



RULING OF THE CHAIR

PARLIAMENTARY OVERSIGHT: INTERPRETATION OF SECTION 53 OF PREVENTION OF ELECTRONIC CRIMES ACT, 2016

This Ruling draws from the following amongst other facts:-

- (i) The Prevention of Electronic Crimes Act, 2016 (XL of 2016) (hereinafter referred as the 'said Act') was passed by the National Assembly on 11-08-2016 and by the Senate on 29-07-2016. After attaining the assent of the President on 18-08-2016, it was published in the Gazzete of Pakistan on 22-08-2016.
- (ii) Under Section 53 of the said Act, the Agency designated or established under section 29 of the said Act shall have to submit a half yearly report to both Houses of the Parliament for in-camera consideration by the relevant Committee in respect of its activities, without disclosing identity information, in a manner as prescribed under the Act.
- (iii) The Government, on 22nd September, 2016, vide Notification No. S.R.O. (1)/2016, notified/designated Federal Investigation Agency (FIA) as Investigation Agency under section 29 of the said Act.
- (iv) In the Senate sitting held on 19th June, 2017, debate was held on the following Motion under Rule 218:-

"The House may discuss the threat to freedom of expression by misuse of the Electronic Crimes Act and the impunity with which crimes are continuously being committed against journalists and media persons."

After discussion on the said Motion, I drew the attention of the Minister towards the requirement of Section 53 of the Act which has not been complied with and observed as under:-

"The Act was made on 22-08-2016. We are now almost coming to one year. Stricto sensu speaking, two reports should have been submitted before the Parliament but not a single report is submitted before the Parliament so far. Within one month, the period from which this Act came into force including the one month that I am giving, the report will be laid before both Houses of Parliament."

On this observation, Mr. Baligh ur Rehman, the then Minister of State for Interior assured that the report will be submitted before the House within the given time.

- (v) The Senate Secretariat also communicated my directions to the Ministry through O.M. No.1 (264) SO (L) dated 19th July, 2017.
- (vi) After the lapse of due date, the Ministry was once again asked through O.M. No.8(266) SO(L) dated 30th August, 2017, to submit the report before the House in response to which the Ministry of Interior through U.O No.21/6/2017-Council dated 22-09-2017 sent a photo copy of the report to the Secretariat.
- (vii) The Secretariat returned the report to the Ministry of Interior through O.M. No.15(267) SO(L) dated 25th September, 2017, for presentation of report through proper channel, which is, that the same shall be included in the Orders of the Day as Government Business in consultation with the Ministry of Parliamentary Affairs and further the required number of copies of the report be provided to the Secretariat for presentation in the House.
- (viii) In the Senate sitting held on 3rd November, 2017, the House discussed an admitted adjournment motion regarding the need to point out the means of availability of extremist ideology and literature to the students and the role of religious, security and educational

institutions. During the debate, Senator Farhatullah Babar once again pointed out the non-submission of report to the Parliament as required under section 53 of the Prevention of Electronic Crimes Act, 2016, whereupon, I gave clear direction that the report shall be laid in the House on Wednesday, the 8th November, 2017 and the Ministry of Parliamentary Affairs shall include the Motion in the Orders of the Day. However, the motion for laying of report before the House was included in the Orders of the Day of 10th November, 2017, but the same could not be laid on that date as due to absence of Ministers the Session was prorogued without transaction of business on the Orders of the Day.

- (ix) The Motion for submission of report before the Senate was again included in the Orders of the Day on 20th November, 2017, but since, it is the first report of the Agency to be submitted before the Parliament, therefore, I kept it pending and wanted to hear the arguments of learned Senators Aitzaz Ahsan, Leader of the Opposition, Muhammad Javed Abbasi, Muhammad Ali Khan Saif and Farhatullah Babar on the modus operandi of the submission of the report before the Parliament and its subsequent in-camera consideration by the relevant Committee in terms of Section 53 of the said Act. The Notices were issued to the Members for 22nd November, 2017.
- (x) In the Senate sitting held on 22nd November, 2017, the Members gave their arguments in the following terms:-

Senator Farhatullah Babar

- Senator Farhatullah Babar informed the House that though he was not member of the Senate Standing Committee, wherein, said law was being considered, however, he remained associated with the formulation of this law. The investigating agency was being given

wide powers, therefore, in order to curtail the abuse of powers, parliamentary oversight was provided and the Committee was of the view that the Report should be laid before the Parliament and be discussed, however, the Government was reluctant. Therefore, the Chairman Committee proposed a middle way out by providing that the Report be laid before the both Houses of Parliament and if any Member has objection, the same may be discussed in the Committee.

