



February 20, 2015

The Chairman,  
Prime Minister's Inspection Commission,  
Islamabad.

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

Dear Sir,

Attached please find TI Pakistan's draft proposals for review, amendment and enactment of the following Federal Acts:

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

The drafts have been prepared on the basis of the best practices globally. 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 curb corruption and thus improve the CPI 2015 ranking.

We are available to provide any clarification if required.

Best Regards,

Saad Rashid  
Executive Director

Copy to:  
Syed Adil Gilani, Consultant PMIC

## Transparency International Pakistan's Proposal

### Draft of 'Right to Information Act 2015'

*To provide for the right to information in a rapid and low-cost manner, subject only to reasonable restrictions established by law*

**WHEREAS** Government transparency and the right to information ensure that the people of Pakistan have improved access to records held by public authorities and promote the purposes of making the Government more accountable to its people, of improving participation by the people in public affairs, of reducing corruption and inefficiency in Government, of promoting sound economic growth and of promoting good governance and respect for human rights;

**AND WHEREAS** it is expedient to provide for a law which gives effect to the human right to information, as guaranteed under international law and by Article 19A of the Constitution of the Islamic Republic of Pakistan, whereby everyone shall have the right to have access to all information held by public bodies subject only to reasonable restrictions as established by law, and for matters connected therewith or incidental thereto;

It is hereby enacted as follows:-

1. **Short title, application and commencement.-** (1) This Act may be called the Right to Information Act, 2015.

(2) It shall apply to public bodies as defined in clause (ix) of section 2 of this Act.

(3) Except for this section which shall come into force at once, the remaining provisions of this Act shall come into force on such date or dates as the Federal Government may, by notification in the official Gazette, specify in this behalf and different dates may be specified for bringing into force of different provisions of this Act.

2. **Definitions.-** In this Act, unless there is anything repugnant in the subject or context-

- (i) "applicant" means any natural or legal person who lodges a request, or any person who is acting for or on behalf of such a person;
- (ii) "Commission" or "Information Commission" means the Pakistan Information Commission established in accordance with section 29;
- (iii) "complaint" means any grievance lodged in writing by an applicant with the principal officer of a public body in accordance with section 28;
- (iv) "designated official" means an official of a public body designated in accordance with section 7;
- (v) "information" means material held in any record, regardless of who produced it or its physical form or characteristics.

- (vi) “prescribed” means prescribed by rules made under this Act;
- (vii) “national security” means and includes the matters pertaining to the integrity, security or defence of Pakistan or any part thereof;
- (viii) “principal officer” means-
  - (a) in case of the Federal Government’s Ministries and Divisions, the Secretary thereof; and
  - (b) in all other cases, the head or chief executive of the public body by whatever designation identified;
- (ix) “public body” means—
  - (a) any Ministry, Division, attached department or subordinate office, including autonomous bodies, of the Federal Government;
  - (b) any federal and any municipal or local authority set up or established by or under any federal law;
  - (c) the National Assembly and Senate including their secretariats, committees and members and the head of government;
  - (d) any statutory corporation or other body corporate or institution set up or established or owned or controlled or funded by the Federal Government;
  - (e) any court, tribunal, commission or board;
  - (f) any incorporated or unincorporated body or entity functioning under the control or authority of another public body or wherein one or more public bodies owns or has controlling interests or provides substantial funding;
  - (g) any other organisation which undertakes a public function, to the extent of that function;
- (x) “record” means any form of storage in which information is recorded, and includes any data, document, memo, voucher, noting on the file, minutes of meeting, e-mail, map, advice, press release, brochure, circular, order, decision, notification, logbook, contract, agreement, budget, report, paper, sample, model, map, drawing, CD, USB, disc, audio record, mobile device, film, video, any instrument prepared through electronic process, machine-readable documents
- (xi) “request” means a request for information and includes a request for information and a request for a specific record; and
- (xii) “third party” means a person other than the applicant.

**3. Access to information not to be denied.-** (1) Notwithstanding anything contained in any other law for the time being in force, and subject only to this Act, no applicant shall be denied access to any information or record held by a public body.

(2) This Act shall be interpreted so as to advance its purposes as set out in the Preamble and to—

- (a) promote the right to know; and
- (b) facilitate and encourage, promptly and at the lowest reasonable cost, the disclosure of information.

