

## NATIONAL ASSEMBLY SECRETARIAT

### REPORT OF THE STANDING COMMITTEE ON LAW AND JUSTICE ON THE INTERNATIONAL COURT OF JUSTICE (REVIEW AND RE-CONSIDERATION) BILL, 2020

1, Chairman of the Standing Committee on Law and Justice, have the honour to present this report on the Bill to provide for the right of review and re-consideration in giving effect to the judgment of the International Court of Justice [The International Court of Justice (Review and Re-consideration) Bill, 2020] (Government's Bill) referred to the Committee on 27<sup>th</sup> July, 2020.

2. The Committee comprises the following:-

|                                                                          |                   |
|--------------------------------------------------------------------------|-------------------|
| 1. Mr. Riaz Fatyana                                                      | Chairman          |
| 2. Mr. Atta Ullah                                                        | Member            |
| 3. Mr. Lal Chand                                                         | Member            |
| 4. Mr. Muhammad Farooq Azam Malik                                        | Member            |
| 5. Ms. Kishwer Zehra                                                     | Member            |
| 6. Ms. Maleeka Ali Bokhari                                               | Member            |
| 7. Mr. Muhammad Sana Ullah Khan Masti Khel                               | Member            |
| 8. Malik Muhammad Ehsan Ullah Tiwana                                     | Member            |
| 9. Agha Hassan Baloch                                                    | Member            |
| 10. Mr. Junaid Akbar                                                     | Member            |
| 11. Ms. Shunila Ruth                                                     | Member            |
| 12. Mr. Saad Waseem                                                      | Member            |
| 13. Rana Sana Ullah Khan                                                 | Member            |
| 14. Ch. Mehmood Bashir Virk                                              | Member            |
| 15. Mr. Usman Ibrahim                                                    | Member            |
| 16. Khawaja Saad Rafique                                                 | Member            |
| 17. Syed Hussain Tariq                                                   | Member            |
| 18. Syed Naveed Qamar                                                    | Member            |
| 19. Dr. Nafisa Shah                                                      | Member            |
| 20. Ms. Aliya Kamran                                                     | Member            |
| 21. Barrister Dr. Muhammad Farogh Naseem<br>Minister for Law and Justice | Ex-officio Member |

3. The Committee considered the Bill as introduced in the National Assembly placed at (Annex-A), in its meeting held on 21<sup>st</sup> October, 2020. The Committee recommended with majority that the Bill placed at (Annex-B), may be passed by the National Assembly.

Sd/-  
**TAHIR HUSSAIN**  
Secretary  
Islamabad, the 19<sup>th</sup> November, 2020

Sd/-  
**(RIAZ FATYANA)**  
Chairman

ORDINANCE No. VI OF 2020

AN

ORDINANCE

*to provide for the right of review and re-consideration in giving effect to the  
Judgment of the International Court of Justice*

WHEREAS, it is expedient to provide for the right of review and re-consideration to foreign nationals, in relation to orders and judgments of Military Courts;

AND WHEREAS, the Senate and the National Assembly are not in session and the President is satisfied that circumstances exist which render it necessary to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of Article 89 of the Constitution of the Islamic Republic of Pakistan, 1973, the President is pleased to make and promulgate the following Ordinance, namely:—

1. **Short title and commencement.**—(1) This Ordinance may be called the International Court of Justice (Review and Re-consideration) Ordinance, 2020.

(2) It shall extend to the whole of Pakistan.

(3) It shall come into force at once.

2. **High Court's Power to review and reconsider.**—(1) Where:

(a) the International Court of Justice in relation to a foreign national passes an order in respect of rights under Article 36 of the Vienna Convention of Consular Relations of 24 April 1963; or

(b) a foreign national is aggrieved in respect of the rights available under Article 36 of the Vienna Convention of Consular Relations of 24 April 1963;

such foreign national, either himself or through his authorized representative, or through a consular officer of a mission of his country, may file a petition before a High Court for review and re-consideration, in terms of section 3, with regard to an order of conviction or sentence of a Military Court operating under the Pakistan Army Act, 1952:

**Explanation.**— "High Court" means a High Court established under Article 175 of the Constitution of Pakistan, 1973, within the limits of whose territorial jurisdiction a foreign national is confined.

(2) The petition for review and re-consideration may be filed within 60 days of:—

(a) the promulgation of this Ordinance against the order of the Military Court specified in sub-section (1) existing prior to the promulgation of this Ordinance; or

(b) the order of the Military Court specified in the sub-section (1), if such order has been delivered after the promulgation of this Ordinance.

3. **Disposal of petitions for review and re-consideration.**—In deciding a petition filed under section 2, the Court shall examine whether any prejudice has been caused to the foreign national in respect of his right of defence, right to evidence and principles of fair trial, due to denial of consular access according to the Vienna Convention on Consular Relations of 24 April 1963.

4. **Removal of difficulties.**—If any difficulty arises in giving effect to any provision of this Ordinance, the President may make such order as may appear to him to be necessary for the purpose of removing such difficulty.

