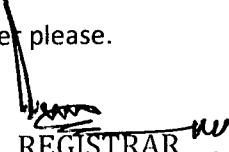





Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- 822/2022


S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	24/05/2022	<p>The appeal of Mst. Roheela Sayal resubmitted today by Mr. Muhammad Amin Ayub Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p> REGISTRAR</p>
2-	27-5-22	<p>This case is entrusted to Single Bench at Peshawar for preliminary hearing to be put there on <u>13-6-2022</u>. Notices be issued to appellant and his counsel for the date fixed.</p> <p> CHAIRMAN</p>
	13 th June, 2022	<p>Clerk to counsel for the appellant present.</p> <p>Counsel are on strike. To come up for preliminary hearing on 30.06.2022 before S.B.</p> <p> (Kalim Arshad Khan) Chairman</p>
	30.06.2022	<p>Learned counsel for the appellant present.</p> <p>As the inquiry against the appellant was conducted by the undersigned when posted as Secretary Public Service Commission. Therefore, it would be appropriate that the case may be placed before other bench. case is adjourned to 12.08.2022 for preliminary hearing before S.B.</p> <p> (Fareeha Paul) Member (E)</p>

The appeal of Mr. Roheela Sayal Associate Professor GGDC No.2 Hayatabad Peshawar received today i.e. on 17.05.2022 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Memorandum of appeal may be got signed by the appellant.
- 2- Appeal may be supported with by an affidavit duly attested by the Oath Commissioner.
- 3- Certificate be given to the effect that the appellant has not filed any service appeal earlier on the subject matter before this Tribunal.

No. 1070 /S.T,

Dt. 18-05 /2022


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Muhammad Amin Ayub Adv.
Peshawar.

دستور العمل
25/05/2022

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 822/2022

Ms. Roheela Sayal Appellant

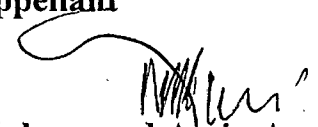
Versus

The Govt. of KPK and others.....Respondents

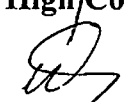
INDEX

S.No.	Description of Documents	Date	Annexure	Pages
1.	Memo of Service Appeal			1-8
2.	Charge Sheet and Statement of Allegations		A	9-10
3.	Reply to Charge Sheet	19.10.2020	B	11-13
4.	Reply to Charge Sheet on direction of Inquiry Officer	16.11.2021	C	14-15
5.	Final Show Cause Notice		D	16
6.	Reply to final Show Cause Notice	22.04.2021	E	17-19
7.	Impugned order	08.12.2021	F	20
8.	Departmental Appeal	08.01.2022	G	21-22
9.	Provincial Electronic Crimes Act, 2016 (PECA Act)		H	23-50
10.	Wakalat Nama			

Through Appellant


Muhammad Amin Ayub
Advocate, High Court

&


Muhammad Ghazanfar Ali
Advocate, High Court
4-B, Haroon Mansion
Khyber Bazar, Peshawar
Off: Tel: 091-2592458

Dated: 16/05/2022

Cell # 0313-9040434

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. _____/2022

Ms. Roheela SayalAssociate Professor (BPS-19).....**Appellant**
GGDC No.2 Hayatabad, Peshawar.

VERSUS

1. **The Govt. of Khyber Pakhtunkhwa**
through Chief Secretary,
Civil Secretariat, Peshawar.
2. **The Secretary**
to Govt. of Khyber Pakhtunkhwa
Higher Education Department,
Civil Secretariat, Peshawar.....**Respondents**

SERVICE APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNALS ACT, 1974 AGAINST THE IMPUGNED ORIGINAL ORDER DATED 08.12.2021 COMMUNICATED TO APPELLANT ON 07.01.2022 WHEREBY RESPONDENTS NO.2 IMPOSED UPON THE APPELLANT MINOR PUNISHMENT OF WITHHOLDING OF TWO INCREMENTS FOR TWO YEARS AGAINST WHICH SHE PREFERRED DEPARTMENTAL APPEAL/REVIEW BEFORE THE APPELLATE AUTHORITY ON 18.01.2022 BUT THE SAME WAS NOT DECIDED WITHIN THE STIPULATED PERIOD OF 90 DAYS.

PRAYER:

On acceptance of the instant appeal, the impugned order dated 08.12.2021 communicated on 07.01.2022 passed by Respondent No.2 may graciously be set aside and appellant may be allowed her original pay with effect from the due date with all back benefits.

