

A
Bill

further to amend the Khyber Pakhtunkhwa Provincial Ombudsman Act, 2010.

WHEREAS it is expedient further to amend the Khyber Pakhtunkhwa Provincial Ombudsman Act, 2010 (Khyber Pakhtunkhwa Act No. XIV of 2010), for the purposes hereinafter appearing;

It is hereby enacted by the Provincial Assembly of Khyber Pakhtunkhwa as follows:

1. Short title and commencement.---(1) This Act may be called the Khyber Pakhtunkhwa Provincial Ombudsman (Amendment) Act, 2024.

(2) It shall come into force at once except section 3 thereof which shall come into force with effect from 12th June, 2022.

2. Amendment of section 2 of the Khyber Pakhtunkhwa Act No. XIV of 2010.---In the Khyber Pakhtunkhwa Provincial Ombudsman Act, 2010 (Khyber Pakhtunkhwa Act No. XIV of 2010), hereinafter referred to as the said Act, in section 2,-

(a) after clause (f), the following new clause shall be inserted, namely:

“(f-i) “misconduct” means the misconduct as defined in the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011;” and

(b) after clause (j), the following new clauses shall be inserted, namely:

“(j-i) “regulations” mean the regulations made under this Act;

(j-ii) “rules” mean the rules made under this Act;

(j-iii) “Search and Scrutiny Committee” means the Search and Scrutiny Committee constituted under section 3A of this Act;”.

3. Amendment of section 3 of the Khyber Pakhtunkhwa Act No. XIV of 2010.---In the said Act, for section 3, the following shall be substituted, namely:

“3. Appointment of Provincial Ombudsman.---(1) There shall be a Provincial Ombudsman, for the Province of the Khyber Pakhtunkhwa, who shall be appointed by Government on the recommendations of Search and Scrutiny Committee.

(2) The Provincial Ombudsman shall be a person, who has been-

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- (a) a retired judge of the High Court; or
- (b) a retired civil servant in BPS-20 or above, having at least three years experience as the head of a Government Department or a public sector organization.

(3) The process of appointment of the Provincial Ombudsman shall be initiated one hundred and twenty (120) days, prior to the completion of tenure of the outgoing Provincial Ombudsman and the process shall be completed before the expiry of the tenure of the outgoing Provincial Ombudsman.

(4) In case the appointment process, under sub-section (3), is not completed within the specified time, the said time period may be extended on recommendation of Law Department, for a reasonable term, with the approval of Chief Minister:

Provided that in such a case the outgoing Provincial Ombudsman, whose tenure has expired, shall continue to act as Provincial Ombudsman during the extended period.

(5) The maximum age for application to the post of Provincial Ombudsman shall be sixty four years.


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

(7) The Provincial Ombudsman shall, in all matters, perform his functions and exercise his powers fairly, honestly, diligently and in accordance with relevant laws, rules, regulations, policies and by-laws for the time being in force.

(8) All executive authorities, Departments, agencies and offices of Government in the Province shall act in aid of the Provincial Ombudsman in the discharge of his duties under this Act in an effective manner.”.

4. Insertion of new section 3A in the Khyber Pakhtunkhwa Act No. XIV of 2010.---In the said Act, after section 3, the following new section shall be inserted, namely:

“3A. Search and Scrutiny Committee.---For the purpose of recommendation of a panel of three persons to Government for appointment as Provincial Ombudsman, there shall be a committee to be known as Search and Scrutiny Committee.


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(2) The Search and Scrutiny Committee shall consist of the following:

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| (a) | Minister for Law, Parliamentary Affairs and Human Rights, Khyber Pakhtunkhwa; | Chairperson |
| (b) | Secretary to Government, Law Department; | Member |
| (c) | Secretary to Government, Establishment Department; and | Member |
| (d) | Additional Secretary (General), Law Department. | Member -cum-Secretary. |

(3) The Chairperson of the Search and Scrutiny Committee may co-opt any person as member of the Search and Scrutiny Committee; provided that such co-opted member may participate in the discussion but cannot take part in decision making.”.

5. Amendment of section 4 of the Khyber Pakhtunkhwa Act No. XIV of 2010.---In the said Act, in section 4,-

- (a) for sub-section (1), the following shall be substituted, namely:

“(1) The Provincial Ombudsman shall hold office for a term of four years or during the pleasure of Government whichever is earlier. The term of the Provincial Ombudsman may be extended for another period of two years only once.”; and

- (b) after sub-section (1), as so substituted, the following new sub-section shall be inserted, namely:

“(1A) Notwithstanding anything contained in the provisions of this Act, the provisions of the Khyber Pakhtunkhwa Provincial Ombudsman (Amendment) Act, 2022 (Khyber Pakhtunkhwa Act No. XXVI of 2022) and the provisions of the Khyber Pakhtunkhwa Provincial Ombudsman (Amendment) Act, 2024, shall be applicable to the incumbent Provincial Ombudsman who was appointed prior to the commencement of the Act *ibid.*”.

