

BILL No. 73

A
Bill

*to protect and secure the rights of ownership of women in the
property in the Province of the Khyber Pakhtunkhwa.*

WHEREAS, it is expedient to provide for the protection of the rights of ownership and possession of properties owned by women, ensuring that such rights are not violated by means of harassment, coercion, force or fraud and for the matters connected therewith or incidental thereto;

It is hereby enacted as follows:

1. Short title, extent and commencement.---(1) This Act may be called the Khyber Pakhtunkhwa Enforcement of Women's Property Rights Act, 2019.

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

(3) It shall come into force at once.

2. Definitions.--- In this Act, unless the context otherwise requires, the following expressions shall have the meanings hereby respectively assigned to them, that is to say:-

- (a) "complainant" means a woman who files a complaint or for whom proceedings are initiated in respect of the title or possession of her property;
- (b) "Government" means the Government of the Khyber Pakhtunkhwa;
- (c) "Ombudsperson" means the Ombudsperson appointed under section 7 of the Protection against Harassment of Women at the Workplace Act, 2010 (IV of 2010);
- (d) "prescribed" means prescribed by rules;
- (e) "property" includes any moveable and immovable property; and
- (f) "rules" mean rules made under this Act.

ownership & customary practices

3. Powers of the Ombudsperson.---In addition to the powers, functions and authority under this Act and rules made thereunder, the Ombudsperson, for the purpose of this Act, shall have the same powers, functions and authority as are vested in the Ombudsperson for the Protection against Harassment of Women at the Workplace Act, 2010 (IV of 2010).

4. Complaint to the Ombudsperson in case no proceedings in a Court of law are pending.--- (1) Any woman deprived of ownership or possession of her property by any means, may file a complaint to the Ombudsperson if no proceedings in a court of law are pending regarding that property:

Provided that the Ombudsperson, on its own motion or on a complaint filed by any person including a non-governmental organization, may also initiate action under sub-section (1) in relation to the ownership or possession of a woman's property, if no proceedings are pending in a Court in respect of that property.

(2) The Ombudsperson shall make a preliminary assessment of the complaint filed under sub-section (1) whereafter he may, if the matter requires further probe or investigation, refer the matter to the concerned Deputy Commissioner, who, after calling the record, if necessary, and issuing notices to the complainant and her adversaries, conduct a summary enquiry and submit a report within fifteen days to the Ombudsperson.

(3) If the matter does not require any detailed probe, investigation or recording of evidence, the Ombudsperson may, after calling any record, if deemed necessary, pass orders under section 5.

(4) The Ombudsperson upon receiving the report under sub-section (2), may further conduct such summary enquiry and call for such record as he may deem fit.

(5) The Ombudsperson after confronting the report of the concerned Deputy Commissioner and the conclusion and findings of his own enquiry, shall call upon the complainant and her adversaries to submit objections, whereafter he may conduct a hearing, and pass orders under section 5, preferably within sixty days of receipt of the complaint under sub-section (1).

5. Delivery of possession and transfer of ownership of property to women etc.---(1) On conclusion of the proceedings under section 4, if the Ombudsperson finds that the complainant has been illegally deprived of ownership or possession of her property, he shall direct the Deputy Commissioner or a state functionary or any private person to take steps so as to restore or confer possession or title of the property to the complainant, including measures to perfect such title.

(2) The Ombudsperson may, where deemed fit, direct the officer-in-charge of a police station for such assistance as may be required for the purposes of implementing the orders passed under sub-section (1).

(3) The concerned Deputy Commissioner shall submit a compliance report within seven days to the Ombudsperson in respect of implementation of his orders.

6. Reference to the Court.---(1) Notwithstanding anything contained in section 4 and 5, if upon preliminary assessment, or upon receiving the report of the Deputy Commissioner or upon conducting further summary enquiries by the Ombudsperson himself, he comes to the conclusion that the matter requires in-depth enquiry, investigation or detailed recording of evidence or intricate adjudication, he shall formulate a reference along with all the reports and material collected and submit the same to the Civil Court of competent jurisdiction preferably within sixty days of receipt of the complaint under sub-section (1) of section 4.

