

NATIONAL ASSEMBLY SECRETARIAT

**REPORT OF THE STANDING COMMITTEE ON INTERIOR AND NARCOTICS
CONTROL ON THE PROTECTION OF PAKISTAN BILL, 2013
(ORDINANCE NO. IX OF 2013).**

I, the Chairman of the Standing Committee on Interior and Narcotics Control have the honour to present this report on the Bill to provide for protection against waging of war against Pakistan and the prevention of acts threatening the security of Pakistan, [The Protection of Pakistan, Bill, 2013] (Ordinance No. IX of 2013), referred to the Standing Committee on 07th November, 2013.

2. The Committee comprises of the following members:-

1.	Rana Shamim Ahmad Khan,	Chairman
2.	Syed Javed Ali Shah	Member
3.	Mr. Ghalib Khan	Member
4.	Dr. Ibadullah	Member
5.	Sheikh Muhammad Akram	Member
6.	Syed Iftikhar-ul-Hassan	Member
7.	Makhdoomzada Basit Bokhari	Member
8.	Ms. Tahmina Daultana	Member
9.	Mr. Nauman Islam Shaikh	Member
10.	Mr. Ehsan-ur-Rehman Mazari	Member
11.	Nawab Muhammad Yusuf Talpur	Member
12.	Ms. Naeema Kishwer Khan	Member
13.	Dr. Arif ur Rehman Alvi	Member
14.	Syed Asif Hasnain	Member
15.	Sardar Nabil Ahmed Gabol	Member
16.	Mr. Sher Akber Khan	Member
17.	Mian Shahid Hussain Khan Bhatti	Member
18.	Mr. Essa Noori	Member
19.	Makhdoom Syed Ali Hassan Gillani	Member
20.	Ch. Nisar Ali Khan	Ex-Officio Member
	Minister Incharge for Interior and Narcotics Control	

3. The Committee in its meeting held on 21st January, 2014 considered the said Bill in detail and approved the same. The Committee unanimously recommends that the Bill as reported by the Standing Committee placed at (Annexure-A) may be passed by the National Assembly. The Notes of dissent by Dr. Arif Alvi and Ms. Naeema Kishwar Khan, MNAs are at (Annexure-B & C).

sd/-
(KARAMAT HUSSAIN NIAZI)
Secretary
National Assembly Secretariat
Islamabad, the 29th January, 2014

sd/-
(RANA SHAMIM AHMAD KHAN)
Chairman
Standing Committee on
Interior and Narcotics Control

[AS REPORTED BY THE STANDING COMMITTEE]

A

BILL

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

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

AND WHEREAS pursuant to the directions of the Hon'ble Supreme Court in cases of civil disturbance in different parts of the Country, it has become imperative to promulgate a law in order to give effect to such directions;

It is hereby enacted as follows:-

1. Short title, extent and commencement.-(1) This Act may be called the Protection of Pakistan Act, 2013.

(2) It extends to the whole of Pakistan.

(3) It shall come into force on such date or dates as the Federal Government may appoint in this behalf and different dates may be appointed for different provisions of this Act.

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 person who fails to establish his citizenship of Pakistan and is suspected to be involved in waging of war or insurrection against Pakistan or depredation on its territory, by virtue of involvement in offences specified in the Schedule;

(e) "Special Court" means the Special Court established under section 7;

(f) "Police" includes all the police forces established by the Provincial Governments;

(g) "Government" means the Federal Government;

(h) "Prosecutor General" means the person appointed as Prosecutor General by the Government under this Act;

- (i) "Prosecuting agency" means a prosecuting agency established by the Government for the prosecution of offences falling under this Act;
- (j) "Schedule" means a Schedule annexed to this Act;
- (k) "Scheduled offence" means an offence as set out in the Schedule annexed to this Act; and
- (l) "Special Judicial Magistrate" means the Special Judicial Magistrate appointed under section 7.

3. Use of armed forces and civil armed forces to prevent scheduled offences.-(1)

Any police officer, 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 the 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, armed forces and civil armed forces 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, grievous hurt or destruction of property 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;

(b) any police officer, a member of the armed forces or civil armed forces acting in aid of civil authority may 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) any such officer may enter and search, without warrant any premises to make any arrest or to take possession of any property, fire-arm, weapon or article used, or likely to be used, in the commission of any scheduled offence.

