

Question No. 14038

Mover Ms Samar Bilour, MPA

Will the Minister for Home state that:

QUESTION	ANSWER
(i) What is the status of District Public Safety Commissions and Provincial Public Safety Commission after the abolishing of District Government under the Police Act, 2017?	(i) Public Safety Commissions are functional in twelve (12) Districts of Khyber Pakhtunkhwa and after expiry of tenure of the District Councils, the independent members have constituted Commissions in these 12 Districts as provided in Section (57) Sub-Section (9) of the Khyber Pakhtunkhwa Police Act, 2017 (Anne-A). Provincial Public Safety Commission and Public Safety Commissions in remaining districts are not functional due to the following reasons. <ul style="list-style-type: none">• Section 57 of the Khyber Pakhtunkhwa Police Act, 2017 has been challenged in Peshawar High Court, Peshawar (Annex-B).• After repeal of the Khyber Pakhtunkhwa Ehtesab Commission Act and promulgation of Khyber Pakhtunkhwa Local Government (Amendment) Act, 2019 various sections of Khyber Pakhtunkhwa Police Act, 2017 Require amendments.
(ii) How and when the Provincial Government will amend the Police Act after changing or abolishing District Assemblies, kindly reply in details.	(ii) In order to make all the Commissions functional, proposed amendments in Khyber Pakhtunkhwa Police Act, 2017 have been forwarded to Provincial Government for legislation (Annex-C).

EXTRAORDINARY
GOVERNMENT



REGISTERED NO. P.III
GAZETTE

KHYBER PAKHTUNKHWA

Published by Authority

PESHAWAR, MONDAY, 30TH JANUARY, 2017

PROVINCIAL ASSEMBLY SECRETARIAT,
KHYBER PAKHTUNKHWA

NOTIFICATION

Dated Peshawar, the 30th January, 2017.

No. PA/Khyber Pakhtunkhwa/Bills/2017/4606.—The Khyber Pakhtunkhwa Police Bill, 2017 having been passed by the Provincial Assembly of Khyber Pakhtunkhwa on 24th January, 2017 and assented to by the Governor of the Khyber Pakhtunkhwa on 25th January, 2017 is hereby published as an Act of the Provincial Legislature of the Khyber Pakhtunkhwa.

THE KHYBER PAKHTUNKHWA POLICE ACT, 2017

(KHYBER PAKHTUNKHWA ACT NO. II OF 2017)

(First published after having received the assent of the Governor of the Khyber Pakhtunkhwa in the Gazette of the Khyber Pakhtunkhwa, (Extraordinary), dated the 30th January, 2017).

AN
ACT

*to reconstruct and regulate the Police
in the Province of the Khyber Pakhtunkhwa*

WHEREAS in pursuance of the Constitution of the Islamic Republic of Pakistan and the laws in force in the Province of the Khyber Pakhtunkhwa, the Police has an obligation to perform its duties and functions in an efficient manner for prevention and detection of crime and maintenance of public order;

AND WHEREAS it is expedient to make the police apolitical and accountable to the people through democratic institutions and civilian oversight bodies;

AND WHEREAS in order to maintain effective internal discipline, achieve high performance standards and ensure across the board service delivery, it is expedient to give operational, administrative and financial autonomy to Police;

(3) At least one member of the Capital City Public Safety Commission shall act as observer in procurement, the amount of which is more than five (05) lacs rupees and if the member has any reservation, he shall bring the same in the notice of Capital City Police Officer and the Provincial Police Officer.

53. **Establishment and composition of the District Public Safety Commission.**—(1) Government shall establish a District Public Safety Commission in each district consisting of thirteen (13) members.

(2) The District Public Safety Commission shall consist of the following members to be appointed by Government:

- (i) four (04) members, to be nominated from amongst the members of District Council of which two shall be from the treasury benches to be nominated by the Nazim, District Government and the other two from the opposition benches to be nominated by the leader of opposition; provided that one member shall be female; and
- (ii) nine (09) members, shall be independent members, recommended by the District Scrutiny Committee from the following categories:
 - (a) four (4) retired civil servant in BPS-19 or above or a retired army officer of equivalent grade; and
 - (b) five (5) from the civil society including one female.

54. **Functions of the District Public Safety Commission.**— The District Public Safety Commission shall perform such functions in the District as the Capital City Public Safety Commission performs in Capital City District under section 52.

55. **Term of a Commission.**—The term of a Commission shall be three (03) years.

56. **Appointment of Chairperson and Vice-Chairperson of a Commission.**—(1) The Chairpersons and Vice-Chairpersons of Commissions shall be elected by the members of the concerned Commission from amongst themselves for a period of two years and shall not be eligible for a second term.

