

[AS PASSED BY THE SENATE]

A

BILL

to provide for the establishment of a National Human Rights Commission

WHEREAS it is expedient to provide for the creation of a National Commission for Human Rights, for the purposes of promotion and protection of Human Rights as provided for in the Constitution of the Islamic Republic of Pakistan and the various International Instruments to which Pakistan is a State Party or shall become a State Party;

It is hereby enacted as follows:-

CHAPTER I

PRELIMINARY

1. **Short title, extent and commencement.** - (1) This Act may be called the National Commission for Human Rights Act, 2012.

(2) It extends to the whole of Pakistan except Chapter V which shall extend to the Islamabad Capital Territory.

(3) It shall come into force at once .

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

- (a) "armed forces" means army, navy, air force and all other civil armed forces including military intelligence agencies;
- (b) "Chairperson" means the Chairperson of the Commission, as appointed under section 4;
- (c) "Commission" means National Commission for Human Rights constituted under section 3;
- (d) "human rights" means the rights relating to life, liberty and dignity of the individual guaranteed included in the International Instruments including political and women rights;
- (e) "member" means a member of the Commission and includes the Chairperson;

- (f) "Prescribed" means prescribed by rules made under this Act; and
- (g) "Public servant" means a public servant defined under section 21 of the Pakistan Penal Code (Act XLV of 1860).

CHAPTER II

ESTABLISHMENT OF COMMISSION FOR HUMAN RIGHTS

3. **Establishment of Commission.** - (1) The Federal Government shall constitute a Commission to be known as the National Commission for Human Rights to exercise the powers and perform the functions under this Act.

(2) The Commission shall consist of-

- (a) a Chairperson, who has been, or is qualified to be, a judge of the Supreme Court or a person having demonstrable knowledge of, or practical experience in, matters relating to human rights;
- (b) one member from each Province, Federally Administrated Tribal Areas and Islamabad Capital Territory having demonstrable knowledge of, or practical experience in, matters relating to human rights ;
- (c) Chairperson of the National Commission on Status of Women;
- (d) one member from minority communities; and
- (e) a Secretary, who shall be appointed by the Commission:

Provided that of the total membership of the Commission, at-least two shall be women members.

(3) A member shall not be less than forty years of age and shall have knowledge and experience relating to human rights.

(4) The headquarters of the Commission shall be at Islamabad and it may establish its offices at other place or places in Pakistan as it may consider appropriate.

(5) The Commission shall be a body corporate having perpetual succession and a common seal with powers, among other, to acquire, hold and dispose of any property and shall sue and be sued by the said name.

(6) All members of the Commission shall work on full time basis on prescribed terms and conditions and the Chairman on ceasing to hold office shall be inelligible for holding any office of profit in the Government, Federal or Provincial, for a period of two years:

Provided that it shall not apply to the Chairperson of the National Commission on the Status of Women.

4. Appointment of Chairperson and Members.- (1) The Federal Government shall, through public notice, invite suggestions for suitable persons for appointment as Chairperson and members of the Commission and, after proper scrutiny, shall submit a list of these persons to the Prime Minister and the Leader of the Opposition in the National Assembly.

(2) The Prime Minister shall in consultation with the Leader of the Opposition in the National Assembly forward three names for each post to a Parliamentary Committee for hearing and confirmation of any one person for each post:

Provided that in case there is no consensus between the Prime Minister and the Leader of the Opposition, each shall forward separate lists to the Parliamentary Committee.

(3) The Parliamentary Committee shall be constituted by the Speaker of the National Assembly consisting of the following four members, namely:-

- (a) two members from the Senate; and
- (b) two members from the National Assembly;

Provided that when the National Assembly is dissolved, the total membership of the Parliamentary Committee shall consist of the members from the Senate only as mentioned in paragraph (a) and the provisions of this section shall, *mutatis mutandis*, apply:

Provided further that out of the four members of the Committee, two shall be from the Treasury Benches, one from each House and two from the Opposition Benches, one from each House. The nomination of members from the Treasury Benches shall be made by the Leader of the House and from the Opposition Benches by the Leader of the Opposition.

