

[AS PASSED BY THE MAJLIS-E-SHOORA (PARLIAMENT)]

A

BILL

to provide for protection against waging of war or insurrection against Pakistan and the prevention of acts threatening the security of Pakistan

WHEREAS it is expedient to provide for protection against waging of war or insurrection against Pakistan, prevention of acts threatening the security of Pakistan and for speedy trial of offences falling in the Schedule and for matters connected therewith or incidental thereto;

It is hereby enacted as follows:-

1. Short title, extent and commencement.— (1) This Act may be called the Protection of Pakistan Act, 2014.

(2) It extends to the whole of Pakistan.

(3) It shall come into force at once:

Provided that this Act shall remain in force for a period of two years from the date it comes into force.

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

(a) “armed forces” means the Military, Naval and Air Forces of Pakistan and the Reserves of such Forces;

(b) “civil armed forces” means Police, Frontier Constabulary, Frontier Corps, Pakistan Coast Guards, Pakistan Rangers or any other civil armed force notified by the Government as such;

(c) “Code” means the Code of Criminal Procedure, 1898 (Act V of 1898);

(d) “enemy alien” means a militant:-

(a) whose identity is unascertainable as a Pakistani, in the locality where he has been arrested or in the locality where he claims to be residing, whether by documentary or oral evidence; or

(b) who has been deprived of his citizenship, under the Pakistan Citizenship Act, 1951 (II of 1951), acquired by naturalization;

(e) “Government” means the Federal Government;

(f) “militant” means any person who:

(a) wages war or insurrection against Pakistan, or

- (b) raises arms against Pakistan, its citizens, the armed forces or civil armed forces; or
 - (c) takes up, advocates or encourages or aids or abets the raising of arms or waging of war or a violent struggle against Pakistan; or
 - (d) threatens or acts or attempts to act in a manner prejudicial to the security, integrity or defence of Pakistan; or
 - (e) commits or threatens to commit any scheduled offence;
- and includes:
- (i) a person who commits any act outside the territory of Pakistan for which he has used the soil of Pakistan for preparing to commit such act that constitutes scheduled offence under this Act and the laws of the State where such offence has been committed, including an act of aiding or abetting such offence; or
 - (ii) any person against whom there are reasonable grounds that he acts under the directions or in concert or conspiracy with or in furtherance of the designs of an enemy alien;
- (g) "Police" includes all the police forces established by the Provincial Governments or the Federal Government;
 - (h) "Preparing to commit a scheduled offence" means any act, prior to an attempt, whereby a person equips or adorns himself with the means and instruments necessary for the commission of such offence and includes the possession, storage, fabrication or transport of explosives, firearms, instruments, articles, suicide jackets or vehicles designed to be used in such commission;
 - (i) "Prosecuting agency" means a prosecuting agency established by the Government for the prosecution of offences falling under this Act;
 - (j) "Prosecutor General" means the person appointed as Prosecutor General by the Government under section 12 of this Act;
 - (k) "Schedule" means a Schedule annexed to this Act;
 - (l) "Scheduled offence" means an offence as set out in the Schedule;
 - (m) "security of Pakistan" shall have the same meaning as is assigned to it in Article 260 of the Constitution;
 - (n) "Special Court" means the Special Court established under section 8 of this Act; and
 - (o) "Special Judicial Magistrate" means the Special Judicial Magistrate appointed under section 8 of this Act.

3. Use of armed forces and civil armed forces to prevent scheduled offences.— (1) Any police officer not below BS-15 or member of the armed forces or civil armed forces who is present or deployed in any area may, on reasonable apprehension of commission of a scheduled offence after giving sufficient warning, use necessary force to prevent the commission of a scheduled offence, and in so doing shall, in the case of an officer of the armed forces or civil armed forces, exercise all the powers of a police officer under the Code.

(2) In particular and without prejudice to generality of sub-section (1), an officer of the police not below BS-15 or member of the armed forces or civil armed forces in the above situation may,—

- (a) after giving prior warning use such force as may be deemed necessary or appropriate, keeping in view all the facts and circumstances of the situation, against any person who is committing or in all probability is likely to commit a scheduled offence, it shall be lawful for any such officer after forming reasonable apprehension that death or grievous hurt may be caused by such act, to fire, or order the firing upon any person or persons against whom he is authorized to use force in terms hereof:

Provided that the decision to fire or order firing shall be taken only by way of last resort, and shall in no case extend to the inflicting of more harm than is necessary to prevent the scheduled offence which has given rise to the reasonable apprehension of death or grievous hurt:

Provided further that all cases of firing which have resulted in death or grievous hurt shall be reviewed in an internal inquiry conducted by a person appointed by the head of the concerned law enforcement agency:

Provided further that all cases of firing which have resulted in death may, if the facts and circumstances so warrant, be also reviewed in a judicial inquiry conducted by a person appointed by the Federal Government.

