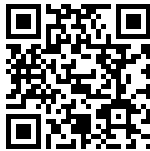


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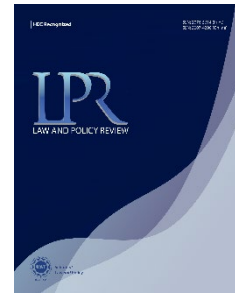
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# Lessons for Sri Lanka: Insights from Pakistan's Anti-Human Smuggling Law

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## Abstract

Human Smuggling is a global transnational crime often perpetrated by organized criminal networks. Both Pakistan and Sri Lanka are parties to the United Nations Convention against Transnational Organized Crime (UNTOC). However, neither country has ratified the Protocol against the Smuggling of Migrants by Land, Sea and Air, which supplements the Convention (Human Smuggling Protocol). Despite not being a party to the Human Smuggling Protocol, Pakistan introduced a specific legislation, the *Prevention of Human Smuggling Act 2018*, in alignment with the Human Smuggling Protocol's objectives to combat human smuggling. In contrast, Sri Lanka lacks dedicated legislation on human smuggling and continues to address the issue under the *Immigrants and Emigrants Act, 1948*. The absence of specialized legislation in Sri Lanka undermines global efforts to combat human smuggling, limits protections for vulnerable migrants, and hampers effective law enforcement and prosecution of smugglers. Against this backdrop, this paper critically examines the strengths and weaknesses of Pakistan's *Prevention of Human Smuggling Act*, with the aim of proposing a model law for Sri Lanka. Given that both countries are major source countries for human smuggling and face similar push factors such as poverty and unemployment, Pakistan's legislative approach—being closely aligned with the UN Smuggling Protocol—offers valuable lessons. Using a doctrinal methodology, the paper analyzes key legal instruments, including UNTOC, the Human Smuggling Protocol, Pakistan's *Prevention of Human Smuggling Act*, and Sri Lanka's *Immigrants and Emigrants Act*. The findings reveal that, while Pakistan's law broadly aligns with international standards, its implementation faces numerous challenges, resulting in a low conviction rate. In Sri Lanka, the current legal framework does not explicitly address human smuggling, instead focusing on general immigration control. Therefore, the study recommends that Sri Lanka adopt legislation similar to Pakistan's, with

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enhanced provisions that ensure the rights of smuggled migrants in accordance with international standards.

**Keywords:** human smuggling, organized criminal group, Pakistan, Sri Lanka

## Introduction

Human trafficking, human smuggling, drug trafficking, money laundering, and corruption are identified as transnational crimes. Human smuggling, in particular, is a transnational organized crime typically committed by well-organized criminal groups for profit. The United Nations (UN) has adopted legal measures to address this issue by introducing two international legal instruments. Human smuggling has become a large-scale business taking place across multiple countries. Although criminal groups are directly involved, ad hoc members such as family members, social networks, and friends often facilitate this criminal process by providing financial support and assistance in the form of accommodation, transport, or forged documents.

This crime poses a serious threat to national security, as criminal groups engaged in human smuggling often commit other transnational crimes as well (Chauffard, [2023](#)). Sri Lanka and Pakistan are largely source countries in the South Asia, producing a substantial number of irregular and smuggled migrants (Global Initiative Against Transnational Organized Crime, [2023](#)). Poverty, unemployment, (Edwards et al., [2023](#)) and marriage dowries are the main causes of this issue in both states (UNODC, [2018](#)). Additionally, factors such as demand for cheap labor, urban life, and better healthcare facilities act as pull factors attracting migrants to destination countries (Ebrahim, [2024](#); UNODC [2018](#)).

According to international law, states are duty bound to combat human smuggling and protect the rights of smuggled migrants. Sri Lanka is a major source country for smuggled migrants heading to Australia, Canada, and various European countries. In many instances, boats carrying smuggled migrants are returned to their country of origin, and the individuals involved face severe consequences. Despite the gravity of the issue, Sri Lanka continues to rely on the Immigrants and Emigrants Act, which does not adequately address the issue of human smuggling, nor does it provide appropriate punishments or recognize the adversities faced by smuggled migrants. Against this backdrop, the objective of this paper is

to propose a robust legal framework for Sri Lanka to effectively address the issue of human smuggling. To formulate appropriate recommendations, the researcher has analyzed Pakistan's Prevention of Human Smuggling Act (PHS Act), considering that both Sri Lanka and Pakistan are source countries in South Asia with similar economic conditions—factors that contribute significantly to human smuggling. This research adopts doctrinal methodology, mainly focusing on the analysis of the United Nations Convention against Transnational Organized Crime (UNTOC), Human Smuggling Protocol and PHS act and IME Act. The study has been divided into four sections. The first section summarizes the transnational regulatory legal provisions governing people smuggling. The second section explores the background on human smuggling in Pakistan and Sri Lanka. The third section deliberates the international obligation of Pakistan and Sri Lanka and section four analyses the Prevention of human smuggling Act Pakistan (PHS Act) and Immigrants and Emigrants Act (IME Act) and the final section concludes the article with a few recommendations.

