

AS
[~~TO BE~~ INTRODUCED IN THE SENATE]

A

Bill

to provide for an extraordinary procedure to investigate and determine credible claims of factual innocence

Whereas right to life and liberty, right to freedom of movement and right to fair trial and due process are declared fundamental rights and equality before law and equal protection of law are guaranteed to every citizen;

And whereas conviction of a person who claims factual innocence may involve infringement of his rights;

And whereas, it is expedient to make provisions to deal with claims of innocence in certain cases of conviction and to remedy the possible miscarriage of justice and for ancillary matters;

It is hereby enacted as follows:-

1. Short title, extent and commencement.- (1) This Act may be called the Review of Innocence Claims Act, 2012.

(2) It extends to the whole of Pakistan.

(3) It shall come into on such date as the Federal Government may, by notification in the official Gazette, specify.

2. Definitions.- In this Act, unless there is anything repugnant in the subject or context:-

(a) 'Bench' means a Bench of the Judges of the Supreme Court of Pakistan constituted by the Chief Justice for purposes of this Act;

(b) 'Chief Justice' means Chief Justice of the Supreme Court of Pakistan and includes an acting Chief Justice of that Court;

(c) 'Chairperson' means Chairperson of the Commission;

(d) 'claim of factual innocence' means a claim on behalf of a living person convicted of death sentence or life imprisonment, asserting complete innocence of any criminal responsibility for the crime for which the person was convicted and for any other reduced level of criminal responsibility relating to the crime, and for which there is some credible, verifiable evidence of innocence that has not previously been presented at trial or considered at a hearing granted through post-conviction relief;

- (e) 'Commission' means Innocence Inquiry Commission of Pakistan constituted under this Act;
- (f) 'Director General' means Director General of the Commission appointed under this Act;
- (g) 'member' means a member of the Commission;
- (h) 'prescribed' means prescribed by rules made under this Act;
- (i) 'victim' means the victim of the crime, or if the victim of the crime is deceased, the next of kin of the victim; and
- (j) 'wrongful conviction' means a final order of conviction against which the convict person has a claim of factual innocence.

3. Act to override other laws.- This Act shall have effect notwithstanding anything contained in any other law for the time being in force.

4. The Commission.- (1) For the purposes of this Act, the Chief Justice, by notification in the official Gazette, shall constitute an independent Commission to be called 'Innocence Inquiry Commission of Pakistan'.

(2) The Commission shall perform its functions under the general supervision and control of the Supreme Court, and the administrative office of that Court shall provide necessary administrative support to the Commission.

(3) The Commission shall consist of a Chairperson who shall be a judge of the Supreme Court and the following members:-

- (a) three retired Judges of the Supreme Court or of a High Court;
- (b) two senior Advocates of the Supreme Court engaged in criminal practice;
- (c) one expert of criminal prosecution; and
- (d) Attorney General for Pakistan or his nominee not below the rank of an Additional Attorney General.

(4) The Chairperson and the members, other than the *ex-officio member*, shall be appointed by the Chief Justice and shall hold office for a term of three years.

(5) No one shall be appointed as the Chairperson or member of the Commission for more than two terms.

(6) The members of the Commission shall receive no salary for serving the Commission but they shall receive such subsistence and travel expenses as may be prescribed.

(7) The Chairperson and the members, other than *ex-officio member*, shall not be removed except in the manner prescribed for the removal of a Judge of the Supreme Court.

(8) The Chairperson or a member may at any time resign his office by submitting his resignation to the Chief Justice.

(9) A casual vacancy in the Commission shall be filled for the remaining period.

5. Powers and duties of the Commission.- (1) The Commission shall have the following powers and duties:

- (a) to establish the criteria and screening process to be used to determine which cases shall be accepted for review;
- (b) to conduct inquiries into claims of factual innocence, with priority to be given to those cases in which the convicted person is currently incarcerated solely for the crime for which he or she claims factual innocence;
- (c) to coordinate the investigation of cases accepted for review;
- (d) to maintain records for all case investigations;
- (e) to prepare written reports outlining the Commission's investigations and recommendations to the Supreme Court at the completion of each inquiry; and
- (f) to apply for and accept any funds that may become available for the Commission's work from government grants or any other source.

(2) For purposes of conducting an inquiry into a claim of factual innocence, the Commission shall have all the necessary powers of a criminal court of original jurisdiction under the Code of Criminal Procedure, 1898.

(3) The Commission may compel the testimony of any witness and if a witness asserts any privilege against self-incrimination in a proceeding under this Act, the Chairperson, in judicial capacity, may order the witness to testify or produce other information if the Chairperson first determines that the testimony of the witness is likely be material to reach a correct factual determination in the case under inquiry.