6. Substitution of section 6 of the Khyber Pakhtunkhwa Act No. XIV of 2010.---In the said Act, for section 6, the following shall be substituted, namely:

“**6. Remuneration of Provincial Ombudsman.**---The Provincial Ombudsman shall be entitled to such salary, allowances and privileges as


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Government may determine, which shall not be varied during the term of his office.”.

7. **Insertion of new section 6A in the Khyber Pakhtunkhwa Act No. XIV of 2010.**---In the said Act, after section 6, as so amended, the following new section shall be inserted, namely:

“6A. Removal of Provincial Ombudsman.---(1) Nothing contained in sub-section (1) of section 4 of this Act shall prevent the Government to remove the Provincial Ombudsman at any time on any of the following grounds, if he-

- (a) is guilty of misconduct; or
- (b) is being incapable of properly performing the duties of his office by reason of physical or mental incapability; or
- (c) has become bankrupt or has applied to be adjudicated as an insolvent and his application is pending; or
- (d) has been convicted by a court of law for an offence involving moral turpitude; or
- (e) is or has become inefficient in the performance of his duties; or
- (f) is or has become corrupt or is involved in corrupt practices; or
- (g) has been debarred from holding any office under any provisions of law; or
- (h) has conflict of interest with his position as Provincial Ombudsman.


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(2) In case of removal of the Provincial Ombudsman, on any of the grounds mentioned in sub-section (1), a copy of charges, leveled against him, shall be provided to the Provincial Ombudsman and he shall also be given an opportunity of hearing.

(3) If the Provincial Ombudsman is removed from office on the grounds mentioned in sub-section (1), it shall debar him from holding any office under the Government or the Federal Government or any other public office.”.

8. **Amendment of section 8 of the Khyber Pakhtunkhwa Act No. XIV of 2010.**---In the said Act, in section 8, for sub-section (1), the following shall be substituted, namely:

“(1) The member of the staff of Provincial Ombudsman Secretariat shall be appointed in the manner as may be prescribed by rules.”.

9. Amendment of section 9 of the Khyber Pakhtunkhwa Act No. XIV of 2010.--In the said Act, in section 9,-

- (a) sub-section (2) shall be deleted; and
- (b) for sub-section (5), the following shall be substituted, namely:

“(5) The principal seat of the Office of Provincial Ombudsman shall be at Peshawar. However, the Provincial Ombudsman may, with the approval of Government and concurrence of the Finance Department of Government, establish Regional or Divisional Offices for proper implementation of the provisions of this Act.”.

10. Amendment of section 10 of the Khyber Pakhtunkhwa Act No. XIV of 2010.---In the said Act, in section 10, after sub-section (4), the following new sub-sections shall be inserted, namely:

“(4A) In case there is unreasonable delay or failure to submit written comments within the time period mentioned in sub-section (4) by the Agency, the Provincial Ombudsman shall recommend to the head of the concerned Agency for disciplinary action against the concerned officer or official of the Agency under the relevant rules for the time being in force.


(4B) The head of the Agency shall, on initiating disciplinary action against the delinquent officer or official in pursuance of sub-section (4A), submit a report to the Provincial Ombudsman in this regard.

(4C) Where the delay, in filing reply under sub-section (4), is due to the inaction of head of the Agency, the same shall be construed as inefficiency on his part.”.

11. Amendment of section 12 of the Khyber Pakhtunkhwa Act No. XIV of 2010.---In the said Act, in section 12,-

- (a) after sub-section (2), the following new sub-section shall be inserted, namely:

“(2A) On acceptance of review petition, the Provincial Ombudsman shall send notices to the Agency and the aggrieved person in the prescribed manner.”; and



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- (b) in sub-section (4), after the word "findings", appearing before the full stop, the words and figure "subject to section 31 of this Act" shall be inserted.

12. Amendment of section 13A of the Khyber Pakhtunkhwa Act No. XIV of 2010.---In the said Act, the existing provision of section 13A shall be numbered as sub-section (1) of section 13A and after sub-section (1), as so numbered, the following new sub-sections shall be added, namely:

“(2) For the purpose of implementation of findings in accordance with the instructions issued under sub-section (1), there shall be an Implementation Committee in Law Department, which shall consist of-

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| (a) | Secretary to Government, Law, Parliamentary Affairs and Human Rights Department; | Chairperson |
| (b) | Law Officer of the Law Department; | Member |
| (c) | Director (Implementation), Provincial Ombudsman Secretariat; | Member |
| (d) | a representative of concerned Administrative Department or Agency, not below the rank of BPS-18; and | Member |
| (e) | Deputy Secretary (Admin), Law Department. | Member
-cum-
Secretary. |


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(3) The Chairperson of the Implementation Committee may nominate any other person as co-opted member, if required.

