

**IN THE HON'BLE ISLAMABAD HIGH COURT, ISLAMABAD**

*(Constitutional Jurisdiction)*

Writ Petition No. \_\_\_\_\_/2020

*Muhammad Ashfaq Jutt vs. Federation of Pakistan etc.*

**PETITION UNDER ARTICLE 199 OF THE CONSTITUTION OF THE ISLAMIC  
REPUBLIC OF PAKISTAN, 1973**

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**PETITIONER Through COUNSELS:**

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**IN THE HON'BLE ISLAMABAD HIGH COURT, ISLAMABAD**

*(Constitutional Jurisdiction)*

Writ Petition No. \_\_\_\_\_/2020

**Muhammad Ashfaq Jutt**, S/o Nazir Ahmed, CNIC 35202-9048393-1,  
resident of House No 6, Street No. 1, Mohalla Bridge Colony, Ittefaq Road,  
Kot Lakhpat, Lahore

**...PETITIONER**

**versus**

**1. Federation of Pakistan**

Through Secretary, Cabinet Division, Pakistan Secretariat, Islamabad.

**2. Ministry of Information Technology and Telecommunication, Pakistan,**

Through its Secretary, 7th Floor, Kohsar Block, Pak Secretariat, Islamabad.

**3. Pakistan Telecommunication Authority (PTA)**

Through its Chairman, PTA Headquarters, Sector F- 5/1, Islamabad.

**...RESPONDENTS**

**PETITION UNDER ARTICLE 199 OF THE CONSTITUTION OF  
THE ISLAMIC REPUBLIC OF PAKISTAN, 1973**

**Respectfully submitted:**

1. The names and addresses of the parties, as mentioned in the caption of the titled petition, are correct and sufficient for the proper service of summons, notices and other processes, which may from time to time, be issued by this Honorable Court.

### **Subject-Matter of the Writ Petition:**

2. That through the Instant Petition the Petitioner, impugns the unconstitutional, arbitrary action taken by Respondent No. 3 whereby they imposed a temporary ban on a phone based video-sharing social networking application, namely **TikTok**, (hereinafter, the “**Application**”) as being *ultra vires* the *Prevention of Electronic Crimes Act, 2016* (“**PECA 2016**” or “**Act of 2016**”), the *Pakistan Telecommunication (Re-organization) Act, 1996* (“**PT Act of 1996**”), (PT Act of 1996 and PECA 2016 are collectively *hereinafter referred to as the “Parent Acts”*), the fundamental rights of the citizens secured in the Constitution of Pakistan, 1973 and the doctrine of Legitimate Expectation under the Law.

### **Factual Background:**

3. That the Petitioner is a citizen of Pakistan and a celebrated athlete. Furthermore, he has promoted sports for the benefit of citizens of Pakistan. He has also served as Senior Vice President Pakistan Kickboxing Federation. He as an Athlete has made the Country proud both Internationally and Nationally. He won the World Champion of Kickboxing in 2016 while representing Pakistan. Furthermore, he has won, five times, the title of Mixed Martial Arts Champion. He has been

twelve times the National Champion of the Wushu Kung-Fu. He has been running Private Martial Arts Training Club where he trains and instruct the citizens, particularly the youth and preach the benefits of engaging in the physical sports and self defence, especially Kickboxing. H trains the Young enthusiast of Kickboxing. He has been associated with Mixed Martial Arts for more than 26 Years. The Petitioner has also earned his livelihood by offering his Services as an Athlete and as a Trainer. He has successfully trained several Athletes who have become prominent and successful through his method. Through his insightful and Comprehensive Instructions, he instills them with Discipline and passion of hard work. The Petitioner has given more than two and half decades and contributed positively in the development and promotion of Mixed Martial Arts. He has done it through first by becoming a celebrated Athlete. Now he has been putting effort to teach the Young who are enthusiastic about it.

4. That the Petitioner has been using *Application* for the past one year and has followers throughout the World. His TikTok is *Ashfaqjutt52222* under the username of Ashfaq Jutt. He has been using the platform of TikTok, to upload instructive videos, raise awareness among the citizens of Pakistan, especially youth, about the benefits of engaging in physical sports, especially kickboxing. He has been using TikTok to advertise his club and his Services.

