

**A
BILL**

to provide for the establishment of the Khyber Pakhtunkhwa Ehtesab Commission, for good governance to create an effective institutional structure for the prevention of corruption and corrupt practices and to hold accountable all public office holders, accused of such practices.

WHEREAS the Provincial Government of the Khyber Pakhtunkhwa is desirous to implement the Charter of Good Governance of the Provincial Government, in order to ensure the implementation of laws, safeguard of citizens' rights, and provide justice without delay and in a transparent manner under a system of good governance;

AND WHEREAS pursuant to Articles 37 and 38 of the Constitution of the Islamic Republic of Pakistan, all citizens have a right to the promotion of social justice and social and economic well-being through efficient, honest and effective management of public resources;

AND WHEREAS the Charter of Good Governance of the Provincial Government, requires the provision of a comprehensive redressal mechanism to address failure or misconduct on the part of public office holders, while misusing or abusing their powers or authority through corruption, corrupt practices, misappropriation of property, receiving kickbacks, commissions and for matters connected and ancillary or incidental thereto;

AND WHEREAS it is expedient to provide for a mechanism through which the recovery of Government money and other assets from Public Office Holders, who have misappropriated or received such money or assets through corruption, corrupt practices and misuse of power or authority can be achieved;

NOW, THEREFORE, it is expedient to establish an autonomous and accountable anti-corruption institution in the Province of the Khyber Pakhtunkhwa, in order to promote the integrity and accountability of public sector administration.

It is hereby enacted as follows:

1. Short title, application and commencement.---(1) This Act may be called the Khyber Pakhtunkhwa Ehtesab Commission Act, 2013.

(2) It shall apply to all the public office holders, who are performing their functions, in connection with the affairs and the employment of Government funds in the Province of the Khyber Pakhtunkhwa and includes all those persons, who are involved and deals with the transaction and utilization of Government money.

(3) It shall come into force at once.

2. Definitions.---(1) In this Act, unless there is anything repugnant in the subject or context,-

(a) "accused" means a person in respect of whom there are reasonable grounds to believe that he is or has been involved in the commission of any offence triable under this Act or is the subject of an

investigation or inquiry by the Commission, or any other agency authorized by the Commission in this regard under this Act;

- (b) “assets” means any property owned or controlled by or belonging to an accused whether directly or indirectly or held benami in the name of his spouse or relatives or associates, whether within or outside Pakistan which he cannot reasonably account for or for which he cannot prove payment of full and lawful consideration;
- (c) “associates” means-
 - (i) any person who is or has been managing the affairs of or keeping accounts for the accused or who enjoys or has enjoyed any benefit from the assets;
 - (ii) any association of persons, body of individuals, partnership firm or private limited company within the meaning of the Companies Ordinance, 1984 (Ord. No. XLVII of 1984), of which the accused is or has been a member, partner or director or which has been promoted, floated, established or run by the accused, whether singly or jointly, with other persons;
 - (iii) a trustee of any trust declared by the accused, or of which the accused is also a trustee or a beneficiary; and
 - (iv) a benamidar;
- (d) “benamidar” means any person, who ostensibly holds or is in possession or custody of any property of an accused on his behalf for the benefit and enjoyment of the accused;
- (e) “Chief Minister” means the Chief Minister of the Province of the Khyber Pakhtunkhwa;
- (f) “Code” means the Code of Criminal Procedure, 1898 (V of 1898);
- (g) “Commission” means the Khyber Pakhtunkhwa Ehtesab Commission established under section 3;
- (h) “Commissioners” mean the Commissioners appointed under section 8 and includes the Chief Ehtesab Commissioner;
- (i) “corruption and corrupt practices” mean the offenses as specified under section 23 and are triable by the Court;
- (j) “Court” means an Ehtesab Court, established under section 41 to try offenses under this Act;
- (k) “Director General” means the Director General of the Commission, as appointed by the Commission under section 12;
- (l) “Government” means the Government of the Khyber Pakhtunkhwa;
- (m) “Governor” means the Governor of the Khyber Pakhtunkhwa;
- (n) “gratification” means-

- (i) money, donation, gift, loan, fee, reward, valuable security, property or interest in property, being property of any description whether movable or immovable, financial benefit or any other similar advantage;
 - (ii) any office, dignity, employment, contract of employment or services, and agreement to give employment or render services in any capacity;
 - (iii) any payment, release, discharge or liquidation of any loan, obligation or other liability, whether in whole or in part;
 - (iv) any valuable consideration of any kind, any discount, commission, rebate, bonus, deduction or percentage;
 - (v) any forbearance to demand any money or money's worth or valuable thing;
 - (vi) any other service or favor of any description, including protection from any penalty or disability incurred or apprehended or from any action or proceedings of a disciplinary, civil or criminal nature, whether or not already instituted, and including the exercise or the forbearance from the exercise of any right or any official power or duty; and
 - (vii) any offer, undertaking or promise, whether conditional or unconditional, of any gratification within the meaning of any of the preceding clauses;
- (o) "Legislative Committee" means the Legislative Committee on Governance and Accountability, constituted under section 5;
 - (p) "Order" means the Qanun-e-Shahadat Order, 1984 (X of 1984);
 - (q) "Penal Code" means the Pakistan Penal Code, 1860 (XLV of 1860);
 - (r) "prescribed" means prescribed by rules;
 - (s) "Province" means the Province of the Khyber Pakhtunkhwa;
 - (t) "Provincial Assembly" means the Provincial Assembly of the Province;
 - (u) "public office holder" means and includes-
 - (i) a person, as defined under section 2 of the Prevention of Corruption Act, 1947 (Act No. II of 1947); or
 - (ii) a person holding a legislative, executive or administrative position in exercising the authority of the Province, whether appointed or elected, permanent or temporary, paid or unpaid, irrespective of such person's seniority; or
 - (iii) a person, who performs a public function, including for a public agency, public enterprise, foreign funded public program or any other person or entity utilizing public revenue of the Province, or provides a public service, as defined in any law for the time being in force; or

- (iv) any other person or entity owned or controlled by Government directly or indirectly;
- (v) “regulations” mean the regulations made under this Act;
- (w) “reference” means a reference filed in the Court by the Director General, or an officer of the Commission duly authorized by him, in the manner specified in section 36;
- (x) “report” means the report prepared and submitted pursuant to section 17 of this Act;
- (y) “rules” mean the rules made under this Act;
- (z) “Schedule” means the Schedule appended to this Act;
- (aa) “Search and Scrutiny Committee” means the Search and Scrutiny Committee, constituted by the Legislative Committee under subsection (4) of section 5;
- (ab) “Secretary” means the Secretary of the Legislative Committee;
- (ac) “section” means a section of this Act;
- (ad) “State” means a foreign state for purposes of this Act; and
- (ae) “Wings” mean the Wings of the Commission, as provided in section 11.

PART-I
KHYBER PAKHTUNKHWA
EHTESAB COMMISSION

3. Establishment of the Commission.---(1) As soon as, after the commencement of this Act, Government shall establish a Commission, to be known as the Khyber Pakhtunkhwa Ehtesab Commission.

4. Composition of the Commission.---(1) The Commission shall consist of five Commissioners nominated by the Search and Scrutiny Committee and confirmed by the Legislative Committee on Governance and Accountability in accordance with the provisions of this Act.

(2) The Commissioners shall hold office for one non-extendable term of four (04) years from the day he enters his office and shall not be eligible for reappointment for a second term:

(3) Whenever the office of a Commissioner falls vacant before the completion of the term of the said Commissioner, the Legislative Committee shall, upon nomination by the Search and Scrutiny Committee, approve the nomination of a new Commissioner for the remainder of the term of the said Commissioner.