Explanation.- Reasonable apprehension that death or grievous hurt may be caused, may, *inter alia*, be based on the following grounds, namely:-

- (i) credible prior information about a person, who is identified on site or is suspected to be that person and such person either attempts to resist arrest by force or refuses a command to surrender and his action may lead to grievous hurt or death;
- (ii) prior information but without any clear identification of individual(s) in an area who may have been or are going to be involved in the planning, commission or financing of a scheduled offence to carry out action as mentioned in paragraph (i) above;
- (iii) appreciation of circumstances on the scene that a person can cause harm and the situation may lead to grievous hurt or, a judgment based on event/s or a sequence of event(s) on site;

- (iv) threatening movement of a person who is in possession of a fire arm or reaching for a firearm, to target law enforcing personnel or a member of the public which may lead to grievous hurt or death; or
 - (v) prior information or a judgment on site that the person may cause to signal or personally trigger an explosion which can cause harm or a person assisting in commission of such a crime that may lead to grievous hurt or death.
- (b) arrest, without warrant, any person who has committed a scheduled offence or against whom a reasonable suspicion or credible information exists that he has committed, or is about to commit any such act or offence; and
 - (c) enter and search, without warrant any premises to make any arrest or to take possession of any fire-arm, explosive, weapon, vehicle, instrument or article used, or likely to be used and capable of being used, in the commission of any scheduled offence:

Provided that after the search, the circumstances justifying it and the items recovered shall be reported within two days to Special Judicial Magistrate of the area by the officer conducting the search.

(3) Nothing contained in sub-section (1) or sub-section (2) shall affect the provisions of Chapter IX of the Code and the provisions of section 132 of the Code shall apply to any person acting under this section.

4. Application of Code.— The provisions of the Code, insofar as they are not inconsistent with this Act, shall be applicable thereto.

5. Investigation.— (1) All the scheduled offences shall be cognizable and non-bailable.

(2) All scheduled offences, where armed forces / civil armed forces are acting in aid of civil authority, shall be inquired into and investigated by a Joint Investigation Team comprising of one gazetted police officer and two officers from the armed forces / civil armed forces. The Joint Investigation Team shall be headed by the Police Officer as aforesaid.

(3) Whenever a person is arrested or detained in custody under clause (b) or clause (c) of sub-section (2) of section 3 and it appears that the inquiry or investigation cannot be completed within the period of twenty-four hours, the head of Joint Investigation Team or any other officer acting under him, excluding the time necessary for journey from the place of arrest or detention to the court shall produce him before a Special Judicial Magistrate and may apply for remand of the accused to the custody of the police or custody of any other investigating agency.

(4) A Special Judicial Magistrate may remand the accused, from time to time, in such custody as such Special Judicial Magistrate thinks fit for a term not exceeding sixty days:

Provided that the Special Judicial magistrate shall not remand an accused person to custody under this section for a period exceeding fifteen days at a time:

Provided further that all such reports requesting for further custody of the accused shall be submitted through the Public Prosecutor.

(5) A person arrested or detained under this Act who falls within the meaning of clause (d) of section 2 of this Act shall be considered an enemy alien and subject to provisions of section 15 presumed to have joined waging war or insurrection against Pakistan.

6. Preventive detention.— (1) The Government may, by an order in writing, authorize the detention of a person for a period specified in the order shall not exceed ninety days if the Government has reasonable grounds to believe that such person is acting in a manner prejudicial to the integrity, security, defense of Pakistan or any part thereof or external affairs of Pakistan or public order or maintenance of supplies and services:

Provided that detention of such person shall be in accordance with the provisions of Article 10 of the Constitution:

Provided further that without prejudice to the above, an enemy alien may be detained by the Government to prevent him from acting as aforesaid for such period as may be determined by it from time to time in accordance with Article 10 of the Constitution.

Explanation.— A person connected or reasonably believed to be connected with the preparation, attempt or commission of a scheduled offence or a person acting in concert or under directions of an enemy alien, or a person falling under sub-section (5) of section 5 shall be deemed to be a person acting in the manner stated above.