(4) The Parliamentary Committee shall regulate its own procedure.

(5) The Parliamentary Committee shall forward the names of the nominees confirmed by it to the President, who shall appoint the Chairperson and members accordingly.

5. Term of Office of Chairperson and of Members.- (1) A person appointed as Chairperson or a Member shall hold office for a term of four years from the date on which he enters upon his office:

Provided that the term of office may be extended once in the manner provided in section 4.

(2) The Chairperson or a member may resign from his office in writing under his hand addressed to the President and on acceptance of the resignation, such vacancy shall be filled within sixty days.

6. **Removal of the Chairperson and members.-** The Chairman and members may be removed from office on the grounds and in the manner provided for in Article 209 of the Constitution of the Islamic Republic of Pakistan.

7. **Acting Chairperson.-** At any time when the Chairperson is absent or unable to perform the duties of his office for any reason, or in the event of the vacancy in the office of the Chairperson by reason of his death, resignation or otherwise, the members of the Commission shall elect an Acting Chairperson from amongst themselves until the incumbent Chairperson resumes his office, or as the case may be, until the appointment of a new Chairperson to fill such vacancy which shall not exceed sixty days.

8. **Terms and Conditions of Service of Members including Chairperson.-** The salaries and allowances payable to, and terms and conditions of service of the members, other than *ex-officio* member, shall be such as may be prescribed by the Federal Government in consultation with the Commission:

Provided that neither the salary and allowances nor the terms and conditions of service of a member shall be varied to his disadvantage after his appointment.

CHAPTER III

MANAGEMENT AND PROCEDURES OF THE COMMISSION

9. **Functions of the Commission.-** The Commission shall perform all or any of the following functions, namely:-

- (a) *suo-moto* or on a petition presented to it by a victim or any person on his behalf, inquire into complaints of;
 - (i) violation of Human Rights or abetment thereof; or
 - (ii) negligence in the prevention of such violation, by a public servant;
- (b) intervene in any proceeding involving any allegation of violation of human rights pending before a court by making application for becoming a party to the proceedings before such court;
- (c) notwithstanding anything contained in any other law for the time being in force, the Commission or any person authorized by it may visit any jail, place of detention or any other institution or place under the control of the Government or its agencies, where convicts, under trial prisoners, detainees or other persons are lodged or detained for purposes of

ascertaining the legality of their detention as well as to find out whether the provisions of the applicable laws or other provisions relating to the inmates living conditions and their other rights are being complied with:

(d) review the safeguards provided by or under the Constitution of the Islamic Republic of Pakistan or any other law for the time being in force for the protection of human rights and recommend adoption of new legislation, the amendment of existing laws and the adoption or amendment of administrative measures for their effective implementation;

Provided that if requested by the Government the Commission may examine any legislation and submit its views thereon and comment on the implication of the same for legislation;

(e) review the factors, including acts of terrorism, that inhibit the enjoyment of human rights and recommend appropriate remedial measures;

(f) study treaties, other International Instruments on human rights and reports submitted by the Government of Pakistan on them including the comments thereon, to make recommendations for their effective implementation;

(g) undertake and promote research in the field of human rights maintain data base on the complaints on violence of human rights received and development of human rights norms;

(h) spread Human Rights literacy among various sections of society and promote awareness of the safeguards available for the protection of these rights through publications, print and electronic media, seminars and other available means in all major languages of the country;

(i) direct investigation and inquiry in respect of any incident of violation of human rights;

(j) submit independent reports to the Government on the state of human rights in Pakistan for incorporation in reports to United Nations bodies or committees;

(k) develop a national plan of action for the promotion and protection of human rights; and

(l) such other functions as it may consider necessary for the promotion of Human Rights.

10. Procedure of the Commission.- (1) The Commission shall regulate its own procedure.

(2) All orders and decisions of the Commission shall be authenticated by the Secretary or any other officer of the Commission duly authorized by the Chairperson in this behalf.

(3) The quorum for a meeting of the Commission shall not be less than one-half of the total membership of the Commission.

(4) The decision of a Commission shall be taken by the majority of its members present and, in case of a tie, the Member presiding a meeting shall have a casting vote.