(4) 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 or defect in the constitution thereof.

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

- (a) is a citizen of Pakistan;

- (b) is an individual with reputation of high moral integrity and competency;
 - (c) is mentally and physically fit;
 - (d) has a Bachelor's Degree and at least twenty (20) years of experience in the relevant field;
 - (e) is minimum forty-five (45) years of age during the year of appointment or selection; and
 - (f) declare his assets as per law.
- (6) A Commissioner shall cease to hold office if he:
- (a) has been convicted of an offence involving moral turpitude;
 - (b) has been adjudged insolvent;
 - (c) has been declared by a Medical Board, constituted by Government to be physically or mentally unfit to carry out his functions as a Commissioner;
 - (d) does not attend five (05) consecutive meetings of the Commission without leave of the Commission; or
 - (e) is a defaulter of Government dues, utility expenses or a bank.
- (7) A Commissioner may, by writing under his hand addressed to the Governor, resign from his office.
- (8) A Commissioner shall not, at the time of appointment to the Commission:
- (a) hold any other office in the service of Pakistan or be the office bearer of a political party, unless he resigns such office at the time of his appointment; or
 - (b) occupy any other position carrying the right to remuneration for the rendering of services.
- (9) A person who has held office as Commissioner shall not hold any office in the service of Pakistan before the expiration of two (02) years after he has ceased to hold that office.
- (10) 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.
- Explanation.**---For the purpose of this section, a Commissioner shall be deemed to have an interest in a matter if he has any interest, pecuniary or otherwise, in such matter which could reasonably be regarded as giving rise to a conflict between his duty to honestly perform his functions under this Act and such interest, so that his ability to consider and decide any question impartially or to give any advice without bias, may reasonably be regarded as impaired.
- (11) A disclosure of interest under sub-section (10), shall be recorded in the minutes of meetings of the Commission, prior to any discussion of, or decision on, the matter and, after the disclosure, the Commissioner shall:

- (a) not take part nor be present in any deliberation or decision of the Commission; and
- (b) be disregarded for the purpose of constitution of a quorum of the Commission.

(12) The salary and terms and conditions of the Commissioners shall as may be prescribed.

5. The Legislative Committee.---(1) Within one month, after the commencement of this Act, the Speaker of the Provincial Assembly in consultation with Government and the opposition in the Provincial Assembly, shall constitute a Legislative Committee, on governance and accountability. The Legislative Committee shall consist of ten (10) members of the Provincial Assembly, nominated on the basis of equal representation of both treasury and opposition benches.

(2) The Legislative Committee shall be chaired by the Speaker of the Provincial Assembly while the Secretary, Provincial Assembly shall act as the Secretary of the Legislative Committee.

(3) The Legislative Committee shall have the powers to-

- (a) confirm nominees for the Search and Scrutiny Committee;
- (b) confirm nominees for the office of Commissioners of the Commission;
- (c) reject nominee, Commissioners or members of the Search and Scrutiny Committee by three-fourth majority vote; and
- (d) review the report presented to it by the Commission.

6. Constitution of the Search and Scrutiny Committee.---(1) The first Search and Scrutiny Committee constituted under section 7, shall administer the process of the constitution and appointment of subsequent Search and Scrutiny Committee and Commissioners respectively.

(2) Whenever any seat or position is laying vacant in the Search and Scrutiny Committee or where a position of Commissioner is vacant, the Search and Scrutiny Committee shall fill the position according to the criteria prescribed under this Act.

(3) The Search and Scrutiny Committee shall comprise five (05) members of high moral integrity, repute and stature, and at least one of whom shall be a female:

Provided that no person presently in service of Government or the office bearer of a political party shall be a member of the Search and Scrutiny Committee, unless such person resigns from such service or party office, as the case may be, at the time of appointment:

(4) A person shall not be appointed as member of Search and Scrutiny Committee unless he:

- (a) is a citizen of Pakistan;
- (b) is an individual with reputation of high moral integrity and competency;
- (c) is not less than forty-five (45) years and more than seventy-five (75) years of age during the year of selection; and

(d) declare his assets as per law.

(5) Except for members of the first Search and Scrutiny Committee, who shall be appointed through procedure prescribed in section 7, the Search and Scrutiny Committee shall be responsible for initiating the process for appointment of successor member or members of Search and Scrutiny Committee six (6) months prior to end of tenure of members of the Search and Scrutiny Committee or immediately upon creation of a vacancy, as the case may be, and the process for nomination of Commissioners prescribed in section 8, shall apply mutatis mutandis to nomination and confirmation of members for the Search and Scrutiny Committee.

(6) Members of the Search and Scrutiny Committee shall elect one amongst them as Chair, who shall discharge administrative responsibilities in relation to functioning of the Search and Scrutiny Committee in consultation with the members, and in case of any disagreement decisions will be reached by majority vote.

(7) The Search and Scrutiny Committee may meet as often as necessary for the effective performance of its functions and two thirds of the members shall constitute a quorum for a meeting.

(8) Members of the Search and Scrutiny Committee shall serve for one non-extendable term of four (04) years on an honorary basis and shall not be remunerated for their work:

Provided that all expenses related to functioning of the Search and Scrutiny Committee shall be borne by the Commission, and the Commission shall also provide secretarial staff to the Search and Scrutiny Committee to assist its functioning.

(9) A member of the Search and Scrutiny Committee may, by writing under his hand addressed to the Governor, resign from his position.

(10) A member of the Search and Scrutiny Committee shall not be removed unless by three-fourth majority vote of members of the Legislative Committee on the ground of misconduct or for physical or mental incapacity upon such declaration being made by a Medical Board constituted by Government:

Provided that the Legislative Committee shall afford such member the right to be heard prior to voting on his removal.

7. Appointment of the members of the first Search and Scrutiny Committee.---

(1) After the commencement of this Act, Government, within fifteen (15) days, shall nominate candidates as provided in sub-section (3) of section 6, at least one of whom shall be a female, and send such list to Secretary and simultaneously publicly disclose the list of recommended candidates for scrutiny inviting comments and objections from the public against such nominees to be sent directly to Secretary within a period of six (06) days.

(2) Within seven (07) days of receipt of the list of nominees from the Search and Scrutiny Committee, the Secretary shall circulate to members of the Legislative Committee the list of all nominated candidates together with public comments and objections received in relation to such nominees.

(3) Within seven (07) days of receipt of the nominations by members of the Legislative Committee, and in view of the public comments and objections received in relation to such nominees, the Legislative Committee shall confirm the nominees unless it rejects a nominee by three-fourth majority vote:

Provided that if the Legislative Committee neither confirms a nominee nor rejects him by three-fourth majority vote, such nominee shall be deemed to have been confirmed.

(4) If a nomination is rejected by the Legislative Committee, it shall communicate its decision to Government and Government shall nominate another candidate within seven (07) days of such rejection and resubmit the name of such candidate to the Legislative Committee in accordance with the procedure hereinabove prescribed.

(5) Not later than one (01) day of the confirmation or deemed confirmation of nominees, the Secretary, shall send the names of the nominees confirmed or deemed to have been confirmed to the Governor for appointment:

Provided that if the Governor fails to make such appointments within a period of ten (10) days of receipt of the list of nominated candidates, such nominated candidates shall be deemed to have appointed and Government shall issue notification accordingly.

(6) The provisions of sub-section (6), (7), (8), (9) and (10) of section 6 shall apply mutatis mutandis apply to first Search and Scrutiny Committee, appointed under this section.

8. Procedure for appointment of Commissioners.---(1) The Search and Scrutiny Committee shall seek applications for the position of Commissioners from the general public through public advertisement:

(2) Notwithstanding anything contained in sub-section (1), the Search and Scrutiny Committee may recommend to the Legislative Committee, the name of any person of high repute, integrity and stature, to be appointed as Commissioner, who had not applied under sub-section (1).