(2) In areas where the Federal Government or the Provincial Government has called Armed Forces in aid of civil power under Article 245 of the Constitution or where any civil armed force has been called by the Federal Government or Provincial Government in aid of civil power under the Anti-terrorism Act, 1997 (XXVII of 1997), the said requisitioned force may detain any enemy alien or militant, in designated internment camps after a notification to that effect:

Provided that detention of such person shall be in accordance with the provisions of Article 10 of the Constitution.

(3) At any time during the said notification or upon its withdrawal, such internee may be handed over to Police or any other investigating agency for formal investigation and prosecution.

(4) The Federal Government shall make Regulations to regulate the internment orders, internment camps, mechanisms for representation against the internment orders and judicial oversight of such camps, subject to the provisions of sub-section (2) of section 9.

(5) Any person, arrested or detained by the armed forces or civil armed forces and kept under arrest or detention before the coming into force of the Protection of Pakistan (Amendment) Ordinance, 2014 (Ordinance No. I of 2014) shall be deemed to have been arrested or detained pursuant to the provisions of this Act if the offence in respect of which such arrest or detention was made also constitutes an offence under this Act.

7. Report.— Upon completion of investigation, the Joint Investigation Team shall, through the Public Prosecutor, submit a report before the Special Court:

Provided that notwithstanding anything contained in the Qanun-e-Shahadat, 1984 (P.O.10 of 1984), such report shall be admissible in evidence within the meaning of section 173 of the Code.

8. Establishment of Special Courts etc.—(1) The Government may establish as many Special Courts under this Act as determined by it.

(2) The Government, after consultation with the Chief Justice of the concerned High Court, may appoint any person as judge of the Special Court constituted under this Act who is or has been a Sessions Judge in any province of Pakistan, or has been an advocate of the High Court for a period of not less than ten years, and is not more than seventy years of age.

(3) A judge of the Special Court shall have all the powers of a Sessions Court as provided under the Code.

(4) The Government may provide security of tenure to a judge of the Special Court appointed under this Act as may be prescribed by the rules.

(5) The Government may, after consultation with the Chief Justice of the concerned High Court, appoint any Magistrate of the First Class serving as a member of the subordinate judiciary under any High Court or any other officer of not less than BS-18 of the Pakistan Administrative Service or Provincial Management Service of any Province or any person who is or has been an advocate of the High Court for a period not less than five years, as Special Judicial Magistrate.

(6) The Special Judicial Magistrate shall have all the powers of Magistrate of the First Class provided under the Code, unless they are inconsistent with this Act.

(7) No Special Court shall take cognizance of a scheduled offence except on a report submitted under section 7.

9. Place of inquiries, investigations and trials etc.—(1) The Government, on the report of a prosecuting agency, may determine the place of custody, inquiry, investigation and trial of a scheduled offence anywhere in Pakistan.

(2) Subject to the Constitution,—

- (a) the Government, Joint Investigation Team, armed forces or civil armed forces may, in the interest of the security of its personnel or for the safety of the detainee or accused or internee, as the case may be, or for any other reasonable cause withhold the information except from a High Court or the Supreme Court regarding the location of the detainee or accused or internee or internment centre established or information with respect to any detainee or accused or internee or his whereabouts:

Provided that the judge or judges to whom the disclosure is made may decide to treat it as privileged information in the public interest; and

- (b) the Government may not in the interest of the security of Pakistan disclose the grounds for detention or divulge any information relating to a detainee, accused or internee who is an enemy alien or a militant.

(3) A person convicted of a scheduled offence subject to direction of the Government may be confined at any place in Pakistan including the prisons established by the Provincial and Federal Governments.

10. Exclusion of public from proceedings of Special Court.— In addition, and without prejudice, to any powers which a Special Court may have by virtue of any law for the time being in force to order the exclusion of the public from any proceedings, if at any stage in the course of the trial of any person before a Special Court, an application is made by the prosecution on the ground that the publication of any evidence to be given or of any statement to be made in the course of the trial would be prejudicial to the public safety, and that, for that reason, all or any segment of the public should be excluded during any part of the hearing, the Special Court may make an order to that effect, but the passing of sentence shall in any case take place in open court.