**4. Maintenance and indexing of records.-** (1) Subject to provisions of this Act and any rules as may be prescribed, the principal officer of each public body shall ensure that all of the records that the body holds are properly maintained, including so as to enable it to comply with its obligations under this Act.

(2) To foster better record management, each public body shall be required to bring its record management practices into line with any standards in this area set by the Information Commission and within any timeframe for this that the Commission may stipulate.

**5. Publication and availability of records.-** (1) The principal officer of each public body shall, within six months of the commencement of this Act, ensure that the following categories of information are duly published 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) description of the public body's organisation and functions, duties, powers and any services it provides to the public, including a directory of its officers and employees, indicating their duties and functions, and their respective remunerations, perks and privileges;
- (b) statutes, statutory rules, regulations, bye-laws, orders, notifications applicable to the public body disclosing the date of their respective commencement or effect;
- (c) substantive or procedural rules and regulations of general application evolved or adopted by the public body, including any manuals or policies used by its employees;
- (d) relevant facts and background information relating to important policies and decisions which are being formulated or have been adopted, along with a statement of the policies adopted by the public body and the criteria, standards or guidelines upon which discretionary powers are exercised by it;
- (e) the conditions upon which members of the public can acquire any licences, permits, consents, approvals, grants, allotments or other benefits of whatsoever nature from any public body or upon which transactions and contracts, including contracts of employment, can be entered into with the public body, along with particulars about the recipients of any concessions, permits, licences or authorisations granted by the public body;
- (f) a description of its decision making processes and any opportunities for the public to provide input into or be consulted about decisions;
- (g) a detailed budget of the public body, including proposed and actual expenditures, original or revised revenue targets, actual revenue receipts, revisions in the approved budget and the supplementary budget;
- (h) the methods whereby information in the possession or control of the public

body may be obtained and the basis of the fee required therefore, along with the name, title and contact details of all designated officers;

- (i) reports including performance reports, audit reports, evaluation reports, inquiry or investigation reports and other reports that have been finalised;
- (j) such other matters which the principal officer of the public body deems fit to be published in the public interest; and
- (k) such other information as may be prescribed.

(2) Any amendment, alteration or modification relating to matters described in sub-section (1) shall also be published and no person shall be adversely affected by any amendment, modification or alteration of any matter other than a statute.

**6. Computerisation and voluntary disclosure of records.** ~~Each public body shall endeavour within reasonable time and subject to availability of resources that all records covered under this Act are computerised and connected through a network all over the country on different systems so that authorized access to such public records is facilitated.~~

**TI Pakistan recommends:** Each public body shall endeavour within 12 months that all records covered under this Act are computerised and connected through a network all over the country on different systems so that free access to such public records is facilitated.

**7. Designated official.** (1) Each public body shall, within forty-five days of coming into force of this Act, notify one or more designated officials, not below the rank of BPS-19 or equivalent:

Provided that where no designated official has been notified or he is absent or not available, principal officer of the public body shall be the designated official.

**8. Functions of designated official.** Subject to provisions of this Act and the rules made thereunder, the designated official shall be responsible for ensuring that requests are dealt with in accordance with this Act and generally for promoting full compliance by the public body with its obligations under this Act.

**9. Requests.** (1) Subject to the provisions of this Act, anyone may lodge a request with a public body through the designated official.

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

(3) Any written request 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.

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

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

(6) Where a request is received by a public body, the applicant shall be provided with a receipt acknowledging the request as soon as possible and via the same means by which the request was communicated, which shall include the date and name of the official responsible for processing it.

**10. Assistance to applicants.-** (1) A designated official shall take all reasonable steps to assist any applicant who needs such assistance.

(2) In particular, a designated official shall assist any applicant 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 an applicant is unable to provide a written request, a designated official shall reduce the request to writing, and provide the applicant with a signed and dated copy of it.

**11. 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 within five working days, and it shall inform the applicant 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 applicant within five working days, informing him of this.

