



# TRANSPARENCY INTERNATIONAL-PAKISTAN

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April 22, 2015

Dr. Sikandar Ali Mandhro  
Parliamentary Affairs & Environment  
Sindh Assembly Building  
Karachi.

## **Subject: Right to Information Act and Whistle Blower Protection Law**

Dear Dr Mandhro,

In April 2014, Transparency International-Pakistan launched the National Integrity System (NIS) Report 2014, which is a product of a two year extensive research. This research evaluates the key institutions of governance which are responsible for the progress of integrity and eliminating corruption from the country. The findings of the research stressed the importance of the Right to Information and Whistle-blower protection laws as presence of these oversight elements will help promote rule of law in Sindh and Pakistan. Recently the Law & Justice Commission has requested for 40 copies of the NIS report for forwarding it to their members to study the recommendations of the report.

We express our acknowledgment of the Right to Information Act enacted by the Sindh Government in 2006. However there is room for improvement in the Sindh RTI law. The RTI Act is silent on providing legal, administrative and employment related protection to whistleblowers for disclosing corruption. It transmits the perception that by doing so government is least interested to reduce corruption. Actually, risk of corruption is significantly intensified in situations where the reporting of malpractice is not sheltered. Therefore, protection of whistleblower is crucial to encourage the reporting of misconduct, fraud, and corruption.

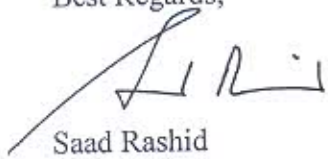
Transparency International-Pakistan, would like to meet members of the assembly in the conference room of the Sindh Assembly in early May, 2015 while the assembly is in session. We would like to discuss Sindh's Freedom of Information, Whistle Blower Protection Law and Rights to Services Law with the members of the Provincial Assembly and suggest recommendations to strengthen the law for transparency and good governance.

We had also met the Punjab Parliamentarians on December 23<sup>rd</sup>, 2014 and made a presentation on their RTI law. We plan to meet the KPK assembly members in May 2015 and also the Law Committee members of the National Assembly soon.

We had earlier sent the draft proposals to the Chief Minister on March 12, 2015. Copies of the draft RTI, Whistle Blower Protection and Rights to Service Act are enclosed.

We look forward to a favorable response.

Best Regards,



Saad Rashid  
Executive Director





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March 12, 2015

The Chief Minister,  
Government of Sindh,  
Karachi.

**Sub: Draft Proposals for Right To Information Act, Whistle Blower Protection and  
Right to Public Services Act.**

Dear Sir,

TI Pakistan has been researching the best practices globally for the Right To Information, Whistle Blower Protection and the Right to Public Services Acts. For the progress of integrity and eliminating corruption from the country, one cannot adequately stress the importance of strong Right to Information, Whistle-blower protection and Right To Public Service laws, as the presence of these oversight elements will help promote rule of law in Pakistan.

Right to Information laws have been enacted at the Federal level and in the Provinces of Sindh, Punjab and KPK. However, there is still room for improvement in this law as this Act is silent on providing legal, administrative and employment related protection to whistleblowers for disclosing corruption. It transmits the perception that by doing so government is least interested to reduce corruption. Actually, risk of corruption is significantly intensified in situations where the reporting of malpractice is not sheltered. Therefore, protection of whistleblower is crucial to encourage the reporting of misconduct, fraud, and corruption. The Rights to Public Services Act would hold the public officials accountable if they are responsible for not providing services to the citizens within the prescribed time.

TI Pakistan has prepared draft proposals on the basis of the best practices globally, of the following Acts:


1. Right to Information
2. Whistle Blower Protection
3. Right to Public Services

The draft laws are enclosed herewith for review, amendment and enactment by the Government of Sindh. They comply to UNCAC requirements, ratified by the GoP in 2007 and are the need of the day.

These acts may be promulgated within three months as it would assist the government in being transparent, thus curbing corruption in the province.

We are available to provide any clarification if required.

Best Regards,

  
Sohail Muzaffar  
Chairman

# Proposal

## THE WHISTLE BLOWERS PROTECTION Bill

A Bill to establish a mechanism to receive complaints relating to disclosure on any allegation of corruption or wilful misuse of power or wilful misuse of discretion against any public servant and to inquire or cause an inquiry into such disclosure and to provide adequate safeguards against victimisation of the person making such complaint and for matters connected therewith and incidental thereto.

### CHAPTER I

#### PRELIMINARY

1. (1) This Act may be cited the Whistle Blowers Protection Act, 2015.
- (2) It extends to the whole of Sindh.
- (3) It shall come into force at once.
2. The provisions of this Act shall not apply to the armed forces, being the Special Services Group.

Short title,  
extent and  
commence-  
ment.

Provisions of  
this Act not to  
apply to Special  
Services Group.

Definitions.

**3. Definitions, -** In this Act, unless the context otherwise requires,—

(a) "The Inspection Commission" means the Prime Minister's Inspection Commission governed under ----- Act and protected under article ---- of the Constitution of Pakistan 1973;

(b) "Competent Authority" means—

(i) in relation to a Member of the Parliament in a province, the Chief Minister of the Province;

(ii) in relation to a Member of the Senate or National Assembly of a province, other than a Minister, the Chairman of the Senate if such Member is a Member of the Senate or the Speaker of the National Assembly if such Member is a Member of the Assembly, as the case may be;

(iii) in relation to—

(A) any Judge (except a Judge of the Supreme Court or of a High Court) including any person empowered by law to discharge, whether by himself or as a member of any body of persons, any adjudicatory functions; or

(B) any person authorised by a court of justice to perform any duty, in connection with the administration of justice, including a liquidator, receiver or commissioner appointed by such court; or

(C) any arbitrator or other person to whom any cause or matter has been referred for decision or report by a court of justice or by a competent public authority,

the High Court;

(iv) in relation to—

(A) any person in the service or pay of the Provincial Government of Sindh or remunerated by the Provincial Government of Sindh by way of fees or commission for the performance of any public duty except Ministers, Members of Parliament and members or persons referred to 21<sup>st</sup> amendment to the Constitution, or in the service or pay of a society or local authority or any corporation established by or under any Act, or an authority or a body owned or controlled or aided by the Provincial Government of Sindh or a Government company as defined in Companies Ordinance, 1984, owned or controlled by the Provincial Government; or

(B) any person who holds an office by virtue of which he is empowered to prepare, publish, maintain or revise an electoral roll or to conduct an election or part of an election in relation to elections to the Provincial Assembly of Sindh; or

(C) any person who holds an office by virtue of which he is authorised or required to perform any public duty (except Ministers and Members of Parliament); or

(D) any person who is the president, secretary or other office-bearer of a registered co-operative society engaged in agriculture, industry, trade or banking, receiving or having received any financial aid from the Provincial Government or from any corporation established by or under an Act of Parliament, or any authority or body or a Government company as defined in Companies Ordinance, 1984 owned or controlled or aided by the Provincial Government; or

(E) any person who is a chairman, member or employee of any Central Service Commission or Board, by whatever name called, or a member of any selection committee appointed by such Commission or Board for the conduct of any examination or making any selection on behalf of such Commission or Board; or

(F) any person who is a Vice-Chancellor or member of any governing body, professor, associate professor, assistant professor, reader, lecturer or any other teacher or employee, by whatever designation called, of any University established by an Act of Parliament or established or controlled or funded by the Provincial Government or any person whose services have been availed of by such University or any such other public authority in connection with holding or conducting examinations; or

(G) any person who is an office-bearer or an employee of an educational, scientific, social, cultural or other institution, in whatever manner established, receiving or having received any financial assistance from the Provincial Government or any local or other public authority,

the Prime Minister's Inspection Commission or any other authority, as the Provincial Government may, by notification in the Official Gazette, specify in this behalf under this Act;

(vii) in relation to—

(A) any person in the service or pay of the Provincial Government or remunerated by the Provincial Government by way of fees or commission, for the performance of any public duty except Ministers, Members of Provincial Assemblies, or in the service or pay of a society or local authority or any corporation established by or under a Provincial Act or Ordinance, or an authority or a body owned or controlled or aided by the Provincial Government or a Government company as defined in Companies Ordinance, 1984, owned or controlled by the Provincial Government; or