11. Advisory Committee.- The Commission may constitute an Advisory Committee consisting of Human Rights activists, civil society organizations, members of Bar Associations, members of Press Clubs and such other representatives of the Federal and Provincial Governments as may be concerned with the functions of the Commission:

Provided that the members of the Advisory Committee shall perform their functions in an honorary capacity to assist the Commission in their areas of competence and expertise.

CHAPTER IV

INQUIRIES AND INVESTIGATIONS

12. Inquiry into complaints.- (1) The Commission while inquiring into the complaints of violations of Human Rights may call for information or report from the Federal Government or a Provincial Government or any other authority or organization, subordinate thereto, within such time as may be specified by it:

Provided that if the information or report is not received within the time stipulated by the Commission, it may proceed to inquire into the complaint on its own:

Provided further that in case the complaint relates to areas that are security sensitive, the Commission shall obtain a report within fifteen days from the Federal Government and if the report is not received within thirty days the Commission may proceed to inquire in to complaint on its own:

Provided also that if on receipt of information or report, the Commission is satisfied either that no further inquiry is required or that the required action has been initiated or taken by the concerned Government or authority, it may not proceed with the complaint and inform the complainant accordingly.

(2) Without prejudice to anything contained in sub-section (1), if it considers necessary, having regard to the nature of the complaint, it may initiate an inquiry.

(3) If at any stage of the inquiry, the Commission,-

- (a) considers it necessary to inquire into the conduct of any person; or
- (b) is of the opinion that the reputation of any person is likely to be prejudicially affected by the inquiry,

it shall give to that person a reasonable opportunity of being heard in the inquiry and to produce evidence in his defence:

Provided that nothing in this section shall apply where the credit of a witness is being impeached.

13. Powers relating to inquires.- (1) The Commission shall, while inquiring into complaints under this Act, have all the powers of a civil court trying a suit under the Code of Civil Procedure, 1908 (Act V of 1908), in respect of the following matters, namely:-

- (a) summoning and enforcing the attendance of witnesses and examining them on oath;
- (b) discovery and production of documents;
- (c) receiving evidence on affidavits;
- (d) requisitioning any public record or copy thereof from any court or office;
- (e) issuing commissions for the examination of witnesses or documents; and
- (f) any other matter which may be Prescribed.

(2) The Commission shall have power to require any person, subject to any privilege which may be claimed by that person under any law for the time being in force, to furnish information on such points or matters as, in the opinion of the Commission, may be useful for, or relevant to, the subject matter of the inquiry and any person so required shall be deemed to be legally bound to furnish such information within the meaning of section 176 and section 177 of the Pakistan Penal Code (Act XLV of 1860).

(3) The Commission shall be deemed to be a civil court to the extent that is described in Sections 175, 178, 179, 180 and 228 of the Pakistan Penal Code, 1860 (Act XLV of 1860). If the offence is committed in the view or presence of the Commission, the Commission may, after recording the facts constituting the offence and the statement of the accused as provided for in the Code of Criminal Procedure, 1898 (Act V of 1898), forward the case to a Magistrate having jurisdiction to try the same and the Magistrate to whom any such case is forwarded shall proceed to hear the complaint

against the accused as if the case has been forwarded to him under section 346 of the Code of Criminal Procedure, 1898 (Act V of 1898).

(4) Every proceeding before the Commission shall be deemed to be a judicial proceeding within the meaning of sections 193, 196 and 228 of the Pakistan Penal Code, 1860 (Act XLV of 1860).

(5) The Commission shall be deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1898 (Act V of 1898).

14. Procedure with respect to armed forces.-(1) Notwithstanding anything contained in any other law for the time being in force while dealing with the complaints of human rights violations by the members of the armed forces, the Commission shall adopt the following procedure, namely:-

- (a) it may either on its own motion or on receipt of a petition, seek a report from the Federal Government on complaint or violation;
- (b) after the receipt of the report it may either not proceed with the complaint or, as the case may be, make its recommendations to the Federal Government.

(2) The Federal Government shall inform the Commission of the action taken on the aforesaid recommendations within three months or such extended time as the Commission may deem appropriate.