(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 of Criminal Procedure (Act V of 1898) in so far as these are not inconsistent with the procedure provided in this Act shall be applicable to inquiries, investigations and trial of the Scheduled Offences.

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

(2) All scheduled offences 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 acting in aid of civil authority.

(3) Whenever a person is arrested or detained in custody under clause (b) 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, a member 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 authorize, from time to time, the detention of the accused in such custody as such Special Judicial Magistrate thinks fit for a term not exceeding ninety days:

Provided 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 whose identity is unascertainable shall be considered as an enemy alien and, subject to provisions of section 14, he shall be presumed to have joined waging war or insurrection against Pakistan:

Provided that for the purposes of this Act, such alien shall include a Commonwealth citizen.

6. Preventive Detention.-The Government may by an order in writing issued by the Secretary Ministry of Interior, or any officer, not below the rank of BPS-21, specifically designated in this behalf, authorize the preventive detention of a person for a period not exceeding ninety days if there are grounds to infer 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;

Explanation I: A person connected or likely to be connected with the commission of a scheduled offence or a person falling under sub-section (5) of section 5 shall be deemed to be a person acting in the manner stated above:

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

Provided further that by virtue of clause (9) of Article 10 of the Constitution, an enemy alien may be detained by the Government for such period as may be determined by it from time to time.

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

Provided further that notwithstanding anything contained in the Qanun-e-Shahadat, 1984 (P.O.10 of 1984), such report shall be admissible in evidence against the accused.

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, in 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.

(3) A judge 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 through rules to be framed under this Act.

(5) The Government may, in 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 BPS-18 of the Pakistan Administrative Service or Provincial Management Service of any Province as Special Judicial Magistrate.

(6) The Special Judicial Magistrate shall have all the powers of Magistrate First Class provided under the provisions of the Code, unless these are inconsistent with the provisions of 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, shall determine the place of custody, inquiry, investigation and trial of a scheduled offence anywhere in Pakistan.

(2) 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. 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.

11. 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 shall discharge or acquit the accused from the case as it may deem fit.

12. 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, safe houses and high security prisons with court rooms.

13. 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 under any other law for the time being in force, 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.

14. Burden of proof.- An accused facing the charge of a scheduled offence on existence of reasonable evidence against him, shall be presumed to be engaged in waging war or insurrection against Pakistan unless he establishes his non-involvement in the offence.

15. Punishments.- Notwithstanding anything contained in the Pakistan Penal Code or any other law for the time being in force, the scheduled offence shall be punishable with imprisonment which may extend to ten years, with fine and confiscation of property unless the scheduled offence already provides a higher punishment.

the **16. 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, withstanding that it has no jurisdiction to try such offence, return the case to the prosecuting agency for its submission before a court of ordinary jurisdiction.

(2) The Prosecutor General may, with the consent of the Chief Justice of High Court concerned, at any stage of proceedings, withdraw a case from any court established under any other law or from a Special Court and submit the same before any other Special Court and such Special Court shall proceed with the case from the stage at which it was pending.

17. 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.

18. Appeal.- (1) An appeal against the final judgment of a Special Court shall lie to the Supreme Court.

(2) Copies of the judgments 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 fifteen days from the pronouncement of judgment.

19. Savings.- No member of the police, armed forces or civil armed forces acting in aid of civil authority, Prosecutor General, 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.

20. Power to make rules.- The Government may from time to time make rules to carry out the purposes of this Act and may also amend, delete or add any offence in the Schedule by publication of a notification in the official gazette.