(4) Notwithstanding anything in sub-section (3), the Chairperson shall not order the witness to testify or produce other information that would incriminate the witness in the prosecution of any offense other than an offence for which the witness is granted immunity under sub-section (3).

(5) The order of immunity under sub-section (3) shall prevent a prosecutor from using the compelled testimony or evidence derived therefrom, to prosecute the witness for previous false statements made under oath by the witness in prior proceedings but the limited immunity granted under this section shall not prohibit prosecution of statements made under oath that are unrelated to the Commission's formal inquiry, false statements made under oath during proceedings under this Act, or prosecution for any other crimes.

(6) The immunity once granted under sub-section (3) shall apply throughout the proceedings conducted under this Act.

6. Procedure to be followed by the Commission.- (1) Except as otherwise provided under this Act, the Commission shall perform its functions in the manner prescribed.

(2) The Commission shall, in its discretion determine whether or not a formal inquiry regarding any claim of factual innocence is necessary and the Commission may summarily reject an application if it is satisfied that there are not sufficient reasons to proceed ahead with the formal inquiry.

(3) During the course of a formal inquiry by the Commission, the convicted person shall be deemed to be currently under trial for the charge for which the convicted person claims factual innocence.

(4) The proceedings before the Commission shall be in camera but the Commission may, at its sole discretion, conduct public hearings in accordance with the rules of procedure of the Commission.

(5) On completion of the formal inquiry, the record of the proceedings, including all relevant evidence, shall be considered by the Commission for appropriate decision.

(6) All decisions of the Commission shall be taken in terms of the majority of five members including the Chairperson but the decision to refer the matter to the Chief Justice for judicial review shall require unanimous decision.

(7) If, at any point during an inquiry, the convicted person refuses to comply with requests of the Commission or is otherwise deemed to be uncooperative by the Commission, the Commission shall discontinue the inquiry.

(8) The Director General, under orders of the Commission, shall:

(a) refer to the concerned authority the record of evidence of criminal acts, professional misconduct, or other wrongdoings disclosed through the formal inquiry or proceedings by the Commission for appropriate action under the law; and

(b) disclose to the convicted person and his counsel, if any, the record of evidence favorable to the convicted person disclosed through formal inquiry or Commission's proceedings.

(9) All proceedings and decisions of the Commission shall be duly recorded and transcribed as part of the record.

(10) Unless otherwise directed by the Commission and subject to sub-section (11), the proceedings and record of the Commission during the course of inquiry and all the record and the decision of the Commission that there is not sufficient evidence of factual innocence to merit judicial review shall remain confidential.

(11) The final report of the Commission that there is sufficient evidence of factual innocence to merit judicial review, including all files and materials considered by the Commission and a full transcript of the hearing before the Commission shall become public at the time of referral to the Chief Justice.

(12) Any challenge with regard to the authority of the Commission or its access to evidence shall be heard and decided by the Chairperson in judicial capacity.

(13) The Commission shall not consider a claim of factual innocence if the convicted person is deceased.

7. Conflict of Interest.- (1) Before proceeding with a case under this Act, the Chairperson and the members shall declare in the prescribed manner that they have no conflict of interest in the case and have never remained directly or indirectly involved at any stage of the case in any manner whatsoever.

(2) In case of any conflict of interest, the Chairperson or a member shall not participate in the proceedings of the case by the Commission and the remaining members shall constitute the Commission for that case.

(3) In case, the Chairperson recuses himself in a particular case, the Chief Justice shall nominate another Judge of the Supreme Court to act as Chairperson for that particular case.

8. Claim of factual innocence.- (1) A convict may submit an application in the prescribed manner to the Director General giving details and evidence on which his claim of factual innocence is based.

(2) No formal inquiry into a claim of innocence shall be made by the Commission unless the Director General or his nominee first obtains a signed agreement from the convicted person in which the convicted person waives his or her procedural safeguards and privileges, agrees to cooperate with the Commission, and agrees to provide full disclosure regarding all inquiry requirements of the Commission.

(3) Any waiver under sub-section (2) would not apply to matters unrelated to a convicted person's claim of factual innocence.

(4) The convicted person shall have the right to the advice of counsel prior to the execution of the agreement and, if a formal inquiry is granted, throughout the formal inquiry.

(5) If a counsel represents the convicted person, the said counsel shall be present at the time of signing of the agreement.

(6) If a counsel does not represent the convicted person, the Chairperson shall determine the convicted person's status and, if appropriate, make an order for the appointment of a counsel for the purpose of advising the convict on the agreement and formal inquiry.