(3) The Commission shall publish its report together with its recommendations made under paragraph (b) of sub-section (1) and the action taken by the Federal Government.

(4) The Commission shall provide a copy of the report published under sub-section (3) to the petitioner or his representative.

15. Procedure with respect to intelligence agencies.-(1) Notwithstanding anything contained in this Act, the functions of the Commission do not include inquiring into the act or practice of intelligence agencies, and where a complaint is made to the Commission alleging that an act or practice of such an agency is in consistent with or contrary to any human right, the Commission shall refer the complaint to the competent authority concerned.

(2) The procedure thereafter shall be the same as in sub-section (1) of section 14 with respect to the armed forces.

16. Independence of the Commission.-(1) The Commission and every member of its staff shall function without political or other bias or interference and shall, unless this Act expressly otherwise provides, be independent and separate from any government, administrations, or any other functionary or body directly or indirectly representing the interests of any such entity.

(2) If at any stage during the course of proceedings at any meeting of the Commission, it appears that a member has or may have a financial or personal interest which may cause a substantial conflict of interests in the performance of his functions as such, the member shall forthwith and fully disclose the nature of his interest and absent himself from that meeting so as to enable the remaining members to decide whether the member should be precluded from participating in the meeting by reason of that interest. Such a disclosure and the decision taken by the remaining members shall be entered on the record of the proceedings.

(3) If a member fails to disclose any conflict of interest as required under sub-section (2) and is present at a meeting of the Commission or in any manner participates in the proceedings, such proceedings in relation to the relevant matter shall, as soon as such non-disclosure is discovered, be reviewed and be varied or set aside by the Commission without the participation of the member concerned and such conduct on the part of the member shall be treated as misconduct.

17. Investigation.- (1) Notwithstanding anything contained in any other law for the time being in force, the Commission may, for the purpose of conducting an investigation into a matter which is the subject of a complaint, requisition the services of any officer or investigation agency of the Federal Government or the Provincial Government with their concurrence.

(2) For the purposes of investigating into any matter which is the subject of a complaint, any officer or agency whose services are requisitioned under sub-section (1) shall under the direction and control of the Commission,-

- (a) summon and enforce the attendance of any person and examine him;
- (b) require the discovery and production of any document; and
- (c) requisition any public record or copy thereof from any office.

(3) The provisions of section 13 shall apply in relation to any statement made by a person before any officer or agency whose services are requisitioned under sub-section (1), as they apply in relation to any statement made by a person in the course of giving evidence before the Commission.

(4) The officer or agency whose services are requisitioned under sub-section (1), shall submit a report to the Commission within such period as may be specified.

(5) The Commission shall consider the report submitted to it under sub-section (4) and, after satisfying itself that the procedure prescribed by or under this Act has been duly observed in the investigation, may proceed in accordance with the provisions of section 16.

18. Steps after inquiry.- The Commission may take any of the following amongst other steps upon the completion of an inquiry held under this Act, namely:-

- (a) where the inquiry discloses, the commission of violation of Human Rights or negligence in the prevention of violation of Human Rights by a public servant, it may recommend to the concerned Government or authority the initiation of proceedings for prosecution or such other action as the Commission may deem fit against the concerned person or persons;
- (b) recommend to the concerned Government or authority for the grant of such immediate interim relief to the victim or the members of his family as the Commission may consider necessary;
- (c) provide a copy of the inquiry report to the complainant or his representative;
- (d) the Commission shall send a copy of its inquiry report together with its recommendations to the Government or Authority which shall, within a period of one month or such further time as the Commission may allow, submit its reply indicating the action taken or proposed to be taken to implement the recommendations or reasons why these cannot or should not be implemented; and
- (e) the Commission shall publish its inquiry report together with its recommendations and the reply of the Government or Authority thereto.

19. Statement made by persons to the Commission.- No statement made by a person while giving evidence before the Commission shall subject him to or be used against him in any civil or criminal proceeding except prosecution for giving false evidence;

- (a) it is necessary to inquire into the conduct of any person; or
- (b) the reputation of any person is likely to be prejudicially affected by the inquiry,

it shall give an opportunity to such person of being heard and to produce evidence in his defence, if any.