(3) The Search and Scrutiny Committee shall evaluate the eligible candidates in accordance with the following process:

- (a) each member shall score each eligible candidate on a scale of one to three, with one signifying unsuitable and three signifying most suitable, on an evaluation sheet in ink pen for five competencies, integrity, educational qualification, relevant experience, provincial stature, and public service contributions;
- (b) a single score one on integrity by any committee member shall disqualify a candidate;
- (c) members shall undertake evaluation on the same day and time, but without interaction with other members of the Search and Scrutiny Committee;
- (d) members shall receive information and details of candidates under seal and shall affix thumbprint, sign the evaluation sheet and return the same under seal;
- (e) in view of the aggregate score of each candidate, top thirty percent of the candidates or a maximum of three candidates for each position to be filled shall be short-listed for interview;
- (g) the names of shortlisted candidates shall be disclosed for public scrutiny in order to solicit objections within a period of fifteen (15) days;
- (h) after expiry of public scrutiny period, the shortlisted candidates shall be interviewed by the Search and Scrutiny Committee with each member asking each candidate equal number of similar questions;
- (i) each candidate shall be evaluated on a scale of one to three, with one signifying unsuitable and three signifying most suitable, and the score shall be marked on the evaluation sheet in ink pen; and

- (j) all interviews shall be conducted on the same day and at the end of interviews of all candidates the evaluation sheets shall be collected from all members for immediate preparation of a merit list by adding up the scores for each candidate, which will be certified by the signature of all members.

(4) The Search and Scrutiny Committee shall, in accordance with the merit list, recommend to the Legislative Committee one name for each vacancy on the Commission, and the candidate with the highest score as Chief Ehtesab Commissioner and also publicly disclose the list of recommended candidates inviting comments and objections from the public against such nominees to be sent to Secretary.

(5) Within fifteen (15) days of receipt of a nomination or nominations from the Search and Scrutiny Committee, and in view of the public comments and objections received in relation to such nominees, the Legislative Committee shall confirm the nominee or nominees, as the case may be, unless it rejects a nominee by three-fourth majority vote:

Provided that if the Legislative Committee neither confirms a nominee nor rejects him by three-fourth majority vote, such nominee shall be deemed to have been confirmed:

Provided further that if a nomination is rejected by the Legislative Committee, it shall communicate its decision to the Search and Scrutiny Committee and the Search and Scrutiny Committee shall nominate the candidate next on the merit list, or if there is no other eligible candidate, furnish a new nomination in accordance with the evaluation process above.

(6) The Secretary shall send the name of the nominees confirmed or deemed to have been confirmed to the Governor for appointment that if the Governor fails to make such appointments within a period of ten (10) days of receipt of list of nominated candidates, such nominated candidates shall be deemed appointed and Government shall issue notification accordingly.

(7) The Search and Scrutiny Committee shall, upon intimation of a vacancy by the Commission or six (06) months prior to such vacancy arising, initiate the appointment process as mentioned hereinabove.

9. Powers and functions of the Commission.---The Commission shall have the power to:

- (a) appoint the Director General, Prosecutor General and Director Internal Monitoring and Public Complaints Wing for the smooth functioning of the Commission and effective discharge of the statutory obligations of the same;
- (b) approve organizational structure and positions to be filled in by employees appointed in accordance with sub-section (4) of section 11 and any creation or deletion of such positions;
- (c) approve annual budget of the Commission;
- (d) approve regulation required to be made under this Act;
- (e) issue policy guidelines for the Commission, its officers and employees;

- (f) oversee the overall performance of the Commission, its officers and employees without interfering in day-to-day operational matters:

Provided that the Commissioners shall not engage directly or indirectly with an accused or other party involved with a complaint or case under investigation or prosecution or otherwise being considered by the Director General;

- (g) delegate such of their powers and functions to the officers of the Commission, as it may consider necessary for the efficient implementation of this Act;
- (h) prescribe terms and conditions of service of employees and approve the human resource policy of the Commission;
- (i) enquire into any allegations of corruptions and corrupt practices within the Commission or any officer or employee of the Commission and pass appropriate orders in this behalf; and
- (j) exercise such powers and authority as are granted to it under this Act.

10. Meetings of the Commission.---(1) The Commission may meet, once in a month, as often as necessary, for the effective performance of its functions.

(2) For any meeting of the Commission, two thirds of the Commissioners shall constitute a quorum.

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

(4) The Commission shall in the prescribed manner, determine the procedure of meetings, recording of minutes and other ancillary matters in this respect.

11. Organizational structure of the Commission.---(1) The Directorate General of the Commission shall comprise of the following Wings:

- (a) the Information and Data Processing Wing;
- (b) the Investigation Wing;
- (c) the Prosecution Wing;
- (d) the Finance and Audit Wing;
- (e) the Internal Monitoring and Public Complaints Wing; and
- (f) the Human Resource Wing.

(2) Each Wing shall be headed by a Director, who shall be appointed in such a manner, as may be prescribed by regulations.

(3) The Director of each Wing shall be responsible for oversight, advocacy, training and recommending policy measures for the effective management and functioning of his respective Wing.

(4) Unless otherwise provided in this Act, the staff, employed in each Wing shall be appointed in a transparent manner by the Human Resource Wing in accordance with the human resource policy, subject to the supervision and approval of the Director

General in accordance with the eligibility criteria and appointment procedure laid down in the terms and conditions of service prescribed by the Commission and the employment of such staff may be terminated in accordance with the same.

(5) The officers, staff and employees of the Commission employed in each Wing shall be entitled to such salary, allowances and other terms and conditions of service as the Commission, may prescribe.

(6) Notwithstanding anything contained herein contrary or in any law for the time being in force, the Director General shall not be required to consult the Khyber Pakhtunkhwa Public Service Commission for making appointments and on matters related to qualifications of persons for such appointments and method of their recruitment and the criteria of eligibility for recruitment shall be such as prescribed by the Commission.

12. Director General.---(1) The Commission shall, in accordance with the procedure laid down in the terms and conditions of service, as may be prescribed by the Commission, appoint the Director General to fulfill such duties and responsibilities as specified in this Act:

Provided that the procedure for nomination and selection of the candidates shall be dealt by the Search and Scrutiny Committee in the same manner as provided for the nomination and selection of the Commissioners under this Act.

(2) The Director General shall hold office for one non-extendable term of four (04) years from the day he enters his office and shall not be eligible for reappointment for a second term.

(3) The Director General shall cease to hold office if he:

- (a) has been convicted of an offence involving moral turpitude;
- (b) has been adjudged insolvent;
- (c) has been declared by a Medical Board constituted by Government, to be physically or mentally unfit; or
- (d) is a defaulter of Government dues, utility or a bank expenses; or
- (e) is found liable by the Commissioners for abuse of authority or misconduct after conducting an inquiry and giving him an opportunity to be heard.

(4) A person shall not be appointed as Director General unless he:

- (a) is a citizen of Pakistan preferably from Khyber Pakhtunkhwa;
- (b) is an individual with reputation of high moral integrity;
- (c) falls within one of the following categories:
 - (i) is a retired Government officer in BPS 21/22 or equivalent; or
 - (ii) is a lawyer eligible to be appointed as a judge of the High Court and has served in a leadership position in professional career;
- (d) is not less than forty five and more than sixty five (65) years of age at the time of selection; and
- (e) declare his assets as per law.

- (5) The Director General shall not:
- (a) hold any other office of profit in the service of Pakistan or be the office bearer of a political party, unless he resigns such office at the time of his appointment; or
 - (b) occupy any other position carrying the right to remuneration for the rendering of services; or
 - (c) pursue his profession while being Director General.

