

**IN THE SUPREME COURT OF PAKISTAN**  
**(Original Jurisdiction)**

Constitutional Petition No. 23 /2007

Defence of Human Rights Organization through its Anchor Person  
Amina Masood Janjua, resident of 40-C/1, Nagi Road, Westridge,  
Rawalpindi.

..... **Petitioner**

Versus

1. Federation of Pakistan through Secretary, Ministry of Interior, Pak Secretariat, Islamabad.
2. Secretary, Ministry of Defence, Secretariat No.2, Rawalpindi.
3. Province of Punjab through its Chief Secretary, Punjab Civil Secretariat, Lahore.
4. Province of Sindh through its Chief Secretary, Sindh Civil Secretariat, Karachi.
5. Province of NWFP through its Chief Secretary, NWFP Civil Secretariat, Peshawar.
6. Province of Balochistan through its Chief Secretary, Balochistan Civil Secretariat, Quetta.

..... **Respondents**

**PETITION UNDER ARTICLE 184(3) OF THE**  
**CONSTITUTION OF ISLAMIC REPUBLIC OF**  
**PAKISTAN, 1973**

Respectfully sheweth:

### POINTS OF LAW

The Points of Law of general importance and public interest with regard to enforcement of fundamental rights guaranteed to the citizens of the Islamic Republic of Pakistan, for determination by this august Court are raised here-in-below :-

- i) Whether any Law Enforcing, Intelligence, Secret and Security Agencies are vested with any power to defeat and frustrate the fundamental rights guaranteed by the Constitution of the Islamic Republic of Pakistan?
- ii) Whether Secret Agencies have any authority under the law to raid the premises and arrest the person(s) without disclosing their whereabouts?
- iii) Whether it is not the inalienable right of every citizen to know about the grounds of his arrest and to consult legal practitioner of his choice as enshrined under Article 10 of the Constitution of Islamic Republic of Pakistan?

- iv) Whether Secret Agencies have any mandate of law to maintain safe houses for interrogation of persons abducted and kidnapped by them and use third degree method upon the detainees?
- v) Whether Intelligence and Secret Agencies are above Constitution and law of the land, not answerable to any judicial forum?
- vi) Whether any citizen of the Islamic Republic of Pakistan can be arrested, detained and subjected to inhuman treatment and torture without commission of any offence?
- vii) Whether any authority in Pakistan is empowered to arrest any person and hand-over its custody to any Agency of other country for the purposes of interrogation?
- viii) Whether any law enforcing, intelligence and secret agencies have any authority to hand-over the custody of any citizen and take reward by way of financial benefits from foreign country?

- ix) Whether Agencies operating have license to show disrespect to the law of the land and are immune from any penal action despite clamorous violation of the fundamental rights?

### **FACTS**

1. That ***Defence of Human Rights*** (DOHR) is a Society registered under the Societies Registration Act having its office at 40/C-1, Nagi Road, Westridge, Rawalpindi. DOHR has been striving for protection of human rights, legal aid to the needy litigants, promoting the rights of all human beings, irrespective of gender and religion. Unfortunately ever since 9/11 incident, the values, rule of law and respect of human rights changed alarmingly. The authorities in Pakistan under the influence of foreign powers started unprecedented drive whereby thousands of citizens of Pakistan were abducted/arrested, detained in safe houses, tortured, humiliated and handed over to the foreign countries by taking reward in financial shape. The most unfortunate aspect of the matter is that the families of the persons abducted or arrested were not informed about the allegations and charges against their

love ones, even the detained persons were not informed about the commission of offence and either kept in incommunicado detention or handed over to the USA for taking and keeping them in Guantonamo-be, the one of the most brutal centre on the earth where devices and digits used for the purposes of torture on mankind are un-imaginable.

2. That missing of the persons in such like manner was felt throughout the country and people from all walks of life raised their voice by lodging protests. The petitioner's organization has the privilege to provide assistance and help to families of the missing persons. The protest was lodged in a graceful way and peaceful manner but persons on the helm of affairs did not bother to disclose the whereabouts of the missing persons, ultimately this august Court came to the rescue and took suo moto notice. Now a number of Constitutional Petitions and Human Rights Petitions have been clubbed wherein same issues and questions have been raised. The petitioner's organization through its Anchor Person **is also** party to the said proceedings.

