to be executed.
- (b) In order that the parties may attend or be represented, the requested authority shall give notice of the date on which and the place at which the proceedings requested are to take place to the Receiving Agency and the Transmitting Agency concerned, and to the respondent.

- (c) Letters of request shall be executed with all convenient speed; in the event of such letters of request not being executed within four months from the receipt of the letters by the requested authority, the reasons for such non-execution or for such delay shall be communicated to the requesting authority.
- (d) The execution of letters of request shall not give rise to reimbursement of fees or costs of any kind whatsoever.
- (e) Execution of letters of request may only be refused:
  - (1) If the authenticity of the letters is not established;
  - (2) If the Contracting Party in whose territory the letters are to be executed deems that its sovereignty or safety would be compromised thereby.

#### *Article 8*

### **VARIATION OF ORDERS**

The provisions of this Convention apply also to applications for the variation of maintenance orders.

#### *Article 9*

### **EXEMPTIONS AND FACILITIES**

1. In proceedings under this Convention, claimants shall be accorded equal treatment and the same exemptions in the payment of costs and charges as are given to residents or national of the State where the proceedings are pending.
2. Claimants shall not be required, because of their status as aliens or non-residents, to furnish any bond or make any payment or deposit as security for costs or otherwise.
3. Transmitting and Receiving Agencies shall not charge any fees in respect of services rendered under this Convention.

#### *Article 10*

### **TRANSFER OF FUNDS**

A Contracting Party, under whose law the transfer of funds abroad is restricted, shall accord the highest priority to the transfer of funds payable as maintenance or to cover expenses in respect of proceedings under this Convention.

#### *Article 11*

### **FEDERAL STATE CLAUSE**

In the case of a Federal or non-unitary State, the following provisions shall apply:



- (a) With respect to those articles of this Convention that come within the legislative jurisdiction of the federal legislative authority, the obligations of the Federal Government shall to this extent be the same as those of Parties which are not Federal States;
- (b) With respect to those articles of this Convention that come within the legislative jurisdiction of constituent States, provinces or cantons which are not, under the constitutional system of the Federation, bound to take legislative action, the Federal Government shall bring such articles with a favorable recommendation to the notice of the appropriate authorities of States, provinces or cantons at the earliest possible moment;
- (c) A Federal State Party to this Convention shall, at the request of any other Contracting Party transmitted through the Secretary-General, supply a statement of the law and practice of the Federation and its constituent units in regard to any particular provision of the Convention, showing the extent to which effect has been given to that provision by legislative or other action.

#### *Article 12*

### **TERRITORIAL APPLICATION**

The provisions of this Convention shall extend or be applicable equally to all non-self-governing, trust or other territories for the international relations of which a Contracting Party is responsible, unless the latter, on ratifying or acceding to this Convention, has given notice that the Convention shall not apply to any one or more of such territories. Any Contracting Party making such a declaration may, at any time thereafter, by notification to the Secretary-General, extend the application of the Convention to any or all of such territories.

#### *Article 13*

### **SIGNATURE, RATIFICATION AND ACCESSION**

1. This Convention shall be open for signature until 31 December, 1956 on behalf of any Member of the United Nations, any non-member State which is a Party of the Statute of the International Court of Justice, or member of a specialized agency, and any other non-member State which has been invited by the Economic and Social Council to become a Party to the Convention.

2. This Convention shall be ratified. The instruments of ratification shall be deposited with the Secretary-General.

3. This Convention may be acceded to at any time on behalf of any of the States referred to in paragraph 1 of this article. The instruments of accession shall be deposited with the Secretary-General.

#### *Article 14*

### **ENTRY INTO FORCE**

1. This Convention shall come into force on the thirtieth day following the date of deposit of the third instrument of ratification or accession in accordance with article 13.

2. For each State ratifying or acceding to the Convention after the deposit of the third instrument of ratification or accession, the Convention shall enter into force on the thirtieth day following the date of the deposit by such State of its instrument of ratification or accession.

#### *Article 15*

### **DENUNCIATION**

1. Any Contracting Party may denounce this Convention by notification to the Secretary-General. Such denunciation may also apply to some or all of the territories mentioned in Article 12.

2. Denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General, except that it shall not prejudice cases pending at the time it becomes effective.

#### *Article 16*

### **SETTLEMENT OF DISPUTES**

If a dispute should arise between Contracting Parties relating to the interpretation or application of this Convention and if such dispute has not been settled by other means, it shall be referred to the International Court of Justice. The dispute shall be brought before the Court either by the notification of a special agreement or by a unilateral application of one of the parties to the dispute.

#### *Article 17*

### **RESERVATIONS**

1. In the event that any State submits a reservation to any of the articles of this Convention at the time of ratification or accession the Secretary-General shall communicate the text of the reservation to all States which are Parties to this Convention, and to the other States referred to in article 13 Any Contracting Party which objects to the reservation may, within a period of ninety days from the date of the communication, notify the Secretary-General that it does not accept it, and the Convention shall not then enter into force as between the objecting State and the State making the reservation. Any State thereafter acceding may make such notification at the time of its accession.

2. A Contracting Party may at any time withdraw a reservation previously made and shall notify the Secretary-General of such withdrawal.

#### *Article 18*

### **RECIPROCITY**

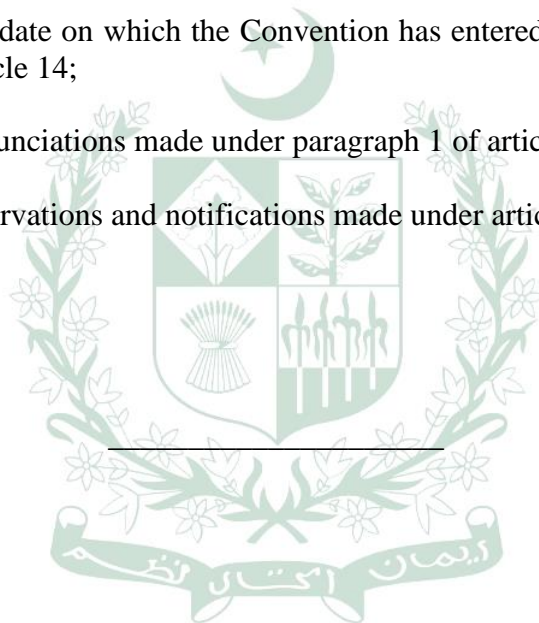
A Contracting Party shall not be entitled to avail itself of this Convention against other Contracting against other Contracting Parties except to the extent that it is itself bound by the Convention.

*Article 19*

**NOTIFICATIONS BY THE SECRETARY-GENERAL**

1. The Secretary-General shall inform all Members of the United Nations and the non-member States referred to in article 13;

- (a) of communications under paragraph 3 of article 2;
- (b) of information received under paragraph 2 of article 3;
- (c) of declarations and notifications made under article 12;
- (d) of signatures, ratifications and accessions under article 13;
- (e) of the date on which the Convention has entered into force under paragraph 1 of article 14;
- (f) of denunciations made under paragraph 1 of article 15;
- (g) of reservations and notifications made under article 17.



**THE PAKISTAN CODE**