(B) any person who holds an office by virtue of which he is empowered to prepare, publish, maintain or revise an electoral roll or to conduct an election or part of an election in relation to municipality or other local body in the province; or

(C) any person who holds an office by virtue of which he is authorised or required to perform any public duty in relation to the affairs of the Provincial Government (except Ministers and Members of Senate or National Assembly); or

(D) any person who is the president, secretary or other office-bearer of a registered co-operative society engaged in agriculture, industry, trade or banking, receiving or having received any financial aid from the Provincial Government or from any corporation established by or under a Provincial Ordinance, or any authority or body or a Government company as defined in Companies Ordinance, 1984 owned or controlled or aided by the Provincial Government; or

(E) any person who is a chairman, member or employee of any State Service Commission or Board, by whatever name called, or a member of any selection committee appointed by such Commission or Board for the conduct of any examination or making any selection on behalf of such Commission or Board; or

(F) any person who is a Vice-Chancellor or member of any governing body, professor, associate professor, assistant professor, reader, lecturer or any other teacher or employee, by whatever designation called, of any University established by a Provincial Act or Ordinance or established or controlled or funded by the Provincial Government and any person whose services have been availed of by such University or any such other public authority in connection with holding or conducting examinations; or

(G) any person who is an office-bearer or an employee of an educational, scientific, social, cultural or other institution, in whatever manner established, receiving or having received any financial assistance from the Provincial Government or any local or other public authority,

The Inspection Commission, or any officer of the Provincial Government or any other authority, as the Provincial Government may, by notification in the Official Gazette, specify in this behalf under this Act;

(viii) in relation to members or persons referred to in clause (a) or clause (b) or clause (c) or clause (d) of article 33 of the Constitution, any authority or authorities as the Provincial Government, having jurisdiction in respect thereof, may, by notification in the Official Gazette, specify in this behalf under this Act;

(c) "complainant" means any person who makes a complaint relating to disclosure under this Act;

(d) "disclosure" means a complaint relating to,—

(i) an attempt to commit or commission of an offence under the Prevention of Corruption Act, 1947;

(ii) wilful misuse of power or wilful misuse of discretion by virtue of which demonstrable loss is caused to the Government or demonstrable wrongful gain accrues to the public servant or to any third party;

(iii) attempt to commit or commission of a criminal offence by a public servant,

made in writing or by electronic mail or electronic mail message, against the public servant and includes public interest disclosure referred to in sub-section (2) of section 4;

(e) "electronic mail" or "electronic mail message" means a message or information created or transmitted or received on any computer, computer system, computer resource or communication device including attachments in text, image, audio, video and any other electronic record, which may be transmitted with the message;

(f) "Government company" means a company referred to in section 617 of the Companies Act, 1956;

(g) "notification" means a notification published in the Provincial Assembly of the Sindh or, as the case may be, the Official Gazette of the province;

(h) "public authority" means any authority, body or institution falling within the jurisdiction of the Competent Authority;



(i) "public servant" shall have the same meaning as assigned to it under section 2 of the Prevention of Corruption Act, 1947 but shall not include a Judge of the Supreme Court or a Judge of a High Court;

(j) "prescribed" means prescribed by rules made by the Provincial Government, as the case may be, under this Act;

(k) "regulations" means the regulations made by the Competent Authority under this Act.

## CHAPTER II

### PUBLIC INTEREST DISCLOSURE

4. (1) Notwithstanding anything contained in the provisions of the Official Secrets Act, 1923, any public servant or any other person including any non-governmental organisation, may make a public interest disclosure before the Competent Authority.

Requirement of public interest disclosure.

(2) Any disclosure made under this Act shall be treated as public interest disclosure for the purposes of this Act and shall be made before the Competent Authority and the complaint making the disclosure shall, on behalf of the Competent Authority, be received by such authority as may be specified by regulations made by the Competent Authority.

(3) Every disclosure shall be made in good faith and the person making disclosure shall make a personal declaration stating that he reasonably believes that the information disclosed by him and allegation contained therein is substantially true.

(4) Every disclosure shall be made in writing or by electronic mail or electronic mail message in accordance with the procedure as may be prescribed and contain full particulars and be accompanied by supporting documents, or other materials, if any.

(5) The Competent Authority may, if it deems fit, call for further information or particulars from the person making the disclosure.

(6) No action shall be taken on public interest disclosure by the Competent Authority if the disclosure does not indicate the identity of the complainant or public servant making public interest disclosure or the identity of the complainant or public servant is found incorrect or false.

## CHAPTER III

### INQUIRY IN RELATION TO PUBLIC INTEREST DISCLOSURE

5. (1) Subject to the provisions of this Act, the Competent Authority shall, on receipt of a public interest disclosure under section 4,—

(a) ascertain from the complainant or the public servant whether he was the person or the public servant who made the disclosure or not;

(b) conceal the identity of the complainant unless the complainant himself has revealed his identity to any other office or authority while making public interest disclosure or in his complaint or otherwise.

Powers and functions of Competent Authority on receipt of public interest disclosure.

(2) The Competent Authority shall, upon receipt of the complaint and concealing the identity of the complainant, or the public servant in the first instance, make discreet inquiry, in such manner and within such time as may be prescribed, to ascertain whether there is any basis for proceeding further to investigate the disclosure.

(3) If the Competent Authority, either as a result of the discreet inquiry, or on the basis of the disclosure itself without any inquiry, is of the opinion that the disclosure requires to be investigated, it shall seek comments or explanation or report from the Head of the Department of the organisation or authority, board or corporation concerned or office concerned within such time as may be specified by it.



(4) While seeking comments or explanations or report referred to in sub-section (3), the Competent Authority shall not reveal the identity of the complainant or the public servant and direct the Head of the Department of the organisation concerned or office concerned not to reveal the identity of the complainant or public servant:

Provided that if the Competent Authority is of the opinion that it has, for the purpose of seeking comments or explanation or report from them under sub-section (3) on the public disclosure, become necessary to reveal the identity of the complainant or public servant to the Head of the Department of the organisation or authority, board or corporation concerned or office concerned, the Competent Authority may, with the prior written consent of the complainant or public servant, reveal the identity of the complainant or public servant to such Head of the Department of the organisation or authority, board or corporation concerned or office concerned for the said purpose:

Provided further that in case the complainant or public servant does not agree to his name being revealed to the Head of the Department, in that case, the complainant or public servant, as the case may be, shall provide all documentary evidence in support of his complaint to the Competent Authority.

(5) The Head of the organisation or office concerned shall not directly or indirectly reveal the identity of the complainant or public servant who made the disclosure.

(6) The Competent Authority, if after conducting an inquiry, is of the opinion that—

(a) the facts and allegations contained in the disclosure are frivolous or vexatious;

or

(b) there are no sufficient grounds for proceeding with the inquiry,

it shall close the matter.

(7) After receipt of the comments or explanations or report referred to in sub-section (3), if the Competent Authority is of the opinion that such comments or explanations or report reveals either wilful misuse of power or wilful misuse of discretion or substantiates allegations of corruption, it shall recommend to the public authority to take any one or more of the following measures, namely:—

(i) initiating proceedings against the concerned public servant;

(ii) taking appropriate administrative steps for redressing the loss caused to the Government as a result of the corrupt practice or misuse of office or misuse of discretion, as the case may be;

(iii) recommend to the appropriate authority or agency for initiation of criminal proceedings under the relevant laws for the time being in force, if so warranted by the facts and circumstances of the case;

(iv) recommend for taking of corrective measures;

(v) take any other measures not falling under clauses (i) to (iv) which may be necessary for the purpose of this Act.

(8) The public authority to whom a recommendation is made under sub-section (7) shall take a decision on such recommendation within three months of receipt of such recommendation, or within such extended period not exceeding three months, as the Competent Authority may allow on a request made by the public authority:

Provided that in case the public authority does not agree with the recommendation of the Competent Authority, it shall record the reasons for such disagreement.