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

(2) The notice shall indicate that—

(a) the request has been accepted and the applicant is entitled to receive the information or record, subject to the payment of any applicable fee;

(b) the request has been rejected on the basis that it does not comply with the rules relating to such requests, but only after assistance has been offered to the applicant in accordance with section 10;

(c) the request has been rejected on the basis that the information is already available in a generally accessible form, such as a book, in which case the notice shall direct the applicant to the place where the information may be found;

(d) the request has been rejected on the basis that it is vexatious, including because it relates to information which is substantially the same as information that has already been provided to the same applicant; or

(e) the request has been rejected, in whole or in part, on the basis that the information is exempt, in which case the notice shall specify the exact exception relied upon and include details regarding the right of the applicant to appeal against this decision.

(3) Where information or a record is provided in accordance with clause (a) of subsection (2), 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 the original record, and such certificate shall be dated and signed by the designated officer.

**13. Time limit for responding.-** (1) Subject to the provisions of this Act, a public body shall be required to respond to a request 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 a search 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 shall be provided within two working days.

**14. 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.

**15. Fees for requests.-** (1) It shall be free to lodge requests.

(2) Fee may be charged for the actual costs of reproducing information and sending it to the applicant, in accordance with any schedule of fee 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 applicant demonstrates evidence of being below the poverty line.

**16. Overriding inconsistent exceptions.-** (1) The exceptions in this Act shall take precedence and exceptions or limitations 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.

(2) 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 be accessed directly, at the time of a request, based on clear and objective considerations.

**17. Information exempt from disclosure.-** Subject to provisions of this Act, a public body shall not be required to disclose exempt information, provided that—

- (a) 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 applicant;
- (b) even where information falls within the scope of an exception provided for in this Act, the information shall still be provided to the applicant where, on balance, the overall public interest favours disclosure of the information;
- (c) for the purposes of clause (b), 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
- (d) the exceptions set out in sections 18, 19, 21, 22 and 26 of this Act, shall cease to apply after a period of fifteen 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.

**18. International relations.-** (1) Information may be exempt if its disclosure would likely to cause grave and significant damage to the interests of Pakistan in the conduct of international relations.

- (2) In this section, “international relations” means relations between Pakistan and—
- (a) the government of any other foreign State; or
  - (b) an organisation of which only States are members.

**19. Disclosure harmful to law enforcement.-** Information may be exempt if its disclosure is likely to—

- (a) result in the commission of an offence;
- (b) harm the detection, prevention, investigation or inquiry in a particular case;
- (c) reveal the identity of a confidential source of information;
- (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.

**20. Privacy and personal information.-** (1) Information is exempt if its disclosure under this Act would involve invasion of privacy of an identifiable individual, including a deceased individual, other than the applicant.

- (2) The exception in sub-section (1) shall not apply where—
- (a) the third party has consented to the disclosure of the information;
  - (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 relates to his function as a public official.

**21. Economic and commercial affairs.-** Information is exempt if and so long as its disclosure is likely to cause—

- (a) grave and significant damage to the economy as a result of premature disclosure of a proposed introduction, abolition or variation of any tax, duty, interest rate, exchange rate or any other instrument of economic management;
- (b) significant damage to the financial interests of the public body 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 for acquisition or disposal of property or supply of goods or services; or
- (c) significant damage to lawful commercial activities of the public body.

**22. National security.-** Information may be exempt if its disclosure would be likely to cause serious prejudice to the defence or security of Pakistan.

**23. Public health and safety.-** Information may be exempt if its disclosure would be likely to endanger the life, health or safety of any individual.

**24. Commercial interests of third parties.-** Information may be exempt if—

- (a) the information was obtained from a third party and to communicate it would constitute an actionable breach of confidence; or
- (b) the information was obtained in confidence from a third party and—
  - (i) it contains a trade secret; or
  - (ii) to communicate it would be likely to seriously prejudice the commercial or financial interests of that third party.

**25. Legal advice.-** Information may be exempt if it is privileged from production in legal proceedings, unless the person entitled to the privilege has waived it.

**26. Legitimate policy making and other operations of public authorities.-** (1) Information may be exempt if its disclosure would be likely to—

- (a) cause serious prejudice to the effective formulation or development of government policy;
- (b) seriously frustrate the success of a policy, by premature disclosure of that policy;
- (c) significantly undermine the deliberative process in a public body by inhibiting the free and frank provision of advice or exchange of views;
- (d) significantly undermine the effectiveness of a testing or auditing procedure used by a public body; or
- (e) prejudice the proceedings in a court or a tribunal.