11. Establishment of Prosecuting Agency.— The Government shall establish an independent Prosecuting Agency headed by a Prosecutor General in order to provide consultation and legal guidance to the investigating agency and to conduct the prosecution of scheduled offences.

12. Prosecutor General.—(1) The Government may appoint any person as Prosecutor General who is not less than forty-five years of age and has been an advocate of the High Court for a period of not less than ten years.

(2) The Prosecutor General may issue instructions and guidelines for the competent investigation and effective prosecution of the cases of scheduled offences.

(3) The Prosecutor General may, with prior approval of the Government, withdraw from the prosecution of any accused in a case pending before any Special Court and on submission of such request the Court may discharge or acquit the accused from the case as it may deem fit.

13. Protection of judges, prosecutors and witnesses etc.—The Government shall take appropriate measures to provide adequate security to the prosecution witnesses, investigating officers, prosecutors, Special Judicial Magistrates and Judges of the Special Courts and for this purpose may establish, anywhere in Pakistan, high security prisons with court rooms.

14. Joint trial.—(1) While trying any offence under this Act, a Special Court may also try any other offence, which an accused may, under the Code of Criminal Procedure, 1898, be charged, at the same trial if the offence is connected with such other offence.

(2) If, in the course of any trial under this Act of any scheduled offence it is found that the accused person has committed, in addition any other offence connected with scheduled offence, the Special Court may convict an accused for such other offence also and pass any sentence authorized by this Act or, as the case may be, such other law.

15. Burden of proof.— (1) An enemy alien or a militant facing the charge of a scheduled offence on existence of reasonable evidence against him, or a person arrested in preparation to commit or while attempting to commit such an offence shall be presumed to be engaged in waging war or insurrection against Pakistan unless he establishes his non-involvement in the offence.

(2) Any person apprehended in the course of preparation, attempt or commission of a scheduled offence and from whom any weapon, material, vehicle, article or instrument designed for or capable of being used to commit or to facilitate the commission of the offence of bombing, suicide

bombing or target killing or grievous hurt shall be presumed to be guilty of preparation, attempt or commission, as the case may be, of a scheduled offence.

Explanation: A cell phone or other instrument that contains logs or evidence of calls or messages made or received that facilitate the preparation, attempt or commission of such an offence, shall be deemed to be such an instrument and any record thereon or therein shall be admissible in evidence.

16. Punishment.— Notwithstanding anything contained in the Pakistan Penal Code or any other law for the time being in force, a scheduled offence shall be punishable with imprisonment which may extend to twenty years, with fine and confiscation of property unless the scheduled offence already provides a higher punishment and the Special Court convicting the accused may also deprive him of the citizenship acquired by him by naturalization.

17. Transfer of cases.—(1) Where, after taking cognizance of an offence, a Special Court is of opinion that the offence is not a scheduled offence, it shall, notwithstanding that it has no jurisdiction to try such offence, return the case to the prosecuting agency for its submission before a court of competent ordinary jurisdiction.

(2) The Persecutor General may, with the approval of Government and for reasons to be recorded, withdraw a case at any stage of the proceedings from one Special Court with its permission and submit the same in other Special Court constituted under this Act.

(3) Notwithstanding anything contained in any other law for the time being in force, the Government may apply to any court of law or tribunal that any case involving any scheduled offence punishable under this Act, pending before such court or tribunal be transferred to a Special Court, then such other court or tribunal shall transfer the said case to Special Court and it shall not be necessary for the Special Court to recall any witness or again record any evidence that may have been recorded.

18. Certain provisions of the Code not applicable.—The provisions of sections 374, 426, 435, 439, 439A, 491, 496, 497, 498 and 561A of the Code shall not be applicable to the scheduled offences.

19. Appeal.—(1) An appeal against the final judgment of a Special Court shall lie to the High Court.

(2) Copy of the judgment of a Special Court shall be supplied to the accused and public prosecutor on the day the judgment is pronounced

(3) Any aggrieved person or the Government may file an appeal against the final judgment of a Special Court within a period of thirty days from the pronouncement of judgment.

20. Savings.—No member of the police, armed forces or civil armed forces acting in aid of civil authority, Prosecutor General, a prosecutor, Special Judicial Magistrates or the Judge of a Special Court shall be liable to any action for the acts done in good faith during the performance of their duties.

21. Power to make rules.— (1) The Government may make rules to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of foregoing power such rules may include guidelines for police and members of armed forces / civil armed forces acting in aid of civil authority while using force to prevent scheduled offences.