(6) During his term in office, if the Director General has any interest in any matter to be inquired, investigated or decided by the Commission, he shall, disclose in writing, to the Commission, the fact of his interest and the nature thereof, and the Commission shall pass appropriate instructions for exercise of any authority under this Act in relation to such matter.

Explanation.---For the purpose of this section, the Director General shall be deemed to have an interest in a matter if he has any interest, pecuniary or otherwise, in such matter which could reasonably be regarded as giving rise to a conflict between his duty to honestly perform his functions under this Act and such interest, so that his ability to consider and decide any question impartially or to give any advice without bias, may reasonably be regarded as impaired.

(7) A person who has held office as Director General shall not hold any office in the service of Government before the expiration of two (02) years after he has ceased to hold that office.

(8) The Director General may, by writing under his hand addressed to the Governor, resign from his office.

13. Powers and functions of the Director General.---(1) The Director General shall be responsible for the day to day operation and administration of the Commission, unless otherwise provided in this Act, and in performance of his duties shall exercise the following powers on behalf of the Commission:

- (a) the Director General, or an officer of the Commission duly authorized by him, may seek full and complete assistance and call for all or any documents and information relevant to or in connection with any matter or inquiry or investigation pending before the Commission, or disposal of any property surrendered to or seized by the Commission, from any department of Government, the Federal Government, local authority, bank, financial institution, person or any authority and institution or department in the public sector or the private sector; provided that in any case in which a question of secrecy is involved or is raised at any time, the decision of the Director General shall be final;
- (b) the Director General, or an officer of the Commission duly authorized by him, may, during the course of an inquiry or investigation of an offence under this Act,-
 - (i) call for information from any person for the purpose of determining whether there has been any contravention of the provisions of this Act or any rule or order made thereunder;
 - (ii) require any person to produce or delivery any document or item useful or relevant to the inquiry or investigation being carried out;

- (iii) direct the relevant department to examine any person acquainted with the facts and circumstances of the case being investigated;
- (iv) where there is reasonable suspicion that any person is involved in or is privy to an offence under this Act, the Director General may, with the prior written authorization of a Court, seek the aid and assistance of any investigation or intelligence agency to conduct the surveillance of that person and the information so collected may be used as evidence in a trial under this Act:

Provided that the Court may grant such authorization without notice to the person who is to be subjected to surveillance only if the Commission establishes a prima facie case for reasonable suspicion against such person:

Provided further that the information received or evidence collected pursuant to such surveillance shall be kept confidential and shall not be used for any purpose other than for legal proceedings under this Act.

- (c) the Director General, or an officer of the Commission duly authorized by him, may seek the assistance of law enforcement agencies in the Province for purposes of ensuring that proper investigation and prosecution, if initiated by the Commission, is carried out against an accused;
- (d) the Director General, or an officer of the Commission duly authorized by him, may request a Foreign State through the Federal Government of Pakistan to extend his support for the arrest of the accused and recovery of assets from such accused:

Provided that notwithstanding anything contained in the Order or any other law for the time being force, all evidence, documents or any other material transferred to Pakistan by a Foreign Government shall be admissible as evidence in legal proceedings under this Act.

- (e) the Director General may, on the recommendation of the Prosecutor General and the Director of the Finance and Audit Wing, for purposes of an inquiry, investigation or prosecution, seek a declaration of assets and details of taxes filed by an accused;
- (f) the Director General may, on the recommendation of the Prosecutor General and the Director of the Investigation Wing, if there appear reasonable grounds for believing that the accused has committed an offence under this Act, order the freezing of his property or any part thereof, whether in his possession or in the possession of any relative, associate or benamidar in accordance with section 27 of this Act;
- (g) the Director General, or an officer of the Commission duly authorized by him, may, following a proper and transparent investigation, trial and conviction of an accused under this Act, make a recommendation for the suspension of service of such public office holder from his office and such recommendation shall be

given serious consideration for implementation by the department such public office holder is employed in;

- (h) the Director General may appoint advisors, consultants and experts, on payment of such fee or remuneration as may be determined by him and approved by the Commission, to assist him in performing the functions of the Commission and the discharge of his duties under this Act; and
- (i) the Director General shall cause to be appointed all officers, staff and employees of the Commission except the Prosecutor General and the Director Internal Monitoring and Public Complaints Wing.

14. Appointment of Prosecutor General.---(1) The Commission, in the prescribed manner, shall appoint any person, who is qualified to be appointed as a Judge of the High Court, as Prosecutor General of the Commission to fulfill such duties and responsibilities as specified in this Act:

Provided that the procedure for nomination and selection of the candidates shall be dealt by the Search and Scrutiny Committee in the same manner as provided for the nomination and selection of the Commissioners under this Act.

(2) The Prosecutor General shall hold such office on a full time basis for a non-extendable period of four (04) years and shall not hold any other office concurrently during such term.

(3) The Prosecutor General shall not be removed from office unless he:

- (a) has been convicted of an offence involving moral turpitude; or
- (b) has been adjudged insolvent; or
- (c) has been declared by a registered physician appointed by Government to be physically or mentally unfit; or
- (d) is a defaulter of Government dues, a bank or utility expenses; or
- (e) is found liable by the Commission for abuse of authority or misconduct, after conducting an inquiry and giving him an opportunity to be heard.

(4) The Prosecutor General may, by writing under his hand addressed to the Commission, resign from his office.

15. Powers and functions of Prosecutor General.---(1) The Prosecutor General shall give advice to the Commissioners and the Director General upon such legal matters and perform such other duties of a legal character as may be referred or assigned to him by the Director General and in the performance of his duties, he shall have the right of audience in all Anti-Corruption Courts and all other Courts including the High Courts and the Supreme Court.

(2) The Prosecutor General shall make recommendations to the Director General of candidates for the posts of Special Prosecutors who shall be appointed by the Director General in accordance with the terms and conditions of service.

(3) The Prosecutor General shall head the Prosecution Wing and shall be responsible for overseeing the performance of Special Prosecutors who have been appointed to conduct prosecutions of cases and advocates that have been appointed to

institute or defend cases, appeals, petitions, applications and all other matters before any Court or Tribunal including the High Courts and Supreme Court in matters arising out of or relating to proceedings under this Act.

(3) For purposes of this Act, the Special Prosecutors, employed by the Commission, shall be deemed to be Public Prosecutors within the meaning of section 492 of the Code and the provisions of the Code shall mutatis mutandis apply to such Special Prosecutors accordingly.

16. Director, Internal Monitoring and Public Complaints Wing.---(1) The Commission shall appoint with majority vote a Director of the Internal Monitoring and Public Complaints Wing to fulfill such duties and responsibilities as specified in this Act.

(2) The Director of the Internal Monitoring and Public Complaints Wing shall head the Wing responsible for internal monitoring of the performance of officers of the Commission and receipt of complaints of misconduct from any citizen against any officers of the Commission.

17. Powers and functions of the Director, Internal Monitoring and Public Complaints Wing.---(1) The Director, Internal Monitoring and Public Complaints Wing shall administer and oversee the preparation of report and ensure that the following measures are implemented for the effective accountability of the Commission and its officers and employees:

- (a) the Internal Monitoring and Public Complaints Wing shall at all times maintain a detailed credible record of the investigations and prosecutions initiated and carried out by the Commission, including a record of complaints received for which investigations and prosecutions were for whatever reason not initiated;
- (b) the Internal Monitoring and Public Complaints Wing shall maintain a record of any complaints received from the general public against an officer of the Commission, regardless of his seniority in the Commission;
- (c) the Internal Monitoring and Public Complaints Wing may investigate allegations of misconduct against officers of the Commission and submit its report to the Commission for necessary action;
- (d) based on the records mentioned in clauses (a), (b) and (c) above, there shall be prepared a report analyzing and setting out in detail the performance of the Commission in discharging its statutory obligations under this Act;
- (e) the report shall be communicated to the Commission directly by the Director, Internal Monitoring and Public Complaints Wing; and
- (f) the Commissioners shall, as soon as possible following the end of every calendar year, submit to the Provincial Assembly through the office of the Governor the report, and upon its publication copies shall be provided to the public at a reasonable cost.

