

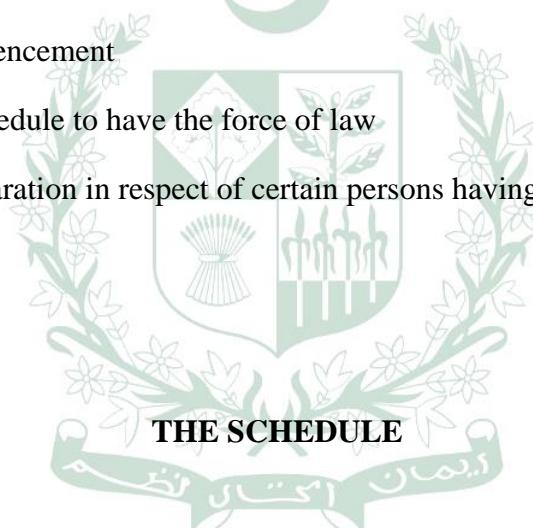


THE UNITED NATIONS (DECLARATION OF DEATH OF MISSING PERSONS) ACT, 1956



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THE PAKISTAN CODE

THE UNITED NATIONS (DECLARATION OF DEATH OF MISSING PERSONS) ACT, 1956

ACT NO. VII OF 1956

[11th April, 1956]

An Act to give effect to the United Nations Convention on the Declaration of Death of Missing Persons.

WHEREAS it is expedient to give effect to the United Nations Convention on the Declaration of Death of Missing Persons ;

It is hereby enacted as follows :—

1. Short title and commencement.— (1) This Act may be called the United Nations (Declaration of Death of Missing Persons) Act, 1956.

(2) It shall extend to the whole of Pakistan and shall come into force at once.

2. Provisions of the Schedule to have the force of law.— (1) Notwithstanding anything to the contrary contained in any other law for the time being in force, the provisions set out in the Schedule to this Act, of the Convention on Declaration of Death of Missing Persons, adopted by the United Nations Conference on the Declaration of Death of Missing Persons, on the 6th Day of April, 1950, shall have the force of law in Pakistan.

(2) The ²[Federal Government] may by notification in the official Gazette amend the said Schedule in conformity with any amendments duly made in the provisions of the said Convention.

3. Powers to make declaration in respect of certain persons having disappeared subsequent to 1945.—(1) Where in pursuance of any international agreement, convention or other instrument it is necessary or permissible to make a declaration of death in respect of persons having disappeared subsequent to 1945 under circumstances similar to those mentioned in the provisions set out in the Schedule to this Act, the ¹[Federal Government] may, by notification in the official Gazette, declare that the said provisions or such of them as it may deem necessary or convenient for giving effect to the said agreement, convention or other instrument, shall apply with such adaptations as may be necessary to the persons specified in the notification, and thereupon the said provisions shall apply accordingly and notwithstanding anything to the contrary contained in any other law for the time being in force, shall in such application have the force of law in Pakistan.

(2) The persons to be specified in the notification as aforesaid may be specified in such manner as the ²[Federal Government] may think fit.

4. Power to make rules. —The ¹[Federal Government] may make rules for carrying out the purposes of this Act.

5. (Repeal.) Omitted by the Federal Laws (Revision and Declaration) Ordinance, 1981 (27 of 1981), s. 3 and II Sch.

¹Subs. by F.A.O., 1975, Art. 2 and Table.

THE SCHEDULE

(See sections 2 and 3)

ARTICLE 1

Scope

1. The present Convention provides for declarations of death of persons whose last residence was in Europe, Asia or Africa who have disappeared in the years 1939-1945, under circumstances affording reasonable ground to infer that they have died in consequence of events of war or of racial, religious, political or national persecution.

However, members of armed forces serving in Europe, Asia or Africa shall not, by reason only of such service, be considered as having had their residence in those continents.

2. Contracting States may, by notification to the Secretary-General of the United Nations, extend its application to persons having disappeared subsequently to 1945 under similar circumstances. Such extension shall only apply as between those States which have made such notification.

3. The persons covered by paragraphs 1 and 2 of this article will be hereafter referred to as "missing persons".

ARTICLE 2

Competent tribunals

1. The term "tribunal", as used in the present Convention, shall apply to all authorities empowered *ratione materiae* to determine the fact of death under the governing domestic law.