(9) The Competent Authority shall, after making an inquiry, inform the complainant or public servant about the action taken on the complaint and the final outcome thereof:

Provided that in a case where, after making an inquiry, the Competent Authority decides to close the case, it shall, before passing the order for closure of the case, provide an opportunity of being heard to the complainant, if the complainant so desires.

6. (1) If any matter specified or an issue raised in a disclosure has been determined by a Court or Tribunal authorised to determine the issue, after consideration of the matters specified or issue raised in the disclosure, the Competent Authority shall not take notice of the disclosure to the extent that the disclosure seeks to reopen such issue.

Matters not to be inquired by Competent Authority.

(2) The Competent Authority shall not entertain or inquire into any disclosure—

(a) in respect of which a formal and public inquiry has been ordered under the Public Servants (Inquiries) Act, 1850; or

(b) in respect of a matter which has been referred for inquiry under the Commissions of Inquiry Act, 1956.

(3) The Competent Authority shall not investigate, any disclosure involving an allegation, if the complaint is made after the expiry of seven years from the date on which the action complained against is alleged to have taken place.

(4) Nothing in this Act shall be construed as empowering the Competent Authority to question, in any inquiry under this Act, any *bona fide* action or *bona fide* discretion (including administrative or statutory discretion) exercised in discharge of duty by the employee.

#### CHAPTER IV

##### POWERS OF COMPETENT AUTHORITY

7. (1) Without prejudice to the powers conferred upon the Competent Authority under any other law for the time being in force, the Competent Authority, may require, for the purpose of any inquiry any public servant or any other person who in its opinion shall be able to furnish information or produce documents relevant to the inquiry or assist in the inquiry, to furnish any such information or produce any such document as may be necessary for the said purpose.

Powers of Competent Authority.

(2) For the purpose of any such inquiry (including the preliminary inquiry), the Competent Authority shall have all the powers of a Civil Court while trying a suit under the Code of Civil Procedure, 1908, in respect of the following matters, namely:—

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of any document;

(c) receiving evidence on affidavits;

(d) requisitioning any public record or copy thereof from any court or office;

(e) issuing commissions for the examination of witnesses or documents;

(f) such other matters as may be prescribed.

(3) The Competent Authority shall be deemed to be a Civil Court under the Code of Criminal Procedure, 1898 (as amended by Act II of 1997), and every proceeding before the Competent Authority shall be deemed to be a judicial proceeding for the purposes of section 196 of the Pakistan Penal Code.

(4) Subject to the provisions of section 8, no obligation to maintain secrecy or other restriction upon the disclosure of information obtained by or furnished to the Government or any public servant, whether imposed by the Official Secrets Act, 1923 or any other law for the time being in force, shall be claimed by any public servant in the proceedings before the Competent Authority or any person or agency authorised by it in writing and the Government

or any public servant shall not be entitled in relation to any such inquiry, to any such privilege in respect of the production of documents or the giving of evidence as is allowed by any enactment or by any rules made thereunder:

Provided that the Competent Authority, while exercising such powers of the Civil Court, shall take steps as necessary to ensure that the identity of the person making complaint has not been revealed or compromised.

Certain matters exempt from disclosure.

**8.** (1) No person shall be required or be authorised by virtue of provisions contained in this Act to furnish any such information or answer any such question or produce any document or information or render any other assistance in the inquiry under this Act if such question or document or information is likely to prejudicially affect the interest of the sovereignty and integrity of Pakistan, the security of the State, friendly relations with foreign State, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence,—

(a) as might involve the disclosure of proceedings of the Provincial Government or any Committee of that government,

and for the purpose of this sub-section, a certificate issued by the Secretary to the Provincial Government, or, any authority so authorised by the Provincial Government certifying that any information, answer or portion of a document is of the nature specified in clause (a) shall be binding and conclusive.

(2) Subject to the provisions of sub-section (1), no person shall be compelled for the purposes of inquiry under this Act to give any evidence or produce any document which he could not be compelled to give or produce in proceedings before a court.

Superintendence of Competent Authority over appropriate machinery.

**9.** (1) Every public authority shall, for the purposes of dealing or inquiry into the disclosures sent to it under sub-section (3) of section 5, create an appropriate machinery for the said purpose.

(2) The Competent Authority shall exercise superintendence over the working of machinery created under sub-section (1) for the purposes of dealing or inquiry into the disclosures and give such directions for its proper functioning, from time to time, as it may consider necessary.

Competent Authority to take assistance of police authorities, etc., in certain cases.

**10.** For the purpose of making discreet inquiry or obtaining information from the organisation concerned, the Competent Authority shall be authorised to take assistance of the National Accountability Bureau or the police authorities, or any other authority as may be considered necessary, to render all assistance to complete the inquiry within the prescribed time pursuant to the disclosure received by the Competent Authority.

## CHAPTER V

### PROTECTION TO THE PERSONS MAKING DISCLOSURE

Safeguards against victimisation.

**11.** (1) The Provincial Government shall ensure that no person or a public servant who has made a disclosure under this Act is victimised by initiation of any proceedings or otherwise merely on the ground that such person or a public servant had made a disclosure or rendered assistance in inquiry under this Act.

(2) If any person is being victimised or likely to be victimised on the ground that he had filed a complaint or made disclosure or rendered assistance in inquiry under this Act, he may file an application before the Competent Authority seeking redress in the matter, and such authority shall take such action, as deemed fit and may give suitable directions to the concerned public servant or the public authority, as the case may be, to protect such person from being victimised or avoid his victimisation:

Provided that the Competent Authority shall, before giving any such direction to the public authority or public servant, give an opportunity of hearing to the complainant and the public authority or public servant, as the case may be:

Provided further that in any such hearing, the burden of proof that the alleged action on the part of the public authority is not victimisation, shall lie on the public authority.

(3) Every direction given under sub-section (2) by the Competent Authority shall be binding upon the public servant or the public authority against whom the allegation of victimisation has been proved.

(4) Notwithstanding anything contained in any other law for the time being in force, the power to give directions under sub-section (2), in relation to a public servant, shall include the power to direct the restoration of the public servant making the disclosure, to the status *quo ante*.

(5) Any person who wilfully does not comply with the direction of the Competent Authority under sub-section (2), shall be liable to a penalty which may extend up to thirty thousand rupees.

**12.** If the Competent Authority either on the application of the complainant, or witnesses, or on the basis of information gathered, is of the opinion that either the complainant or public servant or the witnesses or any person rendering assistance for inquiry under this Act need protection, the Competent Authority shall issue appropriate directions to the concerned Government authorities (including police) which shall take necessary steps, through its agencies, to protect such complainant or public servant or persons concerned.

Protection of witnesses and other persons.

**13.** The Competent Authority shall, notwithstanding any law for the time being in force, conceal, as required under this Act, the identity of the complainant and the documents or information furnished by him, for the purposes of enquiry under this Act, unless so decided otherwise by the Competent Authority itself or it became necessary to reveal or produce the same by virtue of the order of the court.

Protection of identity of complainant.

**14.** The Competent Authority, at any time after the making of disclosure by the complainant or public servant, if it is of the opinion that any corrupt practice required to be stopped during the continuation of any inquiry for the said purpose may pass such interim orders as it may deem fit, to prevent the immediate stoppage of such practice.

Power to pass interim orders.

## CHAPTER VI

### OFFENCES AND PENALTIES

**15.** Where the Competent Authority, at the time of examining the report or explanations or report referred to in sub-section (3) of section 5 on the complaint submitted by organisation or official concerned, is of the opinion that the organisation or official concerned, without any reasonable cause, has not furnished the report within the specified time or *mala fidely* refused to submit the report or knowingly given incomplete, incorrect or misleading or false report or destroyed record or information which was the subject of the disclosure or obstructed in any manner in furnishing the report, it shall impose—

Penalty for furnishing incomplete or incorrect or misleading comments or explanation or report.

(a) where the organisation or official concerned, without any reasonable cause, has not furnished the report within the specified time or *mala fidely* refused to submit the report, a penalty which may extend to two hundred fifty rupees for each day till report is furnished, so, however, the total amount of such penalty shall not exceed fifty thousand rupees;

(b) where the organisation or official concerned, has knowingly given incomplete, incorrect or misleading or false report or destroyed record or information which was the subject of the disclosure or obstructed in any manner the furnishing of the report, a penalty which may extend to fifty thousand rupees:

Provided that no penalty shall be imposed against any person unless he has been given an opportunity of being heard.