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

(2) The Director General shall be the Principal Accounting Officer of the Commission.

(3) The Director General 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.

19. Maintenance and annual statement of accounts.---(1) The Commission shall maintain complete and accurate books of accounts in such forms as may be prescribed by it.

(2) 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.

20. Audit.---The accounts of the Commission shall be audited every year by the Auditor General of Pakistan.

21. Measures for the prevention of corruption and corrupt practices.---The Director General may, from time to time, in the prescribed manner, constitute committees comprising officers of the Commission or other persons or organizations from the private or public sectors. Such committees may make recommendation to:

- (a) educate and advise public authorities, public office holders and the community at large on measures to combat corruption and corrupt practices;
- (b) develop, arrange, supervise, participate in or conduct educational and media awareness campaigns, and generally to disseminate information on the detrimental effects of corruption and corrupt practices and the importance of maintaining the integrity of public administration;

22. Reporting of public contracts.---The Commission may call for information of any contract entered into by a Department of Government and its attached departments, statutory corporations or authorities established by Government and Public Office Holders, when required and the concerned authority shall provide the requisite information within a period of fifteen (15) days after its receipt to the Commission.

PART -II **OFFENCES AND MATTERS** **CONNECTED THEREWITH**

23. Corruption and corrupt practices.---(1) A Public Office Holder, Officers and employees of the Commission, or any other person, shall be deemed to have committed an offence of corruption and corrupt practices, if he-

- (a) accepts or obtains from any person or offers any gratification directly or indirectly, other than legal remuneration, as a motive or reward such as is specified in section 161 of the Penal Code for doing or forbearing to do any official act, or for showing or forbearing to show, in the exercise of his official functions, favours or disfavours to any person, or for rendering or attempting to render any service or disservice to any person; or
- (b) accepts or obtains or offers any valuable thing without consideration, or for a consideration which he knows to be inadequate, from any person whom he knows to have been, or likely to be, concerned in any proceedings or business transacted or about to be transacted by him, or having any connection with his official functions or from

any person whom he knows to be interested in or related to the person so concerned; or

- (c) dishonestly or fraudulently misappropriates or otherwise converts for his own use, or for the use of any other person, any property entrusted to him, or under his control, or willfully allows any other person to do so; or
- (d) by corrupt, dishonest, or illegal means, obtains or seeks to obtain for himself, or for his spouse or dependents or any other person, any property, valuable thing, or pecuniary advantage; or
- (e) or any of his dependents or benamidar owns, possesses, or has acquired right or title in any assets or holds power of attorney in respect of any assets or pecuniary resources disproportionate to his known sources of income, which he cannot reasonably account for or maintains a standard of living beyond that which is commensurate with his sources of income; or
- (f) exercises his authority other than on considerations on merit to gain any benefit or favour for himself or any other person or otherwise or willfully fails to exercise his authority as required under law to confer an undue benefit or favour upon another which ought to have been prevented by lawful exercise of authority; or
- (g) has issued any directive, policy or any other order which grants or attempts to grant any undue concession or benefit in any matter so as to benefit himself or any dependent or relative or a benamidar or any other person; or
- (h) aids, assists, abets, attempts or acts in conspiracy with a person or a public office holder, accused of an offence as provided in clauses (a), (b), (c), (d), (e) and (f) above.

(2) A Commissioner shall be deemed to have committed the offence of corruption or corrupt practices, if he attempts to engage directly or indirectly with an accused or other party involved with a complaint or otherwise influence the conduct of an investigation or prosecution being undertaken by the Commission:

Provided that no investigation against a Commissioner shall be initiated without permission in writing approved by the Legislative Committee with a two-thirds majority votes.

(3) All offences under this Act shall be non-bailable.

24. Punishment for corruption and corrupt practices.---(1) A Public Office Holder, Commissioner or any other person, including any officer and employee of the Commission, who commits the offence of corruption and corrupt practices shall be punishable with rigorous imprisonment for a term which may extend to fourteen (14) years and with fine, and such of the assets and pecuniary resources of such public office holder, Commissioner, officer of Commission or person, as are found to be disproportionate to the known sources of his income or which are acquired by money obtained through corruption and corrupt practices, whether in his name or in the name of any of his dependents, or benamidar, shall be forfeited to the Government or Local Government or other entity to which the assets belong, as the case may be.

(2) The offences specified in the Schedule to this Act shall be punishable in the manner as specified therein.

25. Imposition of fine.---Where an accused found guilty of an offence punishable under this Act is sentenced to pay a fine, the amount of the fine shall in no case be less than the gain derived by the accused or any dependent or associate by the commission of the offence.

26. Recovery of amount of fines, etc. as arrears of land revenue.---Any fine or other sum due under this Act, or as determined due by a Court, shall be recoverable as arrears of land revenue.

27. Freezing of property.---(1) The Director General, on the recommendation of the Prosecutor General and the Director of the Investigation Wing or the Court itself while trying an accused for any offence as specified under this Act may, at any time, if there appear reasonable grounds for believing that the accused has committed such an offence, temporarily order the freezing of his assets, or any part thereof, whether in his possession or in the possession of any relative, associate, or benamidar:

Provided that any order of temporary seizure, freezing, attachment or any prohibitory order by the Director General shall remain in force for a period not exceeding thirty (30) days unless confirmed by the Court seized of the matter through an interlocutory order, failing which the assets shall stand released.

(2) If the property ordered to be frozen under sub-section (1) is a debt or other movable property, the freezing may be made:

- (a) by seizure; or
- (b) by appointment of receiver; or
- (c) by prohibiting the delivery of such property to the accused or to anyone on his behalf; or
- (d) by all or any of such or other methods, the Director General, on the recommendation of the Prosecutor General and Director of the Investigation Wing or the Court, as the case may be.

(3) If the assets ordered to be frozen are immovable property, the freezing shall, in the case of land paying revenue, be made through the Collector of the district in which the land is situated, and in all other cases:

- (a) by taking possession; or
- (b) by appointment of receiver; or
- (c) by prohibiting the payment of rent or delivery of property to the accused or to benamidar; or
- (d) by all or any of such or other methods, as the Director General, on the recommendation of the Prosecutor General and the Director of the Investigation Wing or the Court, as the case may be:

Provided that notwithstanding anything to the contrary contained herein, that the order of the Court or the Director General shall be effective from the time of passing thereof or proclamation thereof in a newspaper, widely circulated and dispatched at the last known address of the accused either by registered post or courier service or electronic media as the Court may deem proper having regard to the facts and circumstances of the case.

(4) If the assets ordered to be frozen consist of livestock or are of perishable nature, the Court or the Director General, as the case may be, if it may deem proper and expedient, order the immediate sale thereof and the proceeds of the sale shall be deposited in the Government exchequer.

(5) The powers, duties and liabilities of a receiver, if any, appointed under this section shall be the same as those of a receiver appointed under Order XL of the Code of Civil Procedure, 1908 (Act V of 1908).

(6) Once confirmed by the Court, any order of freezing made under this section shall remain operative until the final disposal of the case against the accused by the Court, and in the event of the acquittal of the accused, shall stand revoked immediately, whereafter it shall be subject to an order by the Court in which an appeal, if any, is filed.

