

A

BILL

to provide for investigation for collection of evidence by means of modern techniques and devices to prevent and effectively deal with scheduled offences and to regulate the powers of the law enforcement and intelligence agencies and for matters connected therewith or ancillary thereto

WHEREAS in order to prevent the law enforcement and intelligence agencies from using their powers arbitrarily it is necessary to regulate the said powers and provide for their permissible and fair uses in accordance with law and under proper executive and judicial oversight;

AND WHEREAS, further being mindful that the existing laws neither comprehensively provide for nor specifically regulate advance and modern investigative techniques such as covert surveillance and human intelligence, property interference, wire tapping and communication interception that are used extensively in other jurisdictions to successfully prevent the offences and as an indispensable aid to the law enforcement and administration of justice;

AND WHEREAS, in order to neutralize and prevent the threat or any attempt to carry out scheduled offenses it is necessary that the law enforcement and other agencies be given certain specific authorizations to obtain evidence in time and only in accordance with law;

AND WHEREAS, it is also in order to declare the admissibility and use of the material obtained during lawful investigation under the present law, in judicial proceedings and all other legal proceedings or processes to ensure fair trial;

NOW, THEREFORE, it is hereby enacted as follows:—

1. **Short title, extent and commencement.**—(1) This Act may be called the Investigation for Fair Trial Act, 2012.

(2) It extends to the whole of Pakistan.

(3) It shall come into force at once.

2. **Application.**— (1) The provisions of this Act shall apply to—

(a) all citizens of Pakistan within or outside Pakistan;

(b) all persons within Pakistan or on board on any ship or aircraft registered in Pakistan wherever it may be;

(c) It shall also apply to all transactions or communications originated or concluded within Pakistan or originated or concluded outside Pakistan by any person.

(2) Any person liable for investigation under the provisions of this Act for a scheduled offence committed partly or fully outside Pakistan shall be dealt with according to the provisions of this Act in the same manner as if such an offence had been committed within Pakistan.

Chapter 1: Definitions:

3. **Definitions.** – In this Act, unless there is anything repugnant in the subject or context, –

(a) 'applicant' means,

- (i) any law enforcement agency including Police, Federal Investigation Agency, Anti-Narcotics Task Force, Pakistan Customs, Pakistan Maritime Security Agency, Frontiers Constabulary,
- (ii) any of the Civil Armed Forces,
- (iii) any intelligence agency including Inter-Services Intelligence, Intelligence Bureau, Military Intelligence, Field Investigation Unit, Air Force Intelligence and Naval Intelligence,
- (iv) any other organization or agency associated with prevention of breaches of national security, including Airport Security Force, Maritime Security Agency and Strategic Plans Division, and
- (v) any other body, authority or agency as may be notified by the Federal Government.

(b) 'Designated Agency or Body' means any one or more Agency or Body designated by Federal Government for the purposes of this Act;

(c) 'authorized officer' means any officer working with the applicant who is notified under section 4 to represent the applicant while making any application or taking up any proceedings under the Act;

(d) 'competent authority' includes the Judge and also refers to authority competent to issue interim warrants under section 14;

(e) 'Court' means the Sessions Court;

(f) 'expert', means a person qualified or trained or experienced in conducting surveillance or interception who is nominated by the applicant.

or the Federal Government as an expert for analysis of the intercepted material.

(g) 'Intercepted material' means evidence collected under section 17 and will refer

(1) for the purposes of 'Surveillance' to include:

- (i) data, information or material in any documented form, whether written, through audio visual device, CCTV, still photography, bugging, observation or any mode of modern devices or techniques obtained under the Act;
- (ii) documents, papers, pamphlets, booklets; and

(2) for the purposes of 'Interception' to include:

- (i) E-mails, SMS, IPDR (internet protocol detail record)/ CDR (call detail record) and any form of computer based or cell phone based communication. It also includes any means of communication using wired/wireless/IP (internet protocol) based media / gadgetry.

(h) 'Judge' means the Sessions Judge, Islamabad or any other Sessions Judge notified by the Federal Government for the purposes of this Act.