(2) Notwithstanding anything contained in any other law, the Civil Court shall entertain the reference under sub-section (1), as a civil suit and proceed further in terms of the Code of Civil Procedure, 1908 (Act V of 1908) and the relevant rules.

7. Complaint to the Ombudsperson in case proceedings in a Court of law are pending.--- (1) Where proceedings in a Court of law are pending in relation to the ownership or possession of any property claimed to be owned by a woman, she may file a complaint under this sub-section to the Ombudsperson:

Provided that the Ombudsperson, on its own motion or on a complaint filed by any person including a non-governmental organization may also initiate action under sub-section (1) in relation to the ownership or possession of a woman's property, even if proceedings are pending in a Court in respect of that property.

(2) The Ombudsperson shall make a preliminary assessment of the complaint under sub-section (1), whereafter he may, if the matter requires further probe or investigation, refer the matter to the concerned Deputy Commissioner, who, after calling the record, if necessary, and issuing notices to the complainant and her adversaries, conduct a summary enquiry and submit a report within fifteen days to the Ombudsperson.

(3) If the matter does not require any detailed probe, investigation or recording of evidence, the Ombudsperson may, after calling any record, if deemed necessary, may file a report in the Court of law, in which the case is pending, recommending that the proceedings in the Court may be terminated or

put in abeyance unconditionally or subject to any Court order and the Ombudsperson be permitted by the Court to take further proceedings under this Act.

(4) Before filing of the report under sub-section (3), the Ombudsperson shall call upon the complainant and her adversaries to submit objections, and conduct a hearing and pass order, preferably within thirty days of the hearing, as to whether the Ombudsperson may or may not file a report under sub-section (3).

(5) In case the Ombudsperson passes an order of not filling a report under sub-section (3), he may advise the complainant to pursue the proceedings in the Court of law and terminate the complaint.

(6) The Ombudsperson upon receiving the report under sub-section (2), may further conduct such summary inquiry and call for such record as he may deem fit.

8. Appeal.--- Any person who is aggrieved from an order of Ombudsperson may, within forty five (45) days of the order, prefer an appeal to the Peshawar High Court.

9. Loss of rent.--- On culmination of proceedings under section 5, the Ombudsperson may also direct the complainant to be paid by the person depriving the said complainant of the use of the property, the amount equivalent to the rent that the property would fetch at the prevalent market rate, for the duration for which the complainant was deprived of the use of such property.

10. Execution of orders.--- The Ombudsperson may direct any executive state functionary including the concerned Deputy Commissioner where the property of the complainant is situated, to execute the orders in letter and sprite.

11. Appointment of officer, etc.--- For carrying out the object and purpose of this Act, the Government shall appoint such officers as may be required, on such terms and conditions as prescribed.

12. Bar of jurisdiction.--- No Court or other authority shall have jurisdiction-

- (a) to question the validity of any action taken, or intended to be taken, or order made, or anything or purporting to have been taken, made or done under this Act; or
- (b) to grant an injunction or stay or to make any interim order in relation to any proceeding before, or anything done or

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intended to be done or purporting to have been done by, or under the orders or at the instance of the Ombudsperson.

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

STATEMENT OF OBJECT AND REASONS

The Constitution of the Islamic Republic of Pakistan gives due respect to the women in society and guarantees their right of ownership. However, the rights of ownership of women in inheritance are violated usually by their family member by means of coercion, fraud, fabrication, forgery and cheating etc. It is therefore, necessary to provide for an effective and speedy redressal mechanism to protect and secure the rights of ownership of women in the property. Hence this Bill.



MINISTER-IN-CHARGE

Peshawar,
dated the
/ / 2019

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