### **The International legal Framework on Human Smuggling**

The UNTOC was introduced in 2000 as a first global measure to address transnational crimes. The Convention intends to enhance cooperation among states in preventing and combating transnational organized crime, focusing on identification, arrest, investigation, and prosecution (United Nations [UN], [2000](#)).

While the UNTOC attempts to address Transnational Organized crime, it does not define the term 'transnational crime'. Instead, article 3(2) offers a functional definition, outlining the circumstances under which an offence qualifies as transnational—based on factors such as the location of the offence, the involvement of multiple States in its planning or execution, or its substantial effects in another State. Another key definition in the UNTOC is the term 'organized criminal Group' (OCG). Article 2 (a) clarify the meaning of OCG as the transnational crimes are largely committed by OCGs. According to Article 2(a), the term OCG is defined as “a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit” (Article 2 (a) of the UNTOC). As per this provision,

financial or other material benefits are one of the essential elements. Further, the UNCTOC defines serious crime as “an offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty” (Article 2 (b) ).

The Human Smuggling Protocol, which supplements the UNCTOC, explains Human Smuggling as follows in Article 3 (a). “‘Smuggling of migrants’ mean ‘procurement’, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident” (Article 3 (a)).

As per the United Nations Office of the Drugs and Crime (UNODC), the Smuggling Protocol emphasizes financial motivation as a core element in proving the crime as it aims not to punish individuals who facilitate border crossings on humanitarian grounds and for political or social motives (United Nations Office on Drugs and Crime [UNODC], [2018](#)). According to the UNODC, any form of financial or non-financial inducement, payment, bribe, incentive, advantage, privilege, or service—including those of a sexual nature—is referred to as a financial or other material benefit in the Protocol (UNODC, [2000](#)). The non-ratification of the Human Smuggling Protocol by states may limit their ability to fully conform to international standards, thereby posing challenges in harmonizing national legal frameworks with global efforts to combat human smuggling. Despite this, Pakistan was able to enact a law in 2018, followed by supplementary rules in 2020, which are aligned with international standards.

To evaluate the implications of state parties’ obligation, it is essential to assess the nature of the obligations imposed under the UNCTOC and the Human Smuggling Protocol. Both instruments mandate that states enhance universal cooperation to resolve the issue. The UNCTOC obligates state parties to adopt legal, institutional, and technological measures to eradicate crimes stipulated in the UNCTOC the human Smuggling Protocol. A key aspect of the UNCTOC is international cooperation, with a particular focus on ensuring that developed nations assist developing countries in enforcing penalties for such crimes and safeguarding the rights of smuggled migrants. This collaboration is essential for the identification, investigation, and prosecution of the offenders.

In addition to the general obligation imposed under the UNCTOC with regard to transnational crimes, the Human Smuggling Protocol outlines specific measures to address the offence of human smuggling. The offence of human smuggling and other related offences particularly; documentary offences are defined in Articles 3 and 6). These provisions stipulate the penalties for acts such as smuggling migrants for violating the immigration laws of the transit and destination states and persons who facilitates foreigners to remain in a transit state or destination contrary to immigration laws (UNODC, [2018](#)). State parties are required to enact laws to establish criminal offenses, such as attempting to commit human smuggling an offense and documentary offences, aiding and abetting, or coordinating and commanding others to commit an offense. Aggravating circumstances for these offenses include jeopardizing the lives or safety of smuggled migrants or subjecting them to inhuman or degrading treatment and exploitation (UNODC, [2018](#)). These serious violations should also be incorporated into domestic laws to ensure the protection of migrant rights. The Human Smuggling Protocol also states that no state party can prevent measures against a person whose conduct constitutes an offense under its domestic law. Hence, it gives discretion to the states to enact their own laws to punish those who violate immigration and emigration laws within their jurisdictions. (Article 6(4) of the Human Smuggling Protocol).