(2) clauses (a) and (b) of sub-section (1) do not apply to facts, analyses of facts, technical data or statistical information, or apply after the decision has been finalised.

**27. Third parties.-** (1) Where a request relates to information or a record provided on 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 decision as 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.

**28. Complaints and appeals.-** (1) An applicant who is not satisfied with the manner in which his or her application has been processed may, within a period of not exceeding thirty days after either receiving a decision or after the time limit for such a decision has passed, lodge a complaint with the principal officer of the public body and the principal officer shall decide on such a complaint within ten working days.

(2) Anyone who is not satisfied with the manner in which his complaint has been dealt with may lodge an appeal with the Information Commission to this effect, provided that—

- (a) appeals shall be free of charge;

- (b) the Information Commission shall decide any appeal within a period of sixty days; and
- (c) 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.

**29. Information Commission.-** (1) Within one hundred and twenty days of coming into force of this Act, the Government shall establish an Information Commission to be known as the Pakistan 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 the Government and any of its agencies, except as specifically provided for by this Act.

(3) The Information Commission shall comprise three Commissioners, who shall be appointed by the Government, in consultation with the Leader of the Opposition, in accordance with the following—

- (a) one retired judge of the High Court or Supreme Court, to be nominated by the Chief Justice;
- (b) one Advocate of the High Court or Supreme Court, to be nominated by the Bar Council; and
- (c) one respected representative of civil society, to be chosen from among nominees put forward by civil society by the relevant committee of the National Assembly.

(4) The Information Commission shall be headed by the Chief Information Commissioner, who shall be elected by the Commissioners from among their number.

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

(6) No one over the age of sixty-two years may be appointed as Commissioner.

(7) A Commissioner may not hold any other public office or be connected with any political party at the time of or during their appointment to the Information Commission and, once appointed, they shall work on full time basis and may not run any business or pursue any profession during their tenure as Commissioners.

(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 (7), or conduct which is materially inconsistent with the status of being a Commissioner, but only after being heard, provided that a Commissioner who has been removed pursuant to this sub-section shall have the right to appeal that removal before the courts.

**30. 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 clause (k) of 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 applicants, in accordance with sub-section (2) of section 15 of this Act;
- (d) approve or reject extensions to the maximum period that information may be kept confidential, in accordance with clause (d) of section 17 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 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; 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 National Assembly and the Finance Division.

(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 or regulatory proposals which affect the right to information;
- (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) publicise the requirements of this Act and the rights of individuals under it.

**31. Po vers 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 an appeal or on its own initiative in relation to 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 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 records or other things;
- (c) inspecting 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 an applicant or to take such other reasonable measures as it may deem necessary to remedy or compensate an applicant for any failure to respect the provisions of this Act;
- (b) to impose a daily fine of up to the equivalent of one day of salary per day, for a maximum of one hundred days, 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 an applicant; 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.

(4) A decision of the Information Commission under sub-section (3) shall, if it has not been appealed against within thirty 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.

**32. Funding for the Information Commission.-** (1) Government shall make such a budgetary allocation to the Information Commission as the latter 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 the Finance Division 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 the Government.

(3) The remuneration and other benefits of the Chief Information Commissioner and Commissioners shall be set at the equivalent level of a Judge of the High Court.

**33. Offences.-** (1) Anyone who acts wilfully to obstruct the implementation of this Act, including by—

- (a) obstructing access to any information or record with a view to preventing the exercise of a right provided for in this Act;
- (b) obstructing the performance by a public body of a duty under this Act;
- (c) interfering with the work of the Information Commission; or
- (d) destroying a record without lawful authority;

shall be liable to a fine not exceeding twenty-five thousand rupees.

(2) The commission of serious and repeated wilful acts to obstruct the right to information under this Act shall be a criminal offence punishable with imprisonment for a term not exceeding two years or with a fine of up to one hundred thousand rupees or with both.

(3) Where a public body systematically fails to respect the right to information under this Act, the Information Commission may require it to take such general measures as may be required to address those systematic failures, including by appointing a designated official, 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.

**34. Indemnity.-** No suit, prosecution or legal proceedings shall lie against the principal officer, designated official or any other person of the public body in respect of anything which, in good faith, is done or purported to have been done under this Act and the rules made thereunder.

