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THE INVESTIGATION FOR FAIR TRIAL ACT, 2013

ACT NO. I OF 2013

[20th February, 2013]

An Act 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 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:

It is hereby enacted as follows:—

1. Short title, extent and commencement. — (1) This Act may be called the Investigation for Fair Trial Act, 2013.

(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; and

(c) 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)

(b)

(c)

(d)

(e)

(f)

(g)

(h)

“applicant” means, Directorate General Inter Services Intelligence, the three Services Intelligence Agencies, Intelligence Bureau and Police;

“authorized officer”, means any officer not below the rank of BPS-20 or equivalent who is working with the applicant and is notified under Section 4 to represent the applicant when making application or taking up any proceedings under this Act;

“competent authority” includes the Judge;

“Court” means the High Court;

“Designated Agency or Body” means any one or more Agency or Body designated by the Federal Government through notification for the purposes of this Act, having capability for implementing warrant of interception;

“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 materials;

“Intercepted material” means evidence collected under Section 17 and will refer,—

(i) for the purposes of ‘Surveillance” to include,—

(a) data, information or material in any documented form, whether written, through audio visual device, CCTV, still photography, observation or any other mode of modern devices or techniques obtained under this Act; and

(b) documents, papers, pamphlets, booklets; and

(ii) for the purposes of “Interception” to, include-mails, SMS, IPDR (internet protocol detail record) or CDR (cell detail record) and any form of computer based or cell phone based communication and voice analysis. It also includes any means of communication using wired or

wireless or IP (internet protocol) based media or gadgetry;

“Judge” means a Judge of the High Court;

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(i) "Minister" means the Federal Minister for Interior;

Gj) "Register" means the register maintained under subsection (2) of Section 9 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 register shall also contain name, contact, address of the authorized person and the applicant;

(k) "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;

() "Schedule" means schedule to this Act;

(m) "Scheduled offence" means an offence specified in schedule I;

(n) "Service provider" means any person, entity or company related to any

equipment, technology, data, circumstances that given it ability or power or control to implement the warrants issued under Sections 11 and 21;

(p) "Warrant" means warrant of surveillance or interception, and includes warrant issued under Sections 11 whereby the applicant is allowed by the Judge 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.

CHAPTER-2 APPLICATION FOR WARRANT

4. Notification of authorized officer.— The applicant shall, before making an application, first notify an appropriate officer not below BPS-20 or equivalent, duly authorized by him to represent the said applicant for making an application under this Act.

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.

6. Material to be placed before the Minister.--An official of the applicant who has prepared the report under Section 5 shall present the same through the Head of the Department to the Minister for permission to make application to the Judge for issuance of the warrant of surveillance or interception.

7. Action by the Minister on the material presented to him.—(1) The Minister shall examine the report with supporting material and through a written order may either decline the permission sought or grant permission fully or partly.

(2) No application shall be made to the Judge except with prior written permission of the Minister.

8. Application for issuance of warrant.— After permission from the Minister, application for issuance of warrant shall be made by the authorized officer to the Judge,--

(a) preferably in the manner prescribed in schedule II;

(b) 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; and

(c) the application for the issuance of warrant shall be accompanied by,—

(i) a signed statement and affidavit of the authorized officer that the contents of the report and application are true and correct to the best of his information, knowledge and belief, and 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 neither be misused in any manner, nor shall the approval of the warrant, be abused to interfere or intervene in the privacy of any person; and

(ii) details of all warrants obtained previously in respect of the person against whom the warrant is sought

CHAPTER-3 ISSUE OF WARRANTS

9. Judge to issue warrant in Chambers. — (1) The warrant of surveillance or interception shall be issued by the Judge in chamber.

(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(j).

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

(a) the issuance of requested warrant will enable the applicant to collect evidence; and

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

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

(a) the authorized officer is properly authorized to represent the applicant;

(b) the issuance of warrant shall not unduly interfere in the privacy of any person or property.