(4) Without prejudice to sub-section (1), the Implementation Committee shall also perform such functions and exercise such powers as may be prescribed by rules.”.

13. Amendment in section 14 of the Khyber Pakhtunkhwa Act No. XIV of 2010.---In the said Act, in section 14, in sub-section (1), in clause (d), the full-stop, appearing at the end shall be replaced by semi-colon and the word “and” and thereafter the following new clause shall be added, namely:

- “(e) implementation of orders or directions issued to any Agency during the course of proceedings.”.

14. **Insertion of new sections 14A and 14B in the Khyber Pakhtunkhwa Act No. XIV of 2010.**---In the said Act, after section 14, the following new sections shall be inserted, namely:

“14A. Agency to refrain from taking any action in matters pending before the Provincial Ombudsman.---Once the Provincial Ombudsman has taken cognizance of a matter under this Act, the Agency concerned shall not take any prejudicial action in regard to that matter till the conclusion of proceedings:

Provided that the Provincial Ombudsman may allow the Agency concerned, if so requested in writing by the Agency, to take any action or continue any proceedings if the Provincial Ombudsman is of the opinion that such action or proceeding will not prejudicially affect the matter pending before him.

14B. Willful avoidance to implement findings.---Where an Agency willfully avoids any findings recorded by the Provincial Ombudsman under the provisions of this Act within the time period specified in sub-section (1) of section 12 of this Act, without any cogent reasons and without availing the remedies available in sections 12, 13, 13A and 31 of this Act, it shall tantamount to misconduct on part of the head of the Agency and the Provincial Ombudsman in that case shall, after giving an opportunity of hearing to the head of the Agency, have the authority to recommend disciplinary action against the head of the Agency to the relevant competent authority in accordance with the relevant law or rules for the time being in force.”.


15. **Amendment of section 25 of the Khyber Pakhtunkhwa Act No. XIV of 2010.**---In the said Act, for section 25, the following shall be substituted, namely:

“25. Remuneration of fixed pay employees.---The Provincial Ombudsman may, through Law Department, fix remuneration of Advisors, Consultants, Investigation Officer, Fellows, Bailiffs, Interns, Commissioner and experts engaged by him from time to time for services rendered under section 20 of this Act in consultation with Finance Department.”.

16. **Substitution of section 27 of the Khyber Pakhtunkhwa Act No. XIV of 2010.**---In the said Act, for section 27, the following shall be substituted, namely:

“27. Annual and other reports.---(1) Annual reports of the Provincial Ombudsman shall be laid before the Government each year in the month of March.

(2) The Provincial Ombudsman may, 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 of the Provincial Ombudsman.


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(3) The Provincial Ombudsman may also, from time to time, make recommendations to any Agency or Government concerning good governance and elimination of maladministration.”.

17. Substitution of section 31 of the Khyber Pakhtunkhwa Act No. XIV of 2010.--- In the said Act, for section 31, the following shall be substituted, namely:

“31. Representation to Chief Minister.---Notwithstanding anything contained in any other provisions of this Act, any aggrieved person or Agency aggrieved from the findings or orders of the Provincial Ombudsman may file a representation before the Chief Minister within forty five (45) days from the date of communication of findings or order to him or from the date of orders in review, as the case may be.”.

18. Insertion of new section 35A to the Khyber Pakhtunkhwa Act No. XIV of 2010.---In the said Act, after section 35, the following new section shall be inserted, namely:

“35A. Power to make regulations.---Subject to the provisions of this Act and the rules, the Provincial Ombudsman may with the approval of Government, make regulations, regulating the procedure for complaints under this Act.”.


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STATEMENT OF OBJECTS AND REASONS

The office of Provincial Ombudsman plays a key role in ensuring good governance and elimination of mal-administration in the Province of Khyber Pakhtunkhwa. In order to make the Provincial Ombudsman office a more robust organization, further streamline its functioning and to ensure that its findings are smoothly and timely implemented, there is a need to bring further reforms in the law governing the affairs of the Provincial Ombudsman. Hence, it is expedient to amend the Khyber Pakhtunkhwa Provincial Ombudsman Act, 2010.

The Bill seeks to achieve the aforementioned objectives.

Peshawar,
dated the: 18 / 07/2024.


MINISTER-IN-CHARGE