(i) 'register' means the register maintained under section 9(2) by the Judge, containing the serial number of the file received by the Judge in Chambers which has been returned to the applicant for safe custody, and the said register shall also contain name, contact, address of the authorized person and the applicant;

(j) 'suspect' means a person in respect of whom there is a suspicion that he may be involved in any scheduled offence and includes foreigners and groups as well as organizations;

(k) "Schedule" means schedule to this Act;

(l) 'scheduled offence' means an offence specified in Schedule I;

(m) 'service provider' means any person, entity or company related to any equipment, technology, data, circumstances that gives it ability or power or control to implement the warrants issued under section 11, 14 and 21.

(n) 'warrant' means warrant of surveillance or interception, and includes:-

- (i) warrant issued under sections 11 or section 14 whereby the applicant is allowed by the Court to collect evidence through interception, recording through audio or video or any means of communication or surveillance of movements and actions through minimum interference in property and privacy of any person including human intelligence; and
- (ii) interim warrant issued under section 14.

Chapter 2: Application for Warrant

4. **Notification of authorized officer.-** (1) Any applicant shall, before making any application, first notify an appropriate officer, duly authorized by him to represent the said applicant for making an application under this Act.

(2) The notification referred to in sub-section (1) may also authorize the notified officer to nominate one or more officers to represent the applicant.

5. **Record of suspicious conduct.-** In case where any official of an applicant has reasons to believe that any person is likely to be associated with or is beginning to get associated with, any act leading to a scheduled offence, or is in the process of beginning to plan such an act, or is indulging in such a conduct or activity that arises suspicion that he is likely to plan or attempt to commit any scheduled offence and, therefore, it may be necessary to obtain warrant of surveillance or interception, he shall prepare a report thereof with supporting material wherever possible.

6. **Material to be placed before the superior.-** An official of the applicant who has prepared the report under section 5 shall present the same before his superior for permission to make application to the Judge for issuance of the warrant of surveillance or interception.

7. **Decision by the superior on the material presented to him.-** The Head of the applicant's department or any officer not below the rank of BPS-20 or equivalent nominated by him in writing shall examine the report with supporting material, if any, and through a written order may:-

- i. decline the permission; or
- ii. grant permission fully or partly.

8. **Application for issuance of warrant.-** Application for issuance of warrant shall be made by the authorized officer to the Judge. —

- (i) preferably in the manner prescribed in Schedule II; and
- (ii) in case, the nature of warrant requested to be issued requires different description, then the application shall be made in writing on the letter head of the applicant justifying the issuance of warrant by mentioning all necessary details with supporting material alongwith proposed draft for warrant;
- (iii) the application for the issuance of warrant shall be accompanied by a signed statement of authorized officer that the warrant shall be used only and exclusively for preventing or lawfully investigating a scheduled offence or to collect evidence in respect thereof and the same shall not be misused in any manner, nor the approval of the warrant shall be abused to interfere or intervene in the privacy of any person;

Chapter 3: Issue of warrants

9. **Judge to issue warrant in Chambers.**- Subject to section 14 the warrant of surveillance or interception shall be issued by the Judge in chambers.

(2) The authorized officer shall personally present the application in Chambers of the concerned Judge who after considering the same shall pass appropriate orders under section 11. The file on which the orders shall be passed, shall be returned to the authorized officer for safe-custody who shall be duty bound to bring the same on any subsequent related hearings. The Judge shall cause to be maintained a register as provided for in section 3(i).

10. **Considerations for issuance of warrant.**- (1) The Judge while passing an order for issuance of warrant shall consider the following:

(a) the material or statement of the authorized officer whether indicates a reasonable threat or possibility of an attempt to commit a scheduled offence; and

(b) the issuance of requested warrant will enable the applicant to collect evidence.

(2) The Judge while passing an order for the issuance of warrant shall ensure that—

(a) the issuance of warrant shall not unduly interfere in the privacy of any person or property; and

(b) the authorized officer is properly authorized to represent the applicant.