(3) On the notification, the rules shall be laid before both Houses of Parliament.

22. Amendment of Schedule.- The Government may, by notification in the official gazette, amend the Schedule by adding or modifying any entry therein or omitting any entry therefrom.

23. Authorization.— The Federal Government may, by notification in the official gazette, authorize a Provincial Government to perform such functions and exercise such powers under this Act or the rules made thereunder as the Federal Government may deem fit.

24. Overriding effect.— (1) Subject to such conditions as the Government may specify by notification in the Official Gazette, the provisions of this Act shall have effect notwithstanding anything contained in any other law for the time being in force.

(2) In case there is any conflict between the provisions of this Act and any other law for the time being in force, the provisions of this Act shall prevail to the extent of inconsistency.

25. Removal of difficulties.— (1) If any difficulty arises in giving effect to any provision of this Act, the President may make such order, not inconsistent with the provisions of this Act, as may appear to him to be necessary for the purpose of removing such difficulty.

(2) An order under sub-section (1) shall be laid before each House of the Parliament in its first sitting after the order is made.

26. Validation.— All inquiries, investigations and proceedings initiated and conducted, anything done, actions taken, sentences or orders passed, rules or regulations made, notifications issued, powers conferred, assumed or exercised by any person or authority or forum between the 6th day of June, 2014 and the date this Act comes into force (both days inclusive) shall be deemed to have been validly initiated, conducted, done, taken, passed, made, issued, conferred, assumed or exercised under this Act and shall have effect accordingly.

SCHEDULE [See section 2(l)]

Scheduled Offences (1) The following acts, if committed with the purpose of waging war or insurrection against Pakistan or threatening the security of Pakistan shall be the scheduled offences and includes other offences relating to:

- (i) crimes against ethnic, religious and political groups or minorities including offences based on discrimination, hatred, creed and race;
- (ii) use of arson, fire-bombs, suicide bombs, biological weapons, chemical weapons, nuclear arms, plastic explosives and other materials capable of exploding or creating bombs employed to kill or cause hurt to persons or destroy property;

- (iii) use of arson and bombs on public places, government premises, sites of worship, historical places, business concerns, or other places, and risking or causing death or hurt to any person therein;
 - (iv) killing, kidnapping, extortion, assault or attack of members of the Parliament, Judiciary, Executive, Media, and other important personalities or any other person;
 - (v) killing, kidnapping, extortion, assault or attack on officers and employees of Pakistan including armed forces and law enforcement agencies;
 - (vi) killing, kidnapping, extortion, assault or attack on foreign officials, official guests, tourists, foreign visitors, or internationally protected persons etc;
 - (vii) killing, kidnapping, extortion, assault or attack on social or welfare workers, including health personnel, aid workers, and volunteers;
 - (viii) destruction of or attack on communication and interaction lines, devices, grids of stations, or systems etc;
 - (ix) destruction of or attack on energy facilities including dams, power generating and distributing systems including stations, lines and poles;
 - (x) destruction of or attack on aircrafts and airports, attack on flight crew with any weapon or endangering human life by means of weapons on aircrafts;
 - (xi) destruction of or attack on gas or oil pipelines and liquid or natural gas facilities and other means of their transport including tankers;
 - (xii) destruction of or attack on of national defense materials, premises, utilities, and installations including check posts, prisons and other fixtures;
 - (xiii) destruction of or attack on educational institutions, police stations and security organizations etc.
 - (xiv) cyber crimes, internet offences and other offences related to information technology which facilitate any offence under this Act;
 - (xv) wrecking, disrupting or attacking mass transport systems including trains, buses, cars and their stations and ports;
 - (xvi) violence or attack against maritime navigation, maritime fixed platforms, shipping and port installations and other maritime fixtures;
 - (xvii) violence against nuclear arms, sites or any other related installations;
 - (xviii) hostage taking, or attempting to take hostage any person;
 - (xix) violence against nationals occurring outside Pakistan;
 - (xx) illegally crossing national boundaries in connection with Scheduled offence;
- (2) Offences punishable under sections 121, 121A, 122, 123, 123A, 123B, 124, 124A, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139 and 140 of the Pakistan Penal Code.

(3) Preparation, abetment, attempt or conspiracy to commit any of the offences specified in this Schedule.

MAJLIS-E-SHOORA (PARLIAMENT) OF PAKISTAN

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[As Passed by the Majlis-e-Shoora (Parliament)]