(2) The Chairperson shall preside over the meetings of the Commission.

(3) In the absence of the Chairperson, the Vice-Chairperson shall preside over a meeting.

57. **Selection of independent members.**—(1) There shall be three (03) Scrutiny Committees to be notified by Government for the selection of independent members for each of the Provincial Public Safety Commission, Capital City Public Safety Commission and District Public Safety Commission.

(2) The Scrutiny Committee for the Provincial Public Safety Commission shall consist of the Chief Justice of the Peshawar High Court, Chief Commissioner of Ehtesab Commission, and Chairman Public Service Commission.

(3) The Scrutiny Committee for a Capital City District Public Safety Commission shall consist of a judge of the High Court, duly nominated by the Chief Justice, who shall be its Chairperson, Nazim, District Government, one civil servant of BPS 21 nominated by Government and one nominee of Government who shall not be a government servant.

(4) The Scrutiny Committee for the District Public Safety Commission shall consist of District and Sessions Judge, who shall be its Chairperson, Nazim, District Government, one civil servant of BPS 20 nominated by Government and one nominee of Government who shall not be a government servant.

(5) The selection process shall be completed within thirty days from the commencement of the selection process.

(6) Independent members shall be of impeccable integrity and proven professional competence in such fields as social work, law, administration, education, corporate sector, etc.

(7) Government shall direct the Chairperson of the concerned Scrutiny Committee to select the independent members of the relevant Commission in transparent manner.

(8) The appointment of members shall be notified in the Official Gazette.

(9) Notwithstanding anything contained in this Act, the independent members shall constitute the concerned Commission when the Provincial Assembly or the District Assembly, as the case may be, is not in existence.

58. Functions of the Scrutiny Committee.---The Scrutiny Committee shall invite applications or nominations from the public for selection of independent members, and after interviewing eligible and willing candidates, recommend the required number of names to Government for their appointments as independent members of the concerned Commission.

59. Selection criteria of independent members.---A person shall be disqualified from becoming a member of a Commission if he-

- (a) is an activist of any political party; or
- (b) is found suffering from physical or mental incapacity; or
- (c) is declared a bankrupt, loan defaulter or tax evader; or
- (d) is not a citizen of Pakistan; or
- (e) is not permanent domiciled resident of Khyber Pakhtunkhwa; or
- (f) holds an office of profit in the service of Pakistan; or
- (g) is in the service of any statutory body or any other body which is owned or controlled by the Government or in which the Government has a controlling share or interest; or

BEFORE THE HON'BLE PESHAWAR HIGH COURT, PESHAWAR

W. P No. 16957/2018

Arbab Muhammad Usman Khan

President, Peshawar High Court Bar Association, Peshawar

Petitioner

Versus

1. Government of Khyber Pakhtunkhwa through Chief Secretary
2. Secretary Law, Human Rights and Parliamentary Affairs of Khyber Pakhtunkhwa Peshawar
3. Secretary Khyber Pakhtunkhwa Assembly Peshawar
4. Registrar Peshawar High Court Peshawar

Respondents

WRIT PETITION UNDER ARTICLE 199 OF THE CONSTITUTION 1973 TO STRUCK DOWN SECTION 57 (2)(3)& (4) OF THE KHYBER PAKHTUNKHWA POLICE ACT, 2017 AND 168-A OF KHYBER PAKHTUNKHWA POLICE ORDER (AMENDMENT) ACT, 2015 BEING UNCONSTITUTIONAL, AGAINST THE INDEPENDENCE OF JUDICIARY AND RULES OF BUSINESS

Respectfully Sheweth,

Facts

1. That Petitioner is law abiding citizen of Pakistan and elected President of Peshawar High Court Bar Association, Peshawar.
2. That being representative of the legal fraternity and also being the custodian of the Constitution of Islamic Republic of Pakistan 1973, is obliged to watch and curb any illegality, unconstitutionality from any corner of life/ quarter and authority.
3. That being a representative of legal fraternity and also being part of the Judicial System is obliged to look into any unconstitutional act, action taken by the executive or any malafide inconsistent to the Constitution legislation or amendment made by the legislature.

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4. That Respondent No 1 to 3 without considering the theme & object of separation of judiciary from executive as envisaged under Article 175 of the Constitution of Pakistan 1973 and following the Rules of Business as envisaged under Rule 12, 28 & 29 of Rules of Business 1985, without

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consulting Peshawar High Court, Peshawar, the following Section 57 (2,3 & 4) of the Khyber Pakhtunkhwa Police Act, 2017 has been promulgated.

Section 57 Selection of independent Members.-----

(1).....