28. Claim or objection against freezing of property.---(1) Notwithstanding the provisions of any law for the time being in force, the Court shall have exclusive jurisdiction to entertain and adjudicate upon all claims or objections filed against the freezing of any assets under section 28. Such claims or objections shall be made before the Court within fourteen (14) days from the date of the order freezing such assets.

(2) The Court may, for sufficient cause, extend the time for filing such claims or objections for a period not exceeding an additional fourteen (14) days.

(3) The accused or any other aggrieved party, whose claim or objection against freezing of assets has been dismissed by the Court, may, within ten (10) days file an appeal against such order before the High Court.

29. Transfer of property void.---(1) Notwithstanding anything contained in any other law for the time being in force, after an inquiry or investigation has been initiated into any suspected offence under this Act, alleged to have been committed by an accused, the accused, any of his dependent, relative, associate or a benamidar, shall not transfer by any means whatsoever, or create a charge on any property owned by him or in his possession, while the inquiry, investigation or legal proceedings are pending before the Commission or the Court, and any transfer of any right, title or interest or creation of a charge on such property shall be void.

(2) Any person who transfers, or creates a charge on assets in contravention of sub-section (1), shall be punishable with rigorous imprisonment for a term which may extend to three (03) years and shall also be liable to a fine not exceeding the value of the assets involved:

Provided that transfer of any right, title or interest or creation of a charge on such assets shall not be void if made with the approval of the Court, subject to such terms and conditions as the Court may deem fit.

30. Declaration of properties and liabilities.---(1) When the Director General on the recommendation of the Prosecutor General and the Director of the Investigation Wing, on receipt of information and after making such enquiries, as are required under this Act, is satisfied that any Public Office Holder, or any other person on his behalf, is in possession of pecuniary resources or assets disproportionate to the known sources of income of such public office holder, it may, by order, require such public office holder or other person to furnish in the prescribed manner and within the prescribed time a statement of his property and liabilities and such information relating thereto as may be required by such order.

(2) If such Public Office Holder or person-

(a) upon being so required by an order under sub-section (1), fails to furnish the statement or information or furnishes a statement or

information which he knows or has reasonable cause to believe to be false or not true in any material particular; or

- (b) makes in any book, account, record, declaration, return or other document, which he is required by an order under sub-section (1), to furnish, any statement which he knows or has reasonable cause to believe to be false or not true in any material particular;

he shall be punishable with imprisonment for a term which may extend to three (03) years and shall also be liable to fine.

31. Contempt of Court.---The Court shall have the power to punish for contempt of Court with imprisonment for a term which may extend to six (06) months and with fine which may extend to one million rupees any person who:

- (a) abuses, interferes with or obstructs the process of the Court in any way or disobeys any order or direction of the Court; or
- (b) does anything which tends to prejudice the determination of a matter pending or most likely to come up before the Court.

32. Prohibition to hamper investigation.---(1) Notwithstanding anything contained in any other law for the time being in force, if any person concerned with the inquiry, investigation or prosecution of a case consciously, deliberately and with malice compromises, hampers, misleads, jeopardizes or defeats an inquiry or investigation of a suspected offence under this Act under way before the Commission or any concerned agency or authority or the Court or any other court, he shall be guilty of an offence under this Act punishable with rigorous imprisonment for a term which may extend to ten (10) years.

(2) No person shall be proceeded against under this section except with the sanction of a Committee comprising the Director General and the Prosecutor General Accountability.

33. Absconding to avoid service of warrants.---(1) Whoever absconds in order to avoid being served with any process issued by any Court or any other authority or officer under this Act or in any manner prevents, avoids or evades the service on himself of such process or conceals himself to screen himself from the proceedings or punishment under this Act shall be guilty of an offence under this Act punishable with imprisonment which may extend to three (03) years.

(2) It shall not be necessary to file a reference under this section in cases where a reference is pending before the Court.

34. Disqualification to contest elections or to hold public office.---(1) Where an accused is convicted of an offence under section 25, he shall forthwith cease to hold public office, if any, held by him and shall be deemed to have committed the offence of moral turpitude for purposes of Article 63 of the Constitution of the Islamic Republic of Pakistan.

(2) Any person convicted of an offence under section 23 shall not be allowed to apply for or be granted or allowed any financial facilities in the form of any loan or advances or other financial accommodation by any bank or financial institution owned or controlled by Government for a period of five (5) years from the date of his conviction for such offence.

PART -III
INVESTIGATION AND PROSECUTION
CONFERENCE

35. Jurisdiction.---(1) The Director General, may, on complaint or information received or on the recommendation of the Prosecutor General and the Director of the Investigation Wing, as the case may be, order an inquiry or investigation into any incident or an act or omission of a person or accused, that reasonably appears to constitute an offence under this Act.

(2) The Director General, may, on the recommendation of the Prosecutor General and the Director of the Investigation Wing, order that the inquiry or investigation be conducted with the aid or assistance of any other agency of Government or Federal Government.

(3) If jurisdiction over the inquiry or investigation of a suspected offence is assumed by an agency of the Federal Government, the Director General shall meet with the relevant officers of such agency and determine whether the Commission or such agency has proper jurisdiction over the matter; provided that in making such determination, the Director General shall take into regard the following factors:

- (a) the stage of inquiry or investigation being conducted by the Commission at the time of assumption of jurisdiction by Federal Agency;
- (b) territorial location from where evidence has been collected during the inquiry or investigation; and
- (c) place of residence of prosecution witnesses who are to testify against the accused.

(4) Following a determination based on the factors mentioned in sub-section (3), the Director General shall make a recommendation to such agency of the Federal Government with regard to exercise of jurisdiction over the matter in the interest of effective prosecution and crime prevention and the decision of the agency of the Federal Government in the matter shall be final and binding.

36. Cognizance of offences.---(1) The Court shall not take cognizance of any offence under this Act except on a reference made by the Director General or an officer of the Commission duly authorized by him.

- (2) A reference under this Act shall be initiated by the Commission on:
- (a) a reference received from Government or a public office holder; or
 - (b) receipt of a complaint from the general public; or
 - (c) of its own accord:

Provided that if the reference is being initiated under sub-clause (b), the identity of the complainant shall be kept confidential and disclosure on the part of an employee of the Commission shall entail disciplinary proceedings against such employee:

Provided further that if the reference is being initiated under sub-clause (c), such reference shall only be valid if made by the Director General under intimation to the Commission.

(3) Where the Director General, or an officer of the Commission duly authorized by him, is of the opinion that it is, or may be, necessary and appropriate to initiate proceedings against any person, he shall refer the matter for inquiry or investigation.

(4) The responsibility for inquiry into and investigation of an offence alleged to have been committed under this Act shall rest on the Commission to the exclusion of any other agency or authority of the Provincial Government, unless any such agency or authority is required to do so by the Director General.

(5) The Director General and such members, officers or servants of the Commission shall have and exercise, for purposes of an inquiry or investigation, the power to arrest any person, and all the powers of an officer-in-charge of a police station under the Code, and for that purpose may cause the attendance of any person, and if and when the assistance of any agency, police officer or any other official or agency, as the case may be, is sought by the Commission, such official or agency shall render such assistance:

Provided that no person shall be arrested without the permission of the Director General.

(6) Any inquiry or investigation carried out under this Act shall be completed within a period of ninety (90) days from the date the reference for such inquiry or investigation was made, failing which reasons for any delay shall be recorded in writing and presented to the Commission through the office of Director of Internal Monitoring and Public Complaints Wing.

(7) For the purposes of carrying out an inquiry or investigation regarding a suspected offence under this Act, the duly authorized officers and employees of the Commission shall have, throughout the Province, such powers relating to search, arrest of persons and seizure of assets as the officers of a Provincial Police have in relation to the investigation of offences under the Code.