5. That the Petitioner acquired knowledge through the Press Release (**'Impugned Action'**) issued by Pakistan Telecom Authority, PTA (**'PTA'** or **'the Authority'**) dated **9<sup>th</sup> Oct 2002** whereby, it banned the aforesaid Application on account of receiving the Complaints against Immoral/Indecent Comments.

*The Copy of the (Impugned Action) Press release ) dated 9<sup>th</sup> Oct 2002 is appended as **Annexure-A**.*

6. Being vigilant about his rights, the Petitioner immediately wrote a Letter to the Respondent No. 3 expressing his grave and immediate concerns affecting his Constitutionally guarantees

*The Letter dated 09-10-2020 to PTA has been attached as **Annexure- B**.*

7. That the Petitioner is deeply Concerned about the chilling effect that such an arbitrary ban will have on his ability to earn livelihood, online speech and his fundamental Rights and freedoms secured by the Constitution of Pakistan, 1973.

8. That Application is the medium of expressions as well a platform for access which has helped him and numerous other people by providing an alternate and unique stage through which they express their skill, creativity and expression.

9. That according to Bloomberg, there are hundreds of thousands of users of this Application in Pakistan, the Application has been installed 43 million times in the Country, including 14.7 million

installs this year alone, according to data from research firm Sensor Tower.

News source available at:

<https://www.bloomberg.com/news/articles/2020-10-09/tiktok-banned-in-pakistan-after-racking-up-43-million-downloads#:~:text=TikTok%2C%20which%20is%20owned%20by,data%20from%20research%20firm%20SensorTower.>

10. That according to the terms and conditions of this application, any content which promotes nudity, intimidation, harassment, impersonation, defamation and racism is explicitly prohibited. Any material which contains any threat or constitutes a criminal offence is banned from the application. Any content against the law of Pakistan should be regulated through penalty and punishment, rather than a complete ban on the application. It is unjust to put the blame of any violations, if any, on the entire social media application.
11. That the policy to outright block rather than developing innovative and moderated solutions to meet the need of fast pace world & the eye-shutting attitude reflective from the dealings of the Respondent No. 3 have already made the state of Pakistan suffer Economically. It is pertinent to raise awareness and nudge the Authorities of Pakistan to develop technology friendly solutions for progression of Technology.
12. That despite numerous directions of this honourable Court, particularly in *Awami Workers Party (AWP) v. Pakistan Telecom Authority* (W.P No. 634/2020) through Order dated 12-09-2019, the Respondents have failed to frame and prescribe rules for the purposes

*described under section 37(2) of the PECA 2016.* In the absence of such rules, PTA has been exercising its authority illegally without the directions of the Respondent No. 1/ Federal Government as envisioned under section 37(3) of the PECA 2016.

13. That the Federal Government and the Federal Cabinet as required by *Messrs Mustafa Impex, Karachi and others v. The Government of Pakistan through Secretary Finance, Islamabad and others* (PLD 2016 Supreme Court 808) (hereinafter, “**Mustafa Impex**”) has not given any directions to PTA for blocking the Application.

14. That in the circumstances of the case, the Petitioner has no other adequate, efficacious, alternate, and expeditious remedy except to invoke the extraordinary Constitutional Jurisdiction of this Hon’ble Court on the following

**GROUND:**

A. That the Respondent No. 3’s action of arbitrarily banning the Application through a Press Release dated 09.10.2020 is in violation of the mandatory requirement to communicate a formal and speaking order while exercising its power under the Section 37(1) of the Act of 2016, reproduced here:

“The Authority shall have the power to remove or block or issue directions for removal or blocking of access to an information through any information system if it considers it necessary in the interest of the glory of Islam or the integrity, security or defence of Pakistan or any part thereof, public order, decency or morality, or in relation to contempt of court or commission of or incitement to an offence under this Act.”

While interpreting *Section 37 of the PECA*, the hon’ble Islamabad High Court in *M/s Proxima Beta Pte. Ltd. v. Federation of*

*Pakistan* (W.P. No. 1788 of 2020) (hereinafter, '**PUB-G Judgment**'), held that:

*“The Section 37 of the PECA envisaged a **formal Order**. The propriety demanded that after taking the decision, PTA should have passed a formal order spelling out the decision taken by it.”*

However, the Impugned action fails to satisfy this mandatory requirement guaranteed by the statute as well as the Constitution of Pakistan, 1973.