2. Subject to paragraph 1 of this article, the following tribunals shall be competent *ratione loci* to receive applications and to issue declarations of death :—

- (i) The tribunal of the place of the last domicile of the missing person or of his last voluntary or involuntary residence ;
- (ii) The tribunal, in the country of which the missing person was a national, competent under applicable domestic law or, in its absence, the tribunal of the capital of that country ;
- (iii) The tribunal of the place of the situs of property of the missing person ;
- (iv) The tribunal of the place of decease of the missing person ;
- (v) The tribunal of the place of domicile or residence of the applicant in the case of an application filed by any of the following relatives ; ascendants, descendants, adopted children and their issue, brothers and sisters and their issue, uncles, aunts or spouse.

3. However, any Contracting State shall be entitled to designate for the whole or a part of its territory one or several tribunals to which it will transfer or assign the competence which the

preceding paragraph would have conferred on any of its tribunals. Such designation shall be communicated to the Secretary-General.

4. When an applicant has applied to a Tribunal considered by him as competent under the preceding paragraphs of the present article, he shall not be entitled to make a subsequent application to another tribunal unless he has withdrawn his first application before judgment has been rendered or unless the first tribunal does not regard itself as competent to deal with the application.

ARTICLE 3

Application for declaration of death

1. Any competent tribunal in each Contracting State shall, at the instance of any natural or juridical person having a legal interest in the matter or of an authority charged with the protection of the public interest, or acting on its own motion, issue a declaration of death of a missing person provided that all of the following requirements are met:

- (i) Such missing person had his last residence in Europe, Asia or Africa ;
- (ii) Such missing person disappeared in the years 1939 — 1945 ;
- (iii) The circumstances of the disappearance afford reasonable ground to infer that the missing person died in consequence of events of war or of racial, religious, political or national persecution ;
- (iv) A period of at least five (5) years has elapsed since the last known date on which the missing person was probably alive, as indicated by the reception of news or the occurrence of any other fact before the tribunal;
- (v) In the course of the proceedings for the issuance of such declaration, public notice has been given reasonably designed to afford the alleged descendant an opportunity to make known that he is alive.

2. Only the following natural or juridical persons shall be considered as having a legal interest within the meaning of the preceding paragraph:

- (i) Persons who may be entitled to, or have an interest, other than that of a creditor, in any part of the missing person's estate under a will or intestacy ;
- (ii) Persons who may be entitled to, or have an interest, other than that of a creditor, in any property the devolution or distribution of which may depend either on the survival or death or on the date of death of the missing person ;
- (iii) Persons whose personal status may be affected by the survival or death of the missing person ; and
- (iv) Persons desirous of adopting the minor children of the missing person.

ARTICLE 4

Date of death

1. In issuing a declaration of death, the competent tribunal shall determine the date and the time of death, taking into consideration any evidence or indication regarding the circumstances or the period in which death occurred.
2. In the absence of any such evidence or indication, the date of death shall be fixed at the date of disappearance.
3. The date of disappearance shall be the date of the last known indication of the existence of the missing person. It shall be determined by the tribunal taking into account facts brought to its attention and, in particular, the last news of the missing person.
4. In the absence of any evidence or indication regarding the time of death, it shall be declared to have taken place at the last moment of the declared day of death.

ARTICLE 5

Effects of declarations of death

1. Declarations of death issued in conformity with the present Convention in one Contracting State shall constitute in the other Contracting States *prima facie* evidence of death and the date of death until contrary evidence is submitted.
2. However, the Contracting States may by special arrangements, which shall be notified to the Secretary-General, grant broader effects than those provided for in the preceding paragraph to the declarations of death issued in their respective territories.

ARTICLE 6

Effects of declarations issued prior to the entry into force of the Convention.

Declarations of death issued in one of the Contracting States before the entry into force of the Convention shall have, in the territory of other Contracting States, the validity of a declaration issued under this Convention if the issuing tribunal certifies that the declaration satisfies the conditions and requirements which are at present contained in articles 1, 2 and 3 of this Convention. However, property or other rights acquired in such territory before such a declaration is presented shall not thereby be impaired.

ARTICLE 7

Res judicata of declarations issued prior to the entry into force of the Convention.

This Convention shall not be construed as impairing the force of res judicata of final declarations of death having acquired the force of res judicata before the entry into force of the Convention.

