

**Amendment of Sections 11-A, 11-B and 11-C of
The Security of Pakistan Act 1952**

Report No.56

Amendment of Sections 11-A, 11-B and 11-C of The Security of Pakistan Act 1952

Taking suo-moto notice, the Federal Shariat Court examined the Security of Pakistan Act, 1952 and declared Sections 11-A, 11-B and 11-C thereof repugnant to the injunctions of Islam, with direction that the said Sections be omitted. Section 12 of the said Act was also partly held to be repugnant to the injunctions of Islam, and as such the Court directed the same to be amended accordingly¹. The said Sections read as under: -

Section 11-A (1) Where the Federal Government is of the opinion that any undertaking is being used, whether with the aid of funds from foreign sources or otherwise, or is likely to be used, for the purpose of making, printing, publishing or otherwise disseminating news, reports or information, likely to endanger the defence, the external affairs or the security of Pakistan, or any part thereof, or for the purpose of promoting such interests of any foreign State as are in conflict with the interests of Pakistan, it may, by order, remove the owner or, if there be more than one, all or any of them, and, in the case of a company, all or any of the directors, managing directors, managing agents or any other person, from the control or management of such undertaking, and appoint a person to take possession of the whole or any part of the undertaking or its property, movable or immovable, and exercise such powers and perform such duties, including, in the case of a company, all or any of the powers or duties of the Board of Directors, as may be set down in the order, and such appointment may at any time be revoked, and a fresh appointment made on such conditions and with such limitations as the Federal Government may determine.

(2) Where an order has been made under Sub-section (1), the Federal Government, or any authority or person authorized by it in this behalf, shall, as soon as possible, make arrangements to transfer, subject to such conditions as may be deemed fit, and transfer, by way of sale, in any manner considered expedient, any right, title or interest in the undertaking, or if the undertaking be a company, in the shares thereof, of any director or shareholder to any other person not acting for or on behalf of or in collusion with such director or shareholder.

(3) Every sale under Sub-section (2) shall be subject to confirmation by the Federal Government, and such confirmation shall be notified in the Official Gazette.

(4) If such undertaking as aforesaid be a company, the Federal Government may give a direction that the shares held by every or any director or shareholder shall be seized, wherever the shares may be, for sale under Sub-section (2), in

¹ Tamseel Javed V Federation of Pakistan (Shariat Petition No.K-3 of 1983 decided on 27.3.84).

such manner that such director or shareholder shall effectively cease to hold them.

(5) Where possession has been taken under Sub-section (1), or a direction has been given in pursuance of Sub-section (4), any police officer may seize any property of the undertaking, or the shares thereof, or any document relating thereto, found any where in Pakistan, and any Magistrate may, by warrant authorize any police officer not below the rank of Sub-Inspector, to enter upon and search for any such property, share or document in any premises where the same may be or may reasonably be suspected to be.

(6) The Federal Government, or any authority or person authorized by it in this behalf, may, by order, make such arrangements as may be considered expedient to ensure that the continuity of the functioning of the undertaking affected by an order under Sub-section (1) is not interrupted during the period between the date of such order and the date on which the person appointed under Sub-section (1) makes over the control and management of the undertaking under Sub-section (5) of Section 11-B, and any expenditure incurred in connection with such arrangements, including the remuneration of any person or persons, shall be met as the expenses of the undertaking.

(7) If within fourteen days of the promulgation of the Security of Pakistan (Amendment) Ordinance, 1961, or the publication of a notification under Sub-section (3), the person whose right, title or interest has been transferred by sale, or the person to whom the sale has been made makes to the Federal Government a representation against the sale, the Federal Government, after perusal of the record, may, subject to such conditions as it may deem fit to impose, set aside the sale and order a fresh sale.

Explanation (I). - A fresh sale under this Sub-section shall be deemed to be a sale under Sub-section (2)

Explanation (II). - The Federal Government shall not be bound to hear any of the parties or their counsel or agent or to examine any witness or document, before making an order under this Sub-section.

(8) Before a sale is set aside under Sub-section (7), the Federal Government may require the person making the representation to pay an amount sufficient to meet the expenses of the sale, and to forfeit to the Federal Government such other amount, not exceeding twenty-five per cent of the sale price, as may be determined by the Federal Government.

(9) If the purchaser fails to pay the full price of the sale, the property may be resold, and any deficiency which may happen on resale and all expenses attending such resale may be recovered from him.