11. **Issuance of warrant of surveillance or interception.**- After considering the matters specified in section 10, the Judge shall:

- (i) pass an order allowing the issuance of warrant in the manner prescribed in Schedule III or as presented before him in a proposed draft form;
- (ii) pass an order allowing the issuance of warrant with some changes;
- (iii) pass an order allowing the issuance of warrant, but may make any observations regarding the manner and method of its implementation;
- (iv) restrict requested duration of any existing warrant;
- (v) decline to issue the warrant, if the Judge has reasons to believe that warrant is being procured with *malafide* intention and the process under the Act is being abused.

12. **Form of the warrant.**- (1) The warrant shall be issued in the manner ordinarily prescribed in Schedule III:

Provided that the warrant may also be issued in a manner proposed by the authorised officer under section 8(ii) with or without changes by the Judge.

(2) The warrant shall be signed by the Judge and a seal of the Court shall be affixed.

13. **Record of the orders.**- (1) While issuing the warrant, the Judge shall make a formal order indicating reasons for accepting the request of the applicant. The original copy of the formal order shall be given to the applicant for safekeeping.

(2) The formal order and its record shall not be made public and shall be retained at secured place by the applicant.

14. **Interim warrant.**- In case of urgency, the Head of the applicant's Department may himself issue an interim warrant of surveillance or interception as per Schedule II, provided the same shall be presented preferably within seven working days before the Judge for approval.

15. **Duration of warrant of interception.**- Warrant shall be issued for a period of not longer than six months:

Provided, it may be re-issued after the said period by the Judge upon the request of the authorized officer of the applicant, if he is satisfied that as a consequence of issuance of warrant, a suitable progress is being made and there is justification for re-issuance of warrant for another period of six months.

Thereafter, the warrant if required may be renewed successively for further durations.

16. **Sanction in case of arbitrary request for warrant.**- Where the Judge is of the view that any request for the issuance of warrant is based on insufficient or irrelevant considerations or it has resulted in undue and inappropriate interference in the privacy of any person or that the material and information collected or received within six months demonstrates that the officer concerned did not apply himself fully while making an application for the warrant, then he may recommend departmental action against the officer concerned.

Chapter 4: Execution of Warrants

17. **Authorization under the warrant.**- (1) The warrant of surveillance or interception to be issued by the Judge shall authorize and allow the lawful doing of any or all of the following acts:

- (a) interception and recording of telephonic communication of the suspect with any person and of that person with any other person.
- (b) Video recording of any person, persons, premises, event, situation etc.
- (c) Interception or recording or obtaining of any electronic transaction including but not limited to E-mails, SMS etc.
- (d) Interception and taking over of any equipment used in the communication in respect of which the warrant is issued, including but not limited to telephone, cell phone, mobile sims, electronic database demonstrating linking of electronic communication with the database belonging to the person in respect of whom the warrant has been issued.
- (e) Collection of evidence through any modern devices in addition to the ones mentioned above.
- (f) Use of human intelligence.
- (g) Covert surveillance and property interference.
- (h) Access to any information or data in any form related to a transaction, communication or its content.

(2) Any other form of surveillance or interception that the Federal Government may notify in this behalf.

18. **Method of executing the warrant.**- (1) The warrant or summary of the contents thereof, where required shall be served on the service provider or a person or entity exercising control over the premises and the technical facilities located therein through the Designated Agency or Body as provided in Schedule IIA.

(2) Upon receiving the said warrant or summary of its contents, the concerned service provider or person or entity shall be duty bound to provide access through the Designated Agency or Body to the officer holding the warrant to the premises as well as all technical facilities located therein that are necessary to intercept, record, wiretap or copy the data referred to in the warrant and for such period of time as mentioned in the warrant.

(3) Where nature of surveillance or interception is such that it is not necessary to serve the warrant on anyone, then the same shall not be served and its issuance alone shall be sufficient basis to collect evidence.

(4) The service provider will not extend technical facilities of interception to any person or organization other than the Designated Agency or Body.

19. Indemnity for service provider or person.- The access granted by the service provider being in accordance with the law, shall not be questioned anytime by any person who may claim to have been prejudiced by such access.

20. Immunity to service provider.- The service provider shall have immunity in any civil or criminal legal proceedings that any person may commence against his corporate entity or against his office bearers or employees, for having complied with the warrant issued under this Act.