SCHEDULE **[See section 2(i)]**

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

- (i) acts that are calculated to influence or affect the conduct of Government by intimidation or coercion, or to retaliate against government conduct;
- (ii) crimes against ethnic, religious and political groups or minorities including offences based on discrimination, hatred, creed and race;
- (iii) 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 persons or destroy property;
- (iv) 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 to any person therein;
- (v) killing, kidnapping, extortion, assault or attack of members of the Parliament, Judiciary, Executive, Media, and other important personalities;
- (vi) killing, kidnapping, extortion, assault or attack on officers and employees of Pakistan including armed forces and law enforcement agencies;
- (vii) killing, kidnapping, extortion, assault or attack on foreign officials, official guests, tourists, foreign visitors, or internationally protected persons etc;
- (viii) killing, kidnapping, extortion, assault or attack on social or welfare workers, including health personnel, aid workers, and volunteers;
- (ix) destruction of or attack on communication and interaction lines, devices, grids stations, or systems etc;
- (x) destruction of or attack on energy facilities including dams, power generating and distributing systems including stations, lines and poles;
- (xi) 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;
- (xii) destruction of or attack on gas or oil pipelines and liquid or natural gas facilities and other means of their transport including tankers;
- (xiii) destruction of or attack on of national defense materials, premises, utilities, and installations including check posts, prisons and other fixtures;
- (xiv) crimes against computers including cyber crimes, internet offenses and other offences related to information technology etc;
- (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 of Pakistan;
- (xx) transcending or crossing national boundaries.

(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) Any abetment or conspiracy to commit any of the above offences.

STATEMENT OF OBJECTS AND REASONS

The Bill provides for protection against waging of war against Pakistan, prevention of acts threatening the security of Pakistan and for speedy trial of offences falling in the Schedule annexed to the Bill and for matters connected therewith or incidental thereto.

SHAIKH AFTAB AHMAD

Minister of states for Parliament Affairs
Member-in-Charge

PAKISTAN PROTECTION ORDINANCE 2013
'Note of Dissent' from Member Interior and Narcotics Control Committee
DR ARIF ALVI MNA
Pakistan Tehreek-e-Insaf

Pakistan Tehreek-e-Insaf recognizes from the very outset that as a nation, Pakistan is under special circumstances that require extraordinary measures on behalf of the Government (both Federal and Provincial). As a party we believe that the laws to Protect Pakistan are important to curb the menace of terrorism and to close any loopholes that may currently exist. Furthermore, it is imperative that adequate time and opportunity should be available with the investigating authorities so that the terrorists do not go free after committing crimes of heinous nature.

However, there is also no denying of the logic that such extra ordinary measures must not only be temporary but also capable of bringing about the required results. It is important that laws do not give wide unchecked discretion which results in misuse of powers and provides scope for carrying out acts based on poor judgment of investigating and arresting officers or are used in extortion of bribes at the lower levels.

Unfortunately the Ordinance in its current state is a recipe to misuse unconstitutional powers, based on a short-sighted policy and a poor implementation plan. Giving unbridled powers to police and armed forces or civil armed forces or to intelligence agencies and other law enforcement agencies as the case may be, cannot be the only solution to get rid of this menace of terrorism. Just because criminals have no bounds, the state must not be forced to think that the only way to deal with them is to give unfettered powers to the 'forces' and then legislate such intent turning Pakistan into a Security State.

The proposed Pakistan Protection Ordinance 2013 does not strike a balance between the two competing rights, the right of the state to protect the citizens of Pakistan from the threat of terrorism and, the right of protection of fundamental rights as provided by the Constitution of Islamic Republic of Pakistan 1973.

My objections on behalf of Pakistan Tehreek-e-Insaf are as follows:

1. The Preamble states that this is '*an Ordinance to provide protection against waging war against Pakistan and the acts threatening the security of Pakistan*'. As the preamble states this is the main purpose of the Ordinance and the acts that describe this war are listed in the Schedule. We must be precise in determining the sort of acts that threaten our security. The best and binding definition comes from Article 260 in the Constitution to include '*the safety, welfare, stability and integrity of Pakistan and of each part of Pakistan, but shall not include public safety as such*' indicating that the security of Pakistan is not the same as public safety or public order. The issue is also addressed in Benazir Bhutto vs President of Pakistan PLD 1988 SC 416 '*that the security of Pakistan refers to those aggravated forms of prejudicial activities which endanger the very existence of the State but do not include ordinary breaches of the peace*'. Further discussion

will be done when the 'schedule' of offences will be discussed but for now it should suffice that the entire ordinance must also be seen in this light.