**16.** Any person, who negligently or *mala fidely* reveals the identity of a complainant shall, without prejudice to the other provisions of this Act, be punishable with imprisonment for a term which may extend up to three years and also to fine which may extend up to fifty thousand rupees.

Penalty for revealing identity of complainant.



Punishment for false or frivolous disclosure.

**17.** Any person who makes any disclosure *mala fide* and knowingly that it was incorrect or false or misleading shall be punishable with imprisonment for a term which may extend up to two years and also to fine which may extend up to thirty thousand rupees.

Punishment to Head of Department in certain cases.

**18.** (1) Where an offence under this Act has been committed by any Department of Government, the Head of the Department shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly unless he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a Department of Government and it is proved that the offence has been committed with the consent or connivance of, or is attributable, such officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Offences by companies.

**19.** (1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to the company for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he has exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

*Explanation.*—For the purposes of this section,—

(a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm.

Appeal to High Court.

**20.** Any person aggrieved by any order of the Competent Authority relating to imposition of penalty under section 14 or section 15 or section 16 may prefer an appeal to the High Court within a period of sixty days from the date of the order appealed against:

Provided that the High Court may entertain the appeal after the expiry of the said period of sixty days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time.

*Explanation.*—For the purposes of this section, the "High Court" means the High Court within whose jurisdiction the cause of action arose.

Bar of jurisdiction.

**21.** No Civil Court shall have jurisdiction in respect of any matter which the Competent Authority is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

Court to take cognizance.

**22.** (1) No court shall take cognizance of any offence punishable under this Act or the rules or regulations made thereunder, save on a complaint made by the Competent Authority or any officer or person authorised by it.

(2) No court inferior to that of a Judicial Magistrate shall try any offence punishable under this Act.

## CHAPTER VII

### MISCELLANEOUS

**23.** (1) The Competent Authority shall prepare a consolidated annual report of the performance of its activities in such form as may be prescribed and forward it to the Central Government or State Government, as the case may be.

Report on disclosures.

(2) On receipt of the annual report under sub-section (1), the Provincial Government shall cause a copy thereof to be laid before the Provincial Assembly of the Sindh:

Provided that where any other law for the time being in force provides preparing of such annual report by the Competent Authority, then the said annual report shall contain a separate part on the performance of activities under this Act by the Competent Authority.

**24.** No suit, prosecution or other legal proceedings shall lie against the Competent Authority or against any officer, employees, agency or person acting on its behalf, in respect of anything which is in good faith done or intended to be done under this Act.

Protection of action taken in good faith.

**25.** (1) The Provincial Government may, by notification in the official Gazette, make rules for the purpose of carrying out the provisions of this Act.

Power of Central Government to make rules.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the procedure for disclosure by writing or appropriate electronic means under sub-section (4) of section 4;

(b) the manner in which and the time within which the discreet inquiry shall be made by the Competent Authority under sub-section (2) of section 5;

(c) the additional matter in respect of which the Competent Authority may exercise the powers of a Civil Court under clause (f) of sub-section (2) of section 7;

(d) the form of annual report under sub-section (1) of section 23;

(e) any other matter which is required to be, or may be, prescribed.

**26.** The Provincial Government may, by notification in the Official Gazette, make rules for the purpose of carrying out the provisions of this Act.

Power of State Government to make rules.  
Power to make regulations.

**27.** The Competent Authority may, with the previous approval of the Provincial Governments, as the case may be, by notification in the Official Gazette, make regulations not inconsistent with the provisions of the Act and the rules made thereunder to provide for all matters for which provision is expedient for the purposes of giving effect to the provisions of this Act.

**28.** Every notification issued and every rule made by the Provincial Assembly and every regulation made by the Competent Authority under this Act shall be laid, as soon as may be after it is issued or made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the notification or the rule or the regulation, or both Houses agree that the notification or the rule or the regulation should not be made, the notification or the rule or the regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that notification or rule or regulation.

Notification and rules to be laid before Parliament.

**29.** Every notification issued by a Provincial Government and every rule made by a Provincial Government and every regulation made by the Competent Authority under this Act shall be laid, as soon as may be after it is issued, before the Legislature.

**30. Rules.** – The Provincial Government may, by notification, make rules for carrying out the purposes of this Act.

**31. Removal of difficulties.**— If any difficulty arises in giving effect to any of the provisions of this Ordinance during one year of the commencement of the Ordinance, the Prime Minister’s Inspection Commission may, with the approval of the Government, give such directions, not inconsistent with this Act, as it may deem necessary for the removal of such difficulty.

**Transparency International Pakistan**  
**Proposal for Right to Information Bill 2015**

*A Bill for ensuring transparency and access to information in the Province of Sindh.*

*WHEREAS Article 19A of the Constitution of the Islamic Republic of Pakistan provides that every citizen shall have the right to access to information in all matters of public importance, subject to regulation and reasonable restrictions imposed by law;*

*AND WHEREAS transparency of information is vital to the functioning of democracy and also to improve governance, reduce corruption, and to hold Government, autonomous and statutory organizations and other organizations and institutions run on Government or foreign funding more accountable to its citizens and for matters connected therewith and incidental thereto;*

*AND WHEREAS it is essential that citizens shall have right to information to participate meaningfully in a democratic process and further to improve their involvement and contribution in public affairs;*

It is hereby enacted as follows:-

1. Short title, extent and commencement.--(1) This Act may be called the Sindh Right to Information Act, 2015.
  - (2) It extends to the whole of the Province of Sindh.
  - (3) It shall come into force at once.
  
2. Definitions.--In this Act, unless there is anything repugnant in the subject or context,-
  - (a) "complaint" means any allegation in writing made by or on behalf of a requester that his request for information has not been dealt with by a public body in accordance with the rules and procedures set out in this Act, including where he has been wrongfully denied access to all or part of that record;
  - (b) "designated officer" means an officer of a public body designated under section 6 of this Act;
  - (c) "employee or official in relation to a public body means a person employed in a public body whether permanently or temporarily and includes consultants;
  - (d) "Government" means the Government of the Sindh;
  - (e) "information" means material which communicates meaning and which is held in recorded form;
  - (f) "Information Commission" means the Sindh Information Commission established under section 24 of this Act;
  - (g) "prescribed" means prescribed by rules made under this Act;
  - (h) "Province" means the Province of the Sindh;
  - (i) "Public body" means:



- (i) any department or attached department of the Government;
- (ii) Secretariats of Chief Minister and Governor of the Sindh;
- (iii) Secretariat of the Provincial Assembly, Sindh along with the Members of the Assembly and the Assembly itself;
- (iv) any Office, Board, Commission, and Councillor any other Body established by, or under any law;
- (v) subordinate judiciary i.e. Courts of District and Sessions Judges, Courts of Additional District and Sessions Judges, Courts of Senior Civil Judges, Courts of Civil Judges and Courts of Magistrates;
- (vi) Tribunals;
- (vii) any Body which is owned, controlled or substantially funded by one of the above, including enterprises owned by the Province; and
- (viii) any other body which undertakes public functions;

(j) "record" means information which is recorded in any form;

(k) "request for information" shall include a request for information and a request for a specific record;

(i) "requester" means any citizen who has made a request for information under this Act; and

(m) "third party" means a person other than the person making a request for information or a record.

3. Right to Information.---(1) Every citizen shall subject to the provisions of this Act and any rules made under it, have the right to access any information or record held by a public body.

(2) Notwithstanding anything contained in any other law for the time being in force, and subject to the provisions of this Act, no requester shall be denied access to any information or record.

(3) This Act shall be interpreted so as,-

(a) to advance the purposes of this Act; and

(b) to facilitate and encourage, promptly and at the lowest reasonable cost, the disclosure of information.

4. Maintenance and indexing of records.--Subject to the provisions of this Act and in accordance with the rules as may be prescribed, each public body shall ensure that all of the records which it holds are properly maintained, including so as to enable it to comply with its obligations under this Act, and in accordance with any relevant rules or standards established by the Information Commission.