21. Service provider to cooperate.- In the event the service provider declines, fails or interferes in any manner in the execution of warrant then he shall be liable to have committed an offence under this Act for obstructing investigation and justice and may be penalized for a sum up to ten million rupees or be liable for a punishment up to two years.

22. Service provider to ensure confidentiality.- The service provider shall also be responsible for ensuring the confidentiality of the execution of warrant from his staff members except those necessary to execute the warrant and in case of unauthorized disclosure or misuse of data by any of his staff member, the officials of the service provider and the concerned staff shall be liable to a penalty for a sum of rupees up to 10 million or a punishment up to two years.

Chapter 5: Admissibility of Material Obtained under the Warrant

23. Registration of case.- (1) The evidence including data, information and material collected or received pursuant to the warrant shall be examined by the officer authorized by the applicant in this behalf and if he is able to form an opinion

that the same discloses elements of commission, harbouring, abetting or conspiring or attempting to commit any scheduled offence, he may immediately cause registration of an FIR and in that event he shall hand over all the evidence including material, information, and data to the concerned investigating officer so that it forms part of his record for the purposes of investigation and prosecution.

(2) If the evidence which has been collected or received is insufficient to justify registration of an FIR, such evidence including data, information and material collected or received shall be kept confidential in safe custody and shall not be used without the permission of the Court.

24. Admissibility of warrant based information.- (1) Notwithstanding anything contained in the Qanun-e-Shahadat Order, 1984 (P.O.10 of 1984) or any other law for the time being in force, the evidence including data, information, documents or any other material collected or received under this Act shall be admissible as evidence in the legal proceedings.

(2) Nothing contained in sub-section (1) shall debar the admissibility of evidence collected or received under any other law for the time being in force or the evidence collected or received prior to coming into force of this Act.

25. Presumption of correctness of information.- (1) The warrant of surveillance or interception whenever presented in the trial court or any other court, shall be presumed to have been validly and lawfully issued.

(2) The intercepted material collected or received pursuant to the warrant of surveillance or interception under this Act and the material based on which the warrant of surveillance or interception was applied for by the applicant shall be admissible in evidence.

26. Report of expert: In case where an analysis of the intercepted material collected pursuant to the warrant of surveillance or interception is required, then the same shall be carried out by a person referred to in section 3(f) being suitably qualified, trained or experienced, who shall be deemed to be an expert as described under section 510 of the Code of Criminal Procedure, 1898 and his report shall have the same effect as given to the report of the experts of different fields mentioned in the said section.

27. Non-disclosure.- Any official performing any function under this Act, shall ensure complete secrecy of the process and shall refrain from any disclosures that may compromise the future capabilities of intelligence gathering, failing which, he will be proceeded against under the respective applicable law or the rules.

Chapter 6: Review and Oversight

28. **Representation.-** (1) In case the applicant is not satisfied with the declining of the request for the issuance of the warrant of surveillance or interception, it may prefer a representation to the Chief Justice of Islamabad High Court, who may either hear the same at the earliest in chambers or refer it to any other Judge of the High Court for hearing in chambers.

(2) The Chief Justice or any other Judge of the High Court, as the case may be, may either set aside the decision of the Judge and issue the warrant or uphold the view taken by the Judge.

(3) Nothing in this Act prevents the applicant to approach the Judge again in respect of the same person or property on new basis or if new material is found.

29. **Complaints against misuse of warrant.-** (1) The Judge shall also be competent to hear a complaint from any person including the Designated Agency or Body who claims that the warrant is being misused or that the applicant is conducting surveillance or interception beyond the scope of the warrant.

(2) If the complaint under sub-section (1) after hearing both the parties is proved to be true the Judge may direct the applicant to transfer the investigation to some other investigating officer and also initiate departmental proceedings against complained officer and report the result of the departmental proceedings to the Judge within such period as the Judge may deem fit:

Provided that for sufficient reasons shown the Judge may extend the period for submission of the report.

(3) A person aggrieved by decision of a Judge under sub-section (2) may file a representation to the Chief Justice of High Court within thirty days who may hear the representation himself or nominate any other Judge to hear the same which shall be heard in chambers.