3. That since the executive functionaries have no respect for the law, moral values and feelings of the families of the missing persons, therefore, this drive is still continuing with full force. The number of missing persons increased considerably.
4. That the latest list of missing persons contains particulars of 64 persons till 24<sup>th</sup> of April 2007 (Annexure-'A'). The bare perusal of the list suggests that persons from different walks of life have been picked from different areas but till to-date their whereabouts have not been disclosed. Some of the persons mentioned in the list are missing for a considerable period and their families have no clue of their whereabouts.
5. That the petitioner through sustained efforts has raised the issue, which obviously is one of the most important. The different organizations operating internationally like Amnesty International etc. have also raised the issue with the authorities but unfortunately, all went in vain. The electronic and print media also highlighted the issue but persons loyal to foreign forces paid no attention towards the same.

6. That these circumstances constrained the petitioner to invoke the original jurisdiction of this august Court for the redressal of the grievance by way of filing the instant petition, which is of public importance with reference to the enforcement of fundamental rights, inter-alia, on the following among other

### G R O U N D S

- a) That organic law of the country i.e. the Constitution of the Islamic Republic of Pakistan guarantees fundamental rights under Part-II, Chapter-1 of the Constitution. The safeguard has been provided to arrest and detention as enshrined under Article 10 of the Constitution. Even the preventive laws like West Pakistan Maintenance of Public Order Ordinance 1960, Section 11-EEE of Anti Terrorism Act, 1997 and Security of Pakistan Act, 1952 provides a mechanism. There is no law whereby any person can be arrested or detained in violation of the guaranteed constitutional rights, what to talk of illegal confinement.

- b) That prevailing practice of the respondents has taken away the fundamental rights of the citizens and the Articles of the Constitution Nos. 4, 5, 9, 10, 11, 13, 14 and 15 have been violated. The Constitution of the country is enforced, therefore, any step taken besides the same tantamount to abrogate the Constitution by show of force which act of the persons responsible is not less than ***“high treason”***.
- c) That Intelligence and secret agencies of the country are being used to pick the citizens of Pakistan in order to achieve their nefarious designs. Number of innocent persons have been sold to USA while showing disrespect to the Constitution and law of the land. This fact is being substantiated from an admission made in the book ***“IN THE LINE OF FIRE”*** wherein names of about 30 persons are mentioned whose custody was handed over with consideration in dollars.



- d) That the law of the land, international law and United Nations' declaration provides protection from enforced disappearance. The independent forums operating throughout the world have shown their great concern over incommunicado detentions, enforced disappearance, using of third degree method by the security agencies on the detainees, disposing of the persons by the secret agencies, handing over of the persons to the agencies of other countries without due process of law and unprecedented torture inflicted upon the detainees.
- e) That recently *Eminent Jurists Panel* appointed by the International Commission of Jurists in conducting a global enquiry on the impact of terrorism, counter-terrorism measures on the rule of law, common human rights and humanitarian law, visited Pakistan and released its report through Press Release dated 07.03.2007. The observations of the ICJ are being reproduced here-in-below for the gracious perusal of this august court. Press Release is annexed as Annexure-B:-

*“The panel members affirm the fundamental importance of ensuring that responses to terrorism be conducted in accordance with the requirements of the rule of law, international human rights and humanitarian law.*

*Practices such as enforced disappearances, torture and impunity for such conduct, are clearly outside any legitimate legal framework. They create an environment of fear and intimidation within communities. They are calculated to provoke lawlessness rather than to contain it. The panel members consider it essential that the allegations concerning such practices are investigated thoroughly and that those responsible are held accountable. They welcome the investigation being undertaken by the Supreme Court.*

*Effective action against radicalisation and militancy depends upon the opening up of democratic space and the full enjoyment of fundamental rights and freedoms. The closing of legitimate political space may aggravate the risk of radicalisation and leave society more vulnerable to threats of terrorism.*

*Despite the concerns heard during the hearing, the panel members are confident that Pakistani society has the ability to overcome the challenges faced by terrorism and counter-*

*terrorism. They recognize the commitment of civil society and the media in upholding principles of the rule of law and human rights. They also note that the judiciary has set certain limits to excessive counterterrorism laws and policies in the past years.*

