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# Committee on the Human Rights of Parliamentarians

## PAK-26 – Muhammad Azam Khan Swati

**Report by Ms. Samaau Ahmed Najeeb, Commissioner, Human Rights Commission of the Maldives on the visit to Islamabad, Pakistan from 23<sup>rd</sup> - 25<sup>th</sup> July 2023, to observe the trial of Mr. Muhammad Azam Khan Swati which was scheduled to be held on 24<sup>th</sup> July 2023, at the FIA Court, Islamabad**

### 1. Introduction

1. Upon the request of Inter-Parliamentary Union (IPU), I travelled to Islamabad, Pakistan, from the 23<sup>rd</sup> – 25<sup>th</sup> July 2023 to observe the trial of Mr. Muhammad Azam Khan Swati, which was scheduled to be held on 24<sup>th</sup> July 2023.

2. However, upon arriving at the hearing, I was informed by the Registrar of the FIA Court that there has been a miscommunication and that the hearing was scheduled for 27<sup>th</sup> July 2023. Counsel of Mr. Swati was as surprised as I was that the hearing did not take place as expected. I was not able to observe the hearing as planned.

3. According to the information shared by the Counsel of Mr. Swati, no proceeding was conducted on 27<sup>th</sup> July 2023 and the next hearing was scheduled for 26<sup>th</sup> September 2023.

4. As I was not able to observe the trial, I was not able to form an opinion of the nature of the trial and was not able to observe whether legal principles and practice in Pakistan were adhered to.

5. To gather information for this report, I met with the Counsel of Mr. Swati, the Prosecutor assigned for the case and the Registrar of the FIA Court. I also requested the necessary documents from the Counsel of Mr. Swati. My findings and conclusion of this report is based on my general observations of the case and the aforesaid information and documents that I got from the stakeholders.

### 2. Background

6. Mr. Muhammad Azam Khan Swati is a member of the Senate of Pakistan, a former minister and vice-president of the *Pakistan Tehreek-e-Insaf* (PTI).

7. During the night of 13<sup>th</sup> October 2022, few hours after publishing a tweet, Mr. Swati was arrested. According to the FIA's First Information Report (FIR) (No:159/2022), Mr. Swati was arrested for tweeting / uploading / publicly projecting, a highly obnoxious, and intimidating message through twitter against the State Institutions of the Islamic Republic of Pakistan and its Senior Government Functionaries including the Chief of the Army Staff of Pakistan Army, with malafide intentions and ulterior motives.

The tweet read as follows:

*"Mr. Bajwa congratulations to you and few with you. Your plan is really working and all criminals are getting free at cost of this country. With these thugs getting free You have legitimise corruption. How you predict now the future of this country?"*

8. The FIR describes the aforesaid tweet as a mischievous act of subversion to create rift between personnel/s of the armed forces and as an attempt to harm the State of Pakistan. It also stated that the tweet undermined the Judicial System of the Country and was done as a calculated attempt to create hatred in the minds of people and Army personnel's which is likely to incite any officer, soldier, or Airman in the navy or Air Forces of Pakistan to mutiny or otherwise disregard or fail in their duty and that it may induce / incite anyone to commit an offence against the State or the State Institutions.

9. Mr. Swati was charged under section 20 of the Prevention of Electronics Crime Act 2016 and section 131, section 500, section 501, section 505 and section 109 of The Pakistan Penal Code 1860.

10. Mr. Swati was allegedly subjected to custodial torture by policemen in plain clothes. According to the Counsel of Mr. Swati, the issue of custodial torture was raised when Mr. Swati was presented before a Judge within 24 (twenty-four) hours he was arrested. However, according to Mr. Swati's Counsel, no action was taken by the Judge.

11. A letter was sent to the Chief Justice by the Senate of Pakistan, requesting to take Suo Moto action under Article 184(3) of the Constitution of Pakistan, citing that such an allegation made by a sitting Senator rise to the level of a matter of public importance.

Article 184 (3) of the Constitution of Pakistan provides as follows:

**184. Original Jurisdiction of Supreme Court**

*184. (3) Without prejudice to the provisions of Article 199, the Supreme Court shall, if it considers that a question of public importance with reference to the enforcement of any of the Fundamental Rights conferred by Chapter 1 of Part II is involved, have the power to make an order of the nature mentioned in the said Article.*

12. When questioned about the torture allegation, the Prosecutor of the case contended that no such complaints were filed at the Islamabad High Court by Mr. Swati (requesting to initiate an investigation) and argued that hence it suggests that such an incident did not take place.