The Smuggling Protocol also requires the nations to enact laws in their respective countries to prevent, punish, and protect migrants from this crime. However, none of these instruments mandate the adoption of the same definition for OCG and human smuggling and punishment as mentioned therein. Rather, states are given the discretion to enact their own laws in line with their legal systems. International cooperation must be extended by the states in identification, investigation, prosecution. Furthermore, transit, source, and destination countries should actively protect the victims of human smuggling.

With regard to the protection of migrants, the Human Smuggling Protocol provides minimal references, a position that is evident from the content of the protocol. The third paragraph of the preamble emphasizes the significance of the humane treatment of smuggled migrants and the necessity of safeguarding their rights (Kathirgamathamby, [2023](#); United Nations, [2000](#)). Sixth paragraph expresses that migrants may be exposed to loss of life or personal safety during the journey. Moreover, states are

legally bound under article 16 to ensure rights of smuggled migrants align with international law (Kathirgamathamby, [2023](#)). Irrespective of less consideration in the human Smuggling Protocol States must take measures to protect the smuggling migrants based on their Constitutional provisions and international human rights obligations.

In summary, the UNCTOC and the Human Smuggling Protocol establish a comprehensive legal framework to address human smuggling through defining the fundamental terms, listing the crimes, establishing preventive measures, punitive measures and cooperative measures. Although the definitions are given, states parties can exercise discretion to enact their own laws. The major lacking in the human smuggling Protocol is limited attention to rights of smuggled migrants. However, this limited approach does not hinder the states to make provisions to protect the dignity and rights of smuggled migrants. For instance, Pakistan has issued rules under section 14 of the PHS Act to protect the smuggled migrants.

### **An Overview of Human Smuggling in Sri Lanka and Pakistan**

Human Smuggling has not gained the same level of global attention as human trafficking. A similar state prevails in Sri Lanka and Pakistan. Both countries are source, transit, and some extent, destination countries for smuggled migrants (Global Initiative Against Transnational Crime, [2023](#)). For Pakistani and Sri Lankan migrants, major destinations include Australia, Canada, Europe, the United States, Southeast Asia, and Europe (Migration Data Portal, [2025](#)). The Human Rights Commission of Pakistan (HRCP) highlights that human smuggling has not received equivalent human rights attention as other exploitative practices like human trafficking (Ebrahim, [2024](#)). This is because of the perception that the smuggled migrants consent to the journey, despite being aware of the inherent risks involved.

Poverty, unemployment, motivation from family circles, gender discrimination, early marriage proximity to conflict zones such as Afghanistan and Iran, demand for cheap labour in destinations are causes for people smuggling in Pakistan (Ebrahim, [2024](#)). In Sri Lanka, many of the same socioeconomic factors contribute to human smuggling, except for proximity to conflict zones and early marriage. The COVID-19 pandemic and financial recession in 2022 Sri Lanka have also motivated people to choose illegal pathways to leave the island (UN, [2024](#)). In

addition to these thirty years ethnic conflict, internal displacement, delays in reconciliation process are also specific causes in Sri Lanka.

Due to above mentioned reasons; Sri Lankans continue to be smuggled to other countries via sea and air. Similarly, although less frequently, non-nationals are smuggled into Sri Lanka—either as a transit point or, occasionally, as a destination. Human smuggling operations have been a long-standing issue. Notably, in May 2009, the MV *Sun Sea* transported approximately 492 Sri Lankan smuggled migrants from Thailand, and later, the MV *Ocean Lady* carried 76 Sri Lankans to British Columbia, Canada, shortly after the end of the ethnic war in Sri Lanka (Canadian Council for Refugees [CCR], [2015](#)); Sadrehashemi, [2019](#)). These individuals faced prolonged detention and interrogation (Sadrehashemi, [2019](#)). Many of them obtain refugee status over the years (CCR, [2015](#)). By 2020, still some passengers were remaining without refugee status (Tamil guardian). They encountered multiple challenges, including unemployment, lack of legal and social status, uncertainty about their future, and the inability to return to Sri Lanka to see their loved ones (CCR, [2015](#)). Since then, people have continued to be smuggled via maritime routes to Australia, with boats intercepted either en route or in international waters and sent back to Sri Lanka (Sri Lanka Navy, [2025](#)). Those who do reach their destination are often placed in long-term detention camps (OHCHR, [2025](#)).