(10) Any amount payable under this Section, whether as unpaid price, or as forfeiture or otherwise, if not paid within the time specified, if any, shall be recoverable as arrears of land revenue.

(11) The sale shall be complete after all proceedings under this section relating to sale or resale, as the case may be, have been concluded and all sums due from the purchaser in whose favour the sale has been concluded have been paid by or recovered from him.

Section 11-B. - (1) On the completion of sale the Federal Government or the authority or persons, as the case may be, arranging the sale shall deliver possession of the property, or in the case of shares, of the certificates relating thereto, to the purchaser, supported by a sale certificate.

(2) If in consequence of the action taken under Sub-section (1) of Section 11-A, the Board of Directors of a company has ceased to function, the person appointed thereunder shall immediately after the delivery of possession under Sub-section (1), call, notwithstanding anything to the contrary in the Companies Act, 1913, or the constitution of the company, by public advertisement, a general meeting of the company to be held under his chairmanship for the purpose of electing directors.

(3) A meeting called under Sub-section (2) shall, as far as practicable, be held and conducted in accordance with the Articles of Association of the company.

(4) On the conclusion of a meeting held under this section, a record of the proceedings shall be made and certified by the Chairman, and such certificate shall be conclusive proof of the directors named therein having been validly appointed.

(5) Immediately after the record of proceedings is certified under Sub-section (4), the control and management of the company shall be made over to the directors.

Section 11-C. - (1) Any amount realized as price from a sale, or from a fresh sale, as the case may be, under Section 11-A, shall, after deducting the expenses of the sale, be paid, within such time as may be specified by the Federal Government, to the person whose right, title or interest has been transferred by such sale.

(2) Where the shares of more than one person have been sold in a single lot, the amount payable shall, with the shareholders consent, be paid to them against a joint discharge, and in the absence of such consent, the amount shall be paid to each shareholder in proportion to the paid amount of his shares.

(3) If the person to whom any right, title or interest, is transferred under Section 11-A has deposited any moneys before the sale to him is set aside, the amount so deposited or paid shall, after deducting the amount, if any, due from such person under any of the provisions thereof, be refunded to him, and thereupon all documents executed and endorsements made in his favour shall stand cancelled.

(4) Where, in order to effect the transfer of any property, instrument or share, any document or endorsement is required to be executed or made by a person whose right, title or interest, is transferred, the Federal Government or any authority or person authorized by it in this behalf, may execute such document or make such endorsement, and any document so executed and made by the person whose right, title or interest is so transferred, and shall be conclusive proof of such transfer for all purposes.

(5) In this Section, and in Section 11-A, the expression 'expenses of the sale' shall include expenditure incurred in connection with any dispute arising out of the sale, and such other expenditure as the Federal Government may determine to be such expenses.

(6) The provisions of this Section and Sections 11-A and 11-B shall have effect notwithstanding anything to the contrary contained in any law other than this Act, or in any instrument, deed or document.

(7) For the removal of doubt it is hereby declared that where a person appointed under Sub-section (1) of Section 11-A is required to exercise the powers or perform the duties of the Board of Directors of a company, the provisions of the Companies Act, 1913, shall, as respects duties not expressly set forth in the order under Sub-section (1) of Section 11-A, not apply to him.

Section 12. – (1) Where the Federal Government is satisfied that in the interest of the defence, the external affairs or the security of Pakistan it is necessary so to do, the Federal Government or any authority empowered by it in this behalf may, by order addressed to a printer, publisher or editor, or printers, publishers or editors generally, require that all matter relating to a particular subject or class of subjects affecting the defence, the external affairs or the security of Pakistan shall before being published in any document or class of documents, be submitted for scrutiny to any authority specified in the order, who shall, within seventy two hours of its submission either approve of its publication or if it is satisfied that it is likely to prejudicially affect the defence, the external affairs or the security of Pakistan, prohibit it; and no matter the publication whereof has been so prohibited shall be published.

(2) Any person affected by an order under Sub-section (1) prohibiting the publication of any matter may, within seven days of the communication of the order, appeal against it to the District Judge of the district in which such person resides:

Provided that where appeals against the same order have been made by persons who reside in different districts all such appeals shall be preferred to the senior of the District Judges of such districts.

Explanation. - A person shall be deemed to reside in the district in which he ordinarily resides or carries on business or personally works for gain.

(3) The District Judge to whom an appeal has been made under Sub-section (2) shall, after giving the appellant an opportunity of being heard, consider the appeal as speedily as possible and pass such orders thereon as he may deem fit; and the orders shall be final.