20. Commission to preserve identity. - where the Commission considers that the preservation of the identity of a person who has:

- (i) made a complaint; or
- (ii) furnished or proposes to furnish information; or

- (iii) produced or proposes to produce a document; or
- (iv) given or proposes to give evidence; or
- (v) made or proposes to make a submission;

to the Commission or to a person acting for or on behalf of the Commission is necessary to protect the security of employment, the privacy or any human right of the person, the Commission may give directions prohibiting the disclosure of the identity of the person;

CHAPTER V

HUMAN RIGHTS COURTS

21. Human Rights Court.- For the purposes of speedy trial of offences arising out of violation of human rights, the Federal Government may, in consultation with Chief Justice of Islamabad High Court, by notification in the official Gazette, specify a Court of Sessions to be the Human Rights Court for that District to try such offences:

Provided that nothing in this section shall apply if,-

- (a) a Court of Sessions is already specified as a special court; or
- (b) a special court is already constituted, for such offences under any other law for the time being in force.

22. Special Prosecutors.- The Federal Government on the advice of the Commission shall, by notification in the official Gazette, appoint an advocate from the list prepared by the Commission who has been practicing as an advocate for not less than seven years, to be the Special Prosecutor for the purposes of conducting cases in that Court.

CHAPTER VI

FINANCIAL PROVISIONS

23. Fund of the Commission.- (1) There shall be established a fund to be known as the National Commission for Human Rights Fund which shall vest in the Commission and shall be used by the Commission to meet the charges in connection with its functions under of this Act.

- (2) Source of the Fund shall amongst other monies be the following namely:-

- (a) such sums as the Federal Government shall, after due appropriation made by the Majlis-e-Shoora (Parliament) by law in this behalf, pay to the Commission by way of grants such sums of money for being utilized for the purposes of this Act;
- (b) grants and endowments and income there from; and
- (c) all other sums or properties which may in any manner become payable to, or vest in, the Commission in respect of any matter.

(3) The Commission, while performing its functions and exercising its powers under this Act, shall exercise highest sense of prudence as far as expenditures are concerned.

24. Expenditure to be charged on the Fund.- The Fund shall be expended for the purposes of-

- (a) paying any expenditure lawfully incurred by the Commission, relating to remuneration of its Members, employees, Advisors and Consultants of the Commission including legal fees and costs as well as other fees and costs;
- (b) paying any other expenses, costs or expenditure properly incurred or accepted by the Commission in the performance of its functions or in the exercise of its powers under this Act;
- (c) purchasing or hiring equipment, machinery and any other work and undertakings in the performance of its functions or in the exercise of its powers under this Act;
- (d) repaying any financial accommodation received; and
- (e) generally, paying any expenses for carrying into effect the provisions of this Act.

25. Power to obtain finances and receive grants.- The Commission may from time to time accept unconditional grants or contributions from donors and non-governmental organizations in a transparent manner. No contribution from any foreign source, private or governmental, shall be acceptable except after the approval of the Federal Government.

26. Accounts and audit.- (1) The Commission shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the Federal Government in consultation with the Auditor-General of Pakistan.

(2) The accounts of the Commission shall be audited by the Auditor-General at such intervals as may be specified by him.

(3) The Auditor-General and any person appointed by him in connection with the audit of the accounts of the Commission under this Act shall have the same rights and privileges and the authority in connection with such audit as the Auditor-General generally has in connection with the audit of Government accounts and in particular shall have the rights to demand the production of books, accounts, connected vouchers and other documents and paper and to inspect any of the offices of the Commission.

(4) The accounts of the Commission, as certified by the Auditor-General or any other person appointed by him in this behalf, together with the Audit Report, thereon shall be forwarded annually to the Federal Government by the Commission and the Federal Government shall cause the audit report to be laid, as soon as may be after it is received, before each House of Parliament.

27. Financial freedom of the Commission.- The Government shall allocate specific amount of money for the Commission in each Financial Year, and it shall not be necessary for the Commission to take prior approval from the Government to spend such allocated money for the approved and specific purposes.

