

Relevant Extracts of the Khyber Pakhtunkhwa Provincial Ombudsman Act, 2010.

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

(a) "Agency" means a department, commission or office of Government or a statutory corporation or other institution established or controlled by Government, but does not include the High Court and Courts working under the supervision and control of the High Court, and the Provincial Assembly of the Khyber Pakhtunkhwa and its Secretariat;

(b) "aggrieved person" means any person including a public servant, civil servant, [Deleted] aggrieved of any act of maladministration;

[(b-i) "**Law Department**" means the Law, Parliamentary Affairs and Human Rights Department of Government;]

[Deleted]

(d) "Government" means Government of the Khyber Pakhtunkhwa;

(e) "Governor" means the Governor of the Khyber Pakhtunkhwa;

(f) "maladministration" includes-

(i) a decision, process, recommendation, act or omission of a holder of a public office which-

(a) is contrary to law, rules or regulations or is a departure from established practice or procedure, unless it is bonafide and for valid reasons; or

(b) is perverse, arbitrary or unreasonable, unjust, biased, oppressive, or discriminatory; or

(c) is based on irrelevant grounds; or

(d) involves the exercise of powers or the failure or refusal to do so, for corrupt or improper motives, such as, bribery, jobbery, favouritism, nepotism and administrative excesses;

(e) has or have adversely affected a person; and

(ii) neglect, inattention, delay, incompetence, inefficiency and inaptitude, in the administration or discharge of duties and responsibilities;

(g) "Office" means the office of the Provincial Ombudsman;

(h) "Provincial Ombudsman" means the Provincial Ombudsman appointed for the Khyber Pakhtunkhwa under section 3 of this Act;

(i) "prescribed" means prescribed by rules made under this Act;

(j) "Public servant" means a public servant as defined in section 21 of the Pakistan Penal Code, 1860, and includes a Minister, Advisor, the Chief Executive, Director or any other officer, employee or member of an Agency;

(k) "staff" means any employee of Government and includes co-opted members of the staff, consultants, advisors, bailiffs, liaison officers and experts etc.; and

(l) "Schedule" means the Schedule appended to this Act.

3. Appointment of Provincial Ombudsman.---(1) There shall be a Provincial Ombudsman, for the Province of the Khyber Pakhtunkhwa, who shall be appointed by the [Government].

(2) The Provincial Ombudsman shall be a person, who has been a retired judge of the High Court or a retired civil servant in BPS-20 or above having remained the head of a Government Department or a public sector organization for at least three years.]

(3) Before entering upon office, the Provincial Ombudsman shall take an oath before the Governor in the form set out in the Schedule-I to this Act.

(4) [The Provincial Ombudsman shall, in all matters, perform his functions and exercise his powers fairly, honestly and diligently, in accordance with law.]

4. Tenure of the Provincial Ombudsman.---[(1) Subject to the provisions of this Act, the Provincial Ombudsman shall hold office for a period of three years or till the age of sixty five years, whichever is earlier and shall not be eligible, for re-appointment or extension, as the case may be, under any circumstances:

Provided that the new Provincial Ombudsman shall be appointed within a period of ninety days from the date of retirement or permanent vacation of his office due to any other reason.]

(2) The Provincial Ombudsman may resign his office by writing under his hand addressed to the [Government].

6. Terms and conditions of service and remuneration of Provincial Ombudsman.---(1) The Provincial Ombudsman shall be entitled to such salary, allowances and privileges and other terms and conditions of service as Government may determine and these terms shall not be varied during the term of his office.

(2) [The Provincial Ombudsman shall hold office during the pleasure of the Government].

(3) [Deleted.

(4) Deleted].

8. Appointment and terms and conditions of service of staff.---[(1) The members of the staff of Provincial Ombudsman shall be appointed in the manner as may be prescribed.]

(2) [Deleted].

(3) The members of the staff shall be entitled to such salary and allowances and shall be governed by such terms and conditions of service as may be prescribed, having regard to salary, allowances and other terms and conditions of service that may for the time being be admissible to other employees of Government in the corresponding basic pay scales.