*The aforementioned Judgement dtd. 24-07-2020 is appended as Annexure-C.*

- B.** That the Impugned actions is a **non-speaking order**, thereby, violative of the **Section 24-A of the General Clauses Act, 1897**. The press release is based on untested and absurd allegation. The Respondent No. 3 only stated that it has done the same on receipt of some Complaints.
- C.** That there is **no Concept of Temporary Suspension** under the Section 37 (1) of the Act of 2016, as affirmed by this honourable Court in **PUB-G Judgment**', therefore such a ban is against the law.
- D.** That it has been reiterated numerous times to the Respondent No. 3 through several directions passed by the Honorable High Courts in various cases to frame rules under Section 37(2) of the Act for



exercising powers under section **37(1) of the PECA** as. Section 37(2) is reproduced hereunder:

*“The Authority shall, with the approval of the Federal Government, prescribe rules providing for, among other matters, safeguards, transparent process and effective oversight mechanism for exercise of powers under sub-section (1)”*

In this regard, the Islamabad High Court, learned Chief Justice writing for its stated, has held in *Awami Workers Party (AWP) v. Pakistan Telecom Authority* (W.P No. 634/2020), Order dated **12-09-2019**:

*“That the legislature in its wisdom by using the expression “shall” has manifested his intention that it is mandatory for the Authority to prescribe rules for the purposes described under section 37(2) of the Act.”*

(Emphasis provided)

*The Copy of the Order has been attached as **Annexure-D**.*

**E.** That the ban is in violation of section 37(3) of the PECA 2016 as the PTA has exercised authority without the directions of the Respondent No. 1/ Federal Government, as interpreted in the *Mustafa Impex* case. The Federal Government, which means the Federal Cabinet, has not given any directions to PTA for blocking the Application.

The aforementioned Provision is reproduced below:

*“Until such rules are prescribed under sub-section (2), the Authority shall exercise its powers under this Act or any other law for the time being in force in accordance with the directions issued by the Federal Government not inconsistent with the provision of this Act.”*

**F.** That the **Impugned Action** of the Respondent no. 3 is violative of the **Principles of Natural Justice**. The Principles of Natural Justice are to be read in every statute even if they are not mentioned, especially, where the someone is likely to be affected by the actions under the same. Therefore, the Impugned action of the Respondent no. 3 is in contravention to the **Article 10-A of the Constitution of Pakistan, 1973**.

**G.** That the **Article 10-A of the Constitution of Pakistan, 1973**, makes it mandatory to observe the **requirements of due process** before passing an Order or making any Directions, whereby persons could be adversely affected. Thereby, the impugned action is violative of Fundamental Right to due process.

**H.** That the Impugned Action has violated and infringed upon the **Legitimate Expectation** under Law of the Petitioner and numerous other Users of the Application who are dependent on the services provided by it to earn their livelihood.

**I.** That the Impugned Action of the Respondent No. 3 infringes upon the **Freedom of Expressions and Free Speech** by arbitrary blocking the entire medium/platform on which the Petitioner exercised his right to speech, thereby violative of **Article 19** of the Constitution of Pakistan.

**J.** That the Impugned action without reasonable action and failure to abide by the procedure prescribed as per section 37(1) and abiding by mandatory obligation to frame rules to provide guidelines to demarcate the condition precedents before exercising its coercive or punitive powers under Section 37(1) of the Act, the Respondent No. 3 is restricting information of public Importance. Thereby, the press release is violative of **Article 19-A of the Constitution of Pakistan, 1973.**

**K.** That the arbitrary ban without a reasonable order of the Respondent No. 3 infringes upon the Petitioner's Right to Life & Freedom of Freedom of trade, business and profession as guaranteed by Article 9 and 18 of the Constitution of Pakistan. The Petitioner is seriously aggrieved by Respondent No. 3 arbitrary action which restricts his access to his audience and valued customers. through the Application Platform.

**L.** That by mandating the prescription of rules through section 37(2) of the Act to pursue powers under section 37(1) of the Act, the Legislature intended to restrict and narrow the scope of the powers conferred to Respondent No. 3 under section 37(1) of the Act. this indicates the legislature's intention to **balance** the two or more State objectives. When there is confrontation of two or more policy

objectives, the Authorities or public functionaries in their working has to strike a balance between two or more objectives. A balance which has not been struck in the present case. The blanket blocking and ban is arbitrary exercise of discretion, therefore is violative of the Fundamental Rights and constitutional objectives.