ARTICLE 8

International Bureau for Declarations of Death

1. There shall be established within the framework of the United Nations an International Bureau for Declarations of Death. The Secretary-General of the United Nations shall determine its seat, composition, organisation and method of operation.
2. A central registry shall be established in the Bureau.
3. The working languages of the International Bureau shall be English and French.
4. The Bureau shall be empowered to receive from Governments or individuals authenticated copies of Declarations of Death of Missing Persons, as defined in article 1 of the present Convention, issued before the entry into force of the present Convention.

ARTICLE 9

Communication of applications

1. A tribunal to which an application for declaration of death is made or which has initiated such a proceeding on its own motion, shall, within fifteen days, communicate to the International Bureau the following information, in so far as possible:
 - (i) Full name of the missing person ;
 - (ii) Names and, if practicable, addresses of the closest relatives ;
 - (iii) Place and date of birth of the missing person ;
 - (iv) His habitual residence ;
 - (v) His last known voluntary or involuntary residence ;
 - (vi) Any information as to his nationality ;
 - (vii) The last known date on which the missing person was probably alive according to the application ;
 - (viii) Names and addresses of the applicant, his interest and relationship, if any, to the missing person ;
 - (ix) Date of institution of the proceedings.
2. If the Bureau ascertains that a proceeding is already pending before another tribunal, it shall immediately notify the tribunal to which the later application has been made. Such tribunal shall suspend its proceedings pending a final decision by the other tribunal and shall inform the applicant of the tribunal before which proceedings have already been instituted and of the name of the other applicant. The Bureau shall also inform the tribunal to which the first application has been made of the application subsequently made to another tribunal.

ARTICLE 10

Publication and communication of decisions

1. A tribunal issuing a decision under the present Convention shall communicate its decision to the International Bureau within fifteen days from the date on which such decision becomes final, whether the decision is positive or negative. Such communication shall contain the date of the decision and the date fixed as the date of death, or a short statement of the grounds for denying the application.

2. The International Bureau shall publish, periodically, lists of all applications and final decisions as well as of certifications issued in accordance with article 6, which are communicated to it, and it shall also include therein any declarations of death which it may receive under paragraph 4 of article 8. It shall simultaneously send notice of the applications, decisions and certifications to the close relatives whose names are communicated to it in accordance with paragraph 1 (ii) of article 9 of the present Convention. The International Bureau shall also transmit to any tribunal in which an application has been filed for a declaration of death the grounds for any previous denial by any other tribunal of an application for a declaration of death concerning the same missing person.

3. A declaration of death shall not be issued in accordance with the present Convention until the expiration of three months from the publication of the application by the International Bureau.

4. If a final declaration of death is under reconsideration in the country where it was issued under the present Convention, the application for reconsideration and the decision which will be rendered thereon shall be subject to the provisions of paragraphs 1 and 2 of this article. This provision shall also apply to the declarations certified in accordance with article 6.

ARTICLE 11

Letters rogatory

1. The Contracting States shall be bound to execute letters rogatory relating to proceedings under the Convention in accordance with their domestic law and practice and international agreements concluded or to be concluded.

2. The transmission of letters rogatory shall be effected by the usual methods. However, Contracting States may also transmit such letters rogatory through the International Bureau.

ARTICLE 12

Exemption from costs, and free legal aid

Aliens instituting proceedings under the present Convention shall be granted exemption from all costs and charges, and free legal aid in all cases where, under the national law, such exemption or aid is granted in like proceedings to nationals of the country where a proceeding is pending. Indigent applicants shall be exempt from the requirements of posting security for costs which are imposed on aliens alone.

[ARTICLES 13 AND 14 OMITTED]

ARTICLE 15

Approval by the General Assembly

The establishment of the International Bureau provided for in article 8 shall require the approval of the General Assembly of the United Nations.

[ARTICLES 16 AND 17 OMITTED]

ARTICLE 18

Settlement of Disputes

If a dispute shall arise between Contracting States relating to the interpretation or application of the present 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 19

Reservations

Any State may subject its accession to the present Convention to reservations which may be formulated only at the time of accession.

If a Contracting State does not accept the reservations which another State may have thus attached to its accession, the former may, provided it does so within ninety days from the date on which the Secretary-General will have transmitted the reservations to it, notify the Secretary-General that it considers such accession as not having entered into force between the State making the reservation and the State not accepting it. In such case, the Convention shall be considered as not being in force between such two States.

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[ARTICLE 20 OMITTED]