
Magistrates or Special Courts? Trial for Trafficking and Migrant Smuggling Offenses.



RESEARCH CENTER, HIGH COURT OF BALUCHISTAN



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FOR **MEMBER INSPECTION TEAM**

SUBJECT: CRIMINAL LAW

DATE: 26TH DECEMBER 2024.

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QUERY OVERVIEW

Magistrates or Special Courts? Trial for Trafficking and Migrant Smuggling Offenses.

Prevention of Trafficking in Persons Act, 2018

- **Investigation of Offenses: -**

The Act designates the **local Police** and the **Federal Investigation Agency** as the investigating agencies and specifies which agency is responsible for the investigating of the certain offenses of trafficking:-

Police as Investigating Agency: The police are the primary investigating agency for offenses under this Act, as stipulated in section 8(1). They are responsible for investigating cases that do not involve cross-border elements of trafficking.

Federal Investigation Agency (FIA): If the offense involves the transportation of the victim into or out of Pakistan, and this transportation is part of the transaction constituting the offense, the Federal Investigation Agency is designated to investigate the offense as per section 8(2). This reflects the FIA's jurisdiction over transnational crimes and its role in dealing with cases that have international implications.

➤ **Cognizance of offense by the Investigating Agencies**

The Act has made the offense of Trafficking in persons cognizable under section 9, which implies that the investigating agencies have the authority to effect arrests traffickers without warrant as per law.

➤ **Remand of accused arrested under the Act**

The Act does not contain any specific provisions regarding the procedure for remand; therefore, the provisions of Code of Criminal Procedure 1908, being general law, would govern the procedure of remand.

➤ **Cognizance and trial of offenses**

Under the Act, the Courts empowered to try offenses of Trafficking in persons are Magistrates of First Class. Section 10 explicitly states that "a Magistrate of the First Class

shall try an offence punishable under this Act and may impose any punishment provided under the Act." Section 10 starts with a non obstante clause and override any contrary law or provisions of law.

Prevention of Smuggling of Migrants Act, 2018.

➤ **Investigation:**

The investigating agency responsible for the investigation of offences under The Prevention of Smuggling of Migrants Act, 2018 is the **Federal Investigation Agency** (FIA), or any other agency that the Government may empower through a notification in the official Gazette.

➤ **Cognizance of offense by the Investigating Agencies**

The Act has made all the offenses of cognizable under section 9, which implies that the investigating agencies have the authority to effect arrests of offender without warrant as per law.

➤ **Remand of accused arrested under the Act**

The Act does not contain any specific provisions regarding the procedure of remand; therefore, the provisions of Code of Criminal Procedure 1908, being general law, would govern the procedure of remand.

➤ **Cognizance and trial of offenses**

Under the Act, the Courts empowered to try offenses are Magistrates of First Class. Section 10 explicitly states that "a Magistrate of the First Class shall try an offence punishable under this Act and may impose any punishment provided under the Act." Section 10 starts with a non obstante clause and override on any contrary law of provisions of law.

Research Note:

Trial Courts for Offenses under the Act

- A comprehensive analysis of the provisions of the Acts and rule framed thereunder reveals that the Acts or rules neither have established special Courts for trial of offenses under the Acts nor do they provide a mechanism for designating any ordinary Court for this purpose, as generally required under special laws which creates special jurisdiction. It should also be noted that the Acts also do not require the High Court to specially empower a certain class of ordinary Court to try such offenses. On the contrary, sections 10 plainly states that a Magistrate of the First Class shall try offenses punishable under the Acts regardless the quantum of punishment. This authority is granted notwithstanding the provisions of section 32 of the Code of Criminal Procedure 1908 ("**the Code**"). That apart, a well-established legal principle dictates that if a special law does not outline a special procedure

for proceedings under such special law or does not create a special Court, the provisions of the Code apply. This principle is enacted under section 5 of the Code, too. Thusly, all the Magistrates of First Class in the Province are competent to try offenses under the Act.

Special Consideration for Juvenile Offenders

- It warrants due attention here that if a children (juvenile) stands accused under the Acts, they shall be tried by the Juvenile Courts established under the Juvenile Justice System Act 2018, in that the provision of JJSA, would prevail, being special law catering for an specific class of person while the Acts addresses a specific subject.

Establishment of Special Courts

- Establishment of Special Courts provides a more targeted and effective way to handle specific nature of cases and their expeditious resolution. In case it is deemed necessary to assign the cases registered under the Acts to improve the efficiency and effectiveness of the justice system in handling such cases, the High Court or the concerned Sessions Judge may assign the trial of such cases to a Magistrate in a Sessions Divisions where number of Magistrates are more than one.

Trial of coordinated offenses

- Any coordinated offenses, not triable by Magistrate of First Class, for instance cases exclusively triable by Court of Sessions or Special Courts, or a distinct procedure for conducting investigation and inquiry has been prescribed by law, may separately be registered and investigated by the authorized agency and inquired and tried by the competent Court separately.