Several notable incidents occurred in 2022, 2023, 2024, and 2025. According to the Sri Lankan Navy, 65 passengers have been arrested over the last four years. In 2023, France repatriated 52 smuggled migrants in two separate instances. That same year, 303 migrants, including Sri Lankans, were rescued from Vietnamese waters. Furthermore, Australia deported 41 smuggled migrants to Sri Lanka in 2023. As of March 2025, one incident has already been reported (Sri Lanka Navy, [2025](#)). These incidents reflect the ongoing and organized nature of smuggling operations and highlight the vulnerability of individuals who resort to irregular migration due to the lack of legal migration pathways. While maritime interceptions are intended to deter human smuggling, the prolonged detention of smuggled individuals raises significant concerns about their rights, legal uncertainty, and humanitarian protection.

With regard to organized databases, both states have failed, and the human smuggling incidents are widely reported across all types of media,



including print, television, and digital platforms (McAuliffe & Laczko, [2016](#)). According to recent media reports, smuggled migrants from Pakistan and Sri Lanka face severe human rights violations, including going missing and some even succumbed to death, during their journeys (CTV News, [2024](#); Hussain, [2025](#); United Nations, [2024](#)). For instance, a boat carrying 750 smuggled migrants, including 350 from Pakistan, was intercepted in Greece; only 80 bodies were recovered, and the remaining passengers are presumed dead (BBC News, [2025](#)). In another tragic incident in December 2024, five Pakistani migrants died and 47 were rescued at south of Crete (Momand & Guramani, [2024](#)). Similarly, in November 2022, approximately 303 Sri Lankan migrants, including women and children, were abandoned at sea in Vietnamese waters. They were rescued after 28 days at sea, having endured severe physical and psychological distress due to a shortage of food and water (International Organization for Migration [IOM], [2022](#); Sri Lanka Navy, [2025](#)). Furthermore, smuggled migrants often endure extremely poor conditions, lacking adequate food, healthcare, and legal support in detention camps. In particular, in Australia, they are detained in offshore detention centers that lack proper facilities (Office of the High Commissioner for Human Rights [OHCHR], [2025](#)).

In response to the issue of human smuggling, Sri Lanka should have enacted comprehensive legislation to penalize human smuggling and protect smuggled migrants. However, in 2006, Sri Lanka introduced legal provisions to the Immigrants and Emigrants (IME) Act to address irregular arrivals and departures. When the amendment was introduced in Parliament, the then Minister of Labour acknowledged that unemployment, social conditions, lack of social security, and youth dissatisfaction were the primary factors motivating individuals to choose irregular pathways to leave the country (Parliament of Sri Lanka, [2006](#)). These amendments, however, are not on par with international standards on human smuggling. In contrast, Pakistan has enacted a comprehensive legal framework to deal with human smuggling.

### **Compliance with International Law: Pakistan and Sri Lanka**

Pakistan and Sri Lanka have signed the UNCTOC, but both have yet to ratify its smuggling protocol. Both states are obliged to adhere to the provisions of the UNCTOC major human rights conventions to eradicate crimes that are outlined in the convention. The UNCTOC aims to punish

various crimes such as being a member of an OCG, committing money laundering, engaging in corruption, and interfering with legal proceedings (UNTOC Articles 5 to 8). Both Pakistan and Sri Lanka need to penalize these offences in their laws. As of now, the two states have separate laws to address money laundering, corruption, and bribery, rather than a single comprehensive law covering all types of organized crime. States also need to take action to extradite the suspects to relevant states, provide mutual legal assistance to states and conduct joint investigations (UNTOC, Articles 16–19). Some of these obligations are mandatory, while others are of an optional nature for the States Parties. Therefore, the directory nature of certain legal obligations may be disregarded by States Articles 5 to 8 of the UNTOC deal with the criminalization of three offences. Notably, these articles use different language to impose obligations regarding criminalization. For instance, States shall criminalize participation in an organized criminal group (Article 5) and money laundering activities through legislation (Article 6) (United Nations, [2000](#)). However, States are not mandatorily required to include predicate offences in their domestic laws, as indicated in Article 6(2). Moreover, Article 7(1) uses softer language, such as “shall endeavour to” and “shall consider,” requiring States to consider establishing a legal regime to combat money laundering. Furthermore, Article 8 provides that States shall criminalize certain forms of corruption involving public officials. However, they may consider criminalizing corruption involving foreign public officials (United Nations, [2000](#)).