Respectfully Sheweth,

Facts giving rise to the present appeal are as under:-

1. That the appellant is serving as Associate Professor (Pakistan Study) (BPS-19) at GGDC No.2 Hayatabad, Peshawar. She was initially appointed as Assistant Professor in the year 2003. Since then she has been discharging her duties with zeal and zest and no complaint whatsoever has ever been lodged against her.
2. **That** while performing duties against the subject post, all of sudden, disciplinary action was initiated against the appellant being posted at Govt. Girls Postgraduate College, Kohat and she was issued Charge Sheet and Statement of Allegations (*Annex:-A*). The origin of the proceedings stood upon the complaint of Ms. Jamila Khanum, Principal, Govt. Postgraduate Girls College, Kohat, under the Prevention Electronic Crimes Act, 2016. Since the charges were baseless, ill-founded, based on malafide of the complainant therefore, the appellant submitted a reply (*Annex:-B*) on 19.10.2020 thereby explaining her position, the same may be considered as integral part of the instant Service Appeal. Thereafter, the so called Fact Finding Inquiry was conducted and appellant was recommended for suitable punishment. The copy of the Inquiry Report was not provided.
3. That thereafter so called Fact Finding Inquiry Report was provided to the competent authority wherein the competent authority was pleased to pass an order for denovo inquiry because the inquiry was not conducted in accordance with law and Rules. Consequently, Mr. Shakeel Ahmad, Secretary to Govt. of Khyber Pakhtunkhwa, Local Government Rural Development Department was nominated as Inquiry Officer who directed the appellant to submit her reply pursuant to the Charge Sheet and Statement of Allegations. Appellant instantly submitted detailed Reply on 16.11.2021 (*Annex:-C*) by explaining her position but the same was not taken into consideration and without associating appellant into the inquiry proceedings, appellant was found guilty of misconduct. It is apprised

that appellant requested the concerned quarter for provision of the Fact Finding Inquiry Report but this too met the same fate.

4. **That** after the enquiry, the appellant was issued Final Show Cause Notice (*Annex:-D*) by the competent authority whereby minor penalty of withholding of two annual increments for two years was proposed to the appellant. Appellant submitted a Reply (*Annex:-E*) to the Final Show Cause Notice on 22.04.2021 whereby she once again explained her position, however, appellant was handed down the impugned order dated 08.12.2021 (*Annex:-F*) by Respondent No.2, communicated on 07.01.2022, whereby she was inflicted upon minor penalty of withholding of two annual increments for two years.
5. **That** the appellant being disgruntled of the order *ibid*, availed the remedy of Rule-3 of Appeal Rules, 1986 and preferred Departmental Appeal (*Annex:-G*) on 08.01.2022 before the appellate authority but the same was not decided within the statutory period of 90 days.
6. **That** the appellant being mortally aggrieved of the impugned original order dated 08.12.2021 passed by Respondent No.2, communicated to appellant on 07.01.2022, files the instant Service Appeal on the following amongst other grounds:-

Grounds:

- A. **That** Respondents have not treated appellant in accordance with law, rules and policy on subject and acted in violation of Article 4 of the Constitution of Islamic Republic of Pakistan, 1973 and unlawfully issued the impugned order, which is unjust, unfair and hence not sustainable in the eye of law.
- B. **That** as per Rule-4 of Khyber Pakhtunkhwa Civil Servant (Appointment, Promotion and Transfer) Rules, 1989 the Competent Authority in the case in hand is the Worthy Chief Minister, whereas from the very inception appellant was departmentally proceeded by the Respondent No.1 as competent authority and issued Charge

Sheet and Statement of Allegations and issued impugned Notification as well who under the rules was not competent hence, the same squarely falls under the ambit of coram-non-judice, therefore, liable to be set aside being void ab-initio. It is further averred that the impugned order passed by the Respondent No.2 who was also not competent authority. Reliance is placed on 2009 SCMR 339, the operative part is as under:-

“When initial order or act relating of intuition of proceedings was contrary to law and illegal, then all subsequent proceedings and action taken thereon would have no basis and would fall”.

- C. **That** Section-15 read with Section-16 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 stipulate that civil servant shall be regulated by Rules made, or instruction issued by the Government or a prescribed authority and he shall be liable to be proceeded as per prescribed disciplinary action and penalties, therefore, it remains to be seen that whether the requirements of the Sections ibid have been complied with by the Respondents? The prescribed law as has been enacted by the Provincial Government is the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules-2011 under which civil servant is supposed to be treated. Rule-2(1) read with Rule-3 of the Rules ibid, define misconduct, therefore, the offence under which appellant was treated does not fall within the ambit of Section/Rules ibid.
- D. **That** appellant was subjected for departmental proceedings under the Provincial Electronic Crimes Act, 2016 (PECA Act *Annex:-H*) promulgated by the Federal Government on 19.08.2016, upon a complaint filed by the Ms. Jamila Khanum, Principal Govt. Postgraduate Girls College, Kohat on social media/Facebook. Pursuant to the same, appellant was visited with the impugned order dated 08.12.2021. It is significant to aver here that under Section-29 of the Act ibid, a set procedure has been embodied wherein a complaint is lodged before the concerned quarter and as per Chapter-III, the Federal Government authorized the F.I.A to investigate into the complaint and if the same was found to be genuine then the culprit would be dealt in accordance with law and Rules because as per Section-2(viii) of the Act ibid, the Code of Criminal Procedure is