**35. 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 or abuse of authority regarding a public body.

**36. Promotional measures.-** All public bodies shall be required to-

- (a) publish and keep updated a list of all of the documents that that they hold;
- (b) ensure that their staff receive adequate training on implementation of this Act;
- (c) publish annual reports on what they have done to implement this Act, including detailed information about the requests for information which they have received, and how they have processed these requests; and
- (d) the annual report under clause (c) shall be made public and formally forwarded to the Chief Secretary and to the Information Commission, who shall take such action on the report as they may deem appropriate.

**37. Act to override other laws.-** The provisions of this Act shall have effect notwithstanding anything contained in any other law for the time being in force.

**38. Repeal.-** The Freedom of Information Ordinance, 2002 (XCVI of 2002) is hereby

repealed.

**39. Power to remove difficulty.-** If any difficulty arises in giving effect to any of the provisions of this Act, the Federal Government may make such order not inconsistent with the provisions of this Act as may appear to it to be necessary for the purpose of removing the difficulty:

Provided that no such order shall be made after expiry of one year from commencement of this Act.

**40. Power to make rules.-** The Federal Government may, by notification in the official Gazette, make rules for carrying out the purposes of this Act.

**41. Power to make regulations.-** The Information Commission may make regulations, not inconsistent with the provisions of the rules made under section 40, regarding its internal procedures and, without limiting the generality of the foregoing, make regulations regarding—

- (a) record management standards;
- (b) categories of information subject to proactive disclosure;
- (c) fee that may be charged for requests; and
- (d) for the processing of appeals.

# TI Pakistan's Proposal

## THE WHISTLE BLOWERS PROTECTION ACT

AN ACT 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 called the Whistle Blowers Protection Act, 2015.

(2) It extends to the whole of Pakistan.

(3) It shall come into force on such date as the Majlis-e-Shoora (Parliament) – with the assent of the President – may, by notification in the Official Gazette, appoint; and different dates may be appointed for different provisions of this Act and any reference in any provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

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. In this Act, unless the context otherwise requires,—

(a) "The Inspection Commission" means the Prime Minister's Inspection Commission governed under MLO No. 58 of 31st October 1978 and protected under article 270 (A) of the Constitution of Pakistan 1973;

(b) "Competent Authority" means—

(i) in relation to a Members of Parliament, the Prime Minister;

(ii) in relation to a Member of Parliament, 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 National Assembly, as the case may be;

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

(iv) 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;

(v) 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;

(vi) in relation to—

(A) any person in the service or pay of the Federal Government of Pakistan or remunerated by the Federal Government of Pakistan 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 Federal Government or a Government company as defined in Companies Ordinance, 1984, owned or controlled by the Federal 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 Parliament or Provincial Assemblies; 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

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(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 Federal 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 Federal 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 Federal 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 Government of Pakistan/Federal Government or any local or other public authority,

the National Accountability Bureau or any other authority, as the Federal 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 Federal 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

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(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 Federal 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 Federal Government or the Provincial Government, as the case may be, 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 Gazette of Pakistan or, as the case may be, the Official Gazette of a State;

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

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(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 Federal Government and 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,—

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

(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.

(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:

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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

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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 Cabinet of the Federal Government or any Committee of the Cabinet;

(b) 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 Government of Pakistan or the Secretary to the Provincial Government, as the case may be, or, any authority so authorised by the Federal or Provincial Government certifying that any information, answer or portion of a document is of the nature specified in clause (a) or clause (b), 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 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 Federal 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:

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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 fide*ly 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 fide*ly 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 fide*ly 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 Federal Government or Provincial Government, as the case may be, shall cause a copy thereof to be laid before each House of Parliament, or the Provincial assemblies, as the case may be:

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 Federal 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.

**27.** The Competent Authority may, with the previous approval of the Federal Government or 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. Power to make regulations.

**28.** Every notification issued and every rule made by the National 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.

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**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.

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

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

*AN ACT to provide for delivery of public services to the people of Pakistan 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 Pakistan 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 Pakistan.
- (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 Federal Government;
  - (iv) subordinate courts and Tribunals;
  - (v) anybody which is owned, controlled or substantially funded by the Federal 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 Federal 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 Pakistan 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 Federal Government of Pakistan;
- (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: •

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 Federal 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 Federal 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 inconsistent 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.