Articles 16 to 19 UNTOC contain provisions aimed at enhancing international cooperation among States Parties in relation to extradition, the transfer of sentenced persons, mutual legal assistance (MLA), and joint investigations in criminal proceedings. Article 16(1) mandates States to recognize the offences covered by the Convention as extraditable. Where a state refuses to extradite an alleged offender, it is under an obligation to prosecute such an individual in accordance with the principle of *aut dedere aut judicare* (United Nations, [2000](#)). These are therefore mandatory obligations. However, with respect to the legal basis for extradition, the Convention adopts a flexible approach. If a bilateral or multilateral extradition treaty exists between States Parties, the UNTOC merely serves as an additional legal basis for extradition. Consequently, the applicability of the UNTOC in this context is optional, depending on the existing treaty framework and the consent of the involved States. Article

17 provides that States may consider transferring sentenced persons by entering into agreements with other States. This provision is non-mandatory and is thus governed by the principle of mutual consent. The permissive language ("may consider") reflects the discretionary nature of the obligation.

In contrast, the obligation to provide MLA under Article 18 is of a mandatory character, although it allows for procedural flexibility. States shall afford mutual legal assistance to the fullest extent possible in investigations, prosecutions, and judicial proceedings relating to offences covered by the UNCTOC. Article 18(1) further requires States to assist in the service of judicial documents, execution of searches, seizures, and related investigative measures. Nevertheless, Article 18(2) introduces important limitations by permitting a State to refuse assistance on specific grounds, such as the protection of national security or public order. This exception reflects a balancing approach—while cooperation is generally obligatory, State sovereignty and national interests are preserved through narrowly tailored grounds for refusal.

Moreover, conducting training and awareness programs to prevent organized crime (UNCTOC Articles. 29–31), adopting measures to protect victims and witnesses from potential harm caused by perpetrators (Articles. 24–25), establishing judicial mechanisms to prosecute perpetrators when transnational crimes occur within their territory or beyond the territory to ensure effective prosecution (Articles 15 and 11), and implementing measures to recover and seize illicit proceeds (Articles 12) are additional obligation of the state parties. In both states, a specific organized crime law is absent and the crimes are addressed by various laws.

Key global human rights treaties entail the states to uphold the rights of all human being including smuggled migrants and the accused (Kathirgamathamby, [2023](#)). Pakistan and Sri Lanka should adhere to this legal requirement given the fact that both have ratified major international human rights (Smuggling Protocol, art 16(1)).

In addition International obligation Constitutions of Pakistan and Sri Lanka recognizes right to equality, (Pakistan Constitution Article-, Sri Lankan Constitution – Article 12 ) Religious freedom, (Pakistan Constitution - Sri Lankan Constitution – Article 10 and freedom from

arbitrary arrest and Detention, Pakistan Constitution - Articles 9,10, Sri Lankan Constitution – Article 13) freedom of speech, (Pakistan Constitution - Article 19 , Sri Lankan Constitution – Article 14(1)a ) peaceful assembly, (Pakistan Constitution 16, Sri Lankan Constitution – (4(1) (b)), Right movement, (Pakistan Constitution -15 Sri Lankan Constitution – Article 141(h)) Furthermore, Right to life is explicitly recognized in the Pakistan Constitution. (Article 9) However, Sri Lanka relies more on judicial interpretation in absence of express provisions. (Nallaratnam Singarasa v. Attorney General, S.C. Spl (LA) No. 182/99, 2006, (Rathnayake Mudiyansele Sunil Ratnayake v. Hon. Attorney General, SC TAB 01/2016, 2019). Moreover, Article 11 of the Sri Lankan Constitution states that no one shall be subjected to torture or cruel, inhuman, or degrading treatment. In contrast, the Pakistan Constitution, under Article 14(2), specifically states that no person shall be subjected to torture for the purpose of extracting evidence. The latter limits the practice of torture only to the extraction of evidence, and does not include references to 'inhuman' or 'degrading punishment or treatment.

In addition to constitutional safeguard for the smuggled migrants in Pakistan, in 2020, the Ministry of Interior of Pakistan issued the Prevention of Smuggling of Migrants Rules under Section 14 of the PHS Act. Among other matters connected to the smuggling of migrants, special attention has been given to the non-criminalization of migrants and the rights and protection of smuggled migrants.