- Regarding the question that in terms of word used "submitted", whether the report is to be laid before the House or otherwise, the hon'ble Member gave his input in the following terms:-

"word 'submitted' yield oneself to the authority of another or control of another which means that this report have been submitted to the Parliament which means it has been submitted to the authority of the Parliament and the Parliament is not merely the Secretariat, the Parliament is not merely the Secretary or the Additional Secretary, the Parliament comprises of all this House, the Secretariat, the Chairman, the Deputy Chairman, everybody. Therefore, when the law says that it will be submitted to the Parliament that means the report lies unconditionally, surrender to the Parliament, surrender to the authority and when it is surrender to the authority, now if there are peculiar questions that arise then I have to go by camera, then I am not going to discuss that."

Senator Muhammad Javed Abbasi

Senator Muhammad Javed Abbasi gave his input in the following terms:-

- Section 53 of the Act provides the following line of action
 - a) Submission of half yearly report to both Houses of the Parliament for consideration by the relevant Committee in camera.
 - b) Report shall be regarding its activities.
 - c) The report shall not disclose identity information.

- The Parliament as a whole cannot be deprived from accessing the contents of the report. Secondly, the Parliament does not serve as postman to its own subordinate committees. As evident from the Chapter 16 of the Rules of Procedure and Conduct of Business in the Senate, 2012 the Reports laid before the House have to be discussed by the House.
- The primary objective of a Committee is consideration of relevant matters/ issues and formulation of the recommendations thereon cannot be achieved unless it submits to the House its reports containing the recommendations.
- The working and recommendations of a Committee cannot be fruitful and binding unless the House makes it binding upon the executive through its Rules of Procedure and Conduct of Business.
- Section 53 of the Prevention of Electronic Crimes Act, 2016 be amended to ensure supremacy and independent working of the Parliament under Article 67 of the Constitution.

Senator Syed Shibli Faraz

- Senator Syed Shibli Faraz who was also Member of the Sub-Committee of the Standing Committee of Information and Technology which considered and amended the Prevention of the Electronic Crime Bill, 2016, and remained part of the drafting of the amendment regarding section 53, explained the intent of the legislature.
- He stated that the Sub-Committee was conscious of the fact that this law may be misused, therefore, Parliamentary Oversight was provided to check the same. The intention was that the Report be laid in the House and detailed consideration be done in the Committee. The Minister wanted it to be an annual Report, however, the Committee being conscious of its sensitivity and knowing that the implementation of this law will require expertise, made it a biannual Report.

Senator Aitzaz Ahsan, Leader of the Opposition

- Senator Aitzaz Ahsan, Leader of the Opposition stated that,-
 - i) There are, at least, three things that have to be done under this clause, which must be done in the manner prescribed

in the rules and only in the manner prescribed, not in any other manner.

- ii) The manner 'prescribed' will have to be provided in the rules; the rules must provide the manner in which the report will be examined or taken cognizance of by the House or the Committee and the manner in which the agency may withhold information. There has to be separate rules for submission and consideration of report under section 53.
- iii) There is no doubt that this is a half yearly report and it has to be submitted to the House but the consideration will have to be by the committee in-camera.
- iv) The Chairman Senate may direct the Ministry to make the rules within one month and present the report as soon thereafter. The rules shall be placed before the House for final approval.
- v) In terms of the earlier Ruling of the Chair on the subject, the issue of confidentiality is resolved. The only thing is that how much confidentiality will Parliament or the Committee itself allow.
- vi) So section 53 provides as under:-

The report will be laid before the House whereas, there may not be a discussion on the report in the whole House but the Committee may discuss it threadbare. In this case it is suggested that the report that is placed in the hands of all Members would be in-camera; it would be confidential communication because the statute provides so.