(4) [Deleted].

9. Jurisdiction, functions and powers of the Provincial Ombudsman.---[(1) The Provincial Ombudsman may, on a complaint made by any aggrieved person, undertake any investigation into any allegation of mal-administration on the part of any Agency or any of its officers or functionaries:

Provided that the Provincial Ombudsman shall not have any jurisdiction to investigate or inquire into any matter which is subjudice before a court or a tribunal of competent jurisdiction on the date of the receipt of a complaint in this behalf.]

(2) Notwithstanding anything contained in sub-section (1), the Provincial Ombudsman shall not accept for investigation any complaint by or on behalf of a public servant or functionary concerning any matter relating to the Agency in which he is, or has been working, in respect of any personal grievance relating to his service therein.

(3) [Deleted]

(4) [Deleted]

(5) [The principal seat of the office of the Provincial Ombudsman shall be at Peshawar however, the Provincial Ombudsman may hold proceedings at any appropriate places in the Province as he may deem appropriate in the public interest.]

10. Procedure and evidence.---(1) A complaint shall be made on solemn affirmation or oath and in writing addressed to the Provincial Ombudsman by the person aggrieved or, in the case of his death, by his legal representative and may be lodged in person at the office or handed over to the Provincial Ombudsman in person or sent by any other means of communication to his Office.

(2) No anonymous or pseudonymous complaints shall be entertained.

(3) A complaint shall be made not later than six months from the day on which the person aggrieved first had the notice of the matter alleged in the complaint, but the Provincial Ombudsman may conduct any investigation pursuant to a complaint which is not within the time-limit, if he considers that there are special circumstances which make it necessary to do so.

(4) Where the Provincial Ombudsman proposes to conduct an investigation, he shall issue to the principal officer of the Agency concerned, and to any other person who is alleged in the complaint to have taken or authorised the action complained of, a notice calling upon him to meet the allegations contained in the complaint, including rebuttal:

Provided that the Provincial Ombudsman may proceed with the investigation if no response to the notice is received by him from such principal officer or other person within thirty days of the receipt of the notice or within such longer period as may have been allowed by the Provincial Ombudsman.

(5) Every investigation shall be conducted informally, but the Provincial Ombudsman may adopt such procedure as he considers appropriate for such investigation and may obtain information from such persons and in such manner and make such inquiries as he thinks fit.

(6) A person shall be entitled to appear in person or be represented before the Provincial Ombudsman.

(7) The Provincial Ombudsman shall, in accordance with the rules made under this Act, pay expenses and allowances to any person who attends or furnishes information for the purpose of any investigation.

(8) The conduct of an investigation shall not affect any action taken by the Agency concerned, or any power or duty of that Agency to take further action with respect to any matter subject to the investigation.

(9) For the purpose of an investigation under this Act, the Ombudsman may require any officer or member of the Agency concerned to furnish any information or to produce any document which in the opinion of the Provincial Ombudsman is relevant and helpful in the conduct of the investigation and there shall be no obligation to maintain secrecy in respect of disclosure of any information or document for the purposes of such investigation:

Provided that the Government may, in its discretion, on grounds of its being a State secret, allow a claim of privilege with respect to any information or document.

(10) In any case where the Provincial Ombudsman decides not to conduct an investigation, he shall send to the complainant a statement of his reasons for not conducting the investigation.

(11) Save as otherwise provided in this Act, the Provincial Ombudsman shall regulate the procedure for the conduct of business or the exercise of powers under this Act.

12. [Implementation of Findings.]---(1) The Agency shall implement the findings of the Provincial Ombudsman within forty five days from the date of receipt of the findings by it. The Agency shall accordingly inform the Provincial Ombudsman of action taken in pursuance of the findings.

(2) Notwithstanding anything contained in sub-section (1), where the Agency feels difficulty in implementing the findings or considers that the findings recorded by the Provincial

Ombudsman are not well founded, it may file a review petition with the Provincial Ombudsman within forty five days from the day on which the findings are received to it.