11. Issuance of warrant of surveillance or interception.— After considering the matters specified in Section 10, the Judge shall,—

(a) pass an order allowing the issuance of warrant in the manner prescribed in schedule IV or as presented before him in a proposed draft form;

(b) pass an order allowing the issuance of warrant with some modifications;

(c) pass an order allowing the issuance of warrant, but may make any observations regarding the manner and method of its implementation;

(d) restrict requested duration of any existing warrant; and

(e) decline to issue the warrant, if the Judge has reasons to believe that warrant is being procured with mala fide intention and the process under the Act is being abused.

12. Form of the warrant. — (1) The warrant shall be issued ordinarily in the manner prescribed in schedule IV:

Provided that the warrant may also be issued in a manner proposed by the authorized officer under Section 8(b) with or without modifications 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 safe custody.

(2) The formal order and its record shall not be made public and shall be kept in safe custody.

14. Duration of warrant of interception. — Warrant shall be issued for a period of not longer than six days:

Provided that it may be re-issued after the said period by the Judge upon the request of the authorized officer of the applicant, if, after examining the gist of the intelligence and evidence collected by the applicant thus far, he is satisfied that as a consequence of issuance of warrant, suitable progress is being made and there is sound justification for re-issuance of warrant for another period not exceeding sixty days. Thereafter, the same consideration shall apply for every request for reissue of warrant for further periods not exceeding sixty days at a time.

15. 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 the period mentioned in Section 14 demonstrate 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

16. Authorization under the warrant. — (1) The warrant of surveillance or interception to be issued by the Judge may authorize and allow the lawful doing of any or all of the following acts, namely—

(a) interception and recording of telephonic communication of the suspect with any 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 persons in respect of whom the warrant has been issued:

Provided that the Judge shall authorize take-over of equipment only where the material or statement of the authorized officer discloses a substantial threat or possibility or an attempt to commit a scheduled offence;

(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; and

(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.

17. Method of executing the Warrant. — (1) Where the warrant is issued, the applicant in case of the warrant of interception, shall approach the designated agency or body, for serving the same on service provider in the manner provided for in Schedule III and the designated agency or body shall duly serve the said warrant on the service provider or give effect to it within seven days.

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

(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) While executing the warrants each applicant shall act within the mandate provided for it under the law.

18. Indemnity for service provider. — Access granted by the service provider in accordance with this law shall not be called in question under any law by any person who may have been prejudiced by such access.

19. Immunity 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.

20. 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 shall be punished with fine upto ten million rupees.

21. 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 punished with imprisonment which may extend to one year or with fine which may extend to ten million rupees.

CHAPTER-S5

ADMISSIBILITY OF MATERIAL OBTAINED UNDER THE WARRANT

22. 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 satisfied that the same discloses elements of commission, harbouring, abetting or conspiring or attempting to commit any scheduled offence, he may immediately cause registration of a report (FIR) under Section 154 of the Code of Criminal Procedure, 1898 (Act V of 1898) 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:

Provided that before the evidence is handed over to the Investigating Officer, the authorized officer shall certify that it has been collected strictly in accordance with the warrant and has not been tampered with or altered in any manner whatsoever.

(2) If the evidence which has been collected or received in respect of scheduled offence is insufficient to justify registration of a report (FIR) under Section 154 of the Code of Criminal Procedure, 1898 (Act V of 1898), 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.

23. 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, prior to the coming into force or this Act, under the provisions of any other law for the time being in force.

24. Presumption of validity of warrant.— The warrant of surveillance and 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.

25. 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 (Act V of 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.

26. Non-discloser. — Any person performing any function under this Act who fails to secure complete secrecy of the process or makes any disclosure which may compromise future capabilities of intelligence gathering shall, in addition to any other punishment to which he may be liable under applicable law and rules, be punished with imprisonment of upto five years or with fine of upto ten million rupees or with both.

CHAPTER-6 REVIEW AND OVERSIGHT

27. Oversight by Review Committee. — (1) A Review Committee Comprising Ministers of Defence, Interior and Law shall on a six monthly basis call for reports from all the applicants about the warrants obtained by them and assess administrative aspects including if the evidence collected pursuant to the warrants of surveillance or interception has been helpful in prevention of offences and of aid to prosecution or has been able to achieve the object and purposes of this Act.