5. Publication and availability of records.--(1) The following categories of information shall be duly published by public bodies in an up-to-date fashion and in a manner which best ensures that they are accessible to those for whom they may be relevant, Including over the internet, subject to reasonable restrictions based on limited resources:

(a) Acts and subordinate legislation such as rules, regulations, notifications, bye-laws, manuals and orders having the force of law in the Province, including being made available at a reasonable price at an adequate number of outlets to ensure reasonable access by the public;

(b) information about the public body, including its organization, functions, duties, powers and any services it provides to the public;

(c) a directory of its officers and employees, including a description of their powers and functions and their respective remunerations, perks and privileges;

(d) norms and criteria set by the public body for the discharge of its functions, including any rules, manuals or policies used by its employees to this end;

(e) a description of its decision making processes and any opportunities for the public to provide input into or be consulted about decisions;

(f) relevant facts and background information relating to important policies and decisions which are being formulated or have been made and which affect the public;

(g) a detailed budget of the public body, including proposed and actual expenditures;

(h) details about any subsidy or benefit programmes operated by the public body, including details about the amount or benefits provided and the beneficiaries;

(i) particulars of the recipients of concessions, permits, licences or authorizations granted by the public body;

(j) the categories of information held by the public body;

(k) a description of the manner in which requests for information may be made to the public body, including the name, title and contact details of all designated officers; and

(l) such other information as may be prescribed.

(2) Public body shall also publish an annual report on what they have done to implement their obligations under this Act which shall include detailed information about the requests for information which they have received, and how they have processed these requests.

(3) The annual report under sub-section (2) shall be formally forwarded to Speaker Provincial Assembly of Sindh and to the Information Commission, who shall take such action on the report as they may deem appropriate.

6. Designation of official.---(1) On commencement of this Act, a public body shall within a period of one hundred and twenty (120) days designate and notify an officer to act as designated officer for the purposes of this Act, with whom request for information under this Act may be lodged.

(2) In case no such official has been designated or in the event of the absence or non-availability of the designated officer, the person in charge of the public body shall be the designated officer.

(3) The designated officer shall be responsible for ensuring that requests for Information are dealt in accordance with this Act and generally for promoting full compliance by the public body with its obligations under this Act.

7. Request for Information.--(1) Subject to the provisions of this Act, every citizen may lodge a request for information with a public body through the designated officer.

(2) A request for information shall be made in writing and lodged in any manner in which the public body has the facilities to receive it, including in persons, by mail, by fax or by e-mail.

(3) Any written request for information which identifies the information or record sought in sufficient detail to enable the public body to locate it, and which includes an address for delivery of the information or record, shall be treated as a request for information.

(4) Subject to sub-section (3), a public body may provide an optional form for making requests for information, with a view to assisting requesters to make request.

(5) In no case shall a requester be required to provide reasons for his request.

(6) Where a request for information is received by a public body, the requester shall be provided with a receipt acknowledging the request, including the date and name of the official responsible for processing it.

8. Assistance to requesters.--(1) A designated officer shall take all reasonable steps to assist any requester who needs such assistance.

(2) In particular, a designated officer shall assist any requester who is having problems describing the information sought in sufficient detail to enable the public body to locate that information, or who needs help due to disability.

(3) Where a requester is unable to provide a written request, a designated officer shall reduce the request into writing, and provide the requester with a signed, dated copy of it.

9. Where Information Is not held.--(1) Where a public body does not hold information or records which are responsive to a request, and it is aware of another public body which does hold the information, it shall forward the request to that public body, and it shall inform the requester of this.

(2) Where a public body does not hold information or records which are responsive to a request, and it is not aware of any other public body which does, it shall return the request to the requester, informing him of this.

10. Procedure for disposal of requests.--(1) A designated officer shall provide a written notice in response to a request for information.

(2) The notice shall indicate the

(3) it shall be accompanied by a certificate, which may be affixed to the information or record at the foot thereof, as appropriate, to the effect that the information is correct or, as the case may be, the copy is a true copy of such public record, and such certificate shall be dated and signed by the designated officer.

(4) A decision of the Information Commission under sub-section (3) shall, if it has not been appealed against within 30 days, be registered with the court and any failure to respect the decision shall be dealt with in the same way as any contempt of court.

11. Time fine for responding.- (1) Subject to the provisions of this Act, a public body shall be required to respond to a request for information in accordance with section 7 as soon as possible and in any case within ten working days of the receipt of request

(2) The period stipulated in sub-section (1), may be extended by a maximum of a further ten working days where this is necessary because the request requires an n:h through a large number of records or records located in different offices, or consultation with third parties or other public bodies.

(3) Information needed to protect the life or liberty of any individual will be provided within two working days.

12. Form for providing information..-Where an applicant has indicated a preferred means for accessing information, such as a physical copy (attested), an electronic copy or an opportunity to inspect certain records, the public body shall provide access in that form unless to do so would unreasonably interfere with its operations or harm the document.

13. Fees for requests.- (1) It shall be free to lodge requests for information.

(2) Fees may be charged for the actual costs of reproducing information and sending it to the requester, in accordance with any schedule of fees which may be adopted by the Information Commission.

(3) No fee shall be charged for the first twenty pages of information provided, or where the requester is below the poverty line.

14. Exempt information.-A public body shall not be required to disclose information which falls within the scope of the exceptions provided for in sections 15 to 21 of this Act, provided that

(a) exceptions in other laws (.secrecy provisions) may not extend the scope of the exceptions in this Act, although they may elaborate on an exception that is provided for in this Act;

(b) the fact that information has been classified is irrelevant to the question of whether or not it falls within the scope of the exceptions provided for in this Act, which must always be accessed directly, at the time of a request based on clear and objective considerations;

(c) where only part of a record or the information falls within the scope of the exceptions provided for in this Act, that part shall be .severed and the rest of the record or information shall be provided to the requester,

(d) even where information falls within the scope of an exception provided for in this Act the information shall still be provided to the requester where, on balance, the overall public interest favours disclosure of the information;



15. International relations and security.--A public body may refuse a request for information the disclosure of which would be likely to cause grave and significant harm to international relations or national security.

16. Disclosure harmful to law enforcement--A public body may refuse a request for information the disclosure of which would be likely to:

- (a) result in the commission of an offence;
- (b) harm detection, prevention, investigation, inquiry or prosecution in relation to an offence or the apprehension of an offender;
- (c) reveal the identity of a confidential source of information in relation to an investigation;
- (d) facilitate an escape from legal custody; or
- (e) harm the security of any property or system, including a building, a vehicle, a computer system or a communication system.

17. Public economic affairs.-A public body may refuse a request for information the disclosure of which would be likely to:

- (a) cause grave and significant damage to the economy as a result of the premature disclosure of the proposed introduction, abolition or variation of any tax, duty, interest rate, exchange rate or any other instrument of economic management; or
- (b) cause significant damage to the legitimate financial interests of the public body, including by giving an unreasonable advantage to any person in relation to a contract which that person is seeking to enter into with the public body or by revealing information to a competitor of the public body.

18. Policy making.---A public body may refuse a request for information the disclosure of which would be likely to cause serious prejudice to the deliberative process in a public body by inhibiting the free and frank provision of advice or exchange of views, or cause serious prejudice to the success of a policy through premature disclosure of that policy.

19. Privacy.---(1) A public body may refuse a request for information the disclosure of which would encroach on the privacy of an identifiable third party individual, other than the requester, including an individual who has been deceased for less than twenty years.

(2) The exception in sub-section (1) shall not apply where:

- (a) the third party has effectively consented to the disclosure of the information; or
- (b) the person making the request is the guardian of the third party, or the next of kin or the executor of the will of a deceased third party; or
- (c) the third party is or was an official of a public body and the information related to his function as a public official.

20. Legal privilege.---A public body may refuse a request for information which is privileged from production in legal proceedings, unless the person entitled to the privilege has waived it

21. Commercial and confidential information.--A public body may refuse a request for information if the information:

(a) was obtained from a third party and to communicate it would constitute an actionable breach of confidence; and

(b) was obtained in confidence from a third party and it contains a trade secret or to communicate it would be likely to seriously prejudice the commercial or financial interests of that third party.