(3) The Provincial Ombudsman, if after considering the grounds of the Agency in the review petition, is satisfied that no case of maladministration is made out, he may alter, modify or recall his findings.

(4) Where on considering the review petition, the Provincial Ombudsman determines that the stance of the Agency is not well grounded and that the findings have been rightly recorded, he shall pass an order dismissing the review petition. Upon the order of dismissal, the Agency shall implement the findings.]

[13A. Instructions etc. with regards to implementation of findings.---The Law Department, with the approval of the Chief Minister, Khyber Pakhtunkhwa, shall issue such instructions and devise such mechanism as may appear to it to be necessary for the implementation of findings of the Provincial Ombudsman.]

14. Powers of the Provincial Ombudsman.---(1) The Provincial Ombudsman shall, for the purposes of this Act, have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908, in respect of the matter, namely:

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) compelling the production of documents;
- (c) receiving evidence on affidavits;
- (d) issuing commission for the examination of witnesses;
- [.] [Deleted].

[Deleted]

(3) The Provincial Ombudsman shall have the power to require any person to furnish information on such points or matters as, in the opinion of the Provincial Ombudsman, may be useful for, or relevant to, the subject-matter of any inspection or investigation.

(4) The powers referred to in sub-section (1) may be exercised by the Provincial Ombudsman or any person authorised in writing by the Provincial Ombudsman in this behalf while carrying out an inspection, investigation or implementation of findings under the provisions of this Act.

(5) Where the Provincial Ombudsman finds the complaint referred to in sub-section (1) of section 9 to be false, frivolous or vexatious, he may award reasonable compensation to the Agency, public servant or other functionary against whom the complaint was made, and the amount of such compensation shall be recoverable from the complainant as arrears of land revenue:

Provided that the award of compensation under this sub-section shall not debar the aggrieved person from seeking any other remedy.

(6) If any Agency, public or other functionary fails to comply with the direction of the Provincial Ombudsman, he may, in addition to taking other actions under this Act, refer the matter to the appropriate authority for taking disciplinary action against the person who disregarded the direction of the Provincial Ombudsman.

(7) If the Provincial Ombudsman has reason to believe that any public servant or other functionary has acted in a manner warranting criminal or disciplinary proceedings against him, he may refer the matter to the appropriate authority for necessary action to be taken within the time specified by him.

(8) The staff and the nominees of the office may be commissioned by the Provincial Ombudsman to administer oaths for the purposes of this Act and to attest various affidavits, affirmations or declarations which shall be admitted in evidence in all proceedings under this Act
[.] [Deleted].

15. [Deleted]

16. Deleted]

25. **[Remuneration of the advisors, consultants, etc.]**---The Provincial Ombudsman, in consultation with the Law Department, may fix honorarium or remuneration of advisors, consultants, fellows, experts, interns and other persons engaged by him from time to time for services rendered under section 20.]

27. **Annual and other reports.**---(1) Within three months of the conclusion of the calendar year to which the report pertains, the Provincial Ombudsman shall submit an Annual Report to the Governor [, through the Law Department].

(2) The Provincial Ombudsman may, from time to time, [through the Law Department] lay before the Governor such other reports relating to his functions as he may think proper or as may be desired by the Governor.

(3) Simultaneously, such reports shall be released by the Provincial Ombudsman for publication and copies thereof shall be provided to the public at reasonable cost.

(4) The Provincial Ombudsman may also, from time to time, make public any of his studies, research, conclusions, recommendations, ideas or suggestions in respect of any matter being dealt with by the Office.

(5) The report and other documents mentioned in this section shall be placed before the [Government], as early as possible.

31. **[Representation to Governor.]**---(1) Any person aggrieved by the findings of the Provincial Ombudsman may, within forty five days of the findings, make representation to the Governor in the manner, as may be prescribed, and the Governor may pass such orders thereon as he may deem fit.

(2) The operation of the impugned findings shall remain suspended till the final disposal of the representation made under sub-section (1).]