

**IN THE HIGH COURT OF SINDH AT KARACHI**  
**(Constitutional Jurisdiction)**  
**CP No. 3927 of 2017**

**FARIEHA AZIZ**

**PETITIONER NO. 1**

**ZOHRA YUSUF**

**PETITIONER NO. 2**

**AFIA SALAM**

**PETITIONER NO. 3**

**ZIAD ZAFAR**

**PETITIONER NO. 4**

**GHAZI SALAHUDDIN**

**PETITIONER NO. 5**

**NAZIM HAJI**

**PETITIONER NO. 6**

**UZMA NOORANI**

**PETITIONER NO. 7**

**MAHNAZ RAHMAN**

**PETITIONER NO. 8**

**JIBRAN NASIR**

**PETITIONER NO. 9**

**VERSUS**

**FEDERATION OF PAKISTAN**  
**through the Secretary,**  
**Ministry of Interior**  
Room No.409, 4<sup>th</sup> Floor, R Block  
Pak Secretariat  
Islamabad

**RESPONDENT No. 1**

**FEDERAL INVESTIGATION AGENCY**  
**Through its Director General**  
Having its office at  
25-A MT Khan Road  
Lalazar Society  
Karachi

**RESPONDENT No. 2**

## PETITION UNDER ARTICLE 199 OF THE CONSTITUTION

*Respectfully sheweth:*

The Petitioners above-named, being aggrieved by the Respondents' attempts to curb the fundamental right to free speech through, *inter alia*, unlawful detention and threats to and harassment of individuals:

### THE PARTIES

1. The Petitioners are public spirited and socially conscious individuals committed to raising awareness of social and political issues through their writing and advocacy. The Petitioner No. 1 is a journalist and digital rights activist. The Petitioner No. 2 is a council member and former Chairperson of the Human Rights Commission of Pakistan. The Petitioner No. 3 is an environmental journalist and social and human rights activist. The Petitioner No. 4 is a journalist and filmmaker. The Petitioner No. 5 is also a journalist and regular columnist. The Petitioner No. 6 is an entrepreneur, activist and former chief of the Citizen Police Liason Committee ("CPLC"). The Petitioner No. 7 is the co-chairperson of the Human Rights Commission of Pakistan and member of the Women's Action Forum. The Petitioner No. 8 is a writer and social activist presently associated with Aurat Foundation. The Petitioner No. 9 is a lawyer and activist.
2. The Respondent No. 1 is the federal ministry tasked with ensuring internal security. The Respondent No. 2 (also referred to herein as "FIA") is a law enforcement agency under the control and supervision of the Respondent No. 1. Under Section 3(2) of the Federal Investigation Agency Act ("FIA Act") the Respondent No.s 2 was constituted for "*inquiry into, and investigation of the offences specified in the Schedule, including an attempt or conspiracy to commit, and abetment of, any such offence.*" The FIA has also apparently been designated as the investigation agency under the Prevention of Electronic Crimes Act 2016 ['PECA'].

## FACTS

3. On or around 14 May 2017, the Minister of Interior, Mr. Chaudhry Nisar Ali Khan, ordered the FIA to initiate action against persons running “anti-military” campaigns on the Internet. According to the Minister, *“under constitutional guidelines on freedom of expression, unwarranted criticism of security forces and other institutions responsible for the defence of the realm is not allowed. No citizen can be involved in a campaign that tarnishes the reputation and respect of the armed forces... Disrespecting the Pakistan Army and its officials under the guise of freedom of expression will not be tolerated”*. The Minister claimed to have taken notice of online criticism against the armed forces following the announcement of the military’s media affairs wing of the withdrawal of a tweet published by the ISPR rejecting the inquiry report from the Prime Minister’s office regarding a news report published by Dawn in January 2017 on alleged differences between the civilian government and armed forces regarding counter-terrorism strategies. *A copy of the news report dated 15.5.2017 is annexed herewith as Annexure ‘A.’*
  
4. Since then, the FIA has detained dozens of people involved in what it calls “an organized campaign” against the country’s armed forces on social media. To the best of the Petitioner’s knowledge, no First Information Report (“**FIR**”) has been registered against most individuals detained in the crackdown nor has the FIA disclosed the identities of most of the persons detained. *Copies of news report in Dawn, The News and Samaa TV regarding action initiated by the Ministry of Interior and FIA are attached as Annexure ‘B-1’, to ‘B-4’.*
  
5. On 31 May 2017, the FIA arrested an activist, Adnan Afzal Qureshi, in Lahore and charged him under Sections 20 and 24 of PECA and Section 419 and Section 500 of the Pakistan Penal Code. The FIA claimed that the activist was arrested for “anti-military tweets” and “abusive language against military personnel and political leaders.” This arrest is an example and sign of how the Respondents intend to misuse PECA to quell freedom of speech. Section 20 of PECA pertains to *“Offense against dignity of a natural person”* while Section 24 of PECA

pertains to “*Cyber stalking.*” Even if it is assumed that the arrested activist published comments on Twitter and Facebook that were critical of the armed forces, he cannot conceivably be considered to have violated Sections 20 and 24 of PECA. Indeed, PECA does not prohibit criticism of the armed forces and therefore provides no basis for the arrest whatsoever. Furthermore, the alleged criticism of the armed forces cannot form the basis of charges under Section 419 (*Punishment for cheating by personation*) and Section 500 (*Defamation*) of the Pakistan Penal Code. Therefore the arrest and detention of Adnan Afzal Qureshi is entirely without any legal basis and simply serves to create a chilling effect on the exercise of free speech. *A copy of a news report regarding the arrest of Adnan Afzal Qureshi is attached as Annexure ‘C’.*