*The panel members welcome the affirmation received by the authorities of the importance of combating the threat of terrorism within the law and with due respect to international human rights and international humanitarian law, and their commitment to do so. They welcome the process whereby the country is now considering becoming a party to key human rights treaties, particularly the Covenant on Civil and Political Rights and the Convention Against Torture, urge expeditious accession to these treaties and underline the need for effective implementation. The panel members raised with the authorities the Convention on Enforced Disappearances, which was adopted on December 20, 2006. Given the wide perception that exists that enforced disappearances are a feature of practices adopted by the security forces, it would serve an important symbolic and practical purpose, for Pakistan to accede to this Convention.*

*Finally, the Panel wishes to express their sympathy and support to those members of the public, directly affected by acts of terrorism or by counter-terrorism operations. They are confident that they will not suffer any adverse implications as a result of their participation at the hearings”.*

- f) That it is also an inalienable right of the families of the missing persons to know about their whereabouts in order to provide them all kind of assistance if booked in any case or detained under any preventive law. It appears that for the Intelligence and secret agencies, the dictates of the high ups is **"Order"** and they have to obey it, whether legal or illegal. This august Court has always shown jealousy towards the infringement of fundamental rights and took very serious note of it. It has been held time and again that nobody is above law whosoever he may be but persons on the helm of affairs from executive side have always shown disgrace, disrespect and disobedience to the orders/judgments on the issue.

- g) That the acts of the respondents to arrest, detain, dispose of and use of third degree methods against the persons in their illegal custody and confinement is unwarranted, unprecedented, unlawful, besides the law of the land, against the Constitution, principle of natural justice, immoral, inhuman, against the dictums of the superior courts of the country and in violation of all the laws of civilized societies.
- h) That the respondents are under obligation to disclose the whereabouts of the missing persons mentioned in Annexure 'A', release them forthwith and proceed against the persons responsible and by providing compensation to the aggrieved persons. The entire nation is under fear and alarm due to this drive against the citizens of the country by the secret agencies. It appears that the State is being run by the secret agencies, although under the law and Constitution, such agencies neither come within the definition of the State nor have any recognition under the law.

- i) That if the agonizing, stinking and torment actions of the secret agencies/respondents are not checked, the life and liberty of every citizen at the hands of agencies shall go to sixes.
- j) That in these peculiar circumstances, the petitioner is left with no other adequate and efficacious remedy except to invoke the original constitutional jurisdiction of this august Court.
- k) That the petitioner beseeches this august Court for indulgence in the matter through instant petition.


### P R A Y E R

It is, therefore, respectfully prayed that the respondent Nos. 1 & 2 may very graciously be called upon to furnish the whereabouts of the missing persons (Annexure 'A'). The respondents may also be directed to produce all the missing persons before this august Court, to set them at liberty.

It is further prayed that all the persons who are involved/ responsible for the abduction, detention, torture and illegal confinement of the missing persons as mentioned in Annexure 'A' may be booked in the criminal cases and families of the missing persons may also be awarded special compensation.

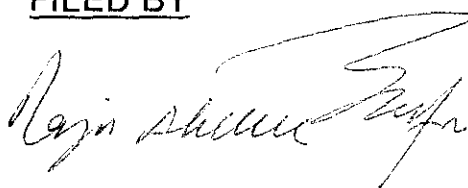
Any other relief which this august Court deems appropriate, just and lawful may also be granted.

DRAWN BY PETITIONER



(SHAUKAT AZIZ SIDDIQUI)  
Advocate,  
Supreme Court of Pakistan,  
Rawalpindi.

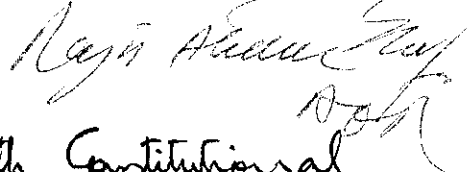
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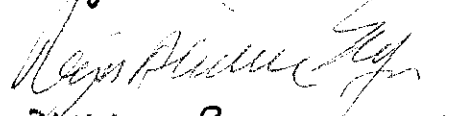
(RAJA ABDUL GHAFOOR)  
Advocate-on-Record,  
Supreme Court of Pakistan,  
Islamabad.

Dated: 25<sup>th</sup> April, 2007

*Certified that this is  
first Const. Petition in this  
Court.*



Note: Please put up with Constitutional  
Petition NO. 5/07 and other matter  
of same nature fixed for 27.4.07.



RAJA ABDUL GHAFOOR  
Advocate-on-Record,  
Supreme Court of Pakistan,  
Islamabad.