

Passed on 24-10-2017
[AS PASSED BY THE SENATE]

A

Bill

to provide a mechanism for public interest disclosures and protection of persons making such disclosures

WHEREAS it is expedient to provide a mechanism for public interest disclosures to prevent corruption and corrupt practices, protect persons making such disclosures and for matters connected therewith or ancillary thereto;

It is hereby enacted as follows:-

CHAPTER I
PRELIMINARY

1. Short title, extent and commencement.— (1) This Act may be called the Public Interest Disclosures Act, 2017.

(2) It extends to the whole of Pakistan.

(3) It shall come into force at once.

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

(a) "Competent Authority" means the respective Head of the Organization;

(b) "complainant" means a person making complaint relating to disclosure under this Act;

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

(i) willful misuse of power or willful misuse of discretion by virtue of which substantial loss is caused to the Government or substantial wrongful gain accrues to the public servant or to third party; and

(ii) commission of or an attempt to commit an offence of corruption or corrupt practices as defined in the National Accountability Bureau Ordinance, 1999 (XVIII of 1999) or any other law relating to

corruption and includes the offence committed through electronic mail or device;

- (c) "Government" means the Federal Government;
- (d) "Head of Organization" means the Head of Organization concerned with disclosure;
- (e) "Organization" means:
 - (i) a Ministry, Division, Department or an Office of the Government;
 - (ii) a corporation, company, body, an institution or entity controlled or established by the Government;
 - (iii) institutions established under the Constitution except the institutions which exclusively relate to Province;
 - (iv) any other public sector authority, body, institution or entity not covered under paragraphs (i) and (iii) above which the Government may, by notification in the official Gazette, specify for the purposes of this Act;
 - (v) any private sector body, company or entity including NGOs of national and public importance which the Government may, by notification in the official Gazette, specify for the purposes of this Act.
- (f) "person" means any person who is, or has been holding or has held, a post or office in any public corporation, bank, financial institution, undertaking or other organization established, controlled or administered by or under the authority of Government;
- (g) "public servant" for the purposes of this Act, means a public servant as defined in section 21 of the Pakistan Penal Code, 1860 (Act XLV of 1860) and includes an employee of any corporation or other body or organization setup, controlled or administered by, or under the authority of the Government; and
- (h) "prescribed" means prescribed by rules made by the Government under this Act.

CHAPTER II
PUBLIC INTEREST DISCLOSURE AND INQUIRY IN RELATION
THERETO

3. Public interest disclosure.— (1) Any person may make a public interest disclosure before the Competent Authority.

(2) A disclosure under sub-section (1) shall be made in good faith and shall be substantiated by a declaration that the information being disclosed or allegations being leveled by him are true to the best of his knowledge and belief.

(3) The disclosure shall be in the prescribed form and duly supported by relevant documents, or other materials, if any.

(4) The Competent Authority may, if it deems fit, call for further information or particulars from the Complainant.

(5) Anonymous or pseudonymous disclosures shall not be entertained or processed by the Competent Authority.

(6) The Competent Authority may designate or appoint such officers as may be notified any officer not below BPS-17 or equivalent to receive complaints.

4. Preliminary inquiry.— The Competent Authority shall conduct a preliminary inquiry into the disclosure to ascertain the identity and credibility of the Complainant in prescribed manner.

5. Matters not to be inquired by Competent Authority.— The Competent Authority shall not inquire into following matters, namely:—

- (a) any matter specified or an issue raised in a disclosure has been determined by a court or tribunal authorized to determine the same; or
- (b) matter in respect of which a formal and public inquiry has been ordered under the law;
- (c) in respect of a matter which has been referred for inquiry under the law.

(2) 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 or person concerned.

