

THE KHYBER PAKHTUNKHWA WHISTLEBLOWER PROTECTION AND VIGILANCE COMMISSION ACT, 2016.

(KHYBER PAKHTUNKHWA ACT NO. XVI OF 2016)

CONTENTS

PREAMBLE

SECTIONS

a

Short title, extent and commencement.

Definitions.

Establishment of Whistleblowers Protection and Vigilance Commission.

Composition of the Commission.

Powers and functions of the Commission.

Meetings of the Commission.

Powers and functions of Chairman.

Financial Autonomy.

a

Inquiry in relation to Public Interest Disclosure.

S

Actions in violation of public interests.

a

=

Protection to the Whistleblower.

XN

Rewards and Punishments.

a

Ww

Imposition of fine.

-

Annual report.

“

Indemnity.

a

Power to make rules.

—

power to make regulation.

THE KHYBER PAKHTUNKHWA WHISTLEBLOWER PROTECTION AND VIGILANCE COMMISSION ACT, 2016.

(KHYBER PAKHTUNKHWA ACT NO. XVI OF 2016)

[First published after having received the assent of the Governor of the Khyber Pakhtunkhwa in the Gazette of Khyber Pakhtunkhwa (Extraordinary), dated the 26<sup>th</sup> September, 2016].

AN  
ACT

to provide for the establishment of the Khyber Pakhtunkhwa Whistleblower Protection and Vigilance Commission in the Province of the Khyber Pakhtunkhwa.

WHEREAS it is expedient to provide for the establishment of the Khyber Pakhtunkhwa Whistleblower Protection and Vigilance Commission to enable the citizens of the Khyber Pakhtunkhwa to make public interest disclosure that relates to the irregular, illegal or corrupt practices and to protect them from disadvantageous measures, give them rewards for such public interest disclosure and for matters connected therewith and ancillary thereto;

It is hereby enacted as follows:

1. Short title, extent and commencement.---(1) This Act may be called the Khyber Pakhtunkhwa Whistleblower Protection and Vigilance Commission Act, 2016.

(2) It shall extend to the whole of the Province of the Khyber Pakhtunkhwa.

(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, the following expressions shall have the meanings hereby respectively assigned to them:

(a) "agency" means a company, a firm, an association, corporation, commission, council, any other body or office or a non-governmental organization;

(b) "Chairman" means the Chairman of the Commission;

(c) "Commission" means the Khyber Pakhtunkhwa Whistleblower Protection and Vigilance Commission established under section 3 of this Act;

(d)

(e)

(f)

“Commissioner” means the Commissioners appointed under this Act and includes the Chairperson;

“corruption or corrupt practices” shall have the same meaning as given to them in the Khyber Pakhtunkhwa Ehtesab Commission Act, 2014 (Khyber Pakhtunkhwa Act No. I of 2014);

“Disadvantageous Measures” means and includes the following actions:

(i)

(ai)

(iii)

(iv)

(v)

(vi)

(vii)

(viii)

(ix)

removal from office, release from office, dismissal or any other unfavorable personal action equivalent to the loss of status at work;

disciplinary action, suspension from office, reduction in pay, demotion, restriction on promotion and any other unfair personal actions;

work reassignment, transfer, denial of duties, rearrangement of duties or any other personal actions that are against the Whistleblower's will;

discrimination in the performance evaluation, etc. and subsequent discrimination in the payment of wages, bonuses, etc.;

cancelation of education, training or other self-development opportunities; the restriction or removal of budget, work force or other available resources, the suspension of access to

security information or classified information; the cancellation of authorization to handle security information or classified information; or any other discrimination or measure detrimental to the working conditions of the Whistleblower;

putting the Whistleblower's name on a black list as well as the release of such a blacklist, bullying, the use of violence and abusive language , or any other action that causes physical harm;

unfair audit or inspection of the whistleblower's work;

cancellation of a license or permit, or any other action that causes disadvantage to the whistleblower;

termination of contract for goods or services, or any other

measure that causes financial losses to the whistleblower;  
(x) intimidation; and  
(xi) threat of any of the above;  
(g) "Government" means the Government of the Khyber Pakhtunkhwa;  
(h) "prescribed" means prescribed by rules and regulations;  
(i) "Public Interest Disclosure" means any declaration of information by

any individual or by an agency who reasonably believes that such information may prevent an action that of corruption or corrupt

practices;

Gj) "regulations" mean regulation made under this Act;  
(k) "rules" mean rules made under this Act;  
(l) "violation of public interest" means the violation of any action as

provided in the definition of disclosure of public interest under this Act irrespective of the fact that the law applying to the violation is that of the Khyber Pakhtunkhwa or of the Federal Government; and

(m) "Whistleblower" means a person or an agency, who discloses the public interest information under this Act.