2. Section 2 (d) defines 'enemy alien' as who fails to establish citizenship. This definition while being silent on ID card has an un-mentioned presumption of the same as the ID card is the most frequent document used for this purpose. Being so, it does not give room for those almost 8 % who still don't have an ID Card and does not provide room for such individuals to establish their citizenship through other means. Further a time limit for the process needs to be defined say 15-30 days wherein he can muster his relatives or other witnesses to prove whether or not he is a citizen of Pakistan.
3. Section 3 generally reveals that **too much arbitrary power is being vested and/or delegated** to the officers in making them on the spot judge, jury and executioner. Such power can be hazardous when used by someone with inadequate analytical or reasoning skills/training. Security officials will be able to use force against civilians in anticipation of scheduled offences thereby legalizing extra-judicial killings. We therefore propose the following:
 - a. Detailed 'Rules and Procedures' must be written to guide the officers and adequate training be provided to minimize and eliminate miscarriages of justice.
 - b. Formation of an internal review board of Grade 18 officers within the department which meets on a monthly basis to evaluate all cases which have led to loss of life or grievous injuries, to examine if exercise of discretion has been carried out properly and that due process has been followed. If not, an internal detailed inquiry should be conducted leading to disciplinary action, dismissal and or prosecution of the officer/s.
4. Section 3 (2) (a) states that an officer can use '*necessary force*' but '*after forming reasonable apprehension*'. Both the terms should have been defined further and in greater detail to educate officers and limit them to act within the law as it should be described:
 - (a) It is pertinent to note that the current ordinance does not attempt to define the limits of the '**use of necessary force**' in the event that there is a '**reasonable apprehension that death, grievous hurt or destruction of property may be caused**'. It is imperative that they be defined as both PPC and CPC are also silent on the interpretation of these terms.
 - (b) As a consequence a police/armed/civil forces officer has wide discretion upon formation of '*reasonable apprehension*' and '*use of necessary force*' as he/she deems fit for the prevention of terrorism. Both the terms are undefined under the Ordinance and as such it gives wide unchecked powers on those exercising the same. However, Article 14 of Constitution of Pakistan guarantees the *Inviolability of dignity of man*,

and Article 25 provides *Equality of Citizens* having entitlement to equal protection as well as equality before the law. It is pertinent to note that both of the foregoing fundamental rights are absolute in nature, in that there is no exclusion that entitles derogation of the same.

- (c) In view of the foregoing discussion, it is imperative that the both the formation of 'reasonable apprehension' and limits of use of such 'necessary force' should have been well defined under the Ordinance to stay within the ambit of the Constitution.
2. Section 3 (2) (b) mentions 'Credible Information'. This term has not been defined as to what is a 'Credible Source' and also 'Credible information'. This is necessary for an effective piece of legislation.
3. Section 3 (2) (c) states that '*any such officer may enter and search without warrant any premises to make any arrest or confiscate any property.....*'. This section corresponds with Section 19 of the ATA as it was. In the Mehram Ali case the Supreme Court explicitly held such an authorization to enter, search and seize any property without a warrant to be invalid being in direct conflict with Article 14 (1) of the Constitution which states 'subject to law' *the privacy of home shall be inviolable*. This therefore creates a dilemma with the current ascendancy of terrorism in Pakistan. Without the ability to search areas for terrorists, prevention may be a futile exercise. A way out from this dilemma may lie under limited use of different articles under the Constitution of Pakistan where such powers may be used for specific areas rather than the whole country. Such areas may be notified by the government from time to time even at short notice for emergency measures to be taken allowing immediate search and action.
4. In Section 5 (2) the ranks of the other two officers of the JIT should have been given and the hierarchy of JIT should have been defined with a clear mention as to who would be the head of this team. The rules and procedures of the JIT have not been delineated as to the frequency of meetings and closure of cases within a limited time frame to avoid lengthy delays.
5. There is no mention in Section 5 (3) or in any other part of this Ordinance, that once a person is arrested, when and after how long would his kith and kin be informed of such an arrest. This anomaly must be corrected otherwise it would lead to more '**missing persons**' causing tremendous trauma to society in general.
6. Section 5 (4) authorizes the Special Judicial Magistrate to order remand of the accused for up to 90 days. This clause has been debated thoroughly in the meeting with major reservations expressed. A fortnightly presentation of the accused in front of the Special Judicial Magistrate should have been made compulsory to avoid custodial torture that would be a violation of Article 14 (2) of the constitution. The suggested change would also be in line with the Supreme Court verdict in Khan Asfandiyar Walivs Federation of Pakistan PLD 2001 SC

607, 929 wherein it was directed in similar circumstances that the accused shall be brought before the court every 15 days. Sec 167 of the CrPC sets a similar limitation.