22. Third parties.--(1) Where a request for information relates to information or a record provided in a confidential basis by a third party, the public body shall endeavour to contact that third party with a view to obtaining either his consent to disclosure of the information or record or his objections to disclosure.

(2) Where a third party objects to disclosure, his objections shall be taken into account, but the decisions to whether or not the information falls within the scope of the exceptions in this Act shall be assessed by the public body on the basis of objective considerations.

23. Complaints.--(1) Anyone who believes that his request has not been dealt in accordance with the provisions of this Act has the right to lodge a complaint with the Information Commission to this effect

(e) for the purposes of clause (d), there shall be a strong presumption in favour of the disclosure of information that exposes corruption, criminal wrongdoing, other serious breaches of the law, human rights abuse, or serious harm to public safety or the environment; and

(f) the exceptions set out in sections 15 to 18 of this Act, shall cease to apply after a period of twenty years, provided that this may be extended, in exceptional cases, for up to a maximum of another fifteen years with the approval of the Information Commission.

24. Information Commission.--(1) On the commencement of this Act, Government shall within a period of one hundred and twenty (120) days, establish an Information Commission to be known as the Sindh Information Commission.

(2) The Information Commission shall be an independent statutory body, which shall enjoy operational and administrative autonomy from any other person or entity, including Government and any of its agencies, except as specifically provided for by law.

(3) The Information Commission shall be headed by the Chief Information Commissioner, who shall be a retired Senior Government Servant not below the rank of BPS-20 and shall be appointed by Government.

(4) The Information Commission shall comprise of three other Members to be known as Commissioners, who shall be appointed in the following manner:

(a) one Advocate of High Court or Supreme Court, who is qualified to be a Judge of High Court; and

(b) A person from civil society having experience of not less than fifteen years in the field of mass communication, academic or right to information.

(5) The Chief Information Commissioner and the Commissioners shall hold office for a term of three years from the date on which they assume office and shall not be eligible for re-appointment.

(6) Notwithstanding anything contained in sub-section (5), the Chief Information Commissioner and Commissioners shall not hold office after they have attained the age of sixty-five (65) years.

(7) A Commissioner may not hold any other public office, or be connected with any political party or be running any business or pursuing any profession at the time of or during their appointment to the Information Commission.

(8) A Commissioner may be removed by a positive vote of not less than two of the other Commissioners on grounds of failure to attend three consecutive meetings of the Information Commission without cause, inability to perform the duties of a Commissioner, falling foul of the conditions for being a Commissioner as set out in sub-section (6), or conduct which is materially inconsistent with the status of being a Commissioner, provided that a Commissioner who has been removed pursuant to this sub-section shall have the right to appeal that removal before the courts.

25. Functions of the Information Commission.--(1) The Information Commission shall have a primary responsibility to receive and decide on complaints.

(2) The Information Commission shall in addition to its complaints function, conduct the following activities:

(a) set rules and minimum standards regarding the manner in which public bodies are required to manage their records, in accordance with section 4 of this Act;

(b) designate further categories of information which may be subject to proactive disclosure in accordance with sub-section (1) of section 5 of this Act;

(c) adopt a schedule of the fees that public bodies may charge for providing information to requesters, in accordance with sub-section (2) of section 13 of this Act;

(d) approve or reject extensions to the maximum period that information may be kept confidential, in accordance with clause (f) of section 14 of this Act;

(e) compile a user-friendly handbook, in Urdu and English, describing in easily comprehensible form the rights established by, and how to make a request for information under this Act;

(f) refer to the appropriate authorities cases which reasonably disclose evidence of criminal offences under this Act;

(g) compile a comprehensive annual report both describing its own activities, including an overview of its audited accounts, and providing an overview of the activities undertaken by all public bodies to implement this Act, taking into account the information provided by individual public bodies pursuant to sub-section (2) of section 5 of this Act; and

(h) have an accredited accountant conduct an audit of its accounts on an annual basis, and provide a copy of its audited accounts to the Provincial Assembly and the Department of Finance.

(3) The Information Commission shall have the power to:

(a) monitor and report on the compliance by public bodies with their obligations under this Act;

(b) make recommendations to Government for reform both of a general nature and in relation to specific public bodies:

(c) make formal comments on any legislative or other legal proposals which affect the right to information;

(2) Complaints under sub-section (1) shall be free of charge.

(3) The Information Commission shall decide any complaint within a period of sixty (60) days.

(4) In an appeal, the public body shall bear the burden of proof of showing that it acted in accordance with the provisions of this Act.

26. Powers of the Information Commission.-(1) The Information Commission shall have all powers, direct or incidental as are necessary to undertake its functions as provided for in this Act, including full legal personality and the power to acquire, hold and dispose of property.

(2) The Information Commission shall also have the power to conduct inquiries, in relation to either a complaint or other matters connected with the proper implementation of this Act, and when conducting such an inquiry, the Information Commission shall have the powers of a Civil Court under Code of Civil Procedure {CPC},1908 in respect of the following matters:

(a) summoning and enforcing the attendance of witnesses and compelling them to give oral or written evidence under oath;

(b) requiring public bodies and to produce documents or things;

(c) inspect the premises of public bodies; and

(d) examining and inspecting information.

(3) When deciding a complaint, the Information Commission shall have the following powers:

(a) to order a public body to disclose information to a requester or to take such other reasonable measures as it may deem necessary to compensate a requesters for ant failure to respect the provisions of this Act;

(b) to impose a daily \*ire of up to Rs.250 per day, up to a maximum of Rs.25,000, on any official who has acted wilfully to obstruct any activity which is required to be undertaken by this Act, including with a view to preventing or delaying the disclosure of information to a requester; and

(c) to require a public body to take such general measures as may be required to address systematic failures to respect the provisions of this Act including by appointing a designated officer, by conducting training for its employees, by improving its record management, by publishing information on a proactive basis and/or by preparing and publishing an annual report.

27. Funding for the Information Commission.-(1) Government shall make such a budgetary allocation to the Information Commission as it may require to discharge its responsibilities effectively, including by establishing a secretariat and hiring the requisite staff to enable it to conduct its business properly, and shall provide the funds indicated through a reasonable schedule of payments throughout the year.

(2) For purposes of implementing sub-section (1), the Information Commission shall present a budget proposal to Government,

(3) The Chief Information Commissioner and Commissioner and Commissioners shall be entitled to such remuneration and allowances as the Government may determine.

28. Offence-. (1) It is a criminal offence wilfully to:

(a) obstruct access to any record with a view to preventing the exercise of a right provided for in this Act;

(b) obstruct the performance by a public body of a duty under this Act;

(c) interfere with the work of the Information Commission; or

(d) destroy a record without lawful authority.

(e) Use the information obtained for malafide purposes with ulterior motives with facile, frivolous design.

(2) Anyone who commits an offence under sub-section (1), shall be liable to a fine not exceeding rupees fifty thousand (50,000) or imprisonment for a period not exceeding two years.

29. Indemnity-. No one may be subject to any legal, administrative or Employment-related sanction for anything which is done in good faith or intended to be done in pursuance of this Act or any rules made there under.

30. Whistleblowers.---(1) No one may be subject to any legal, administrative or employment-related sanction, regardless of any breach of a legal or employment obligation, for releasing information on wrongdoing, or which would disclose a serious threat to health, safety or the environment, as long as they acted in good faith and in the reasonable belief that the information was substantially true and disclosed evidence of wrongdoing or a serious threat to health, safety or the environment

(2) For purposes of sub-section (1), wrongdoing includes the commission of a criminal offence, failure to comply with a legal obligation, a miscarriage of justice, corruption or dishonesty, or serious maladministration regarding a public body.

(d) co-operate with or undertake training activities for public officials on the right to information and the effective implementation of this Act; and

(e) publicize the requirements of this Act and the rights of individuals under it

31. Power to remove difficulties.--If any difficulty arises in giving effect to the provisions of this Act, Government may, by order in the official Gazette, make such provisions not inconsistent with the provisions of this Act as appear to it to be necessary or expedient for removing the difficulty.