3. Establishment of Whistleblowers Protection and Vigilance Commission.---As soon as, after the commencement of this Act, Government shall establish a Commission, to be known as the Khyber Pakhtunkhwa Whistleblower Protection and Vigilance Commission.

4. Composition of the Commission.---(1) Subject to sub-section(3), the Commission shall consist of three Commissioners, including a Chairman, appointed by the Government for a period of three years from the day they enter their offices and shall not be eligible for

reappointment for a second term.

(2) No act or proceedings of the Commission shall be invalid by reason of absence of a Commissioner or existence of any vacancy among its members.

(3) A person shall not be appointed as Commissioner unless he:

(a) is a citizen of Pakistan;

(b) is the permanent resident of Khyber Pakhtunkhwa;

(c) is an individual with reputation of high integrity and competence;

(d) is honest and a person with a good character;

(e) is mentally sound;

(f) has a Bachelor's Degree and has at least fifteen (15) years' experience in the field of law, or professionals of high repute from civil society having relevant experience or has remained a Public Office Holder

for at least twenty years;

(g) is not less than forty-five (45) and not more than sixty-seven (67) years of age during the year of appointment or selection;

(h) declares his assets as per requirement of this Act; and

(i) is not a defaulter of Government dues, utility expenses or a bank.

(4) A Commissioner shall cease to hold office if he-

(a) has been convicted of an offence involving moral turpitude;

(b) has been declared by a Medical Board to be physically or mentally unfit to carry out his functions;

(c) does not attend five consecutive meetings of the Commission without leave of the Commission; or

(d) has been declared insolvent, defaulter of Government dues, utility bills or a banking institution during the term of his office.

(5) A Commissioner may, by writing under his hand, addressed to the Government, resign from his office.

(6) A Commissioner shall not, at the time of appointment:

(a) hold any other office in the service of Pakistan or province, unless he resigns from such office before the time of his appointment; or

(b) occupy any other position which may carry conflict of interest.

(7) During his term in office, if a Commissioner has any interest in any matter to be discussed, inquired, investigated or decided by the Commission, he shall, prior to any discussion of the matter, disclose in writing to the Commission, the fact of his interest and the nature thereof.

(8) In connection with the performance of functions under this Act, Government may allow such honoraria and allowances to the Commissioners, as maybe prescribed by rules.

5. Powers and functions of the Commission.---(1) The Commission shall have the powers to-

(a) approve organizational structure and positions to be filled in by employees appointed under this Act;

(b) approve annual budget of the Commission;

(c) conduct proper and transparent inquiry under this Act and make recommendations to the concerned authorities for taking action against individual or agencies for violation of public interest under the relevant laws;

(d) appoint employees of the Commission and prescribe terms and conditions of their service and approve the human resource policy of the Commission;

(e) seek full and complete assistance and call for all or any documents and information relevant to or in connection with any matter or inquiry pending before the Commission;

(f) during the course of an inquiry of an action in violation of public interest under this Act-

(i) call for information from any person for the purpose of determining whether there has been any violation of the provisions of this Act or any rule or order made thereunder;

(ii) require any person to produce or deliver any document or item useful or relevant to the inquiry under process; and

(iii) direct the relevant department to depute any person acquainted with the facts and circumstances of the case being investigated:

Provided that where any record has been provided to the Commission for the purpose of any inquiry, the same shall be returned in original to the concerned institution, as soon as possible but not later than thirty (30) days and attested copies of the same shall be retained by the Commission;

(g) appoint advisors, consultants and experts, on payment of such fee or remuneration as may be determined by the Government, on the recommendation of the Chairman of the Commission, to assist him in discharge of his duties under this Act; and

(h) exercise such powers and functions as deem necessary for the implementation of the provisions of this Act.

(2) The Commission may delegate any of its powers and functions to any officer of the Commission, as it may deem appropriate.

6. Meetings of the Commission.---(1) For any meeting of the Commission, two Commissioners including the chairman shall constitute a quorum.

(2) All decisions of the Commission shall be taken by majority of the Commissioners except as may be otherwise specified in this Act.

(3) Commission may in the prescribed manner, determine the procedure of meetings, recording of minutes and other allied matters in this respect.

7. Powers and functions of Chairman.---(1) Chairman shall be responsible for the day to day operation and administration of the Commission, unless otherwise provided in this Act.

(2) Chairman shall be the Principal Accounting Officer of the Commission.