(4) If any person contravenes any order made under Sub-section (1), then, without prejudice to any other proceedings which may be taken against such person, the Federal Government may declare to be forfeited to Government every copy of any document published or made in contravention of such order and any press used in the making of such document.

While examining Section 11-A and the consequential provisions of Sections 11-B and 11-C of the Security of Pakistan Act 1952, the Federal Shariat Court observed that if any judicial authority finds that any undertaking is being used to endanger inter alia the security of Pakistan it would be open to that authority to seize and forfeit such undertaking. Such power can not be allowed to be exercised by a government merely on the basis of its opinion by excluding judicial trial which is repugnant to the injunction of the Holy Quran and Sunnah. So the provisions of Sections 11-A, 11-B and 11-C were declared by the Federal Shariat Court to be repugnant to the injunctions of the Holy Quran and Sunnah and its was directed that the said Sections shall be omitted.

Amendments were also proposed in Sub-sections (1) (2) & (3) of Section-12. Decision of the Federal Shariat Court regarding amendment in Section-12 was accepted by the Government and the Section was amended accordingly. Before amendment of Sub-section (2), it provided for an appeal to the Government wherein the Federal Shariat Court proposed that the Government shall refer the appeal to the District Judge. Similarly, before amendment of Sub-section (3) it provided that the District Judge shall not pass the final order but send his recommendation to the Government about how the appeal is to be disposed of wherein the Federal Shariat Court proposed that the same purpose can be achieved by allowing a direct appeal to the District Judge whose order on the same may be made final. Sub-section (1) which is about pre-censorship of matter affecting defence, the external affairs or the security of Pakistan, was declared to be justified. However, it was proposed by the Federal Shariat Court that after the words " or prohibit its publication" the words " if it is satisfied that it prejudicially affects the security defence or external affairs of Pakistan" shall be added.

Decision of the Federal Shariat Court regarding amendments in Section 12 was accepted by the Government. However, an appeal was preferred against the decision of the Federal Shariat Court regarding Sections 11-A, 11-B and 11-C contending that no reference has been made to injunctions of the Holy Quran and Sunnah in the impugned judgment and that the said provisions have been held repugnant only on the ground of harshness without justifying it on the touch stone of the injunctions of Islam so the decision is liable to be set aside. Contending further that the exception to the general rule provided in these provisions by the legislature cannot be questioned before the Federal Shariat Court.

The Supreme Court in its judgment *Federation of Pakistan V. General Public*² observed that the preventive measures as contained in Sections 11 A, 11 B and 11 C of the Act have rightly been justified by the Federal Shariat Court for which reference has been made to some well known commentaries of the Holy Quran under verses 33 and 34 of Sura Al-Maida according to which such kind of preventive action is justified and the government has rightly been empowered to take such kind of necessary preventive action which is expedient in the circumstances for the maintenance of peace and security. However limitations on human rights in this connection must be subordinated to the most fundamental of all the human rights in Islam, which cannot be abridged by any limitation, namely the right to justice.

Agreeing with the observations of the Federal Shariat Court it was further observed that on the touch stone of Islamic injunctions the legislature has the power to control the right to enjoy property and freedom of press, trade and business for the sake of security, defence and external affairs or other similar interest of Pakistan, but such power cannot be allowed to be exercised by a government merely on the basis of its opinion, which amounts to encroachment on the Shariah freedom to own property and to carry on trade or business. However it was observed that instead of order to omit the said provisions on the ground of harshness, the proper course for the Federal Shariat Court was to remove the harshness with the aid of the Islamic injunctions regarding an other fundamental right guaranteed by Islam, namely opportunity of showing cause against abridgement of a basic right as done by it in the same judgment in similar provisions of West Pakistan Press and Publication Ordinance, 1963 (XXX of 1963).

It was further observed that it was essential for the Federal Shariat Court to spell out the remedial measures for removing the element of harshness, which defect can be removed by (1) adequate provision for opportunity of hearing and (2) necessary provision for final determination of the disputes by a judicial forum, as ruled by this court also in its certain other judgments.

² PLD 1988 S.C. page 645

As regards the first point i.e. right of opportunity of hearing, the Deputy Attorney General raised the question that in matters relating to zarar and fasad fil-arz and for similar other reasons, for making proper exceptions, the power is exercised by a law making organ of the State and the Federal Shariat Court or the Supreme Court has no jurisdiction to declare such exception as against the injunctions of Islam. But after referring to its certain other decisions the Supreme Court observed that if the exception or its purpose runs counter to the injunctions of Islam as contained in the Holy Quran and Sunnah, the courts will be competent to take the necessary decisions under Article 203-D/ 203-F of the Constitution.