32. Power to make rules.-Government in consultation with the Information Commission may, by notification in the official Gazette, make rules for carrying out the purposes of this Act.



## **Transparency International Pakistan's Proposal**

### **THE RIGHT TO PUBLIC SERVICES Bill, 2015**

*A Bill to provide for delivery of public services to the province of Sindh within the stipulated time limit, including liabilities of Government servants in case of default, administrative efficiency and for the matters connected therewith and incidental thereto.*

*WHEREAS it is expedient to provide for delivery of public services to the people of the province of Sindh within the stipulated time limit, including liabilities of Government servants in case of default, administrative efficiency and for the matters connected therewith and incidental thereto;*

It is hereby enacted as follows:

#### **CHAPTER I - PRELIMINARY**

1. Short title, extent and commencement---

- (1) This Act may be called the Right to Public Services Act, 2015.
- (2) It extends to the whole of the province of Sindh.
- (3) It shall come into force on such date as the Government may, by notification in the official Gazette, appoint and different dates may be appointed for different provisions of this Act.

2. Definitions.

In this Act, unless the context otherwise requires,-

- (a) "Appellate Authority" means the concerned administrative Secretary of the Department or such other person or authority, as may be specified by Government through notification;
- (b) "Authority" means,-
  - (i) any Department or Attached Department of Government and subordinate offices thereof;
  - (ii) any Office, Board, Commission, Council or any other Body established by or under, any law in force in the country;
  - (iii) all institutions, established or constituted under the province of Sindh;
  - (iv) subordinate courts and Tribunals;
  - (v) anybody which is owned, controlled or substantially funded by the Provincial Government, including enterprises owned, by whatever name called, required to render any

services of public utility in the country or to control, manage or regulate public services within a specified local area; and

- (vi) any other body which undertakes public services;
- (c) "Commission" means the Provincial Public Services Commission, constituted under section 16 of this Act;
- (e) "designated officer" means an officer designated under section 4;
- (f) "e-governance" means the use by Government of web-based Internet applications together with other information technologies,- combined with processes that implement these technologies, to-
  - (i) enhance the access to and delivery of Government information and services to the public, other agencies, and other Government entities; or
  - (ii) bring about improvements in Government operations that may include effectiveness, efficiency, service quality, or transformation.
- (g) "eligible person" means a citizen of the province of Sindh having any accrued right to public service in the Province and shall include corporations, companies, firms, businesses and organizations working in the Province;
- (h) "Government" means the province of Sindh;
- (i) "prescribed" means prescribed by rules and regulations, made under this Act;
- (j) "public service" mean any service or services notified by Government, under section 4;
- (k) "regulations" mean regulations made under this Act;
- (l) "rules" mean rules made under this Act; and
- (n) "specified time limit" means the time limit within which the designated officer is required to provide service as specified under sub-section (1) of section 4.

## **CHAPTER II**

### **Right to time bound provisions of public service**

3. Right to public services.-- (1) Subject to the provisions of this Act every eligible person shall have a right to public services.
- (2) The right conferred under sub-section (1) shall include the right to-
- {a) have access to the public service;

- (b) receive the public service within a specified time limit;
- (c) receive the public service in a transparent manner;
- (d) demand performance of duties and functions by the designated officer in accordance with the provisions of this Act;
- (e) hold the concerned designated officer accountable for any service deficiency in the public service; and
- (f) claim compensation from the concerned designated officer for his failure to provide, or delay in providing public service.

4. Notification of public services and time limit.

(1) Government may by notification, in the official Gazette, from time to time, specify any service to be a public service, for the purpose of this Act and also specify by a notification, the time limit within which such services shall be provided by the designated officer to the eligible persons.

(2) For providing public services specified under sub-section (1), Government may, by notification designate different officers for different public services, who shall be responsible for providing each of such service to the eligible person.

(3) While specifying the time limit for provision of any public service, in order to arrive at an informed decision, Government may invite and receive recommendations from all related public functionaries, as well as general public through prior publication of the proposed time limit along with a precise description of service.

5. Providing of public service within the specified time limit---

{1) It shall be mandatory on the part of the designated officer to provide public services to the eligible persons within the time limit as specified in the notification issued under sub-section (2-) of section 4.

(2) The specified time limit shall start from the date when an application is submitted by the eligible person to the designated officer or to a person subordinate to him, authorized to receive the application for providing the public service.

(3) All applications received by the designated officer or the authorized person, shall be duly acknowledged by putting an inward stamp specifying the inward number, date and time of receipt of such application, on the duplicate copy of such application.

(4) On receipt of an application under sub-section (3), the designated officer shall within the specified time limit, either provide the public service or reject the application:

Provided that in case of rejection of the application, the designated officer shall record reasons thereof and intimate the same to the applicant.

6. Appeal.---

(1) Any person, whose application has been rejected under sub-section (4) of section 5, or who does not receive public service within the specified time limit, or where the public service received by him is deficient in any manner, may prefer an appeal to the Appellate Authority, within a period of thirty (30) days from the date of such rejection or expiry of the specified time limit or receipt of deficient service, as the case may be.

(2) The Appellate Authority shall dispose of the appeal preferred under sub-section (1) within a period of thirty (30) days from the date of presentation of the appeal.

(3) The Appellate Authority may direct the designated officer to provide the public service within such time as it may specify but not more than the time specified in the notification or to remove the deficiency in public service provided to the appellant or to pass such other order, including rejection of the appeal, as it may deem fit:

Provided, that before passing any order under sub-section (3), the Appellate Authority shall provide an opportunity of being heard to the appellant as well as to the designated officer;

(4) In case the appellant or the designated officer is aggrieved of a final order passed under sub-section (3), he may prefer an appeal to the Commission, within fifteen (15) days of issuance of such final order of the Appellate Authority.

7. Time-frame for disposal.---

(1) An appeal under sub-section (4) of section 6 shall be disposed of within thirty (30) days of the receipt of the appeal.

(2) Any other matter or complaint, to be adjudicated by the Commission, may be disposed- off, within a period of sixty (60) days, from the date of receipt of such complaint or entrustment of such matter, as the case may be.

8. Powers of Appellate Authority.---The Appellate Authority shall, while deciding an appeal under section 6, have the same powers as are vested in the Civil Court under the Code of Civil Procedure 1908 (Act V of 1908), in respect of the following matters,-

- (a) requiring the production and inspection of documents;
- (b) issuing summons for a hearing to the designated officer and the appellant;
- (c) requisitioning any public records or copies thereof from any Government office;
- (d) levying of fine or compensation upon the concerned designated officer to pay compensation;
- (e) directing the designated officer to pay compensation to the eligible person; and

(f) any other matter which may be prescribed by the rules;

9. Display of public services.---The details of the designated officers, public services and the specified time limit thereof shall be displayed locally on the notice-board in every Authority and notified in the official Gazette and if possible, also on the website of the concerned Authority, for the information of the general public.

10. e-Governance of Services.---Government shall endeavor and encourage all the authorities required under this Act to deliver to the eligible persons, the public services within the specified time limit, as a part of e-Governance.

11. Penalty, for not providing public service.---(1) If the Appellate Authority is of the opinion that the designated officer has failed to provide the public service to the eligible person within the time limit specified or has caused delay in providing public service or has provided the public service, which is deficient in any manner, the Appellate Authority shall by notice, call upon the designated officer to show cause, within thirty days of the receipt of such notice, for failure to provide such public service.

(2) If, after having considered the cause, if any, shown by the designated officer, the Appellate Authority opines that the designated officer has acted in the manner as provided in sub-section (1), the Appellate Authority shall, impose a fine on such designated Officer which may extend to rupees twenty-five thousand and which shall not be less than rupees five hundred.

12. Penalty, for not deciding the appeal within the specified time.---Where the Commission is of the opinion that the Appellate Authority has failed to decide the appeal within the, time limit specified in sub-section (2) of section 6, without any sufficient or reasonable cause, it may impose a fine on the Appellate Authority, which shall not be less than rupees one {01} thousand but which may extend to rupees twenty-five (25) thousand:

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Provided that before imposing such fine, the Appellate Authority shall be given a reasonable opportunity of being heard by the Commission.