Despite the fact that Pakistan is yet to ratify the Protocol, it has inclusive legal provisions to penalize human smuggling and protect the rights of smuggled migrants. However, Sri Lanka still relies on the Immigration and Emigration Act of 1948, which does not *prima facie* deal with human smuggling; rather, it regulates immigration and emigration.

### **Analysis of prevention of Human Smuggling Act Pakistan (PHS Act) and Immigrants and Emigrants Act Sri Lanka (IME Act)**

Understanding the role of Organized Criminal Group (OCG) is essential before analyzing the PHS Act. According to the UNCTOC, transnational crimes, including human smuggling, must be committed by an OCG and exhibit transnational elements, such as involving multiple countries or having substantial effects beyond a single jurisdiction. A unique example is the Chinese "Big Snakehead" smuggling network, which was

established approximately five decades ago. This is a well-structured organization involved in human smuggling and other serious crimes, including human trafficking, drug trafficking and corruption. Another example of an OCG is smuggling organizations in Hungary, which are well-organized, structured, and highly disciplined (Bilger et al., [2006](#)). In recent years, these groups have increasingly relied on sophisticated technologies to plan, coordinate, and execute transnational crimes, thereby enhancing their operational capabilities and evasion of law enforcement (Tung, [2021](#)). According to Zhang ([2008](#)) the leadership of OCGs are centralized, and tasks are delegated to both permanent and non-permanent members. These tasks include recruitment, collecting money, preparing documents, providing accommodation, and arranging transportation. Corrupt officials, family members, and friends are considered ad hoc members, as their roles are limited to facilitating the human smuggling process by preparing documents, making payments, and providing accommodation.

The PHS Act defines the term OCG in section 2 of the Act, as per this section it is not mandatory the human smuggling is carried out by an OCG: Notwithstanding this fact, if the crime is perpetrated by an OCG, it constitutes as a serious offence according to the PHS Act (PHS Act S-6(c)). According to the UNCTOC, human smuggling must be conducted by an organized criminal group (OCG) to fall within the scope of the convention. As defined under Article 2(a) of the UNCTOC, an OCG consists of a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes for financial or material benefit. However, the definition of an OCG varies across jurisdictions. For instance, Canada, Australia, and the United States Belgium each provide their own definitions of organized criminal groups, which differ from the definition set out in the UNCTOC. This deviation is permissible, as States Parties are not under a mandatory obligation to adopt a uniform definition, provided their domestic frameworks are consistent with the general objectives of the UNCTOC.

The PHS Act contains several provisions that align with the human smuggling protocol. The PHS Act punishes both smuggling of migrants (PHS Act section -3) and offences linked to producing travel documents (PHS Act section 4). These are stated in article 3(a) and Article 6 of the

Protocol. According to section 3, in the original enactment in 2018, anyone who intentionally smuggle or attempts to smuggle a person will be punished minimum of three years of imprisonment and maximum of five years. A significant amendment has been introduced to this section in 2025 by increasing the period of imprisonment from five years to ten years and the fine has been increased from Rs. 1 million to Rs. 10 million (Senate of Pakistan, [2025](#)). Preparation, procurement of false documents, possession of such documents is subject to three to ten years imprisonment and may also be liable to a fine up to five million rupees as per section 4. Section 5 penalizes harboring illegal residents for benefit. The benefit includes money, property, services, or any other advantage gained through smuggling activities. This is broader than the meaning given in the human smuggling protocol. Furthermore, Section 5 does not specify other forms of substantial benefits. This may include sexual favor as outlined in the interpretative notes to the Smuggling Protocol (United Nations, [2000](#)). Further, harboring illegal residents in the PHS Act constitutes an offence punishable by imprisonment of seven to fourteen, with fines up to ten million (Senate of Pakistan, [2025](#)). This recent amendment to section 3, 4 and 5 is evidence that Pakistan is seriously concerned about the human smuggling.

The Act also includes aggravated offences identified in the Protocol in section 6 including serious injury, life-threatening illness, death, inhumane treatment, or organized criminal groups, are punishable by imprisonment and fines up to two million rupees. Punishment for this crime is minimum five years and maximum fourteen years of imprisonment and fine is up to two million rupees. In 2025 numerous cases involving aggravated circumstance such as providing unsafe route, endanger the life of the victims are reported (Ministry of Foreign Affair Pakistan, [2025](#); NPR, [2025](#))

As stated in Section 03 of this paper, the Smuggling of Migrants Rules 2020 provide for the rights of migrants. Rule 8 states that, without prejudice to other penal provisions, smuggled migrants shall not be liable to criminal prosecution solely for having been the object of human smuggling, and they may be treated as witnesses in such cases. This provision is similar to Article 5 of the Human Smuggling Protocol.