**M.** That the Impugned Action fails to satisfy the test of *Proportionality stricto sensu*. While performing functions under the law, the adequate congruence between the benefits and harm it may cause to the constitutional rights is to be examined pursuant to an action. Thereby, the Respondent No. 3 while performing its functions under the sub-constitutional legislation had to advance the *democratic values* purported by the Liberties afforded by the Constitution. The Impugned action fails to advance the *proper purpose* of the fundamental Rights guaranteed under Constitution of Pakistan, 1973 and Section 37(1) of the Act of 2016 due to its arbitrariness and unreasonableness.

**N.** Assuming *Arguendo*, if Respondent no. 3 insists that they have taken the Impugned Action under the **PT Act 1996, the Impugned action is violative of the section 6(d) of the aforesaid Act.** Under Section 6(d) of *Pakistan Telecommunication (Re-organization) Act, 1996*, notice has to be given to the person likely to be affected for an opportunity to be heard. The aforesaid provision states as:

*“In exercising its functions and powers under this Act, the Authority shall ensure that—*

*(d) the persons affected by its decisions or determinations are given a due notice thereof and provided with an opportunity of being heard.”*

Under section 6(d) of the PT Act 1996, the Respondent No. 3 had to afford an Opportunity to be heard by giving *due notice* to the party affected by its decision or determination. The Petitioner being the User of the Application is directly affected by the Impugned Action.

**O.** That the Petitioner seeks the indulgence of this Honourable Court to raise further grounds at the time of the hearing of this Petition.

### **PRAYER:**

- i.** Direct the Respondent No. 3 to immediately remove the ban on TikTok Application;
- ii.** Direct the Respondents, particularly Respondent No. 3, to frame necessary rules for regulation of its power under subsection (1) of Section 37 of PECA 2016, as is required under the sub-section 2 of Section 37;
- iii.** Direct the Respondent No. 3 provide reasoned and speaking orders with regards to its decisions and directions while exercising powers under Section 37, and to develop a framework a for filing, hearing and decision of review applications under sub-section 4 of Section 37 of PECA 2016;

- iv. Direct to the Respondent No.3 to ensure protection of the fundamental rights of the Citizen during exercise of its power under section 37 of the Act, including a direction to the Respondent No. 3 to provide the concerned parties an opportunity of hearing before removing and blocking their online content, and to develop convenient mechanism for this purpose; and
- v. Grant such other relief as may be deemed just and proper in the circumstances of case.

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**PETITIONER** Through  
**COUNSELS:**

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**Address:** *The Law and Policy Chambers, 1<sup>st</sup> Floor, Al Shafi Residency, Zafar Ali Road, , Gulberg, Lahore.*

**Certificate:** As per instruction of the petitioner, it is certified that this is the first Petition filed by the Petitioner on the subject matter.

**IN THE HON'BLE ISLAMABAD HIGH COURT, ISLAMABAD**

**PETITION UNDER ARTICLE 199 OF THE CONSTITUTION OF THE ISLAMIC REPUBLIC  
OF PAKISTAN, 1973**

*Muhammad Ashfaq Jutt vs. Federation of Pakistan etc.*

**Affidavit** of **Muhammad Ashfaq Jutt**, S/o Nazir Ahmed, CNIC 35202-9048393-1, resident of House no 6, Street No. 1, Mohalla Bridge Colony, Ittefaq Road, Kot Lakhpat, Lahore

I, the above-named deponent does hereby solemnly affirm and declare as under:

1. That the deponent has filed the accompanied writ petition today.
2. That the contents of the titled writ petition are true and correct to the best of my knowledge and belief and nothing has been concealed or suppressed.

**Deponent**

**Verification:** Verified on oath at Islamabad, this \_\_\_\_\_ day of October, 2020 that the contents of the above affidavit are true and correct to the best of my knowledge and belief.

**Deponent**

**IN THE HON'BLE ISLAMABAD HIGH COURT, ISLAMABAD**

C.M. NO. \_\_\_\_\_/2020

IN

Writ Petition No. \_\_\_\_\_/2020

In re:

*Muhammad Ashfaq Jutt vs. Federation of Pakistan etc.*

**APPLICATION UNDER SECTION 151 OF THE CODE OF CIVIL  
PROCEDURE, 1908, FOR DISPENSATION OF CERTIFIED COPIES.**

1. That the titled petition is pending adjudication before this Honourable Court in which no date of hearing has been fixed so far.
2. That the Applicant has annexed uncertified copies of Annexures due to the urgency in the matter.
3. That the Annexures attached in support of the titled petition are necessary to be filed for the determination of the matter of the writ petition.
4. That it is interest of justice, equity and fair play that filing of the certified copies of the said annexes may kindly be dispensed with.