Reference was made to various commentaries on verses 107 and 108 of Sura Tauba in which the Holy Prophet (PBUH) did not afford formal opportunity of hearing to those who were responsible for constructing the Masjid-i-Zarar before directing its abolition. Reliance was also placed on verse 33 of Sura Al-Maida and related material which deals with those who wage war against the state or create disorder in the country or spread mischief or do similar other acts, however that part of the provision, which denies the right of hearing to the party concerned can be declared to be repugnant to the injunctions of Islam if the exception or its purpose runs counter to the injunctions of Islam and the courts will be competent to take necessary decision thereon under Articles 203-D and 203-F of the Constitution. And that the case of Masjid-i-Zarar is clearly distinguishable on the ground that the persons concerned did have enough opportunity of satisfying the Holy Prophet (PBUH) with regard to their belief and that Allah Himself as a witness established that the persons concerned were guilty.

Partly allowing the appeal the judgment of the Federal Shariat Court to the extent it held the entire provisions contained in Sections 11-A, 11-B and 11-C of the Security of Pakistan Act 1952 as against the injunctions of Islam and directed their omission from the statute, was set aside by the Supreme Court directing that the provisions shall continue to remain on the statute book only if the necessary amendments/provisions are made therein with regard to right of appeal before and on final adjudication by a judicial forum whenever an action is proposed to be taken or is taken under the provisions in question. Directing further that it would also be in accord with the principles contained in the Holy Quran and Sunnah if the words "where the Federal Government is of the opinion that...." are substituted by the words "where the Federal Government is satisfied that" and that the right of opportunity of hearing would ordinarily be provided prior to the adverse action proposed to be taken under these provisions. However exception can be made to the effect that in case of emergency this opportunity shall be afforded as soon after the action as possible. Adequate provision can also be made regarding the manner of affording the opportunity of hearing at the original and appellate stages.

In order to afford adequate time for doing the needful it was directed that this decision shall take effect on 1st January 1989 otherwise Sections 11-A, 11-B and 11-C of the Pakistan Security Act 1952 shall cease to have effect.

The Commission in its meeting held on 11 October 2003 considered and approved the proposed amendments in the Security of Pakistan Act, 1952 and recommended Bill is at Annex for enactment.

**A
Bill**

to amend the Security of Pakistan Act, 1952

WHEREAS it is expedient to amend the Security of Pakistan Act, 1952 (XXXV of 1952) for the purposes hereinafter appearing;

It is hereby enacted as follows:-

1. **Short title and commencement.-** (1) This Act may be called the Security of Pakistan (Amendment) Act, 2003.
(2) It shall come into force at once.

2. **Amendment of Section 11A, Act XXXV of 1952.-** In the Security of Pakistan Act, 1952 (XXXV of 1952), hereinafter referred to as the said Act, in Section 11A, in Sub-section (1).-

- (i) for the words " of the opinion" the word "satisfied" shall be substituted;
- (ii) after the words and comma "by order, " the words and comma " after giving an opportunity of hearing ," shall be inserted; and
- (iii) for the full stop at the end, a colon shall be substituted and thereafter the following proviso shall be added, namely;-

"Provided that in case of emergency the opportunity of hearing to the owner of undertaking, shall be afforded soon after the action under this Sub-section is taken.

3. **Insertion of Section 11D, Act XXXV of 1952.-** in the said Act, after Section 11C, the following Section shall be inserted, namely;-

11D.- (1) Where any person is aggrieved by the order of Federal Government or any authority or person authorized by it in this behalf, made under Sections 11A, 11B or 11C, he may within thirty days of such order, file a review application, in writing, before the Federal Government, stating grounds on which it is made, and the Federal Government shall, after giving him an opportunity of being heard, decide the matter within sixty days.

(2) A person, whose review application has been rejected under Sub-section (1), may file an appeal before District Judge within thirty days from the date of rejection of the review application.

- (3) The District Judge to whom an appeal has been made under Sub-section (2) shall, after giving the parties an opportunity of being heard, expeditiously pass such order thereon as he may deem fit.
- (4) The Federal Government or a person who has filed an appeal before the District Judge under Sub-section (2), as the case may be, affected by an order of the District Judge, may, within thirty days, file an appeal against such order, in the High Court; and the orders passed by the High Court on such appeal, shall be final.