

[AS PASSED BY THE NATIONAL ASSEMBLY]

A

Bill

to provide for the right of review and re-consideration in giving effect to the judgement 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 judgements 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, or in default whereof, the Secretary, Ministry of Law and Justice in an appropriate case, 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:

“Provided that any petition already filed or pending shall be treated as a petition having been filed under this section.”

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 judgement on 17th 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 judgement".

2. In order to give full effect to the said judgement, 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