30. **Powers of the Court.-** The Judge shall have powers under the Act to make any changes, modification, extensions, date of applicability of the warrants already issued etc, only upon the request of the applicant, who may approach the concerned Judge to further clarify any ambiguity or to seek advice or request the required changes in view of the changing or unique circumstances.

Chapter 7: Mutual Legal Assistance:

31. **Warrants to be served outside Pakistan.-** (1) Warrants obtained under the Act shall be executable outside Pakistan as well as in foreign jurisdictions, either directly on the concerned service providers or through mutual legal assistance mechanism.

(2) The warrant issued under the Act shall be processed for execution outside Pakistan through the Designated Agency or Body.

32. **Warrants received from outside Pakistan.-** Warrants received from outside Pakistan may be executed by the Designated Agency or Body in the light of mutual legal assistance mechanism.

Chapter 8: Confidentiality of Proceedings

33. **Confidentiality of proceedings.-** The Judge shall ensure that during any proceedings under the Act, no disclosure of any source or information or proceedings is made that may compromise the future capability of the applicant's intelligence gathering in any manner whatsoever.

34. **Prohibition of misuse of Intercepted material.-** The material intercepted pursuant to the warrant of surveillance or interception, shall not be, misused by any official of the applicant or of the court or any other person associated with any function under this Act, failing which the matter will be brought to the notice of the judge, apart from any other action.

Chapter 9: Miscellaneous

35. **No warrant against Members of Parliament or a Provincial Assembly.-** No warrant shall be applied for or issued in respect of any Member of the Parliament or a Provincial Assembly, unless the same is permitted by the Speaker or the Chairman Senate, as the case may be.

36. **Powers to make rules, issue guidelines and orders.-** The Federal Government may, by notification in the Official Gazette, make rules in respect of any matter under the Act or to carry out the purposes of the Act, or issue guidelines or orders in pursuance of this Act and the rules made thereunder.

37. **Power to amend the Schedule.-** The Federal Government may, by notification in the Official Gazette amend Schedule I, II and III by adding any entry therein, omitting any entry therefrom or modifying any entry therein.

38. **The Act to have effect notwithstanding existing laws.**- The provisions of the Act shall prevail and have effect, notwithstanding anything contained in any other law for the time being in force including the Code of Criminal Procedure, 1898 and Qanun-e-Shahdat Order, 1984 (P.O.10 of 1984).

39. **Removal of difficulty.**- If any difficulty arises in giving effect to any provision of the Act, the President may by Order, not inconsistent with the provisions of the Act, remove such difficulty.

Schedule I

(see section 3(k))

1. Offences under the Pakistan Nuclear Regulatory Authority Ordinance, 2001 (III of 2001)
2. Offences under the Official Secrets Act, 1923 (XIX of 1923)
3. Offences under the Explosive Substances Act, 1908 (VI of 1908)
4. Offences under the Prevention of Anti-National Activities Act, 1974 (VII of 1974)
5. Offences under the Anti Terrorism Act, 1997 (XXVII of 1997)
6. Offences under the Security of Pakistan Act, 1952 (XXXV of 1952)
7. Offences under the Surrender Illicit Arm Act, 1991 (XXI of 1991)
8. Offences under the Arms Act, 1878 (XI of 1878).
9. Prohibition of Private Armies Act 1974.
10. Offences under the National Command Authority Act, 2010 (V of 2010)

Schedule II

(see section 8 or section 14)

Application for issuance of warrant of surveillance or interception:

To,

Sir,

The applicant makes a request to this Court that it may consider appropriate to allow to be collected and later produced (in case of prosecution) evidence including material, data, information, electronic transactions etc that may become available because of modern devices or techniques, by allowing the issuance of warrant of surveillance and interception under section 9 to 12 or section 14 of Investigation for Fair Trial Act, 2012 and submits the following particulars:

Name of applicant _____

Address _____

Name of officer authorized under section 4 of the
Act _____

(enclose copy of authorization)

Rank / grade _____

Contact address of
officer _____

Date of order by applicant's concerned authority _____
(enclose copy).