(2) The Committee, based on the said assessment, may issue appropriate orders or instructions in respect of working of any applicant for compliance or guidance.

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 High Court concerned, for Constitution of a Division Bench of two Judges for hearing in chambers.

(2) The Division Bench to whom the representation is entrusted 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 shall bar the applicant to approach the Judge again for issue of warrant in respect of the same person on basis of fresh grounds or new material.

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 the officer against whom the complaint was filed 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 concerned within thirty days, for constitution of a Division Bench for hearing and deciding the representation in chambers.

30. Powers of the Judge— The Judge shall have powers under the Act to make any charges, 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 as agreed between Pakistan and the concerned foreign state as provided under the law, treaty or agreement.

(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 as agreed between Pakistan and the concerned foreign state as provided under the law, treaty or agreement.

CHAPTER 8 CONFIDENTIALITY OF PROCEEDINGS

33. Confidentiality of proceedings.— The Judge shall ensure that during any proceedings under this 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—(1) The material intercepted pursuant to the warrant of surveillance or interception shall not be used by any official of the applicant or of the Court or any other person associated with any function under this Act other than in accordance with the provisions of this Act.

(2) Any person who violates the provisions of sub-section (1), shall be punished with imprisonment of upto five years or with fine upto ten million rupees or with both.

35. Unauthorized surveillance or interception Any person who carries out any surveillance or interception except in accordance with the provision of this Act shall in addition to any other punishment to which he may be liable under any other law for the time being in force be punished with imprisonment for upto three years and shall also be liable to fine.

CHAPTER 9 MISCELLANEOUS

36. Power to make rules, issue guidelines and orders.— The Federal Government may, by notification in the Official Gazette, make rules to carry out the purposes of this Act, and 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 Schedules II, III and IV by adding any entry therein, omitting any entry therefrom or modifying any entry therein.

38. Act to have effect notwithstanding existing laws.— The provisions of this Act shall have effect, notwithstanding anything contained in any other law for the time being in force

including the Code of Criminal Procedure, 1898 (Act V of 1898) and Qanun-e-Shahadat, 1984 (P.O. 10 of 1984).

39. Removal of difficulty — If any difficulty arises in giving effect to any provision of this Act, for a period of one year from its coming into force the Federal Government may, by Order not inconsistent with the provisions of the Act, remove the difficulty.

SCHEDULE I [See Section 3(1)]

1. The Private Military Organizations Abolition and Prohibition Act, 1974, (IV of 1974) to the extent of terrorist activities;

2. Offences under the Prevention of Anti-National Activities Act, 1974 (VII of 1974) to the extent of terrorist activities;

3. Offences under the Anti-Terrorism Act, 1997 (XXVII of 1997);

4. Offences under the Pakistan Nuclear Regulatory Authority Ordinance, 2001 (III of 2001) to the extent of terrorist activities;

5. Offences under the National Command Authority Act, 2010 (V of 2010) to the extent of Anti-Terrorism Act, 1997 (XXVII of 1997) only.

SCHEDULE II

[See Section 8]

Application for issuances 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 Sections 9 to 12 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 e-mails, human intelligence, property interference collection of material, data, video making, concealed camera, recording equipment etc...)

Supporting material and Statement of belief about suspect's likely involvement in crime [accompanied by affidavit as per Section 8(c)(i) 1].

Signature of authorized officer

Seal of the authorized officer

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

- q)
- (2)
- (3)
- (4)

SCHEDULE III

[See Section 17]

Summary of warrant under Section 17 of 'the Investigation for Fair Trial Act 2012'

It is affirmed that warrant of interception pursuant to Sections 9 to 12 of "the 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 warrant authorizes the lawful interception of

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To: (Service Provider)

Please ensure compliance.

Designated Agency or Body [under Section 3(e) 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 IV

[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 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 days starting with effect from
(Date if request made in retrospect).

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

Mr./Entity /

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to extend fullest cooperation to the holder or application of the warrant and facilitate in its execution technically and logically 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 Investigation for Fair Trial Act, 2012 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

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