37. Prosecution conference.---(1) Upon completion of the inquiry or investigation there shall be scheduled a prosecution conference, to be attended by the relevant investigation officers and Special Prosecutors assigned to the matter, to determine if charges should be framed and the matter referred to the Court for initiation of legal proceedings against the accused.

(2) The investigation officers and Special Prosecutors shall appraise the material and evidence collected and shall prepare a joint report for the Director General with a recommendation supporting the filing of a reference before the Court or opposing the filing of a reference or proposing further investigation; provided that in case of lack of consensus, the investigation officers and Special Prosecutors shall make independent recommendations that shall be presented to the Director General for further action.

(3) If it is recommended upon conclusion of the prosecution conference that material evidence collected is insufficient to make out a prima facie case and further investigation is inadvisable in view of the facts of the case, the Director General may order further investigation or close the investigation and seek the release of the accused from Court, if in custody.

(4) If a complaint is investigated by the Commission and it is concluded at the prosecution conference that the complaint was prima facie frivolous or has been filed with the intent to harass, malign or defame any person, the duly authorized officer of the Commission may file charges against the complainant, and the complainant, if found guilty by the Court, shall be punishable with imprisonment for a term which may extend to one (01) year, or with fine, or with both.

38. Arrest.---(1) The Director General, or an officer of the Commission duly authorized by him, shall have the power, at any stage of the inquiry or investigation under this Act, to direct that the accused, if not already arrested, be arrested, if such arrest is necessary to facilitate effective investigation or if the accused refuses to join the investigation.

(2) If the Director General, or an officer of the Commission duly authorized by him, decides to refer the case to the Court, such reference shall contain the substance of the offence or offences alleged to have been committed by the accused and a copy of such reference shall be filed with the Court of competent jurisdiction, and another copy shall be delivered to the accused.

(3) The provision of sub-section (1), shall also apply to cases that have already been referred to the Court.

(4) Notwithstanding anything contained in the Code, where a public office holder or any other person accused of an offence under this Act is arrested by order of the Commission, the Commission shall, as soon as may be, inform him of the grounds and substance on the basis of which he has been arrested and produce him before the Court within a period of twenty-four (24) hours from arrest, excluding the time necessary for the journey from the place of arrest to the Court, and the accused shall, having regard to the facts and circumstances of the case, be liable to be detained in the custody of the Commission for the purpose of inquiry or investigation for a period not exceeding forty-five (45) days and the Court may remand an accused to custody not exceeding fifteen (15) days at a time and for every subsequent remand, the Court shall record reasons in writing for the grant and extension of such remand.

(5) The Director General, or an officer duly authorized by him, may declare and notify any place to be a police station or a sub-jail, if deemed necessary in the interest of justice and an efficient and effective investigation:

Provided that the places under this sub-section shall not be symbol of prestige and authority of other state institutions.

PART -IV **TRIAL**

39. Jurisdiction over trial.---Notwithstanding anything contained in section 41 of this Act, if, in respect of any case related to an offence triable under this Act, the Director General, or an officer of the Commission duly authorized by him, files a reference before a Court established anywhere in the Province, such Court shall have the jurisdiction to try the same.

40. Policy objectives for trial of offences.---(1) The trial for any offence suspected to have been committed under this Act shall be carried out keeping in mind the following policy objectives:

- (a) that the accused has the right to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
- (b) that the accused has the right to adequate time for the preparation of his defence;
- (c) that the accused has the right to defend himself in person or through a pleader of his own choosing, or if he does not have sufficient means to pay for legal representation, to be given the same for free where the interests of justice so requires;

- (d) that the accused has the right to be heard by the Court, for the purposes of the trial against the accused; and
- (e) that the accused has the right to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him.

41. Ehtesab Courts.---(1) Within thirty (30) days of the commencement of this Act, Government shall take necessary steps to establish as many Ehtesab Courts as may be necessary to ensure expeditious trial of offenses under this Act with territorial areas as specified by the Peshawar High Court and dispensation of justice within prescribed time as specified by the National Judicial Policy from time to time and in relation to each offence committed in an area of the Province shall be tried by the Court exercising territorial jurisdiction in relation to such area.

(2) Where more Courts than one have been established in any area, the Peshawar High Court shall designate a Judge of any such Court to be an Administrative Judge and a case triable under this Act shall be filed before the Court of the Administrative Judge who may either hear the case himself or assign it for trial by any Court established at that place at any time prior to the framing of the charge.

(3) In respect of a case assigned to a Court under sub-section (2), all orders made or proceedings taken before the assignment shall be deemed to have been made or taken by the Court to which the case has been assigned.

(4) Where the number of references filed or cases pending before a Court exceeds fifty (50), Government shall immediately establish a new Court and provide it all related facilities to ensure dispensation of justice within prescribed time schedules and each new Court shall sit at such place as Government may, in consultation with the Peshawar High Court, specify.

(5) A Court shall consist of a Judge, being a person who is a District and Sessions Judge or a Senior Additional District and Sessions Judge.

(6) Government shall, after consultation with the Peshawar High Court, appoint a Judge of each Court.

(7) A Judge shall hold office unless he sooner resigns or is transferred to another Court upon direction of the Peshawar High Court or is removed from office in accordance with sub-section (8) below.

(8) A Judge shall not be removed from office unless, on information from any source, the Administrative Committee of Peshawar High Court conducts an inquiry and concludes that the Judge may be incapable of properly performing the duties of his office by reason of physical or mental incapacity or may have been guilty of misconduct:

Provided that no Judge shall not be removed from office without affording him the right to be heard.

42. Procedure for Trial.---(1) Notwithstanding anything contained in any other law for the time being in force, each matter brought before the Court under this Act shall be disposed of no later than within three (03) months from the date of the reference being filed.

(2) Within seven (07) days of the filing of the reference, the accused shall file or cause to be filed before the Court a written response to the charges made in the reference.

(3) Within seven (07) days of the filing of the response by the accused, the reference shall be fixed for hearing where the Court shall either acquit the accused or frame charges.

(4) Within seven (07) days of framing of a charge the Court shall convene a pre-trial conference with the Special Prosecutor, the accused and the defence attorney for the following purposes:

- (i) finalize the list witnesses to be produced by each party to record evidence in person and the order for recording evidence of witnesses;
- (ii) list of documents and details of documentary evidence of the prosecution and the defence;
- (iii) whether any party requires an order compelling the attendance of a witness and issuance of such order;
- (iv) what arrangements are desirable to facilitate the recording of evidence by witnesses;
- (v) what arrangements are desirable to facilitate the participation of any other person, including the accused; and
- (vi) the date for commencement of trial.

(4) A Court shall set a date for commencement of trial which shall be no later than four (4) weeks from the pre-trial conference and the Court shall proceed with the trial day to day till its conclusion and announcement of judgment by the Court.

(5) The Court shall not grant any party more than one adjournment during the pendency of a matter from the filing of reference till its disposal.

(6) It shall be the responsibility of the Commission and the accused to arrange legal representation and presence of its attorney or pleader on each hearing, failing which the Court shall proceed in the absence of an attorney or pleader:

Provided that under no circumstance will the Court grant adjournment of more than seven (07) days:

Provided further that one fixed the date for commencement of trial shall not be altered and during trial the Court shall not grant adjournment of more than seven (07) days.