(2) the Scrutiny Committee for Provincial Public Safety Commission shall consist of the Chief Justice of Peshawar High Court, Chief Commissioner of Ehtisab Commissioner of Ehtisab Commission , and Chairman Public Service Commission.

(3) the Scrutiny Committee for Capital City District Public Safety Commission shall consist of a judge of the High Court, duly nominated by Chief Justice, who shall be its Chairperson, Nazim, District Government, one civil servant of BPS 21 nominated by Government and one nominee of Government who shall not be a government servant.

(4) the Scrutiny Committee for District Public Safety Commission shall consist of District and Session Judge, who shall be its Chairperson, Nazim, District Government, one civil servant of BPS-20 nominated by Government who shall not be a government servant.

Copy of Khyber Pakhtunkhwa Police Act, 2017, & Rules of Business 1985 are annexed as annexure A & B

5. That Respondent No.1 to 3 without considering the theme and spirit of independence & separation of judiciary as envisaged under Article 175 Of Constitution of Pakistan 1973, vide Khyber Pakhtunkhwa Police Order (amendment) Act, 2015 inserted section 168-A which is reproduced as under,

“168A” Dispute Resolution Council,----- the Provincial Police Officer for out of Court amicable settlement of petty nature cases, may constitute, Dispute Resolution Councils at District. Sub Division or Police Station level, which shall consist of such number of members who have respect and repute in the society for their honesty and impartiality and shall include minimum one female member and shall conduct its business in such a manner as may be prescribed:

Provided that the Dispute Resolution Councils already constituted by the Provincial Police Officer shall be deemed to have been validly constituted under this Order and all the action taken, decisions made or order passed by such Dispute Resolution Councils shall be deemed to have been validly taken, made or passed under this Order.

Explanation: For the purpose of this section. Petty nature case means and includes a small, minor, of less or inconsiderable importance and affected *intimacy in the society or any cause pleading towards provocation which may lead to criminal offences.*

Copy of section 168-A of Khyber Pakhtunkhwa Police Order (amendment) Act, 2015 is annexed as annexure C

6. That there being no other alternate, efficacious remedy available to strike down the impugned unconstitutional section 57(2,3 & 4) of the Khyber

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Police Act, 2017, hence, Petitioner invokes the jurisdiction of this August Court inter alia on the following grounds

GROUND

- A. That the impugned section 57 (2, 3 &4) of Khyber Pakhtunkhwa Police Act, 2017, is wrong, illegal, inconsistent with Article 4, 8, 25, 38 & 175 of the Constitution, against the independence of judiciary & principle of Tricotomy of power.
- B. That the judiciary being an independent organ of the state as enshrined in Constitution of Pakistan has a special role for granting relief to the aggrieved person and being the watch dog of the rights of the public demands the independence of judiciary.
- C. That Article 175 of the Constitution of Islamic Republic of Pakistan 1973 has clearly described the status of the Supreme Court and High Court which is reproduce as under

Article 175. Establishment and Jurisdiction of Courts

(1) There shall be a Supreme Court of Pakistan, a High Court for each province {and a high Court for the Islamabad Capital Territory} and such other Courts as may be established by law.

[Explanation. — unless the context otherwise requires, the words “High Court” wherever occurring in the Constitution shall include “Islamabad High Court”]

(2) No Court shall have any jurisdiction save as is or may be conferred on it by the Constitution or by or under any law.

(3) The Judiciary shall be separated progressively from the Executive within [Fourteen] years from the commencing day

The sub clause 3 of Article 175 of the Constitution of Pakistan 1973 clearly prescribed the separation of Judiciary from the executive. Now the judiciary has been separated from the executive after long struggle of the lawyer's community.

- D. That the lawyer's community has a long history for struggle of the independence of judiciary. The lawyer's movement which started from 9th March 2007 and ended in June 2010 which culminated into a new era of independence of judiciary. Now any struggle from any corner of life which wants to indulge the judiciary in the executive functions vice versa certainly will be against the independency of judiciary and violative of Article 175 of the constitution.

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That judicature system has been enshrined under Article 175 of Constitution of Pakistan 1973, guarantees only one judicial system under the Supreme Court of Pakistan for whole of Pakistan. For every Province the respective High Court to run the judicial system in the concerned Province. But U/S 168-A of ibid Act, parallel judicial system under the grab of Police Order of 2002 has been inserted. The impugned amendment is unconstitutional against article 8 & 175 of Constitution.

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F. That vide the impugned section of Khyber Pakhtunkhwa Police Act, 2017, the High Court has been given the Executive role regarding the selection of Provincial Public Safety Commission & District Public safety Commission. The High Court has been assigned role for the selection of the members of the ibid commission, which negate the express provision of Article 175 of the Constitution.