Mr. Zahid Hamid, Minister for Law and Justice

Mr. Zahid Hamid, Minister for Law and Justice stated that,-

- Section 51 is very clear, that is the power to make rules. The Federal Government may, by notification in the Official Gazette, make rules for carrying out purposes of this Act
- The Federal Government has set up an Inter-Ministerial Committee. There are certain very important issues involved, jurisdictional issues, which is the reason why it has been delayed but we are actively engaged.
- The Federal Government has been interpreted by the Supreme Court, as meaning the Federal Cabinet and that means that the law, the rules that will be prepared, will be put up to the Cabinet and after approval, the Federal Government will promulgate them by notification in the Official Gazette.
- The report should be given to both Houses of Parliament. But the purpose has also been mentioned, "for consideration by relevant Committee in-camera." The purpose of submission of that report is given and also in respect of its activities, without disclosing identity information. Very important condition has been laid down. That while discussing that in-camera, no disclosure of identity is to be made. There are very important reasons for that obviously because the complaints that will be filed etc.
- The rules should clearly specify, what should be in the report and to make sure that this does not happen where very sensitive information is just disseminated to all and sundry.
- The report would be given to the Parliament without withholding any information but the discussion on that report would be held in-camera without disclosing identity information.

2. The contentions of the hon'ble Members and Minister for Law and Justice, can be summarized in the following terms:-

- (i) There is a consensual opinion that a report shall be laid before the House.
- (ii) Senator Javed Abbasi is of the opinion that *"Parliament as a whole cannot be deprived from accessing the content of the report, therefore, same, in terms of rule 157 of the Rules of Procedure and Conduct of Business in the Senate, 2012, shall be discussed in the House and section 53 of the Prevention of Electronic Crimes Act, 2016, may be amended accordingly"*.

I am conscious of provisions of the Rules of Procedure and Conduct of Business in the Senate, 2012, however, I am also conscious of the fact that the Prevention of Electronic Crimes Act, 2016, is a product of Parliament and in the instant case the Senate has the ownership of introducing section 53 in the law as this provision was not part of the Bill passed by the National Assembly and the same was incorporated by the Senate. Perusal of the verbatim of Senate proceedings dated 29-07-2016, the day this Bill was passed by the Senate, provides that Members while incorporating this provision were aware that this is for the first time a parliamentary oversight mechanism is being provided in a special law given the fact that wide ranging powers were being given to an investigating agency.

- (iii) Senator Aitzaz Ahsan Leader of the Opposition is of the opinion that *"first , the Government should formulate the rules for prescribing the contents and manner of submission of report and thereafter the report shall be presented before the House"*.

I am conscious of the fact that the Parliament has given rule making power to the Executive, which is to be exercised without any fail and it is also correct that the Rules should provide for the contents of the report and other matters connected with and ancillary thereto. However, I am also conscious of the fact that it is being more than one year that a report which was to be submitted every six months has not

been submitted even once in fifteen months. Inaction on the part of the Government should not be an impediment in the way of the Parliament to perform its role of Parliamentary Oversight.

- (iv) The Minister for Law and Justice has stated that *"the report would be given to the Parliament without withholding any information but the discussion on that report would be held in-camera without disclosing identity information"*. This position is correct to the extent that discussion on the report would be held in-camera, however, in terms of my earlier Ruling dated 4th November, 2016, the identity information, if required by the Committee, shall be provided as no information can be withheld from the Parliament.

3. I have heard the hon'ble Leader of the Opposition, Members and Minister for Law and Justice and also perused the Prevention of Electronic Crimes Act, 2016. Section 53 of the said Act is relevant in the matter, which is as under:-

"53. Report to Parliament.- The agency designated or established under section 29 of the Act shall submit a half yearly report to both houses of the Parliament for consideration by the relevant Committee in camera, in respect of its activities, without disclosing identity information, in a manner as prescribed under this Act."

4. A perusal of the aforesaid provision provides that,-
- a) The agency designated or established under section 29 of the said Act shall submit a half yearly report to both Houses of Parliament.
 - b) The report shall contain activities of the designated agency, without disclosing identity information, in a manner as prescribed under the Prevention of Electronic Crime Act, 2016.
 - c) The report, after submission, shall be considered by the relevant committee, in-camera.
5. Regarding the first requirement of the said section that the Agency shall submit a half yearly report to both Houses of the Parliament, the procedure will

remain the same as in case of other statutory reports being submitted before the House, which includes,-

- i) Every six months, the Ministry concerned shall initiate a process of placement of report on the Orders of the Day, as Government Business, through Ministry of Parliamentary Affairs and shall provide adequate copies of the Report to the Senate Secretariat.
- ii) The Minister concerned shall present a report before the House, after which it shall stand laid before the House.