43. Presumption against accused accepting gratification.---(1) Where in any trial of an offence under clauses (a), (b), (c) and (d) of sub-section (1) of section 23, it is proved that an accused has accepted or obtained, or has agreed to accept or attempted to obtain, for himself or for any other person any gratification, other than legal remuneration, or any valuable thing, or any pecuniary advantage from a person or any agent of a person, for any favor shown or promised to be shown by the accused, it shall be presumed, unless the contrary is proved, that he accepted or obtained, or agreed to accept or attempted to obtain, that gratification or that valuable thing or pecuniary advantage for himself or some other person, as the case may be, as a motive or reward such as is specified in sections 161, 162 and 163 of the Penal Code or, as the case may be, without consideration, or for a consideration which he believed to be inadequate.

(2) Wherein any trial of an offence punishable under section 165A of the Penal Code, it is proved that any gratification, other than legal remuneration or any valuable thing has been given, or offered to be given, or attempted to be given, by any accused, it shall be presumed, unless the contrary is proved, that he gave or offered to give, or

attempted to give that gratification or that valuable thing, as the case may be, as a motive or a reward such as is specified in sections 161, 162 and 163 of the Penal Code or, as the case may be, without consideration or for a consideration which he believed to be inadequate.

(3) In any trial of an offence punishable under clause (e) of sub-section (1) of section 23, the fact that the accused or any other person on his behalf is in possession of assets or pecuniary resources disproportionate to his known source of income, or that such person has, at or about the time of the commission of the offence with which he is charged, obtained an accretion to his pecuniary resources or property for which he cannot satisfactorily account, the Court shall presume, unless the contrary is proved, that the accused is guilty of the offence of corruption and corrupt practices and his conviction therefore shall not be invalid by reason only that it is based solely on such a presumption.

44. Appeal.---(1) Any person convicted or the Prosecutor General, if so directed by the Director General, aggrieved by the final judgment and order of the Court under this Act may, within twenty (20) days of the final judgment and order of the Court prefer an appeal to the Peshawar High Court:

Provided that no appeal shall lie against any interlocutory order of the Court.

(2) All appeals against the final judgment filed before the Peshawar High Court shall be heard by a Judge, designated as the Ehtesab Judge by the Peshawar High Court, and shall be finally disposed of no later than sixty (60) days of the filing of the appeal.

45. Accused to be competent witness.---An accused shall be a competent witness for the defence and may give evidence on oath in disproof of the charges made against him:

Provided that the accused shall not be compelled to be a witness against himself:

Provided further that where an accused appears as a witness of his choice and refuses to answer any question, the Court may draw such adverse inference from such refusal as it may think proper.

46. False evidence.---(1) Notwithstanding anything to the contrary contained in this Act or any other law for the time being in force, on pronouncement of judgment after a trial for an offence committed under this Act, the Court shall have the jurisdiction and power to take cognizance of an offence committed in the course of inquiry, investigation or trial of a case by any officer, or any witness, including an expert, who has tendered false evidence in the case, whether he deposed in Court or not, or any other person, under sections 176 to 182 or sections 191 to 204, or sections 211 to 223, or section 225A of the Penal Code, or under any other law for the time being in force, related to false evidence and offences against public justice, and to summarily try him and award punishment provided for the offence under the law.

(2) For the purposes of trial under sub-section (1), the Court may, as nearly as may be, follow the procedure specified in Chapter XXII of the Code.

(3) The proceedings under sub-section (1), may be initiated by the Court on its own accord at any time after the decision of the trial for an offence committed under this Act or, in the event that there is an appeal, after the decision thereof, or on an application made by the prosecution or the accused tried by the Court, within a period of thirty (30) days.

47. Withdrawal from prosecution.---The Prosecutor General may, with the consent of the Court, in the interests of justice for reason of insufficient evidence, withdraw from the prosecution of any accused generally or in respect of any one or more of the offences for which he is tried and upon such withdrawal:

- (a) if it is made before a charge has been framed, the accused shall be discharged in respect of such offence or offences; and
- (b) if it is made after a charge has been framed, he shall be acquitted in respect of such offence or offences, as the case may be.

48. Protection of witnesses.---The Director General or the Court may, given the facts and circumstances of a case, take such measures as may be considered necessary for the safety, security and protection of witnesses and their families.

49. Favorable sentencing.---Where at any time after the authorization of investigation, before or after the commencement of the trial or during the pendency of an appeal, the accused offers to return to the Commission the assets or gains acquired or made by him in the course, or as a consequence, of any offence under this Act, the Court may, after taking into consideration the facts and circumstances of the case, look favorably upon such return at the time of sentencing or pronouncement of judgment.

PART -V **MISCELLANEOUS**

50. Power to make rules.---Government may, by notification in the official Gazette, make rules to carry out the purposes of this Act.

51. Power to make regulations.---The Commission may, by notification in the official Gazette, make regulations not inconsistent with the provisions of this Act and rules made thereunder.

52. Delegation of powers.---The Director General may, by an order in writing, delegate any of his powers to and authorize performance of any of his functions by an officer of the Commission as may be prescribed.

53. Indemnity.---No suit, prosecution, or any other proceedings shall lie against the Government, the Commissioners, Director General or any other member, officer or staff of the Commission or any person exercising any power or performing any function under this Act or the rules made hereunder for any act or thing which has been done in good faith or intended to be done under this Act or the rules thereof.

Explanation: The word “good faith” shall have the same meaning as given to it in section 52 of the Penal Code.

54. Commissioners, Officers and employees deemed to be public servants.---Every Commissioner, officer and employee of the Commission including the Director General and Directors shall be deemed to be a public servant within the meaning of section 21 of the Penal Code and shall be subject to the provisions of sections 161 to 169 of the Penal Code.

55. Removal of difficulties.---If any difficulty arises in giving effect to any provision of this Act, the Commission 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 such difficulty within one (1) year.

56. Harmonious interpretation with other laws.---An effort shall be made to interpret this Act harmoniously with other Federal laws on the subject; provided that in the event of a conflict between this Act and a Federal law, the provisions of the Federal law shall prevail.

57. Repeal and savings.---(1) The West Pakistan Anti-corruption Establishment Ordinance, 1961 (W.P. Ord. XX of 1961), is hereby repealed.

(2) Notwithstanding the repeal of the Ordinance under sub-section (1), everything done, action taken, obligation, liability or penalty incurred, inquiry or proceedings commenced, shall continue and be deemed to have been validly done, taken, incurred or commenced under this Act, and shall, for all intents and purposes, be governed by the provisions contained in section 4 of the West Pakistan General Clauses Act, 1956 (W.P. Act VI of 1956), and the provisions contained in Article 264 of the Constitution of the Islamic Republic Of Pakistan.

(3) On commencement of this Act:

- (i) all cases pending with the Anti-corruption Establishment under the repealed Ordinance; and
- (ii) all employees recruited by the Anti-Corruption Establishment; and
- (iii) all assets and liabilities, including furniture, fixtures machinery and vehicles, subject to sub-section (4);

shall stand transferred to the Commission.

(4) All other officers and members transferred to the Anti-Corruption Establishment, shall revert to their respective parent Departments.

SCHEDULE

PUNISHMENT FOR OFFENCES BY COURT

[See section 24(2)]

S.No.	Offence.	Punishment.
1.	Any person who refuses to answer questions, or to provide information to any Commissioners or any other agency when required to do so.	Rigorous imprisonment for a term which may extend to five (05) years.
2.	Giving false information or fabricating false evidence during inquiry into or investigation of an offence by the Commission or any agency authorized by the Commission in this regard when given by: (a) a complainant, witness or an accused or any inquiry officer; and (b) the investigator of the Commission or concerned agency.	Rigorous imprisonment for a term which may extend to five (05) years. Rigorous imprisonment for a term which may extend to ten (10) years.
3.	Misuse of authority or power in committing any offence specified above, by a public office holder including any offence under sections 161 to 165A of the Penal Code.	Rigorous imprisonment for a term which may extend to fourteen (14) years.

STATEMENT OF OBJECTS AND REASONS