(3) Chairman may, with the approval of the Commission re- appropriate funds from one head to another head of account or sanction expenditure from within the budget allocated to the Commission.

8. Financial Autonomy.---(1) The remuneration payable to the Commissioners, other employees, staff and administrative expenses of the Commission shall be an expenditure charged upon the Provincial Consolidated Fund.

(2) Commission shall maintain complete and accurate books of accounts in such forms as may be prescribed by it.

(3) In the month of March every year, the Commission shall submit to Government a statement for the estimated receipts and expenditure in respect of the next financial year.

(4) The accounts of the Commission shall be audited every year by the Auditor General of Pakistan.

9. Inquiry in relation to Public Interest Disclosure.---(1) The officer duly authorized by the Commission shall upon receipt of the Public Interest Disclosure and after concealing the identity of the Whistleblower may, make a preliminary inquiry within a period of thirty (30) days in such a manner as may be prescribed to ascertain whether there is any basis for proceeding further.

(2) If after preliminary inquiry, the concerned officer is of the view that-

(i) the matter requires further inquiry, it shall after the approval from the Commission, start formal inquiry in the prescribed manner and may pass such interim order as it may deem fit to prevent immediate violation of public interest; and

(ii) the facts and allegations contained in the disclosure are frivolous, vexatious or not made in good faith may, after approval from the Commission stop further inquiry in the matter:

Provided that an opportunity of being heard shall be given to the Whistleblower:

Provided further that the inquiry shall be completed within a period of sixty (60) days and the Commission shall take decision on the inquiry within a period of thirty (30) days:

Provided also that if the inquiry is not completed within the stipulated time, the Commission may call explanation of the officer so authorized for inquiry and take action against him in accordance with rules and the pending inquiry shall be extended once for a further period of sixty (60) days for decision.

10. 'Actions in violation of public interests.---(1) Where a Whistleblower discloses violation of public interest, the officer of the Commission duly authorized in this behalf after inquiry into the matter is of the view that the violation of public interest has taken place, immediately take steps to prevent such violation of public interest.

(2) Where the authorized officer is of the view that the violation of public interest has taken place may, with the approval of the Commission, refer the matter to the concerned authorities in the Province for taking appropriate action under the relevant laws.

11. Protection to the Whistleblower.---(1) Commission shall ensure that no Whistleblower is victimized by Disadvantageous Measures or otherwise merely on the ground that such Whistleblower had made a Public Interest Disclosure or rendered assistance in inquiry under this Act.

(2) If a Whistleblower is being subjected to Disadvantageous Measures or likely to be subjected to Disadvantageous Measures on the ground that he has made Public Interest Disclosure, he may file an application before the Commission seeking redressal in the matter. The Commission may pass such orders to the concerned authority as deem

appropriate.

(3) Every order given under sub-section (2) by the Commission shall be binding upon the concerned authority against whom the allegation of victimization has been proved.

12. Rewards and Punishments.---(1) After inquiry, if it has been proved that a Whistleblower has rightly disclosed the violation of public interest, shall be rewarded thirty (30) percent of the recovered amount and certificate of appreciation.

Explanation: For the purpose of this section, the whistleblower means the person which does not include agency as defined under clause (m) in section 2 of this Act.

(2) After inquiry, if it has been proved that a Whistleblower has lodged frivolous or malafide complaint, he shall be liable to a fine of thirty (30) percent of the actual amount claimed against a person with rigorous imprisonment for a period of three (03) years:

Provided that the amount of the fine shall be paid to the person against whom the complaint has been made.

13. Imposition of fine.---(1) Any person, agency or Government Department, who willfully does not comply with the directions of the Commission, shall be liable to a fine not less than fifty (50,000) thousands and not more than two lac (2,00,000) and 2 years imprisonment.

(2) The identity of the Whistleblower shall not be disclosed till the finalization of the matter and if the Commission after inquiry is of the view that any person has revealed the identity of the Whistleblower, may impose a fine which may extend to rupees fifty (50,000) thousands and shall be paid to the Whistleblower.

14. Annual report.---(1) Commission shall prepare a consolidated annual report of the performance of its activities in such a form as may be prescribed and submit it to the Government preferably in the last month of the year.

(2) The annual report shall be laid before the Provincial Assembly for consideration.

15. Indemnity.---No suit, prosecution or other legal proceedings shall lie against the Commission 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.

16. Power to make rules.---The Government may, by notification in the official Gazette, make rules for the purpose of carrying out the provisions of this Act.

17. Power to make regulation.---Commission may make regulations, not inconsistent with the provisions of this Act.