Name or particulars or address of suspect or that of premises or both (to the extent
necessary to identify the suspect:

Nature of evidence to be collected through surveillance or interception requested
under warrant;

(For example, recording of cell phone, interception of sms or emails, human intelligence, property interference, collection of material data, video making, concealed camera, recording equipment etc...)

Statement of belief about suspect's likely involvement in crime

Signature of authorized officer _____

Seal of the authorized officer _____

Attested copy to be forwarded to Designated Agency or Body for Interception of:-

- (1) _____
- (2) _____
- (3) _____
- (4) _____

Schedule IIA

(see section 18)

Summary of warrant under section 18 of 'Investigation for Fair Trial Act, 2012'

It is affirmed that warrant of interception pursuant to Section 9 to 12 or Section 14 of 'Investigation for Fair Trial Act, 2012' is issued on ___ day of ___ and attested copy of the same has been received and is retained in our record.

It is further affirmed that the said warrants authorize the lawful interception of

1. _____
2. _____
3. _____
4. _____

To : _____ (Service Provider)

Please ensure compliance.

Designated Agency or Body [under Section 3(b) of the Act].

Through Official _____

Address _____

Contact _____

Signature of Head of Designated Agency or Body

Official seal of Designated Agency or Body with date

Schedule III
(see section 11)

Part I
(to be filled by the applicant)

1. This warrant of surveillance or interception is issued under sections 9 to 12 or section 14 of the 'Investigation for Fair Trial Act, 2012'. to enable the applicant to collect evidence through surveillance or interception of: *(Provide briefly nature of evidence being allowed to be collected by the concerned Court under the present warrant)*

For an initial period of _____ months starting with effect from _____
(Date if request made in retrospect)

2. Where applicable, the warrant allowed to be served on;

Mr / Entity/ _____

to extend fullest cooperation to the holder or applicant of the warrant and facilitate in its execution technically and logistically and through any other appropriate means and also ensure full confidentiality of implementing of the warrants and not to misuse evidence so collected

Part II

(For official use only)

After examining the request of the applicant, the Court is satisfied that requirements prescribed under the Act for the issuance of the warrants have been fulfilled and accordingly, the warrant is allowed to be issued in terms expressed above.

Signed

Judge

Seal of Court

Statement of Objects and Reasons

Whereas, the objectives and purposes of enacting Investigation for Fair Trial Act, 2012 are to provide a legal mechanism for conducting lawful and transparent investigation that constitutes the integral basis for trial and to ensure that evidence is collected in accordance with the law that balances the rights of privacy of individuals with effective administration of justice.

Whereas, the law must encourage all investigation agencies including intelligence agencies to only collect genuine evidence in accordance with law and thus curb the temptation of planting false and fabricated evidences against individuals in violation of their human rights, due process and civil liberties.

Whereas, it is expected that with the entry into force of this law, all law enforcement and intelligence agencies will be governed by a uniform legal system for collection of evidence, which will be admissible even if collected prior to the registration of an FIR. Hitherto, the investigating agencies lack the comprehensive legal powers to collect evidence through surveillance or interception although such legal cover is available to intelligence and law enforcement agencies in several other jurisdictions to preempt and prevent acts of crime or terror.

Whereas in Pakistan, the laws and the criminal justice system are not tailored for or geared towards preempting and preventing acts of crime or terror and the act of crime or terror has to actually occur for the registration of an FIR and thereafter the Police takes cognizance. It is expected that this law would provide the legal framework to agencies to lawfully conduct the surveillance of an individual who is likely to or suspected of engaging in preparations to conduct an act of crime or terror or to intercept any property linked with preparation of an act of crime or terror. Furthermore, the law will render necessary assistance in successful prosecution of perpetrators of such crimes.

Whereas, the law shall prevent the arbitrary use and abuse of interception powers particularly by the intelligence agencies and force them to abide by the law. Thereby, the intelligence agencies will be performing their originally intended function of preempting any incidence of act of crime or terror in a timely manner to ensure the protection of fundamental rights including the right to life of the citizens of Pakistan.

The Bill is designed to achieve the said objects

MR. FAROOQ H. NAEK
Minister for Law, Justice and Parliamentary Affairs
Member-in-Charge