

Cabinet approves 'fair trial' bill



ISLAMABAD, Sept 5: It may be called Fair Trial bill, but its draft, which the government plans to table in parliament will hardly be fair to all Pakistani citizens.

The bill which the government argues will allow investigation "by modern techniques and devices" will, if passed in its current shape, authorise the state to tap people's phone calls and intercept all other private communications in order to catch terrorists.

Emails, SMSs, phone calls and audio-visual recordings will be admissible evidence while suspects will be held for six months after a warrant issued by a sessions and district court judge in his chambers.

The federal cabinet on Wednesday passed the "Investigation for Fair Trial Bill, 2012", which will now be presented before parliament, during the ongoing session of two houses, for approval.

A simple reading of the draft, available with Dawn, clearly suggests that if passed in its current form, it will pose a serious threat to people's privacy.

But the government claims that "existing laws neither comprehensively provide for nor specifically regulate use of advanced and modern investigative techniques such as covert surveillance and human intelligence, property interference, wire tapping and communication interception that are used extensively in other countries, including the US, UK and India

which are an indispensable aid to the law enforcement and administration of justice.”

It further said that in order to neutralise and prevent the threat or any attempt to carry out scheduled offences, including offence of terrorism, it was necessary that law-enforcement and other agencies were given certain specific authorisation to obtain evidence in time and only in accordance with law to secure successful prosecution of offenders.

As per the draft which the cabinet approved will have extra-territorial application and will apply to Pakistanis wherever they may be and to people within Pakistan or on board a ship or an aircraft registered in Pakistan wherever it may be.

In the new law, a case will be registered on the basis of evidence and material collected or received pursuant to the warrant and evidence, including documents and other material collected or received, will be admissible as evidence in legal proceedings.

And the evidence which law-enforcement agencies will be able to collect prior to issuance of a formal warrant included “data, information or material in any documented form, whether written, electronic or through audio-visual device or any mode of modern devices or techniques obtained under the Act; documents, papers, pamphlets, booklets; and Emails, SMS, and any form of computer based or cell phone based communications.”

And if a judge refuses the request for issuance of warrant, that will not be for less than six months and extendable, the applicant can make a representation to the chief justice of the high court concerned which shall be heard in chambers either by the chief justice or any judge nominated by him.

Although provisions of the law cover all citizens, no warrants could be issued against members of parliament or provincial

assemblies until permitted by speaker of the legislature concerned or chairman of senate.

And to give the new law an overriding effect, other laws have been put under its purview included: Offences under the Pakistan Nuclear Regulatory Authority Ordinance, 2001 (III of 2001): Offences under the Official Secrets Act, 1923 (XIX of 1923): Offences under the Explosive Substances Act, 1908, (VI of 1908): Offences under the Prevention of Anti-National Activities Act, 1974 (VII of 1974): Offences under the Anti Terrorism Act, 1997 (XXVII of 1997): Offences under the Security of Pakistan Act, 1952 (XXXV of 1952): Offences under the Surrender Illicit Arm Act, 1991 (XXI of 1991): Offences under the Arms Act 1878: Prohibition of Private Armies Act 1974.

BLATANT VIOLATION: Talking to Dawn, Barrister Zafarullah Khan said the draft of the new law was a blatant violation of personal privacy and unprecedented in the modern history of legislation.

“Yes, throughout the world, countries do allow extensive surveillance of suspects, but that is done after due court orders, not as suggested in this law, prior to the issuance of a warrant.”

“If I understand it correctly, the new law will allow law-enforcement agencies to secretly intrude into anybody’s privacy, as they will deem fit,” Barrister Khan said.

The cabinet also approved the Anti-Terrorism (Amendment) Bill, 2012, that concerns terrorism financing. It provides for addressing shortcomings relating to terrorism financing provisions in the Anti-Terrorism Act, 1997.

In particular, the government said the bill would strengthen provisions relating to the offence of terror financing; covering all aspects of the offence in the light of international standards and provided for more effective

measures for law-enforcement agencies to investigate offences. The provisions on freezing, seizing and forfeiture of property involved in terror financing have been strengthened to ensure that the funding of the terrorism financing offence was detected and seized after due process of law, said an official handout issued after the cabinet meeting.