5. **Ordinance to have overriding effect.**—The provisions of this Ordinance shall have effect notwithstanding anything to the contrary contained in any other law for the time being in force including the Pakistan Army Act, 1952.

### STATEMENT OF OBJECTS AND REASONS

The Government of India initiated proceedings against Pakistan in the International Court of Justice (ICJ), concerning alleged violations of the Vienna Convention on Consular Relations of 24 April 1963 "in the matter of detention and trial of an Indian national, Commander Kulbhushan Sudhir Jadhav", who had been sentenced to death by the Military Court in Pakistan in April 2017. Commander Jadhav was a RAW operative, who facilitated numerous acts of terrorism in Pakistan, which resulted in the killings of countless innocent citizens of Pakistan. The ICJ gave its Judgment on 17<sup>th</sup> July, 2019 wherein it observed that "Pakistan is under an obligation to provide, by means of its own choosing, effective review and reconsideration of the conviction and sentence of Mr. Jadhav, so as to ensure that full weight is given to the effect of the violation of the rights set forth in Article 36 of the Vienna Convention, taking account of paragraphs 139, 145 and 146 of this Judgment".

2. In order to give full effect to the said Judgment, it is necessary that a mechanism for review and reconsideration of Pakistan's own choice has to be provided. This can be done by law only, therefore, the Bill is designed to achieve the aforesaid object.

## [AS REPORTED BY THE STANDING COMMITTEE]

A  
BILL

*to provide for the right of review and re-consideration in giving effect to the judgment of the International Court of Justice*

**WHEREAS** it is expedient to provide for the right of review and *re-consideration* to foreign nationals, in relation to orders and judgments of Military Courts;

It is hereby enacted as follows:-

1. **Short title and commencement.-** (1) This act may be called the International Court of Justice (Review and Re-consideration) Act, 2020.
  - (2) It shall extend to the whole of Pakistan.
  - (3) It shall come into force at once.
2. **High Court's power to review and reconsider.-** (1) where:
  - (a) the International Court of Justice in relation to a foreign national passes and order in respect of rights under Article 36 of the Vienna Convention of Consular Relations of 24 April 1963; or
  - (b) a foreign national is aggrieved in respect of the rights available under Article 36 of the Vienna Convention of Consular Relations of 24 April 1963;

such foreign national, either himself or through his authorized representative, or through a consular officer of a mission of his country, may file a petition before a High Court for review and re-consideration, in terms of section 3, with regard to an order of conviction or sentence of a Military Court operating under the Pakistan Army Act, 1952.

*Explanation.-* "High Court" means a High Court established under Article 175 of the Constitution of Pakistan, 1973, within the limits of whose territorial jurisdiction a foreign national is confined.

  - (2) The petition for review and re-consideration may be filed within 60 days of:-
    - (a) the promulgation of this Act against the order of the Military Court specified in sub-section (1) existing prior to the promulgation of this Act; or
    - (b) the order of the Military Court specified in the sub-section (1), if such order has been delivered after the promulgation of this Act.
3. **Disposal of petitions for review and re-consideration.-** In deciding a petition filed under section 2, the Court shall examine whether any

prejudice has been caused to the foreign national in respect of his right of defence, right to evidence and principles of fair trial, due to denial of consular access according to the Vienna Convention on Consular Relations of 24 April 1963.

4. **Removal of difficulties.-** If any difficulty arises in giving effect to any provisions of this Act, the President may make such orders as may appear to him to be necessary for the purpose of removing such difficulty.
5. **Act to have overriding effect.-** The provisions of this Act, shall have effect notwithstanding anything to the contrary contained in any other law for the time being enforce including the Pakistan Army Act, 1952.

#### STATEMENT OF OBJECTS AND REASONS

The Government of India initiated proceedings against Pakistan in the International Court of Justice (ICJ), concerning alleged violations of the Vienna Convention on Consular Relations of 24 April 1963 "in the matter of detention and trial of an Indian national Commander Kulbhushan Sudhir Jadhav", who had been sentenced to death by the Military Court in Pakistan in April 2017. Commander Jadhav was a RAW operative, who facilitated numerous acts of terrorism in Pakistan, which resulted in the killings of countless innocent citizens of Pakistan. The ICJ gave its Judgment on 17<sup>th</sup> July, 2019 wherein it observed that 'Pakistan is under an obligation to provide, by means of its own choosing, effective review and reconsideration of the conviction and sentence of Mr. Jadhav, so as to ensure that full weight is given to the effect of the violation of the rights set forth in Article 36 of the Vienna Convention, taking account of paragraphs 139, 145 and 146 of this Judgment'.

2. In order to give full effect to the said Judgment, it is necessary that a mechanism for review and reconsideration of Pakistan's own choice has to be provided. This can be done by law only, therefore, the Bill is designed to achieve the aforesaid object.

MINISTER-IN-CHARGE

TAHIR HUSSAIN

Secretary