CHAPTER VII

MISCELLANEOUS

28. Annual and Special Reports of the Commission.- (1) The Commission shall prepare an Annual Report at the end of the financial year and may at any time prepare Special Reports on any matter which in its opinion is of particular urgency or importance.

(2) The Federal Government shall cause the Annual Report and the Special Reports to be laid before the Majlis-e-Shoora (Parliament) within ninety and thirty days, respectively, from the date of their receipt, along with a Memorandum indicating the action taken or proposed to be taken on the recommendations of the Commission and reasons for non-implementation of the recommendations, if any.

(3) The report shall be placed on the website of the Commission immediately after its lying before the Majlis-e-Shoora (Parliament) for information of general public.

29. Appointment of Officers and employees.- (1) There shall be a Secretary of the Commission as appointed under section 3.

(2) The Commission may, under this Act, appoint such officers and employees or Consultants as it considers necessary for the efficient performance of its functions.

(3) Salary, remuneration and other terms and conditions of the services of the officers and employees of the Commission shall be determined by the Commission in consultation with the Federal Government.

(4) The Federal Government may, on request from the Commission, appoint any officer or employees of the Federation to the Commission on deputation.

30. Indemnity.- No suit, prosecution, or legal proceedings shall lie against the Commission, the Chairperson or any Member, officer, servant, advisors or Consultant of the Commission in respect of anything in good faith done or intended to be done under this Act or the Rules made there under or order made, or published by or under the Authority of the Federal Government, a Provincial Government, Commission or any Report, paper or proceedings.

31. Members and officers to be public Servants.- Every Member of the Commission and every officer appointed or authorized by the Commission to exercise functions under this Act shall be deemed to be a public servant within the meaning of section 21 of the Pakistan Penal Code, 1860 (Act XLV of 1860).

32. Validity of proceedings.- No act or proceedings of the Commission shall be invalid by reason only of the existence of a vacancy in, or defect in the constitution of, the Commission.

33. Power to make rules.- (1) The Commission may in consultation with the Federal Government and by Notification in the official Gazette make rules to carry out the provision of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-

- (a) the salaries and allowances and other terms and conditions of service of the members as provided under section 8;
- (b) the conditions subject to which other administrative, technical and scientific staff may be appointed by the Commission and the salaries and allowances of officers and other staff appointed under section 29;
- (c) the form in which the Annual Statement of Accounts is to be prepared by the Commission under section 26; and
- (d) any other matter which has to be, or may be, prescribed.

34. Power to remove difficulties.- If any difficulty arises in giving effect to the provisions of this Act, the Federal government may by order published in the official gazette make such provisions not inconsistent with the provisions of this Act as appears to it, be necessary or expedient for removing the difficulty:

Provided that this power shall be available for a period of one year from the date of commencement of this Act.

STATEMENT OF OBJECTS AND REASONS

In recognition of the constitutional provisions on Human Rights contained in Articles 8 to 28 and the Chapter-2 of the Constitution of the Islamic Republic of Pakistan, and the Human Rights agenda of the elected Government of Pakistan, the said Government has assumed its responsibilities to constitute an independent National Human Rights Commission for the protection of the Human Rights of the common people of Pakistan.

2. Further, in pursuance of UN General Assembly Resolution No.48/134 of 20th December, 1993, and such other relevant resolutions of the UN Commission on Human Rights, the UN Member States are under obligation to establish independent National Human Rights institutions which is considered as a singular criterion to judge a States commitment towards the protection and promotion of Human Rights. Presently, the National Human Rights Commissions are functioning in more than 54 countries of the World.

3. The formation of National Commission for Human Rights would not only fulfill the international obligation of establishment of such a Commission but it shall also serve as driving force for negating the propaganda of Human Rights violations in Pakistan.

4. The decision to establish an independent National Commission for Human Rights affirms Government's firm commitment to the promotion and protection of Human Rights in the country.

5. The Bill is designed to achieve the aforesaid objectives.

Mr. Mustafa Nawaz Khokhar,
Adviser to the Prime Minister
on Human Rights
Member-in-Charge.