13. Compensation.---On imposition of a fine under sections 11 or 12, the Appellate Authority or the Commission, as the case may be, may, by order, direct that a portion of such fine imposed, as deemed fit by it, be awarded to the aggrieved person, as compensation:

Provided that the amount of such compensation awarded shall not exceed seventy (70) per cent of the amount of fine imposed.

14. Disciplinary action: -- In addition to the imposition of fines under sections 11 or 12, the Commission, may, if it is satisfied that the designated officer or the Appellate Authority, as the case may be, has failed to discharge the duties assigned to him under this Act without sufficient or reasonable cause, recommend disciplinary action against him under the service rules applicable to him, for the time being.

15. Acknowledgment of good performers.---(1) Government, may by way of a notification or otherwise, maintain and publish from time to time but at least once in every quarter, a roll of honour, acknowledging the names of those designated officers and other government servants appearing on it, who have been consistently performing well either in providing public services in timely and efficient manner, or have been reputed for discharging their administrative duties and disposal of case work, adequately and within prescribed time as envisaged under this Act.

(2) Government may prescribe independent evaluation criteria, designate an independent panel of evaluators from amongst members of commission or otherwise and devise a comprehensive policy for the purposes of acknowledging the services of good performers, as laid down in sub-section (1):

Provided that while prescribing the policy, Government, amongst other things to acknowledge the services of good performers and promote the culture of efficient and timely service delivery, may also prescribe and approve cash rewards for the best performers.

### **CHAPTER III**

#### **Right to Public Services Provincial Commission**

16. Establishment of a Right to Public Services Commission.---(1) Government shall, by notification in the official Gazette, establish an independent Commission to be known as the Public Services Provincial Commission, to exercise the jurisdiction, powers and authority conferred under this Act, including,-

- (a) hearing appeals against the orders of the Appellate Authority;
- (b) make provisions for speedy access to public services in accordance with the provisions of this Act; and
- (c) payment, of compensation for delayed delivery of public service by any designated officer to the eligible person.

(2) The Commission shall comprise of a Chief Commissioner and two Commissioners, to be appointed by Government from persons having the domicile of the Province, in such manner and on such terms and conditions, as may be prescribed, and until so prescribed, as may be determined by Government.

(3) The Commission shall be headed by the Chief Commissioner, who shall be a retired senior Government servant, not below the rank of BPS-21 with proven integrity and intellect.

(4) The other two Commissioners shall be appointed by Government, in the following manner:

- (a) a former civil servant of BPS-20 or above, with proven integrity and intellect, who has demonstrated expertise in one or more of the following:



- (i) financial management; or
- (ii) public administration, regulation and discipline;
- (b) an eminent person, having bachelor degree in the relevant field and has been associated with public services for a period of fifteen (15) years, provided that he may not be less than forty-five (45) years of age.

(5) The Chief Commissioner and the Commissioners shall hold office for a term of three (03) years from the date on which they enter upon office or until they attain the age of sixty-five (65) years, whichever is earlier.

(6) Upon completion of their term, the Chief Commissioner and the Commissioners shall not be eligible for reappointment.

(7) In the event of the absence or incapacity of the Chief Commissioner or any of the Commissioners, or if that office is vacant, the Government may appoint any qualified person to hold that office in the interim for a term not exceeding six (06) months on the terms and conditions so fixed by Government.

(8) Government may remove, the Chief Commissioner or the Commissioner before the expiry of his term on ground of misconduct or of being incapable of properly performing the duties of his office by reason of physical or mental incapacity:

Provided that before removing the Chief Commissioner or the Commissioner, as the case may be, Government shall give him an opportunity of being heard in person.

(9) The Chief Commissioner and the Commissioners shall engage exclusively in the duties and functions of the Commission and may not hold any other office of profit or engage in any other employment for reward.

(10) Government shall provide the Commission with such officers and ministerial staff, as may be required for the discharge of its functions under this Act.

(11) The Commission may also in consultation with the Government appoint such officers and ministerial staff, as may be necessary for the discharge of its functions under this Act.

#### 17. Powers of the Commission.---

(1) The Commission shall, for the purposes of its functions under this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 in respect of the following matters, namely:-

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) discovery and production of any document or other material object producible as evidence;
- (c) receiving evidence on affidavits;

- (d) requisitioning of any public record;
  - (e) issuing commission for the examination of witnesses;
  - (f) reviewing its decisions, directions and orders; .
  - (g) any other matter which may be prescribed by rules.
- (2) The Commission shall have powers to regulate its own procedure.
- (3) The Commission shall arrange to deliver copies of the decision to the parties concerned within a period of fifteen (15) days from the date of such decision.

18. Staff and officers to be public servants.---The staff and officers of the Commission shall be deemed to be public servants within the meaning of section 21 of the Pakistan Penal Code, 1860.

19 Power to issue directions.---(1) The Commission shall, upon adjudication of a complaint, have the power to issue directions,-

- (i) requiring any Authority entrusted with administration to take such steps: as may be necessary to secure compliance with the provisions of this Act or any other law under which the eligible person, entitled to a right or benefit; and
  - (ii) requiring the payment of compensation to the eligible person.
- (2) Where the Commission, is satisfied that there are reasonable grounds to inquire into the matter, it may initiate an inquiry in respect thereof and shall enjoy powers available to a Tribunal under the Tribunals of Inquiry Act, 1969.

## **CHAPTER IV**

### **Incidental Provisions**

20. Punishment for frivolous complaints..—

{1) Any person, whose Appeal complaining against an alleged non-provision of public service within stipulated time or alleging any deficiency therein, is rejected by the Appellate Authority and while deciding so, the Appellate Authority is also of the view that his complaint was false, frivolous or vexatious and if such order is upheld by the Commission-also, the complainant shall be served by the Commission, with a show-cause notice, requiring him to submit his reply within a period of fifteen (15) days of show cause in writing that why he shall not be prosecuted for filing a frivolous complaint.

(2) If the Commission is satisfied, upon receiving the reply to show- cause notice (and hearing the parties that the Complaint so filed was false and frivolous, it may proceed to fine the complainant for an amount up to rupees fifty (50) thousand.

21. Deposit of fines and fees.---

(1) All fines, except those in. nature of compensation, to be paid to the eligible person under this ,Act; shall upon recovery be immediately deposited in the Public Account - of the Province, so maintained in terms of Article 118 of the Constitution of Islamic Republic of Pakistan while all fees shall be deposited in the Provincial Consolidated Fund.

(2) All Authorities shall be bound to give effect to the orders and directions of the Commission in enforcing its decisions and orders, including but not limited to orders related to attachment and remission of properties, salaries and other receivable of the defaulters.

22. Protection of action taken in good faith.---No suit, prosecution or any other legal proceedings shall lie against any person for anything which is done or intended to be done in good faith, in pursuance of this Act or any rules made there-under.

23. Act to have over-riding effect---The provisions of this Act shall have effect notwithstanding anything to the contrary contained in any other law for the time being in force.

24. Power of the Commission to send applications to the Appellate Authority directly.--Notwithstanding anything contained.in this Act, the Commission, if it receives any application alleging non-compliance of the provisions of this Act, may if it deems fit, send such an application directly to any Appellate Authority for taking further action in the matter, in accordance with the provisions of this Act.

25. Bar of jurisdiction of Courts.--••No Court shall entertain any suit, application or other proceeding in respect of any order made under this Act and no such order shall be called in question otherwise than by way of appeal under this Act.

26. Power to make rules.---(1) Government shall within a period of (04) months, by notification in the official Gazette, make rules to carry out the provisions of this Act.

(2) Without prejudice to the generality of sub-section (1 }, the Government shall have the power to prescribe forms and fees for making applications under this Act

27. Power to make regulations.---The Commission may for the purposes of this Act make regulations not inconsistence with this Act or the rules made there under.

28. Power to remove difficulties.---(1) If any difficulty arises in giving effect to the provisions of this Act, Government may by order, make such provisions, as appear to it to be necessary or expedient for removal of the difficulty.

(2) Every order made under this section shall, as soon as may be after it is made, be laid before the legislature.