6. Exemption from disclosure.— Disclosure shall not be made if the information,-

- (i) is likely to prejudicially affect,—
 - (a) the sovereignty and integrity of Pakistan;
 - (b) the security, strategic or economic interests of the Pakistan; or
 - (c) relations with foreign states;
- (ii) may lead to incitement to offence;
- (iii) contains Cabinet or Cabinet Committees papers including records of deliberations of the Cabinet Ministers, secretaries and other offices except as permitted by the Cabinet Secretary;
- (iv) has been expressly forbidden to be published by a court or tribunal, or if the disclosure of information may result in contempt of court;
- (v) cause a breach of privilege of Parliament or Provincial Assembly;
- (vi) relates to trade secrets, intellectual property (and such disclosure would harm a competitor), except if such information is permitted under the law relating to right of information;
- (vii) is available to the person making the disclosure in his fiduciary capacity, except if such information is permitted under the law relating to right of information;
- (viii) is received in confidence from a foreign government;
- (ix) impede the process of investigation or apprehension or prosecution of offenders;
- (x) endanger the life or physical safety of a person, or identify the source of information given in confidence for law enforcement or security purposes; and
- (xi) contains disclosure of personal information and it has no relationship with any public interest or if it causes unwarranted invasion of privacy, except if it is permitted under the law relating to right of information.

CHAPTER III

COMPETENT AUTHORITY

7. Powers of Competent Authority.— (1) For the purpose of 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 (Act V of 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; and
- (f) such other matters as may be prescribed.

(2) The Competent Authority shall be deemed to be a civil court for the purpose of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1898 (Act V of 1898), and every proceeding before the Competent Authority shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 and section 196 of the Pakistan Penal Code, 1860 (Act XLV of 1860).

(3) No claim for any privilege etc., shall be accepted in a proceeding under this Act.

(4) The Competent Authority, shall take all necessary steps to protect the disclosure of identity of the Complainant while proceeding under this Act.

8. Organizations etc., to establish systems.— All organization shall establish proper and adequate systems for dealing with inquiry and processing of disclosures.

9. All authorities to assist Competent Authority.— For the purpose of making discreet inquiry or obtaining information from the organization concerned, the Competent Authority may take assistance of the Police authorities or any other authority or agency as may be considered necessary, to render necessary assistance to complete the inquiry within the prescribed time pursuant to the

disclosure received by the Competent Authority. A person who makes disclosure shall also assist in the inquiry under this Act.

CHAPTER IV

PROTECTION OF COMPLAINANT AND WITNESSES

10. Protection against adverse actions etc.—(1) The Government shall ensure that neither any adverse action shall be taken against a Complainant nor shall he be victimized by initiation of any proceedings or otherwise merely on the ground that he made a disclosure or rendered assistance in inquiry under this Act. A person shall be considered victimized if,-

- (i) dismissed;
- (ii) suspended;
- (iii) denied promotion;
- (iv) demoted;
- (v) made redundant;
- (vi) harassed;
- (vii) intimidated;
- (viii) threatened with any of the matters set out in (i) to (vii);
and
- (ix) subjected to a discriminatory or other adverse measure by the employer or a fellow employee.

(2) If any person is being victimized or likely to be victimized on the basis of his filing a complaint or making a disclosure or rendering assistance in inquiry under this Act, he may make an application to 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 Organization, as the case may be, to protect him from being victimized or avoid his victimization.

(3) The Competent Authority shall, before giving any such direction to the Organization, give an opportunity of hearing to the complainant and the Organization, as the case may be:

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

(4) The Organization shall be bound by every direction given under sub-section (3).

(5) 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*.

(6) Any person who willfully 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 five hundred thousand rupees.

11. Protection of witnesses etc.— 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.

12. Protection of identity of complainant.— 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 inquiry under this Act, unless 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.

13. Power to issue interim orders.— In case the Competent Authority is of the view that after disclosure, any corrupt practice is required to be stopped, during the pendency of any inquiry it may pass such interim orders as deem appropriate, to prevent the continuation of such practice.

CHAPTER V OFFENCES AND PENALTIES

14. Penalty for furnishing incomplete or incorrect or misleading comments or explanation or report.— (1) Where the Competent Authority is of the opinion that the Organization or official concerned has not furnished the report within the specified time, without any reasonable cause, or malafidely refused to submit the report or knowingly submitted 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 may impose where the Organization or official concerned—

- (a) without any reasonable cause, has not furnished the report within the specified time or malafidely refused to submit the report, a minimum penalty which may extend to ten thousand rupees for each day till report is furnished;
- (b) 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 one hundred thousand rupees:

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

(2) Any person aggrieved by order of Competent Authority under sub-section (1) may within thirty days of order prefer an appeal to the next higher authority or an authority as may be prescribed for the purposes of this section.