9. Conditions.- The Commission shall not entertain an application or proceed with a case under this Act unless it fulfills the following conditions:-

- (a) the convict was sentenced to death or life imprisonment by a court of competent jurisdiction in Pakistan;

- (b) the conviction has attained finality and the convicted person has exhausted all the available judicial remedies against conviction;
- (c) the convict is alive and claims complete factual innocence for any criminal responsibility for the crime; and
- (d) the application contains complete details and is accompanied by relevant documents and credible and verifiable evidence which *prima facie* justifies the claim of factual innocence by the convicted person.

10. Director General.- (1) The Chief Justice shall appoint the Director General of the Commission, on contract, for a term not exceeding three years, on such terms and conditions as may be prescribed.

(2) The Director General shall be the administrative head of the Commission and shall assist the Commission in developing rules and standards for cases accepted for review, coordinate investigation of cases accepted for review, maintain records for all case investigations, prepare reports outlining Commission's investigations and recommendations and shall perform such other functions as are prescribed or as may be assigned to him by the Commission.

11. Notice to the victim.- (1) If a formal inquiry regarding a claim of factual innocence is granted, the Director General shall use all due diligence to notify the victim in the case at least thirty (30) days prior to any proceedings by the Commission held in regard to the victim's case, and explain the inquiry process to him.

(2) The Commission shall notify the victim that the victim is permitted to attend proceedings otherwise closed to the public, subject to any limitations imposed by this Act.

(3) If the victim plans to attend proceedings otherwise closed to the public, the victim shall notify the Commission at least ten (10) days in advance of the proceedings of his or her intent to attend.

(4) If the Commission determines that the victim's presence may interfere with the investigation, the Commission may close any portion of the proceedings to the victim.

(5) The Director General shall use all due diligence to notify immediately the victim of the Commission's conclusion in the case.

12. Service of processes.- While performing duties for the Commission, the Director General or his nominee may serve processes issued by the Commission throughout Pakistan in the same manner and with the same effect as an officer authorized under the law to serve processes of a criminal court.

13. Representation before the Commission.- (1) The Attorney General or his nominee or the Prosecutor General or his nominee shall represent the State before the Commission.

(2) The convict and the victim in the case may represent his case before the Commission either personally or through counsel.

14. Action in aid of the Commission.- All executive authorities throughout Pakistan shall act in aid of the Commission.

15. Judicial Review.- (1) If the Commission unanimously concludes there is sufficient evidence of factual innocence to merit judicial review, the Chairperson shall refer the case to the Chief Justice.

(2) The Chief Justice shall constitute a Bench of the Supreme Court consisting of not less than five Judges:

Provided that if the conviction was finally ordered by the Supreme Court, the Bench shall consist of the number of Judges not less than those who passed the order of conviction:

Provided further that no Judge who remained previously involved in the case in any capacity whatsoever shall be included in the Bench.

(3) The Chief Justice shall also require the State to file a response to the Commission's opinion within thirty (30) days of the date of the order.

(4) The Bench shall conduct an evidentiary hearing and the convicted person and the victim shall have right to be present at the evidentiary hearing and to be represented by the counsel.

(5) A waiver of the right to be present the hearing shall be in writing.

(6) After hearing the case, if the Bench is unanimously of the view that the convicted person has proved by clear and convincing evidence that the convicted person is innocent of the charges, the Bench may unanimously acquit him of the charges and, if in custody and is not required in any other case, may release him forthwith, otherwise, the proceedings shall be filed and no relief shall be granted to the convicted person.

16. Compensation to the convicted person.- While acquitting the convicted person under sub-section (6) of section 14, the Bench may order payment of such compensation to him as it deems appropriate in the light of the circumstances involving the case.

17. Compensation to the victim.- (1) If the convicted person is not acquitted of the charges under this Act, the Bench may direct the convicted person to pay to the victim such compensation as it may deem appropriate in the light of the circumstances involving the case.

(2) The compensation under this section, if not paid within the time fixed by the Bench, shall be recovered by the concerned Provincial Government as arrears of land revenue and shall be disbursed to the victim.

18. Finality of the decisions.- All decisions of the Commission and of the Bench shall be final and shall not be subject to further review in any manner whatsoever.

19. Saving.- A claim of factual innocence asserted through the Commission shall not adversely affect the right of the convicted person to any other post-conviction relief under the law.

20. Rules.- The Supreme Court of Pakistan may, by notification in the official Gazette, make rules for carrying out the purposes of this Act.

21. Regulations.- Subject to this Act and the rules, the Commission may frame regulations to regulate its procedure.

STATEMENT OF OBJECTS AND REASONS

This Bill aims at establishing an extraordinary procedure to investigate and determine credible claims of factual innocence by a person convicted of sentence to death or life imprisonment; to constitute an Inquiry Commission for the purpose; and, to empower the Supreme Court to review cases of such convictions for purposes of remedying the miscarriage of justice if any. Hence this Bill.

MRS. NASREEN JALIL
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Members-in-charge