In addition, Rule 3 requires that the relevant authorities identify and rescue smuggled migrants without delay and refrain from treating them as

criminals merely for their illegal entry. Rule 4 requires the authorities to provide medical assistance and other basic needs such as food, clothing, and shelter. Further, it requires the authorities to protect smuggled migrants from violence, intimidation, and retaliation. Pakistan is unable to provide adequate protection and shelter to trafficked victims (International Organization for Migration, [2024](#)). This applies to smuggled migrants as well.

Moreover, Rule 5 emphasizes the services to be provided to vulnerable groups among smuggled migrants, such as women, children, persons with disabilities, and unaccompanied minors. Further, smuggled migrants must be informed about their rights, available assistance, and any proceedings affecting them in a language they understand, according to Rule 6.

The principle of non-refoulement is recognized in the United Nations Convention against Torture 1984 and Article 33 of the 1951 Convention Relating to the Status of Refugees 1951 is ensured under Rule 7, according to which, if a person is subject to threats to life or risks of torture, inhuman, or degrading treatment, the State shall not return the smuggled migrant. Finally, Rule 8 provides for the right to voluntary return of smuggled migrants, and the State must ensure that the return is safe and assisted

Despite the comprehensive legal provisions regarding the rights of smuggled migrants, Pakistan faces numerous challenges in ensuring their effective implementation. For example, law enforcement agencies in many regions lack adequate understanding of the importance of non – criminalization of smuggled migrants (UNDOC, [2021](#)). The basic facilities and legal assistance are limited particularly to remote areas (IOM, [2024](#)). Due to scarcity of interpreters and polyglot materials, smuggled migrants are not able to obtain information regarding their rights (IOM, [2022](#)). In many situations migrants are deported without considering the principle of non- refoulement (Al Jazeera, [2025](#)). The voluntary return is not properly assessed and monitored as per the 2020 rules. (IOM, Pakistan Assisted Voluntary Return and Reintegration (AVRR) Report (2022)

The Federal Investigation Agency (FIA) is responsible for implementing the PHS Act in Pakistan. In 2025, the FIA prosecuted several individuals involved in migrant smuggling under the Act. Notably,



Muhammad Zohaib (Case No. 94/2025) was charged with defrauding a deportee by falsely promising employment in Spain (Butt, [2025](#)). Faisal Ilyas (Case No. 31/2025) was convicted and fined Rs. 25,000, while Imran Ali and Sagheer Ahmed (Case No. 30/2025) were each convicted (Butt, [2025](#)) and fined Rs. 25,000 and Rs. 40,000, respectively (Butt, [2025](#)). These cases demonstrate the FIA's practical commitment to eradicating human smuggling. However, several constraints hinder the effectiveness of the criminal justice process, resulting in a disproportionately low number of convictions compared to the number of registered cases. For example, according to the FIA, in 2023, 18,000 cases were registered, but only 10 convictions were reported (Ullah, [2024](#)). These outcomes are largely due to a lack of systematic evidence collection, weaknesses in the prosecutorial process, and procedural delays in court proceedings. Furthermore, Pakistan has signed bilateral agreements with Turkey, Iran, and the EU to coordinate efforts in preventing smuggling.

In addition to prosecutions, the FIA has established Anti-Human Trafficking and Anti-Human Smuggling Units, set up overseas cells, and taken steps to train law enforcement officials. It has also organized awareness programmes for the general public (UNODC, [2021](#)), alongside community outreach and media campaigns. However, these efforts remain uneven across provinces, and many lower-tier officials lack awareness on how to identify or properly document cases involving aggravated smuggling elements (UNODC, [2021](#)).

In contrast to Pakistan's legal measures, Sri Lanka still relies on the Immigrants and Emigrants Act No. 20 of 1948 to address human smuggling. According to its preamble, the Act aims to regulate the arrival and departure of people from the island, with no mention of human smuggling. The objective of the Act is evidence of a significant legal lacuna in Sri Lanka, despite the global importance placed on addressing human smuggling. The IME Act functions as a general law governing immigration and emigration. It outlines the legal prerequisites that Sri Lankan citizens and foreign nationals must meet to comply with its provisions regarding cross-border movement. Accordingly, a legally obtained passport and visa are essential for both entry and exit.