After our proposed change the leeway shall be exercised in the same manner as suggested in the Ordinance by the same Special Judicial Magistrate but he would be bound to review the same on physical production of the accused every 15 days for up to 90 days of detention if at all that is necessary.

7. Section 5 (5) states that the 'alien' arrested *'shall be presumed to have joined insurrection against Pakistan'*. This can put a person in serious jeopardy. Just because he could not prove his citizenship there is now a 'presumption' of having joined insurrection. This clause needs improvement or deletion.
8. In Section 7 there is no time limit for completion of investigation and submission of report before the Special Court. I suggest that the report be completed within a maximum of 120 days from the arrest of the accused otherwise the prisons may be holding thousands of people without trial.
9. Section 8 (2) does not suggest a maximum age limit for the appointment of the Judge of the Special Court. I would like to propose that the person appointed should not have exceeded the age of 70.
10. Section 11 (3) states that *'if the Prosecutor General with the prior approval of the government withdraws from the prosecution of any accused in any case pending before any Special Court, and upon submission of such request the Court shall discharge or acquit the accused from the case as it may deem fit'*. Such a limitation imposed on the Special Court will allow miscarriage of justice as was seen in the implementation of the NRO law where thousands of cases were withdrawn (the law was later struck down by the Supreme Court but thousands of criminals were released). I am suggesting that the word *'shall'* be removed and substituted by *'may'* so that the Special Court may ensure that justice is carried out and there is no malafide intent in the withdrawal of the case.
11. Section 18 (3) defines the period of appeal as *'within 15 days'*, I would like to suggest that it should be extended to *30 days*.
12. **Schedule:** My discussion on schedule is in continuation of what I wrote with regard to the preamble and should be read as such. We must define the sort of acts that threaten the security of Pakistan. The best and binding definition is given in Article 260 of the Constitution to include *'the safety, welfare, stability and integrity of Pakistan and each part of Pakistan, but shall not include public safety as such'* indicating that the security of Pakistan is not the same as public safety or public order. The issue is also addressed in Benazir Bhutto vs. President of Pakistan PLD 1988 SC 416 *'that the security of Pakistan refers to those*

aggravated forms of prejudicial activities, but do not include ordinary breaches of peace'.

- (a) With the above as the logical boundary, we must examine the 'Schedule of Offences' under this ordinance, to separate them from actions carried out during public protests, and for the punishment of which existing laws are already available on the statutes. The ordinance enumerates many such offences that must be removed from the schedule, otherwise there will be frequent miscarriage of justice and a draconian law shall be used to intimidate and discourage political dissention.
 - The questionable offences are:
 - i. 'Arson' in (iii) and (iv)
 - ii. Damage to 'Lines and Poles' as mentioned in offence (x)
 - iii. Destruction or attack on 'tankers' as mentioned in offence (xii)
 - iv. Attacks on 'buses and cars' in (xv).
- (b) Number (i) in the schedule needs better description or should be removed as civil and political protests frequently attempt to 'intimidate' the government and 'retaliate' against government conduct.
- (c) Descriptions given under (v), (vi), (vii), (viii) of the schedule are in clear violation of Article 25 of the Constitution of Pakistan which states that 'All citizens are equal before law and are entitled to equal protection of law'. The schedule creates a separate class of people with special privileges and virtually establishes that acts committed against these classes deserve special mention and are of greater relevance compared to those committed against an ordinary citizen.
- (d) The description given in item (ix) of the schedule as 'systems' is very vague and the word should be deleted.
- (e) Item (xiv) states 'crimes against computers including cyber crimes, internet offences and other offences related to information technology etc.' This whole item must be deleted as it is very vague in its description and seems to have been drafted by individuals who may be totally computer unfamiliar and have no idea about cyber crimes. The government must come up with a separate 'Prevention of Cyber Crimes Act' that should comprehensively define these crimes and these vaguely described offences must be removed from the schedule here.