6. The FIA has also sent inquiry notices to a number of political and social activists. The inquiry notices direct the addressees to appear at the FIA Counter Terrorism wing police station by a specified time and date. However, the inquiry notices are entirely vague in nature and do not specify any alleged offence in respect of which the inquiry was initiated nor the name of the accused nor the nature of information being sought. Indeed, the said notices are clearly nothing more than a malafide attempt to create a chilling effect on the freedom of speech and to harass and intimidate people engaging in the exercise of free speech. This message is made even clearer as these notices are accompanied with phone calls from the FIA warning the addressees that the FIA is taking strict action under terrorism laws for criticism of the army. *A copy of an inquiry notice issued in this regard is attached as Annexure ‘D’.* The FIA has also seized laptops, phones and other electronic devices owned by the detained individuals without any lawful authority or court warrant in sheer violation of the law.
7. The Respondents have not disclosed the legal basis for the arrest, detention and inquiry of individuals following its crackdown on online dissent. Needless to say, criticism of the armed forces (even if unjustified or misguided) does not amount

to a criminal offence under any law and is even otherwise protected under Article 19 of the Constitution. That the cumulative effect of the Interior Minister's speech and the FIA's acts is that the citizens of Pakistan have been left in fear that the exercise of their right to free speech and to criticize any branch of the government (including the armed forces) shall expose them to the unlawful coercive acts of the State and thus the Respondents have successfully created an atmosphere where citizens are rendered unable to freely exercise their constitutionally guaranteed rights.

8. That the over-enthusiasm of the Respondents to curb ordinary citizen's exercise of free speech is even more troubling when juxtaposed against their complete inaction against actual terrorist groups and proscribed organizations freely engaging in recruitment activities against actual terrorist groups and proscribed organizations freely engaging in terrorist activities and propaganda on various social media. *A copy of a Dawn news report regarding presence of banned groups on social media is attached as Annexure E.*
9. That as public-spirited persons having a deep and abiding interest in issues relating to the freedom of speech and the upholding of democratic values, the Petitioners are aggrieved by the aforesaid statements and acts of the Respondents and, having no other equally efficacious remedy, have approached this Hon'ble Court for the enforcement of their own and the public's Fundamental Rights on the grounds mentioned hereinafter.

## **GROUND**

A) That the criticism of the armed forces (even if unwarranted) is not a criminal offence and the Respondents cannot take or threaten to use their policing powers and take coercive action against persons who may choose to exercise their right to make such criticism.

B) That the Respondents' actions unreasonably targeting and detaining individuals for purposes of investigating their online activity and seizing their electronic devices without even registration of an FIR or specification of grounds or obtaining a warrant in this regard is clearly in violation of the due process of law guaranteed under Article 4 and 10-A of the Constitution and the relevant provisions of the FIA Act and/or PECA read with the Criminal Procedure Code, 1898.

C) That the failure of the Respondents to produce such detainees within 24 hours before the competent court of law is violative, inter alia, of Article 13 of the Constitution.

D) That the issue of inquiry notices by FIA to all and sundry asking them to appear for inquiries without disclosing the allegations that are the subject of the inquiry is patently unlawful. The said notices are entirely vague in nature and do not specify any alleged offence in respect of which the inquiry was initiated nor the name of the accused nor the nature of information being sought and are legally defective for that reason alone. Indeed, the said notices are clearly nothing more than a malafide attempt to create a chilling effect on the freedom of speech and to harass and intimidate people engaging in the exercise of free speech. This message is made even clearer as these notices are accompanied with phone calls from the FIA warning the addressees that the FIA is taking strict action under terrorism laws for criticism of the army.

E) That Article 19 guarantees the freedom of expression to all citizens of Pakistan and it is well settled that the exceptions thereto are to be narrowly construed. Disrespect to or criticism of armed forces does not fall within any of the exceptions to Article 19. Indeed, in any democratic set-up, it is a citizen's right to criticize each and every branch of government and such right is essential in order to ensure good governance. It is, of course, not for any branch of government to itself determine which criticism is warranted and which is unwarranted.

F) That the Respondents have – through both their statements and their actions – created a chilling effect on the freedom of speech and deliberately hindered the public exercise of the rights guaranteed under Article 19 of the Constitution and are obstructing the right of citizens to even engage in constructive criticism of the government and/or armed forces.

#### **PRAYER**

In view of the foregoing, it is respectfully prayed that the Hon'ble Court may be pleased to:

(A) Declare that the criticism of the armed forces does not, by itself, amount to a criminal offence and cannot be subjected to any coercive action by the State;

(B) Declare that Article 19 of the Constitution protects the freedom of expression and the right to criticize any branch of government even if such criticism is unfounded or unwarranted and subject only to the specific exceptions mentioned in Article 19 itself;

(C) Restrain the Respondents from carrying on investigation or inquiry or taking or threatening any coercive action against any persons including arrest, detention or seizure of property merely on the basis of having criticized the armed forces;

(D) Direct the Respondents to provide a full list of all persons arrested in connection with the campaign against on-line criticism of the armed forces and the offences, if any, they have been charged with and the action, if any, taken against them;

(E) Pass any order that this Hon'ble Court may consider necessary or appropriate.

**PETITIONER NO.**

**PETITIONER NO.**

**PETITIONER NO.**

**PETITIONER NO.**

**PETITIONER NO.**

**PETITIONER NO.**

**PETITIONER NO.**

**PETITIONER NO.**

**PETITIONER NO.**

**ADVOCATE FOR THE PETITIONER**

**KARACHI**

**DATED:**