G. That due to the impugned section 57 (2, 3 & 4) of Khyber Pakhtunkhwa Police Act, 2017, any aggrieved person who has not been selected for the ibid posts of the Provincial and District Public Safety Commission will certainly be deprived from getting the relief from the High Court which is against fair and impartial, equity and justice as envisaged under Article 10-A of the Constitution 1973. By assigning the role of selection to the High Court certainly will malign and shatter the confidence of the public from the impartiality and independency of judiciary, hence the concept of delivering fair transparent, without fear and favour justice will be smashed. Because equity and justice demands that the justice not only be granted but seems to be granted. The impugned section is against the fundamental rights of People of Pakistan, violative and inconsistent of Article 10 A and 25 of the Constitution 1973.

H. That the impugned section 57(2, 3 & 4) of the Khyber Pakhtunkhwa Police Act, 2017 is against Article 2A, 4, 8, 10-A, 25 and 38 and being inconsistent with Article 175 of the Constitution 1973.

I. That the impugned section 57(2, 3 & 4) of the Khyber Pakhtunkhwa Police Act, 2017, amounts to malafide, inconsistent with the express provision of constitution of Pakistan 1973. The impugned section has been introduced only to cover up the government's own inefficiency, incompetency, untransparency and unfairness. The selection of any official/authority is sole job and prerogative of the executive authority. The role of Judiciary under the Constitution of Pakistan, 1973 has been assigned only to safeguard the rights of people and review the executive orders including the appointment in Provincial Public Safety Commission. The judges being guardian of constitution thus are under legal and Constitutional obligation to monitor the entire legal order of the state.

J. That the Judiciary being separate organ of the state, having distinct and pivotal role in administering of justice cannot preempt, interfere or encroach the sphere and function of executive for the selection of members of Provincial & District Public Safety Commission. Before the impugned Act for the selection members of Public Safety Commission in the Khyber Pakhtunkhwa Police Act, 2017. The selection of members from public was constituted by the Executive itself. But due to failure of the Government the impugned section has malafidely been introduced only to shift the burden upon the shoulder of High Court which is utter violation of express provision of the Constitution mentioned above.

K. That when one organ of state interferes in or encroaches the sphere and function of other organ in such state of matter Chaos and anarchy is created. When such, unconstitutionality abnormal situation is created, certainly

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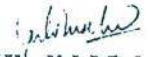
invites the adventures/third party to interfere and take over the situation through unconstitutional means. The impugned section infact is declaration that state organ/executive failed to perform its duty within the parameters as enshrined in the constitution.

L. That Petitioner may be allowed to raise any other grounds at the time of arguments.

It is therefore most humbly prayed that in the light of above stated grounds, the impugned section 57 (2, 3 & 4) of the Khyber Pakhtunkhwa Police, Act, 2017 and Section 168-A of Khyber Pakhtunkhwa Police Order (Amendment) Act, 2015 may kindly be struck down.


Petitioner

Through


Khalid Mahmood
Advocate, Supreme Court of
Pakistan
&
Muhmmad Ashfaq Khan
Advocate,
High Court, Peshawar

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Deputy Registrar
21 MAR 2018

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BEFORE THE HON'BLE PESHAWAR HIGH COURT, PESHAWAR

W. P. No. 1695-P/2018

Arbab Muhammad Usman Khan

-----PETITIONER

6,

VERSUS

Government of Khyber Pakhtunkhwa through Chief Secretary & Other

-----RESPONDENTS

AFFIDAVIT

I, *Arbab Muhammad Usman Khan President, Peshawar High Court Bar Association, Peshawar*, as per instructions, do hereby solemnly affirm and declare on oath that the contents of the accompanying WRIT Petition are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.

Identified By

Khalid Mahmood
Khalid Mahmood

Advocate,

Supreme Court of Pakistan

[Signature]
Deponent

CNIC 17301-5222304-7

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President

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Arbab Muhammad Usman Khan
President
Peshawar High Court Bar Association

[Signature]
29/03/2018

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PROPOSED AMENDMENTS IN KHYBER PAKHTUNKHWA POLICE ACT, 2017 (ANNOTATED FORM)