**PRAAYER:**

In view of foregoing, it is respectfully prayed that filing of certified copy of Annexures may kindly be dispensed with.

Any other relief which this learned forum deems fit and proper may also kindly be granted in the interests of justice.

Applicant Through

**COUNSELS:**

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**IN THE HON'BLE ISLAMABAD HIGH COURT, ISLAMABAD**

C.M. NO. \_\_\_\_\_/2020

IN

Writ Petition No. \_\_\_\_\_/2020

In re:

**Muhammad Ashfaq Jutt vs. Federation of Pakistan etc.**

**APPLICATION UNDER SECTION 151 OF THE CODE OF CIVIL PROCEDURE, 1908, FOR DISPENSATION OF CERTIFIED COPIES.**

**Affidavit of Muhammad Ashfaq Jutt, S/o Nazir Ahmed, CNIC 35202-9048393-1, resident of House no 6, Street No. 1, Mohalla Bridge Colony, Ittefaq Road, Kot Lakhpat, Lahore**

I, above named deponent, do hereby solemnly declare and affirm that the contents of the accompanying application for dispensation of certified copies are true and correct to the best of my knowledge and belief.

**Deponent**

**Verification:**

Verified on oath at Islamabad this \_\_\_\_\_ of October, 2020 that the contents of the above Affidavit are true and correct to the best of my knowledge and belief.

Nothing stated herein is incorrect nor has anything material been kept concealed.

**Deponent**

**IN THE HON'BLE ISLAMABAD HIGH COURT, ISLAMABAD**

C.M. NO. \_\_\_\_\_/2020

IN

Writ Petition No. \_\_\_\_\_/2020

In re:

**Muhammad Ashfaq Jutt vs. Federation of Pakistan etc.**

**APPLICATION UNDER ORDER XXXIX RULES 1 AND 2, AND  
SECTION 151 OF THE CODE OF CIVIL PROCEDURE, 1908,  
AND ALL ENABLING PROVISIONS OF LAW FOR GRANT OF  
INTERIM RELIEF.**

**Respectfully Sheweth,**

1. That the Applicant has filed the accompanying petition before this Hon'ble Court, the contents whereof may kindly be read as an integral part of this application.

2. That the Applicant is a citizen of Pakistan and Senior Vice-President of *Pakistan Kickboxing Federation*. The petitioner runs his private martial arts training club, profoundly committed to promoting the sports industry of Pakistan. Since last one year he has been a regular user of TikTok, having TikTok handle Ashfaqjutt52222 and user name Ashfaq Jutt. He uses the platform of TikTok, by uploading instructive videos, to raise awareness among the citizens of Pakistan, especially youth, about the benefits of engaging in physical sports, especially kickboxing. His TikTok handle also helps him advertise his club and the services he provides. As a regular user of TikTok, he is also deeply concerned about the chilling effect that such a ban could have on his ability to earn livelihood, his online speech, and fundamental rights and freedoms secured by the Constitution of Pakistan, 1973 (“**the Constitution**”).
3. That the Applicant has a **GOOD PRIMA FACIE CASE**.
4. That the **BALANCE OF CONVENIENCE** lies with restraining the Respondents from implementing the Unconstitutional Actions against the Citizens of Pakistan.
5. That implementation of the unlawful temporary ban on the Application would be against the Constitutional liberties of the Citizens of Pakistan. The restriction of Constitutional and economic liberties Freedom and liberties could have fatal consequences and **IRREPARABLE LOSS** to the Applicant and the whole nation.

**PRAYER:**

In view of the facts and law stated above, it is prayed that this Honorable Court may graciously by way of interim relief during the pendency of the present Petition restrain the Respondents from Implementing the Unlawful impugned action communicated on 09.10.2020 *via* Press Release and restrain

them from banning the Application, namely, TikTok; and grant such further relief as the Court may deem fit under the facts and circumstances of this case.

**Applicant Through**

**COUNSELS:**

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