Pakistan Tehreek-e-Insaf believes that the Pakistan Protection Ordinance in its present form is a draconian measure and not in line with the Constitution of Pakistan. It may lead to serious unbridled violation of human rights without preventing terrorism. We also feel that any and all extraordinary measures that may be needed to counter terrorism must be time bound i.e. subject to ratification/re-approval from the Parliament on a yearly basis with sufficient protection of the acts of each passing year, in order to ensure return to the routine normal legal system at the earliest possible time.

Dr Arif Alvi
MNA Pakistan Tehreek-e-Insaf

Mrs. Naeema Kishwar Khan
Member National Assembly
Presidents, JUI Women's Wing
Member Standing Committee



J-05, Parliament Lodges Islamabad,
 Ph: 051-9213169
 Gujar Garhi, Mardan, KPK
 Ph: 0937-9230346
 Cell: 0300-5737029, 0332-4444291

- Information & Broadcasting
- Interior & Narcotics
- Kashmir

Ref. No: _____

Date: _____

اختلافی نوٹ تحفظ پاکستان آرڈیننس

اس آرڈیننس سے ملک ایک سیکورٹی اسٹیٹ بن جائے گا۔ اور اس سے مارشل لاء کی راہ ہموار ہوگی۔ فورسز کو اختیار دیے جائیں گے کہ سیکورٹی فورسز کو صرف شک کی بنیاد پر کسی بھی شخص پر گولی چلانے کا اختیار ہوگا۔

فورسز کو اختیار ہوگا کہ وہ بلا وارنٹ، بلا اجازت کسی بھی شریف آدمی کے گھر میں داخل ہو کر تلاشی لے سکے گا۔ جس سے چادر اور چادر دیواری کا تقدس پامال ہوگا۔ جو اسلام اور آئین کے خلاف ہے۔ یعنی فورسز کو قانون توڑنے کا اسٹیلس مل جائے گا۔ اسکے لیے اگر حکومت دہشت گردی سے متاثرہ مخصوص علاقوں میں ایمر جنسی کے قوانین کے تحت کارروائی کرنے تو بہتر ہوگا۔ ایسے قوانین کا نفاذ اب حکومت کیلئے ممکن نہیں ہوگا۔ کیونکہ اب عدالتیں، میڈیا، سول سوسائٹی آزاد ہے۔ اور وہ انسانی حقوق کی پامالی نہیں ہونے دے گی۔ اس آرڈیننس میں انسانی حقوق کا خیال نہیں رکھا گیا۔ کیونکہ ملزم کو ہائی کورٹ میں اپیل کرنے کے حق سے محروم رکھا گیا ہے۔ ضمانت کرائے کے حق سے محروم رکھا گیا ہے۔ اپیل بند رہے دن اندر رات کا پابند کیا گیا ہے۔ جو ممکن نہیں یہ ٹائم چالیس دن کا ہونا چاہیے۔

جدولی جرائم میں دیے گئے جرائم کے تحت یہ عام ہڑتال کرنے والے ہر سیاسی پارٹی پر اور ان کے ورکرز پر بھی لاگو ہوگا۔ جدولی جرائم میں اغواء بھتہ نوری، جارحانہ اقدام یا حملہ مخصوص طبقات کی بجائے عام عوام کیلئے بھی ہونا چاہیے جدولی جرائم میں تعلیمی اداروں اور سیکورٹی اداروں یعنی پولیس پوسٹ، چیک پوسٹ وغیرہ پر حملہ کرنے والوں کو بھی شامل نہیں کیا گیا۔ لہذا ان تحفظات کی وجہ سے اس آرڈیننس کی حمایت نہیں کرے گی۔

شکریہ

نعمہ کشور خان المالک
 Mrs. Naeema Kishwar
 Member National Assembly
 Islamabad