13. Mr. Swati was Freed on bail by a Special FIA court on 21<sup>st</sup> October 2022.

14. Subsequently, Mr. Swati was arrested again on 26<sup>th</sup> November 2022. According to the FIA's First Information Report (FIR) (No:185/2022), Mr. Swati was arrested for starting a highly obnoxious campaign of intimidating tweets with malafide intentions and ulterior motives against the state institution of Islamic Republic of Pakistan and its senior government functionaries including Chief of Army Staff of Pakistan Army.

The tweet read as follows:

*"Faisal Naseer is Bastard he will pay for it I will follow that SOB at every legal and ethics forum."*

Additionally, Mr. Swati responded from his verified twitter account @AzamKhanSwatiPK, to replies to his tweet (written in urdu) from twitter account @Azaadi99 and @Wolf1Ak saying "Thank you" and to the reply to his tweet from twitter account @HaqueqatTV\_20 (written in urdu) saying "He needs to go to hell Baster".

15. The FIR describes the aforesaid tweets as a mischievous act of subversion to create rift between personnel of armed forces to harm the state of Pakistan and accused Mr. Swati to have attempted to seduce army personnel from their allegiance from their duties as subordinates and to have

tried to create hatred and mutiny in the mind of people and army personnel against senior Army Officers and Pakistan creating a feeling of ill-will among pillars of the State.

16. Additionally, the FIR also states that during enquiry the alleged Twitter accounts having unknown username @Azaadi99 and @Wolf1Ak and @HaqeeqatTV\_20 was found to have been operated by Mr. Swati.

17. Mr. Swati was charged under section 20 of the Prevention of Electronics Crime Act 2016 and section 131, section 500, section 501, section 505 and section 109 of The Pakistan Penal Code 1860.

18. On 3<sup>rd</sup> January 2023, Mr. Swati was granted bail by the Islamabad High Court.

19. Similarly, according to the Counsel of Mr. Swati, several other FIRs were registered throughout Pakistan for the same sets of allegations. A petition was filed at The Balochistan High Court (BHC). The High Court ruled that the FIRs were to be quashed, as once an FIR is registered, another FIR cannot be registered based on the same occurrence.

20. Subsequently, a 3<sup>rd</sup> and 4<sup>th</sup> FIR were filed, Mr. Swati was charged under the Anti-Terrorism Act of 1997.

### 3. Future trial proceedings

21. Trial proceedings of the cases started in January 2023.

22. According to the Counsel of Mr. Swati, Mr. Swati had not attended the hearings due to the fear of being arrested outside the court, like many other PTI leaders who were getting arrested.

23. On 18<sup>th</sup> May 2023, a bailable arrest warrant was issued for Mr. Swati by the Special Court Islamabad demanding Mr. Swati's appearance for the hearing scheduled for 30<sup>th</sup> May 2023. However, upon Mr. Swati's failure to appear before the Court on 30<sup>th</sup> May 2023, non-bailable arrest warrants were issued at the request of the Federal Investigation Agency (FIA).

24. Where Mr. Swati fails to appear in the hearing scheduled for 26<sup>th</sup> September 2023, there is a possibility that the Court may publish a written proclamation requiring Mr. Swati to appear at a specified place and at a specified time not less than 30 (thirty) days from the date of publishing the proclamation, as provided under section 87 of the Code of Criminal Procedure 1898. In such a case, the Judge also has the power to attach any property, movable or immovable, or both, belonging to Mr. Swati as specified under section 89 of the Code of Criminal Procedure 1898.

**87. Proclamation for person absconding:** (1) If any Court is satisfied after taking evidence that any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed, such Court may publish a written proclamation requiring him to appear at a specified place and a specified time not less than thirty days from the date of publishing such proclamation.

**89. Attachment of property of person absconding:** (1) The Court issuing a proclamation under section 87 may at any time order the attachment of any property; movable or immovable, or both, belonging to the proclaimed person.

25. In such a case, where the accused person is believed to have absconded and where there is no immediate prospect of arresting the person, the Court has the power to examine the witness produced on behalf of the prosecution, and record their depositions as provided under section 512 (1) of the Code of Criminal Procedure 1898.

#### 4. Charges brought against Mr. Muhammad Azam Khan Swati

26. On both accounts, Mr. Swati was charged under section 20 of the Prevention of Electronics Crime Act 2016 and section 131, section 500, section 501, section 505 and section 109 of The Pakistan Penal Code, 1860.

