

[AS PASSED BY THE SENATE]

A

BILL

further to amend the Pakistan Army Act, 1952

WHEREAS the Pakistan Army (Amendment) Act, 2015 (II of 2015) came into force on 7th January, 2015 and stands repealed on the expiry of two years on 6th January, 2017;

AND WHEREAS an extraordinary situation and circumstances still exist which demand continuation of special measures adopted for speedy trial of certain offences relating to terrorism, waging of war or insurrection against Pakistan and prevention of acts threatening the security of Pakistan by any terrorist group, armed group, wing and militia or their members misusing the name of religion or a sect;

AND WHEREAS there still exists grave and unprecedented threat to the integrity of Pakistan from terrorist groups by raising of arms and insurrection misusing the name of religion or a sect, or by foreign and locally funded anti-state elements;

AND WHEREAS special measures were adopted pursuant to the Pakistan Army (Amendment) Act, 2015 (II of 2015), including, *inter alia*, trial under the Pakistan Army Act, 1952 (XXXIX of 1952), as amended, of terrorist groups, armed groups, wings and militia or their members fighting while misusing the name of religion or a sect, captured or to be captured in combat with the Armed Forces or other law enforcement agencies or otherwise;

AND WHEREAS the aforesaid special measures have yielded positive results in combating terrorism;

AND WHEREAS it is in the national interest to continue the special measures adopted pursuant to the Pakistan Army (Amendment) Act, 2015 (II of 2015) for a further period of two years;

AND WHEREAS Article 245 of the Constitution of the Islamic Republic of Pakistan enjoins upon the Armed Forces to act in consonance with the provisions of the said Article;

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It is hereby enacted as follows:-

1. Short title and commencement.- (1) This Act may be called the Pakistan Army (Amendment) Act, 2017.

(2) It shall come into force at once and shall be deemed to have taken effect on and from 7th January, 2017.

(3) The provisions of this Act shall remain in force for a period of two years from the date of its commencement.

2. Amendment of section 2, Act XXXIX of 1952.- In the Pakistan Army Act, 1952 (XXXIX of 1952), hereinafter referred to as the said Act, in section 2,-

(a) in sub-section (1), in clause (d), after sub-clause (ii), the following new sub-clauses shall be added, namely:-

“(iii) claiming or are known to belong to any terrorist group or organization misusing the name of religion or a sect; and

(a) raise arms or wage war against Pakistan, or attack the Armed Forces of Pakistan, law enforcement agencies, or attack any civil or military installations in Pakistan; or

(b) abduct any person for ransom, or cause death of any person or injury; or

(c) possess, store, fabricate or transport or use explosives, fire-arms, instruments, articles, suicide jackets; or

(d) use or design vehicles for terrorist acts; or

(e) provide or receive funding from any foreign or local source for the illegal activities under this sub-clause; or

(f) act to over-awe the state or any section of the public or sect or religious minority; or

(g) create terror or insecurity in Pakistan or attempt to commit any of the said acts within or outside Pakistan,

shall be punished under this Act; and

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- (iv) claiming or are known to belong to any terrorist group or organization misusing the name of religion or a sect and raise arms or wage war against Pakistan, commit an offence as specified in clauses (b), (c), (d), (h), (j), (l), (m), (n) or (o) of sub-section (2) of section 6 of the Anti-Terrorism Act, 1997 (XXVII of 1997):

Provided that-

- (a) any person who is alleged to have abetted, aided or conspired in the commission of any offence falling under sub-clause (iii) or sub-clause (iv) shall be tried under this Act wherever he may have committed that offence;
- (b) no person accused of an offence falling under sub-clause (iii) or sub-clause (iv) shall be prosecuted without the prior sanction of the Federal Government ;
- (c) any person arrested, taken into custody or detained under this Act, after transfer of his custody to the military unit he is attached with for trial, shall be produced before the standing military court specially empowered by the convening authority for this purpose or Commanding Officer as provided for in this Act;
- (d) the accused so attached will be provided grounds of arrest within twenty-four hours of arrest as provided for in this Act;
- (e) the accused shall have the right to engage a counsel of his choice at his trial as provided for in this Act. In case the accused is unable to engage a counsel due to any reason, the convening authority at its discretion, may provide a counsel, on request of the accused, at state expense;
- (f) provisions of the *Qanun-e-Shahadat*, 1984 (President's Order X of 1984) shall apply at the trial as provided for in this Act and clause (2) of Article 1 of the *Qanun-e-Shahadat*, 1984 (President's Order X of 1984);

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- (g) notwithstanding anything contained in this Act or any other law for the time being in force, any person arrested, detained or held in custody by the armed forces, civil armed forces or law enforcement agencies and kept under arrest, custody or detention before the coming into force of the Pakistan Army (Amendment) Act, 2017 (_____ of 2017) shall be deemed to have been arrested or detained pursuant to the provisions of this Act subject to the amendments made through the Pakistan Army (Amendment) Act, 2015 (Act II of 2015) and the Pakistan Army (Amendment) Act, 2015 (Act XIX of 2015), if the offence in respect of which such arrest or detention was made also constitutes an offence referred to in sub-clause (iii) or sub-clause (iv); and
- (h) no suit, prosecution or other legal proceedings shall lie against any person in respect of anything which is in good faith done or intended to be done under sub-clause (iii) or sub-clause (iv).

Explanation.— In this clause, the expression “sect” means a sect of religion and does not include any religious or political party regulated under the Political Parties Order, 2002.”; and

- (b) after sub-section (3), the following new sub-sections shall be added, namely:-

“(4) The Federal Government, shall have the power to transfer any proceedings in respect of any person who is accused of any offence falling under sub-clause (iii) or sub-clause (iv) of clause (d) of sub-section (1), pending in any court for trial under this Act.

(5) Any proceedings transferred under sub-section (4) shall be deemed to have been instituted under this Act.

(6) Where a case is transferred under sub-section (4), it shall not be necessary to recall any witness or again record any evidence that may have been recorded.”

3. Amendment of section 60, Act XXXIX of 1952.- In the said Act, in section 60, in clause (k), after the word "law", occurring at the end, the words "and any other law for the time being in force" shall be added.

4. Overriding effect.- (1) The provisions of this Act shall have effect notwithstanding anything contained in any other law for the time being in force.

(2) In case there is any conflict between the provisions of this Act and any other law for the time being in force, the provisions of this Act shall prevail to the extent of inconsistency.

STATEMENT OF OBJECTS AND REASONS

Keeping in view the extraordinary situation and circumstances constituting grave threat to the security and integrity of Pakistan from various terrorist groups, armed groups, wings and militia or their members, the Constitution (Twenty-first Amendment) Act, 2015 (I of 2015) was passed (with a sunset clause of two years) enabling trial of cases related to terrorism under the Pakistan Army Act, 1952 (XXXIX of 1952). Necessary amendments were also made in the Pakistan Army Act, 1952 (Act XXXIX of 1952) through the Pakistan Army (Amendment) Act, 2015 (II of 2015) and the Pakistan Army (Amendment) Act, 2015 (XIX of 2015). These measures have yielded positive results in combating terrorism. It is, therefore, proposed to continue these special measures for a further period of two years through this Bill.

The Bill seeks to achieve the aforesaid objective.

**MR. ZAHID HAMID,
Minister for Law and Justice
Minister-in-Charge**