

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

A
BILL

to provide for the Curative Review by the Supreme Court of Pakistan

WHEREAS it is expedient to give effect to the mandate of Article 188 of the Constitution of the Islamic Republic of Pakistan, 1973, which regulates the jurisdiction of the Honourable Supreme Court of Pakistan, by providing for a 'curative review jurisdiction' so as to remedy any miscarriage of justice in rarest and exceptional circumstances;

It is hereby enacted as follows:-

1. Short title, extent and commencement.- (1) This Act may be called the Supreme Court of Pakistan (Curative Jurisdiction) Act, 2012.

(2) It extends to the whole of Pakistan.

(3) It shall come into force at once and will be applicable to all orders, decrees or judgments passed/given by the Supreme Court during, before or after the advent of this Act.

2. Curative review jurisdiction of the Supreme Court.- (1) After exhausting the remedy of review available under the existing law or rules, any person aggrieved by any order, judgment or decree of the Supreme Court may make application for curative review, which shall only be entertained in exceptional circumstances so as to remedy any manifest miscarriage of justice.

(2) The curative review jurisdiction shall not be available to decide any academic question:

Provided that no limitation period shall be attached to curative review application.

(3) If the Supreme Court is satisfied that the pre-conditions of sub-section (1) are met, it can pass any order so as to remedy the miscarriage of justice.

STATEMENT OF OBJECTS AND REASONS

WHEREAS Article 188 of the Constitution of the Islamic Republic of Pakistan, 1973 clearly provides that the Supreme Court of Pakistan shall have the power to review any judgment pronounced or any order made by it;

WHEREAS the said Article 188 of the Constitution also provides that such power of review of the Supreme Court shall be subject to the provisions of any Act of the Majlis-e-Shoora (Parliament) and any rules made by the Supreme Court in this regard;

The Supreme Court Rules, 1956 were replaced by the Supreme Court Rules, 1980 and the said 1980 Rules have been notified through the SRO 1159(I)/80 dated 29-11-1980;

WHEREAS Order XXVI contained in Part IV of the Supreme Court Rules, 1980 regulate the jurisdiction of Review of the Honourable Supreme Court;

WHEREAS rule 1 of Order XXVI of the Supreme Court Rules, 1980 provides that the Supreme Court shall entertain a review application in respect of civil proceedings on grounds similar to those mentioned in Order XLVII rule 1 of the Civil Procedure Code, while in criminal proceedings the review application would be entertainable on the ground that the order sought to be reviewed suffers from errors apparent on the face of record;

WHEREAS rule 9 of Order XXVI of the Supreme Court Rules, 1980 only provides for the filing of one review application;

WHEREAS the Courts abroad have recognized the eventuality where a patent miscarriage of justice may have transpired. Hence the concept of "curative review jurisdiction" has been devised by the Courts abroad so as to provide for an opportunity of filing a curative review petition in rarest and exceptional circumstances so as to remedy any manifest miscarriage of justice;

WHEREAS the existing Supreme Court Rules, 1980 do not explicitly provide for the filing of a curative review petition in the Supreme Court of Pakistan and in fact permit the filing of only one review application;

WHEREAS the provision of Article 188 of the Constitution permits legislation through an Act of the Majlis-e-Shoora (Parliament) so as to regulate the review jurisdiction of the Supreme Court of Pakistan;

AND now it is imperative to legislate an Act of the Majlis-e-Shoora (Parliament) so as to explicitly equip the Honourable Supreme Court with the power of exercising a curative review jurisdiction in rarest and exceptional cases so as to remedy a manifest miscarriage of justice;

Hence the Mutahidda Qaumi Movement (MQM), which stands alongside the egalitarian expectation of the populace, is proposing the enclosed statute titled 'Curative Review (by the Supreme Court) Act 2012'.

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