S.#	Existing	Proposed Amendments	After Amendments	Reasons/Remarks
1.	<p><u>Insertion in Section 2</u> Definitions added</p>	<p><u>Insertion in Section 2</u> <i>Insertion of clause (aa) in Section 2</i> 'Attached Department' means Secretariats of Regional Police Complaint Authorities, Capital City District and District Public Safety Commissions;</p> <p><i>Insertion of clause (ff) in Section 2</i> 'Democratic institution' means Provincial Assembly and its Standing Committee on Home and Tribal Affairs Department.</p>	<p><i>Insertion of clause (aa) in Section 2</i> 'Attached Department' means Secretariats of Regional Police Complaint Authorities, Capital City District and District Public Safety Commissions;</p> <p><i>Insertion of clause (ff) in Section 2</i> 'Democratic institution' means Provincial Assembly and its Standing Committee on Home and Tribal Affairs Department.</p>	<p align="center">16</p>
2.	<p><u>Section 51 sub-section 2 Clause (i)</u> six (06) members, to be nominated from amongst the members of District Council in which three shall be from the treasury benches to be nominated by the Nazim, District Government and the other three from the opposition benches to be nominated by the leader of opposition; provided that one member shall be female; and</p>	<p><u>Section 51 sub-section 2 Clause (i)</u> The words "District Council" shall be substituted with words "City / Tehsil Local Council" and the words "Nazim, District Government" shall be substituted with words "Mayor City Local/Chairman Tehsil Local Council".</p>	<p>six (06) members, to be nominated from amongst the members of City/Tehsil Local Council in which three shall be from the treasury benches to be nominated by the Mayor City Local/Chairman Tehsil Local Council and the other three from the opposition benches to be nominated by the leader of opposition; provided that one member shall be female; and</p>	
3.	<p><u>Section 51 sub-section 2 Clause (ii)</u> nine (09) members, shall be independent members, having domicile of the Capital City District, recommended by the Capital City District Scrutiny Committee from the following categories:</p>	<p><u>Section 51 sub-section 2 Clause (ii)</u> The words "Capital City District" after the words "recommended by the" shall be omitted</p>	<p>nine (09) members, shall be independent members, having domicile of the Capital City District, recommended by the Scrutiny Committee from the following categories:</p>	

4.	<p>Section 53 sub-section 2 Clause (i) four (04) members, to be nominated from amongst the members of District Council of which two shall be from the treasury benches to be nominated by the Nazim, District Government and the other two from the opposition benches to be nominated by the leader of opposition; provided that one member shall be female; and</p>	<p>Section 53 sub-section 2 Clause (i) The words "District Council" shall be substituted with words "City/Tehsil Local Council of the District Headquarter" and the words "Nazim, District Government" shall be substituted with words "Mayor City Local/Chairman Tehsil Local Council of the District Headquarter".</p>	<p>four (04) members, to be nominated from amongst the members of City/Tehsil Local Council of the District Headquarter of which two shall be from the treasury benches to be nominated by the Mayor City Local/Chairman Tehsil Local Council of the District Headquarter and the other two from the opposition benches to be nominated by the leader of opposition; provided that one member shall be female; and</p>	<p>After amendments in the K Pakhtunkhwa Local Govern (Amendment) Act, 2019.</p> <p style="text-align: center;">17</p>
5.	<p>Section 53 sub-section 2 Clause (ii) nine (09) members, shall be independent members, recommended by the District Scrutiny Committee from the following categories:</p>	<p>Section 53 sub-section 2 Clause (ii) The words "District" after the words "recommended by the" shall be omitted</p>	<p>nine (09) members, shall be independent members, recommended by the Scrutiny Committee from the following categories:</p>	
6.	<p>Section 53 sub-section 2 Newly proviso added</p>	<p>Section 53 sub-section 2 Provided that if the City Local Council does not exist in a District then the members shall be nominated from Headquarter Tehsil Local Council of the District.</p>	<p>Provided that if the City Local Council does not exist in a District then the members shall be nominated from Headquarter Tehsil Local Council of the District.</p>	<p>After amendments in the K Pakhtunkhwa Local Govern (Amendment) Act, 2019.</p>
7.	<p>Section 56 sub-section 1 The Chairpersons and Vice-Chairpersons of Commissions shall be elected by the members of the concerned Commission from amongst themselves for a period of two years and shall not be eligible for a second term.</p>	<p>Section 56 sub-section 1 The word "two" shall be substituted with word "three"</p>	<p>The Chairpersons and Vice-Chairpersons of Commissions shall be elected by the members of the concerned Commission from amongst themselves for a period of three years and shall not be eligible for a second term.</p>	
8.	<p>Section 57 sub-section 1 There shall be three (03) Scrutiny Committees to be notified by</p>	<p>Section 57 sub-section 1 The words "three (03)" shall be substituted with word "a". The words</p>	<p>There shall be a Scrutiny Committee to be notified by Government for the selection of independent members for</p>	<p>After separation of Judiciary Executive in line with the jud of the Apex Court reported in</p>