27. Section 20 of the Prevention of Electronics Crime Act 2016 provides as follows:

**20. Offences against dignity of a natural person –**

*(1) Whoever intentionally and publicly exhibits or displays or transmits any information through any information system, which he knows to be false, and intimidates or harms the reputation or privacy of a natural person, shall be punished with imprisonment for a term which may extend to three years or with fine which may extend to one million rupees or with both:*

*Provided that nothing under this sub-section shall apply to anything aired by a broadcast media or distribution service licensed under the Pakistan Electronic Media Regulatory Authority Ordinance, 2002 (XIII of 2002).*

*(2) Any aggrieved person or his guardian, where such person is a minor, may apply to the Authority for removal, destruction of or blocking access to such information referred to in sub-section (1) and the Authority on receipt of such application, shall forthwith pass such orders as deemed reasonable in the circumstances including an order for removal, destruction, preventing transmission of or blocking access to such information and the Authority may also direct any of its licensees to secure such information including traffic data.*

28. Section 131 of the Pakistan Penal Code, 1860 provides as follows:

**131. Abetting mutiny, or attempting to seduce a soldier, sailor or airman from his duty.**

*Whoever abets the committing of mutiny by an officer, soldier sailor or airman in the Army, Navy or Air Force of Pakistan, or attempts to seduce any such officer, soldier, sailor or airman from his allegiance or his duty, shall be punished with imprisonment for life or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.*

29. Section 500 of the Pakistan Penal Code, 1860 provides as follows:

**500. Punishment for defamation**

*Whoever defames another shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both provided that the originator of the defamatory imputation shall be punished with imprisonment of either description for a term which may extend to five years, or with fine which shall not be less than one hundred thousand rupees, or with both.*

30. Section 501 of the Pakistan Penal Code, 1860 provides as follows:

**501. Printing or engraving matter known to be defamatory.**

*Whoever prints or engraves any matter, knowing or having good reason to believe that such matter is defamatory of any person, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.*

31. Section 505 of the Pakistan Penal Code, 1860 provides as follows:

**505. Statement conducing to public mischief.**

1. *Whoever makes, publishes or circulates any statement, rumor or report,-*

- (a) *with intent to cause or incite, or which likely to cause or incite, any officer, soldier, sailor, or airman in the Army, Navy or Air Force of Pakistan to mutiny or otherwise disregard or fail in his duty as such; or*
- (b) *with intent to cause, or which is likely to cause, fear or alarm to the public or to any section of the public whereby any person may be induced to commit an offence against the State or against the public tranquility; or*
- (c) *with intent to incite, or which is likely to incite, any class or community of persons to commit any offence against any other class or community.*

*shall be punished with imprisonment for a term which may extend to seven years and with fine.*

- 2. *Whoever makes, publishes or circulates any statement or report containing rumor or alarming news with intent to create or promote, or which is likely to create or promote, on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, feelings of enmity, hatred or ill-will between different religion, racial, language or regional groups or castes or communities, shall be punished with imprisonment for a term which may extend to seven years and with fine.*

32. Section 109 of the Pakistan Penal Code, 1860 provides as follows:

**109. Punishment of abetment if the act abetted is committed in consequence and where no express provision is made for its punishment.**

*Whoever abets any offence shall, if the act abetted is committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with the punishment provided for the offence.*

*Provided that, except in case of Ikrah-i-Tam the abettor of an offence referred to in Chapter XVI shall be liable to punishment of ta'zir specified for such offence including death.*

## 5. General Comments on the National and International Human Rights Framework

33. Article 19 of The Constitution of the Islamic Republic of Pakistan 1973 clearly and explicitly provides the citizens of Pakistan with the right to freedom of expression.

### **Freedom of Speech**

19. *“Every citizen has the right to freedom of speech and expression, and there shall be freedom of the press, subject to any reasonable restrictions imposed by law in the interest of the glory of Islam or the integrity, security or defense of Pakistan or any part thereof, friendly relations with foreign states, public order, decency or morality, or in relation to contempt of court, commission of or incitement to an offense.”*

34. When assessing the aforesaid Article 19 of the Constitution, it is clear that the freedom of speech can only be restricted in limited circumstances, and that even in such a situation, it should be a reasonable restriction.

35. Articles 66 and 69 of the Constitution, in conjunction with Section 3 of the Members of the National Assembly (Exemption from Preventive Detention and Personal Appearance) Ordinance, provide that parliamentary immunity will apply solely in respect of opinions expressed in parliament, and bar members of parliament from being held in preventive detention.