15. Punishment for revealing identity of complainant.—

Any person, who negligently or malafidely 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 to six months or with fine or with both.

16. Punishment for false or frivolous disclosure.— Any person who makes any disclosure malafidely and knowingly that it was incorrect or false or misleading shall be punishable with imprisonment for a term which may extend to one year and also to fine which may extend up to one hundred thousand rupees.

17. Punishment for Head of Organization.— (1) Where an offence under this Act has been committed by any Organization of Government, the Head of the Organization shall be liable 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 an Organization of Government and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any officer, such officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

18. Offences by companies.— (1) Where an offence under this Act has been committed by a company, every person who at the time of commission of the offence 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.

19. Court to take cognizance.— (1) No court shall take cognizance of any offence punishable under this Act or the rules or regulations made thereunder, except on a complaint made by the Competent Authority or any officer or person authorized by it in writing.

(2) No court inferior to that of a Court of Sessions shall try any offence punishable under this Act and the provisions of the Code of Criminal Procedure, 1898 (Act V of 1898) shall, *mutatis mutandis*, apply to the trial of such offences.

(3) No 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.

CHAPTER VI MISCELLANEOUS

20. Protection of action taken in good faith.— 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 or any other person, in respect of anything which is in good faith done or intended to be done under this Act.

21. Report on disclosures.— (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 Government:

Provided that Identity of the complainant if not necessary shall not be disclosed in the Report.

(2) On receipt of the annual report under sub-section (1), the Government shall cause a copy thereof to be laid before each House of Parliament.

22. Power of Government to make rules.— (1) The Government may, by notification in the official Gazette, make rules for carrying out the purposes of this Act.

(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 under section 3;
- (b) the manner and the time within which the inquiry shall be conducted by the Competent Authority;
- (c) the additional matter in respect of which the Competent Authority may exercise the powers of a Civil Court under section 6;
- (d) the form of annual report under sub-section (1) of section 21;
- (e) promoting awareness mechanism for protection of persons making public interest disclosures and the financial incentives which may be offered to such persons; and
- (f) any other matter which is required to be, or may be, prescribed.

23. Power of Competent Authority to make regulations.— The Competent Authority may, with the previous approval of the Government, 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.

24. Rules to be laid before Parliament.— The rules made by the Government under this Act shall be laid, as soon as may be after they are issued, before each House of Parliament.

25. Overriding effect.- The provisions of this Act shall have effect notwithstanding anything contained in any other law for the time being in force.

26. Removal of difficulty.—(1) If any difficulty arises in giving effect to any of the provisions of the Act, the Government may, by order, not inconsistent with the provisions of this Act, remove the difficulty:

Provided that no such order shall be made after the expiry of a period of three years from the date of the commencement of this Act.

(2) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.

STATEMENT OF OBJECTS AND REASONS

Modern-day economic crimes including money-laundering, fraud, embezzlement, kickbacks, commissions and other forms of corruption and corrupt practices have become increasingly complex and, therefore, difficult to investigate and prosecute. Persons disclosing information relating to these crimes in the public interest (also called "whistle-blowers") are often subjected to retaliation in the form of discrimination, intimidation, abuse, unjust disciplinary action including dismissal and even threats of physical harm to them and their families. Protection of persons making such public interest disclosures, by reporting in good faith acts of corruption and other wrongdoing and illegal activities, is integral to efforts to effectively combat corruption, promote public sector integrity and accountability and support a clean working environment. The Government has zero tolerance for corruption and its elimination is one of its foremost objectives; hence, the protection of persons making public interest disclosures especially in corruption cases, is a major concern of the Government. International Conventions / instruments relating to corruption have also recognized the importance of having law in place for protection of persons making public interest disclosures as an effective anti-corruption mechanism.

The Bill is designed to achieve the aforesaid objects.

MR. ZAHID HAMID
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Minister-in-Charge