With regard to legislative measures to combat the organization of irregular departures and entries, in 2006 Sri Lanka incorporated Sections 45A and 45C into the Immigrants and Emigrants Act to penalize the



organization of unauthorized departures and the transportation of non-citizens into Sri Lanka. Section 45C (i) of the Act criminalizes the organization of illegal border crossings from Sri Lanka, stating that no person is permitted to arrange an unlawful exit in contravention of the Act. Furthermore, subsection (11) penalizes any person who engages in, or aids and abets, preparatory acts to facilitate the offense described in subsection (a) (Kathirgamathamby, [2023](#)). Those found guilty of violating these provisions face imprisonment ranging from a minimum of one year to a maximum of five years.

Turning to irregular arrivals in Sri Lanka, Section 45A of the IME Act forbids foreigners from entering the country illegally with the assistance of anyone. Anyone who facilitates the illegal entry of a foreigner into the island is subject to imprisonment for a term of two to five years. The term "organize" in Section 45C is much broader, encompassing any act related to facilitating the movement of people. In comparison with Section 45C, as discussed above, it is evident that Section 45A includes the phrase "any person conceals or harbors." However, it does not include the word "organize," as found in Section 45C. The term "organize" carries several meanings, whereas "conceal" and "harbor" limit the *actus reus* to two specific actions. Moreover, neither Section 45A nor Section 45C requires the prosecution to prove that the perpetrators gained monetary or other benefits. As there are no reported cases under Sections 45A and 45C, there is no evidence to demonstrate how these sections are implemented in practice. This is a major shortcoming in evaluating the effectiveness of the IME Act in practice.

Additionally, the IME Act prohibits irregular immigration and emigration, primarily focusing on documentary offenses. Deported smuggled migrants are charged under Section 45 for violating the IME Act. However, the PHS Act complies with the protocol and does not focus on prosecuting smuggled migrants (PHS Act, Section 8). Regarding prosecution and conviction, no centralized data is available in Sri Lanka. Greater attention is given to human trafficking than to human smuggling, which is a major gap. As discussed in Section Two of this paper, major human smuggling incidents are widely reported in the media.

## Conclusion and Recommendation

Human smuggling is a global issue that requires comprehensive legal framework to penalize the offence and extending protection to the smuggled migrants. This paper examined the strengths and weaknesses of existing legal frameworks in Sri Lanka and Pakistan. Sri Lanka lacks a specific law addressing human smuggling, despite the growing prevalence of this crime. The IME Act primarily focuses on controlling people's movement and not human smuggling. There is no definition provided for smuggling. Although sections 45A and 45 C of the Act penalize inward and outward irregular migration, but lacks specific terms like "human smuggling." The study highlights that Pakistan's PHS Act, 2018 aligns with the core principles outlined in the Smuggling Protocol by defining human smuggling as a transnational crime, criminalizing human smuggling when conducted for financial or material benefit, non-criminalizing victims, and increasing penalties for cases involving aggravated circumstances. However, Pakistan faces practical challenges in identification, prosecution and protection of smuggled migrants.

Sri Lanka and Pakistan's approaches to smuggling differ in scope, definitions, and adherence to international standards. Pakistan's law explicitly recognizes human smuggling as a transnational crime, while Sri Lanka's IME Act does not. Pakistan's legislation includes financial gain as an essential element of human smuggling offenses, while Sri Lanka's IME Act does not require the element. Pakistan imposes enhanced penalties for smugglers in cases involving harm, abuse, or organized networks. However, Sri Lanka has no arrangements in this regard. Sri Lanka needs to change its legal framework to combat human smuggling. While bringing a new Act on human smuggling, Sri Lanka must focus on smugglers and organized crime groups, and impose stronger penalties on offenders who exploit vulnerable migrants and rights of smuggled migrants. Further, Sri Lanka should also align its domestic laws with international best practices. Strengthening collaboration with neighboring countries, such as Pakistan, may assist to share intelligence and coordinate enforcement efforts. Unlike Pakistan, Sri Lanka relies on the IME Act, which focuses on regulating immigration, and lacks a strong legal mechanism to fight against smuggling networks effectively. Sri Lanka must ratify the Human Smuggling Protocol and enact a new legislation in

line with its provisions to serve the sole purpose of eradicating human smuggling.

### Conflict of Interest

The author of the manuscript has no financial or non-financial conflict of interest in the subject matter or materials discussed in this manuscript.

### Data Availability Statement

The data associated with this study will be provided by the corresponding author upon request.

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