
Ordinance extends actions in aid of civil power to entire KP

Waseem Ahmad Shah | Updated 18 Sep 2019



The Khyber Pakhtunkhwa government has promulgated an ordinance extending certain powers of the armed forces, which were a entire province. — APP/File

PESHAWAR: The Khyber Pakhtunkhwa government has promulgated an ordinance extending certain powers of the armed forces, which were available in the erstwhile Fata and Pata while acting in aid of civil power, to the entire province.

The KP Actions (in aid of civil power) Ordinance, 2019, which was issued by the provincial governor on Aug 5, is almost a reproduction of two regulations promulgated by the president in 2011 for Fata and Pata through which legal cover was given to several detention centres set up during the military operations in different regions.

The ordinance assigns wide-ranging powers to the authorised officers and armed forces besides giving an internment authority to detain a suspect until the continuation of action in aid of civil power by the armed forces.

PHC hears petition against legislations made to protect laws in ex-Fata and Pata

The armed forces have also been empowered to occupy any property with the approval of the provincial government.

The ordinance came to light when a two-member Peshawar High Court bench was hearing a petition against two legislations made by the KP Assembly to protect the laws, which were enforced in the erstwhile Fata and Pata before their merger with KP, including one governing internment centres.

The petitioner, advocate Shabbir Hussain Gigyani, has requested the court to strike down the KP Continuation of Laws in the Erstwhile Pata Act, 2018, and KP Continuation of Laws in Erstwhile Fata Act, 2019, insisting the two laws violated the Constitution and the judgments of superior courts.

He has also requested the court to declare the internment centres established under the Action (in aid of civil power) Regulation 2011 for Fata and Pata as unconstitutional.

When the bench of Chief Justice Waqar Ahmad Seth and Justice Ahmad Ali began hearing into the petition, provincial advocate general Shumail Ahmad Butt said the government had promulgated the KP Actions (in aid of civil power) Ordinance, 2019, last month and that was applicable to the entire province.

He said after the promulgation of that ordinance, the petition had become infructuous and therefore, it should be dismissed.

The petitioner expressed surprise at the promulgation of the ordinance and said it was introduced in a clandestine manner and even that ordinance was unconstitutional.

He pointed out that in his petition, he had already requested the court to restrain the respondents, including the provincial government, from promulgating any legal instrument, which discriminated against the people of the erstwhile Fata and Pata.

The petitioner added that after enactment of the Constitution (Twenty-fifth) Amendment, 2018, the government could not discriminate against the residents of those areas.

He, however, said to counter his petition, the government had come up with the novel idea of extending powers of armed forces to the entire province.

The bench fixed Sept 24 for the next hearing into the case directing the advocate general to respond to the pleas of the petitioner.

The two regulations promulgated in 2011 had taken effect on Feb 1, 2008, providing legal framework to the military operations conducted in Fata and Pata.

Like the two regulations, contrary to the provisions of Qanun-i-Shahadat (Evidence Act), the present ordinance said a statement or deposition by any member of the armed forces, or any officer authorised on his behalf, shall be sufficient for convicting an accused.

Similarly, all evidence, information, material collected, received and prepared by the interning authority, or its officials, shall be admissible in evidence and shall be deemed sufficient to prove the facts in issue.

The Ordinance mentions a set of offences, which are punishable with death penalty or imprisonment for life or up to 10 years along with fine and forfeiture of property.

The ordinance defines the 'action in aid of civil power' as series of measures that involve the mobilisation of armed forces, in aid of civil power or their requisition by the federal government, including measures such as armed action, mobilisation, stationing etc till such time they are withdrawn by the written order of the government.

The 'defined area' means the area notified by the provincial government, in which action in aid of civil power is being conducted in order to secure the territory or ensure peace in any place where armed forces have been requisitioned.

The Ordinance authorises the provincial governments or any person authorised by it to act as interning authority having the powers to intern a person.

Under it, the interning authority is empowered to intern any person, even if he is not in the defined area, who may obstruct actions in aid of civil power in any manner whatsoever; or if not restrained or incapacitated through interment shall strengthen the miscreants ability to resist the armed forces or any law enforcement agency; or by any action or attempt may cause a threat to the solidarity, integrity or security of Pakistan; or has committed or likely to commit any offence under the regulation so that the said person shall not be able to commit or plan to commit any offence during the actions in aid of civil power.

The ordinance also provides for the setting up of oversight board comprising two civilians and two military officers to review cases of each person interned within a period of time not exceeding 120 days, from the issuance of the order of internment.

The misuse of force during actions in aid of civil power has been prohibited.

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