	Government for the selection of independent members for each of the Provincial Public Safety Commission, Capital City Public Safety Commission and District Public Safety Commission.	"of the Provincial Public Safety Commission, Capital City Public Safety Commission and District Public Safety Commission." shall be substituted with words "Public Safety Commission and members for each Regional Police Complaint Authority"	each Public Safety Commission and members for each Regional Police Complaint Authority.	1994 Supreme Court Page 105 read with National Judicial Policy 2009 as amended in 2012; no Judicial Officer of whatsoever rank can hold Executive post/ perform Executive functions. As such, all the Judicial Officers working in Federal and Provincial Governments were repatriated to the respective High Courts. The present functions of the Judicial Officers are also of Executive nature.
9.	<p>Section 57 sub-section 2 The Scrutiny Committee for the Provincial Public Safety Commission shall consist of the Chief Justice of the Peshawar High Court, Chief Commissioner of Ehtesab Commission, and Chairman Public Service Commission</p>	<p>Section 57 sub-section 2 The Scrutiny Committee shall consist of Provincial Ombudsman, who shall be its Chairperson, Chairman Khyber Pakhtunkhwa Public Service Commission, Chairman Khyber Pakhtunkhwa Service Tribunal, Chairperson of Provincial Commission on Status of Women and Chairman, Department of Criminology, University of Peshawar.</p> <p>Provided that in case of non-availability of Provincial Ombudsman, the Chairman Khyber Pakhtunkhwa Public Service Commission shall be the Chairperson of the Scrutiny Committee till the availability of Provincial Ombudsman.</p>	<p>The Scrutiny Committee shall consist of Provincial Ombudsman, who shall be its Chairperson, Chairman Khyber Pakhtunkhwa Public Service Commission, Chairman Khyber Pakhtunkhwa Service Tribunal, Chairperson of Provincial Commission on Status of Women and Chairman, Department of Criminology, University of Peshawar.</p> <p>Provided that in case of non-availability of Provincial Ombudsman, the Chairman Khyber Pakhtunkhwa Public Service Commission shall be the Chairperson of the Scrutiny Committee till the availability of Provincial Ombudsman.</p>	<p>On same grounds Arbab Muhammad Usman Khan, President Peshawar High Court Bar Association, Peshawar filed a writ petition No.1695-P/2018 titled "Arbab Muhammad Usman Khan Vs Government of Khyber Pakhtunkhwa through Chief Secretary & others" in Peshawar High Court, Peshawar which is subjudice in the court of Law, wherein, he has plead to strike down Section 57(2) (3) & (4) of the Khyber Pakhtunkhwa Police Act, 2017 and 168-A of Khyber Pakhtunkhwa Police Order (Amendment) Act, 2015 being unconstitutional, against the independence of judiciary and rules of business.</p>
10.	<p>Section 57 sub-section 3 The Scrutiny Committee for a Capital City District Public Safety Commission shall consist of a judge of the High Court, duly nominated by the Chief Justice, who shall be its</p>	Deleted	Deleted	As such, a need is felt for making amendments in the Act ibid by

	Chairperson, Nazim, District Government, one civil servant of BPS 21 nominated by Government and one nominee of Government who shall not be a government servant.			substituting Chief Justice, Judge of High Court and respective District & Session Judges. After repeal of KP Ehtesab Act , the post of Chief Commissioner of Ehtisab Commission no more exists hence it is necessary to substitute the provision.
11.	Section 57 sub-section 4 The Scrutiny Committee for the District Public Safety Commission shall consist of District and Sessions Judge, who shall be its Chairperson, Nazim, District Government, one civil servant of BPS 20 nominated by Government and one nominee of Government who shall not be a government servant.	Deleted	Deleted	
12.	Section 57 sub-section 9 Notwithstanding anything contained in this Act, the independent members shall constitute the concerned Commission when the Provincial Assembly or the District Assembly, as the case may be, is not in existence.	Section 57 sub-section 9 The word "District Assembly" shall be substituted with words "City/Tehsil Local Council"	Notwithstanding anything contained in this Act, the independent members shall constitute the concerned Commission when the Provincial Assembly or the City/Tehsil Local Council, as the case may be, is not in existence.	
13.	Section 60 sub-section 1 The term of office of a member of a Commission shall be three (03) years unless he resigns at any time before the expiry of his term, or ceases to be a member of the Provincial Assembly or the District Assembly, as the case may be:	Section 60 sub-section 1 The words "District Assembly" shall be substituted with words "City/Tehsil Local Council"	The term of office of a member of a Commission shall be three (03) years unless he resigns at any time before the expiry of his term, or ceases to be a member of the Provincial Assembly or the City/Tehsil Local Council, as the case may be:	
14.	Section 62 sub-section 11 Newly provision added	Section 62 sub-section 11 The Chairperson and independent members shall be entitled to	The Chairperson and independent members shall be entitled to honoraria and privileges as may be	