6. The second requirement pertains to the contents of the report; as per section 53 of the said Act, the report shall be in respect of activities of the designated agency, which is FIA. The activities have been outlined in section 29 of the said Act, which provides the functions of the investigation agency, the said provision is as under:-

"29. Establishment of investigation agency. (1) The Federal Government may establish or designate a law enforcement agency as the investigation agency for the purposes of investigation of offences under this Act.

(2) Unless otherwise provided for under this Act, the investigation agency and the authorized officer shall in all matters follow the procedure laid down in the Code to the extent that it is not inconsistent with any provision of this Act.

(3) The investigation agency shall establish its own capacity for forensic analysis of the data or in information systems and the forensic analysis reports generated by the investigation agency shall not be inadmissible in evidence before any court for the sole reason that such reports were generated by the investigation agency.

(4) Notwithstanding provisions of any other law, the Federal Government shall make rules for appointment and promotion in the investigation agency including undertaking of specialized courses in digital forensics, information technology, computer science and other

related matters for training of the officers and staff of the investigation agency."

In terms of section 53 read with section 29 of the said Act, the Agency will have to submit its report with regard to all of its activities carried out in pursuance of its functions including but not limiting to,- details of complaints received, investigations, outcome of investigations, steps taken in pursuance of investigations, steps taken for reservation and accusation of data, if any (section 31), search or seizure (Section 33), warrants obtained for disclosure of content data (Section 34), inspection of operation of any specified information system (Section 35), other matters connected with and ancillary thereto. The information shall be provided in detail without disclosing the identity information.

7. The third requirement is regarding in-camera consideration of the report by the Committee concerned. Therefore, after laying of the report, the same shall be referred to the Standing Committee concerned for in-camera consideration. This becomes all the more important as the contents of the report do not provide identity information, therefore, the same will be provided to the Committee during in-camera proceedings. In terms of Sections 34 and 41 of the said Act, the Government might have a different view of disclosing identity information before the Committee concerned. If this be the case the Government is advised to make recourse to my Ruling dated 4th November, 2016, on the subject, wherein, it has been ruled that,-

"The Constitution of Pakistan, 1973, places the Parliament on a different pedestal from that of any organization or body; same can be fortified by clause (3) of Article 66, Constitution, 1973, which provides that the impediment to the provision of information can only be provided by a President's Order and not by an Act of Parliament. Provision of the Banking Companies Ordinance, 1962, and Protection of Economic Reforms Act, 1992, cannot and do not put any fetters on the inherent

powers of the Parliament to seek and examine information in the larger public interest."

8. In view of the above discussion, the following procedure will be adopted in terms of section 53 Prevention of Electronic Crimes Act, 2016, read with my ruling dated 4th November, 2016:-


- (i) Every six month, the Ministry concerned through Ministry of Parliamentary Affairs will place a Motion for submission of Report in terms of section 53 Prevention of Electronic Crimes Act, 2016, on the Orders of the Day.
- (ii) Accordingly, the Report will be laid before the House.
- (iii) After laying of the Report the same will be referred to the Standing Committee concerned for in-camera consideration
- (iv) The Government will also provide the identity information if required by the Committee
- (v) The Committee after consideration may make a report in general terms, without disclosing identity information to the House or if it feels that certain classified information will have to be placed before the House, the Committee can also present the report in in -camera proceedings of the House.

9. The report submitted by the Federal Investigation Agency is before me and it is a sorry state that the said report does not adhere to the requirements of Section 53 rather it is mockery of the procedures provided through the Act of Parliament. Therefore, the Government is directed to formulate the rules to prescribe for procedure to be adopted in this regard, within a period of one month and place the same before the Senate Functional Committee on Delegated Legislation.

10. The report is referred to the Standing Committee concerned for in-camera consideration and the Government is directed to provide complete information during in-camera proceeding of the Committee.

11. Since presentation of this report in the National Assembly will also be for the first time, therefore, a copy of this Ruling may be sent to the Speaker National Assembly, for him to consider if he would like to follow the same course or any other.

12. The Senate Secretariat is directed to send copies of this Ruling to the Prime Minister of Pakistan, Minister for Information Technology, Minister for Interior, Minister for Law and Justice, Minister for Parliamentary Affairs and Chairperson Standing Committee concerned.



MIAN RAZA RABBANI
NI
CHAIRMAN

Dictated in Chamber
Announced in the House on 24th November, 2017.
270th Session