36. To date, Pakistan has ratified 7 (seven) core Conventions. When a country ratifies international law instruments, it voluntarily accepts to become bound by those provisions and adopt measures to

implement them. Pakistan is thus required to adopt political, legislative, administrative and other measures to fully protect, promote and respect the enjoyment of the rights recognized in the instruments it ratified.

37. Pakistan has ratified the following instruments (among others):

- (a) International Covenant on Civil and Political Rights (ratified on 23<sup>rd</sup> June 2010)
- (b) International Covenant on Economic, Social, and Cultural Rights (ratified on 17<sup>th</sup> April 2008);
- (c) Convention against Torture and other Cruel, Inhuman or Degrading Treatment (ratified on 23<sup>rd</sup> June 2010)

38. It is to note that Pakistan is not a party to the Convention for the Protection of All Persons from Enforced Disappearances.

39. Article 1(1) of the International Covenant on Economic, Social and Cultural Rights, 1966 provides that:

“All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social, and cultural development”

40. Article 9(1) of the International Covenant on Civil and Political Rights, 1967 states that: “(1) Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.”

41. Article 19 of the International Covenant on Civil and Political Rights (ICCPR), provides that “everyone shall have the right to hold opinions without interference (Article 19(1))” and that “everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice (Article 19(2)).”

42. This right includes not only the exchange of information that is favorable, but also that which may criticize, shock, or offend. (General Comment no. 34, para. 7 of the Human Rights Committee).

43. Restrictions on the right to freedom of expression must be compatible with the requirements set out in article 19(3), that is, they must be provided by law, pursue a legitimate aim, and be necessary and proportionate (a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order (order public), or of public health or morals. The State has the burden of proof to demonstrate that any such restrictions are compatible with the Covenant.

44. As defamation laws restrict the right to freedom of expression, they are subject to the narrow requirements of article 19(3). Under the Article 19(3) requirement of legality, it is insufficient that restrictions on freedom of expression are formally enacted as domestic laws or regulations. Restrictions must also be sufficiently clear, accessible and predictable. The Article 19(3) requirement of necessity implies an assessment of the proportionality of restrictions, with the aim of ensuring that restrictions target a specific objective and do not unduly intrude upon the rights of targeted persons. The ensuing interference with third parties’ rights must also be limited and justified in light of the interest supported by the intrusion. The restrictions must be the least intrusive instrument among those which might achieve the desired result.

45. In this specific case, it is for the State to prove that Mr. Swati posted the tweets knowing that the information was false and that it would harm the reputation of the persons named in the tweet. Additionally, the State will also be required to prove that the tweets made by Mr. Swati will likely cause army personnel to mutiny or otherwise disregard their duty and/or create fear or alarm in the public.

46. It is highly questionable whether such a restriction on freedom of speech is necessary and proportionate in the case. Such a narrow interpretation of Article 20 of Prevention of Electronics Crime Act

2016 and Sections 501, 131, 505 of the Pakistan Penal Code 1860 would mean that no citizen is allowed to criticize the government or share views against the army or an army personnel. It is also to note that, Mr. Swati's tweets neither encouraged violence nor incited the public or the army personnel to display disobedience.

47. Additionally, it is concerning to note that there were several FIRs made against Mr. Swati all over Pakistan based on the same occurrence, suggesting that the motive of the State may have been to keep Mr. Swati in custody preventing him from making other statements against the government or the army.

48. Similarly, there are several other opposition leaders who have reportedly been arrested for similar charges, where they have criticized the government or the army. One such example is the case of Mr. Ali Wazir.

49. Mr. Ali Wazir, an independent member of the National Assembly of Pakistan from the region of Waziristan and a senior leader of the Pashtun Tahaffuz (Protection) Movement (PTM), was arrested by the police on 16 December 2020 and accused of delivering hate speeches against armed forces and state institutions. Several other successive cases were registered against Mr. Wazir following the aforesaid charge and Mr. Ali Wazir was imprisoned for two years on remand based on those multiple FIRs. Mr. Ali Wazir remained in prison despite obtaining bail several times and being acquitted.

50. IPU requested to meet with Mr. Ali Wazir or his Counsel during my mission, however I was not able to meet them for logistical reasons. Later, I learnt that Mr. Ali Wazir was arrested again on several occasions since his release from prison in February 2023.

51. Hence, it is to be submitted that Mr. Swati's arrest and detainment based on the tweets he made may be described as a punishment for his exercise of the rights to freedom of expression and opinion guaranteed under the Constitution of Pakistan as stated in Article 19 of the Constitution.

52. The arguments and the additional evidence that the State submits in Court is required to make further analysis of the case.

**13 September 2023**