		honoraria and privileges as may be determined by the Government.	determined by the Government.	
15.	<u>Section 62 sub-section 12</u> Newly provision added	<u>Section 62 sub-section 12</u> Members shall be paid TA & DA for attending meetings as per rules.	Members shall be paid TA & DA for attending meetings as per rules.	
16.	<u>Section 62 sub-section 13</u> Newly provision added	<u>Section 62 sub-section 13</u> Members shall be Justice of Peace within the District in accordance with the Code	Members shall be Justice of Peace within the District in accordance with the Code	
17.	<u>Section 63 sub-section 2</u> The Secretariat shall be headed by a person who shall be appointed by the Commission on contract basis on the recommendation of the concerned Scrutiny Committee for a period of three years and in the performance of his functions he shall be responsible to the Chairperson Provincial Public Safety Commission.	<u>Section 63 sub-section 2</u> The Secretariat shall be headed by an officer not below the Basic Pay Scale 20 who shall be posted by the Government by transfer and in the performance of his functions he shall be responsible to the Chairperson of the Commission. He shall be the Principal Accounting Officer of all Public Safety Commissions and Regional Police Complaint Authorities.	The Secretariat shall be headed by an officer not below the Basic Pay Scale 20 who shall be posted by the Government by transfer and in the performance of his functions he shall be responsible to the Chairperson of the Commission. He shall be the Principal Accounting Officer of all Public Safety Commissions and Regional Police Complaint Authorities.	In case, if new staff is hired from the market on contract basis; huge expenditure will be incurred on the same while on the other side, the existing staff at the Provincial and District level will become surplus. As such, this fact necessitated amendments in the said Section of the Act ibid.
18.	<u>Section 63 sub-section 3</u> The Secretariat shall consist of such number of officers and staff as Government may in consultation with the Provincial Public Safety Commission determine from time to time.	<u>Section 63 sub-section 3</u> The words "in consultation with the Provincial Public Safety Commission" shall be deleted.	The Secretariat shall consist of such number of officers and staff as Government may determine from time to time.	
19.	<u>Section 63 sub-section 4</u> The organization of the Secretariat and functions of officers and staff shall be such as may be determined by the Commission with the prior	<u>Section 63 sub-section 4</u> The words "Commission with the prior approval of" shall be deleted.	The organization of the Secretariat and functions of officers and staff shall be such as may be determined by the Government.	

	approval of Government.			
20.	<u>Section 63 sub-section 5</u> Newly provision added	<u>Section 63 sub-section 5</u> The Secretariat shall be attached to the Home and Tribal Affairs Department for the purpose of budget and matters pertaining to the Provincial Assembly.	The Secretariat shall be attached to the Home and Tribal Affairs Department for the purpose of budget and matters pertaining to the Provincial Assembly.	
21.	<u>Section 63 sub-section 6</u> Newly provision added	<u>Section 63 sub-section 6</u> All officers and members of the staff shall be civil servants within the meaning of the Civil Servant Act 1973 and their terms and conditions of service shall be such as may be prescribed under the said Act.	All officers and members of the staff shall be civil servants within the meaning of the Civil Servant Act 1973 and their terms and conditions of service shall be such as may be prescribed under the said Act.	
22.	<u>Section 64 sub-section 2</u> The Secretariat shall be headed by a person who shall be appointed by the Commission on contract basis on the recommendation of the concerned Scrutiny Committee for a period of three years and in the performance of his functions he shall be responsible to the Chairperson Capital City District Public Safety Commission.	<u>Section 64 sub-section 2</u> The Secretariat shall be headed by an officer not below the Basic Pay Scale 17 who shall be posted by the Government by transfer and in the performance of his functions he shall be responsible to the Chairperson of the Commission.	The Secretariat shall be headed by an officer not below the Basic Pay Scale 17 who shall be posted by the Government by transfer and in the performance of his functions he shall be responsible to the Chairperson of the Commission.	
23.	<u>Section 65 sub-section 2</u> The Secretariat shall be headed by a person who shall be appointed by the Commission on contract basis on the recommendation of the concerned Scrutiny Committee for a period of three years and in the performance of his functions he shall be responsible to the Chairperson District Public	<u>Section 65 sub-section 2</u> The Secretariat shall be headed by an officer not below the Basic Pay Scale 17 who shall be posted by the Government by transfer and in the performance of his functions he shall be responsible to the Chairperson of the Commission.	The Secretariat shall be headed by an officer not below the Basic Pay Scale 17 who shall be posted by the Government by transfer and in the performance of his functions he shall be responsible to the Chairperson of the Commission.	

24.	<p>Safety Commission.</p> <p>Section 65A Newly provision added</p>	<p>Section 65A <u>Democratic Institution</u></p> <ul style="list-style-type: none"> • To keep check and balance over all Civilian Oversight Bodies. • To enquire into complaint again Chairperson/Vice-Chairperson/member of the Civilian Oversight Bodies • Recommend the removal of Chairperson/Vice-Chairperson/member of the Provincial Commission under the rules to Chief Minister/Government. • Evaluate the performance of the Provincial Public Safety Commission on quarterly basis and send reports thereof along with recommendation to the Chief Minister. • Recommend the Police Reforms to the Government in consultation with Provincial Public Safety Commission and Provincial Police Officer. 	<p><u>Democratic Institution</u></p> <ul style="list-style-type: none"> • To keep check and balance over all Civilian Oversight Bodies. • To enquire into complaint again Chairperson/Vice-Chairperson/member of the Civilian Oversight Bodies • Recommend the removal of Chairperson/Vice-Chairperson/member of the Provincial Commission under the rules to Chief Minister/Government. • Evaluate the performance of the Provincial Public Safety Commission on quarterly basis and send reports thereof along with recommendation to the Chief Minister. • Recommend the Police Reforms to the Government in consultation with Provincial Public Safety Commission and Provincial Police Officer. 	<p style="text-align: center;">22</p>
25.	<p>Section 67 sub-section 3 The Scrutiny Committee shall consist of the Chief Commissioner of Ehtesab Commission, Chairman Public Service Commission and a Judge of the High Court nominated by the Chief Justice of the Peshawar</p>	<p>Section 67 sub-section 3 Deleted</p>	<p>Deleted</p>	

	High Court and shall select candidates in the manner as provided for the selection of members of the various Commissions established under this Act.		
26.	Section 71 sub-section 2 The Secretariat shall be headed by a person who shall be appointed by the Authority on contract basis on the recommendation of the concerned Scrutiny Committee for a period of three years and in the performance of his functions he shall be responsible to the Chairperson Regional Complaints Authority	Section 71 sub-section 2 The Secretariat shall be headed by an officer not below the Basic Pay Scale 18 who shall be posted by the Government by transfer and in the performance of his functions he shall be responsible to the Chairperson of the Commission.	The Secretariat shall be headed by an officer not below the Basic Pay Scale 18 who shall be posted by the Government by transfer and in the performance of his functions he shall be responsible to the Chairperson of the Commission.
27.	Section 140 Rules making by Provincial Police Officer. ---Provincial Police Officer with the approval of Government, may by notification in the official gazette make rules for carrying into effect the provisions of this Act.	Section 140 Rules making authority. --- 1. The Provincial Police Officer with the approval of Government, by notification in the official gazette make rules for Police into effect the provisions of this Act, except provisions related to Public Safety Commissions and Police Complaint Authorities. 2. The Head of the Provincial Public Safety Commission with approval of the Government may by notification in the official gazette make rules in respect of provisions related to Public Safety Commissions and Police Complaint Authorities.	3 Rules making authority. --- 1. The Provincial Police Officer with the approval of Government, by notification in the official gazette make rules for Police into effect the provisions of this Act, except provisions related to Public Safety Commissions and Police Complaint Authorities. 2. The Head of the Provincial Public Safety Commission with approval of the Government may by notification in the official gazette make rules in respect of provisions related to Public Safety Commissions and Police Complaint Authorities.

28.	<p>Appointment of Implementation Commissioner....Soon after the commencement of this Act, Government shall appoint a person as Implementation Commissioner having expertise in Policing on contract for a period of one year duly assisted by the representatives of Home, Finance and Police Departments for ensuring the establishment of various bodies under this Act within a period of one year.</p>	<p>Implementation Commissioner.--- <u>Sub-section 1</u> The Chief Secretary of the province will act as ex-officio Implementation Commissioner assisted by the heads of all government Departments for ensuring the establishment of various bodies under this Act. The Implementation Commissioner shall be assisted by such number of officers and members of the staff as may be determined to be appointed by Government from time to time for the performance and discharge of functions under this Act. <u>Sub-section 2</u> Subject to the provisions of this Act, the Implementation Commissioner shall perform his functions and discharge his duties under the general supervision and control of the Government.</p>	<p>Implementation Commissioner.--- <u>Sub-section 1</u> The Chief Secretary of the province will act as ex-officio Implementation Commissioner assisted by the heads of all government Departments for ensuring the establishment of various bodies under this Act. The Implementation Commissioner shall be assisted by such number of officers and members of the staff as may be determined to be appointed by Government from time to time for the performance and discharge of functions under this Act. <u>Sub-section 2</u> Subject to the provisions of this Act, the Implementation Commissioner shall perform his functions and discharge his duties under the general supervision and control of the Government.</p>
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