applicable. The essence of the above averments is that neither the compliant was submitted before the concerned quarter nor investigation was conducted. It would not be wrong to mention here that the Respondents have become complainant and Judge in their own case which is clear transgression of the principle of natural justice as enshrined in the maxim "*Nemo iudex in causa sua*" therefore, it vitiates the whole proceedings as the Foundation of the same is illegal. It is enunciated principle of law that the edifice would be fall to the ground automatically if infrastructure is defective. Reliance is placed on "2018 PLC (CS) Note-36"

"---Rr. 2(3)(4) & 5 (iv)---Employee of National Database and Registration Authority---Allegation of holding a duplicate identity card---Termination of employee after issuing show-cause notice without giving personal hearing---Effect---Principles of natural justice---Applicability---Employee (petitioner) was terminated from service after issuing show-cause notice without giving personal hearing---Validity---Authorized officer should have forwarded the case of employee to the competent authority along with charge and statement of allegations served on the employee along with explanation of the accused and his own findings with regard to the penalty to be imposed--- Opportunity of hearing had not been provided to the employee in the present case---Principles of natural justice had been violated in circumstances--- Employee had been dismissed in an undue haste- -- Conduct of department was questionable---Impugned action was tainted with mala fide--- Disciplinary proceedings were done without application of judicious mind---Basis on which disciplinary proceedings were initiated and conducted had already been resolved in the earlier round of same proceedings-- Employee had been vexed twice with regard to same charges/allegations--- High Court observed that employee should have been confronted with the material and record which formed basis for passing an adverse decision---No one could be punished merely on the basis of media reports by violating principles of natural justice and express provision of law---Adverse action against any person would be illegal if it was influenced by media reports---Adjudicator whether judicial or quasi-judicial must apply a judicious and independent mind before penalizing or passing any adverse order against a person---Disciplinary proceedings and termination of employee was void ab-initio having no legal consequences---Constitutional petition was allowed in circumstances. [paras. 14, 15 & 16 of the judgment]"

- E. **That** it is momentous to aver here that Rule- 14 of the Government of Khyber Pakhtunkhwa Government Servants (Efficient and

Discipline) Rules, 2011 read with Rule-5 of the Khyber Pakhtunkhwa Civil Servant (Appeals), 1986 maintains:-

- (1) *“On receipt of report from the inquiry office or inquiry committee, as the case may be, the competent authority shall examine the report and the relevant case material and determine whether the inquiry has been conducted in accordance with the provisions of these rules.*
- (2) *If the competent authority is satisfied that the inquiry has been conducted in accordance with the provisions of these rules, it shall further determine whether the charge or charges have been proved against the accused or not.*
- (3) *Where the charge or charges have not been proved, the competent authority shall exonerate the accused by an order in writing, or it shall follow the procedure as given in sub-rule (6) of this rule.*

Because the replies so submitted by the appellant pursuant to the Charge Sheet and Statement of Allegation she outright denied the commission of the charge as leveled against her but the competent authority completely failed to apply its judicial mind and relied upon the recommendation of the Inquiry Officer which is against the norms of justice. Reliance is placed on 2020 PLC CS 1291 (Supreme Court), the relevant citation is reproduced herein below for ease to reference:-

“Reinstatement in service--- No specific allegation proved through evidence--- Orders of the competent authority as well as departmental appeal were on the basis of that they agreed with the recommendation of the inquiry officer, they had not scrutinized the evidence available on the file themselves, but awarded major penalty of dismissal from service by relying upon the recommendation of the inquiry officer and ignored the fact that no specific allegation through evidence was proved against the respondent--civil servant---prosecution was duty bound to prove the allegation for which the respondent was charge sheeted---Service Tribunal and rightly reinstated the respondent in service---appeal was dismissed”.

- F. **That** no regular inquiry was conducted into the case nor any documentary or oral evidence was recorded in presence of the appellant nor she was awarded a chance of cross-examination and provided opportunity of hearing. The entire action was taken at the back of the appellant and thus she was condemned unheard, therefore, clear violation of Article-10A of the Constitution of the Islamic Republic of Pakistan, 1973 has been made. Moreover, it is enunciated principle of law that preliminary inquiry was conducted just to collect material against the delinquent civil servant and if the charges are found to be proved then only regular inquiry is conducted where ticklish fact involved. Reliance is placed on 2007 SCMR 1673, PLJ 2016 Trc Service 321, PLJ 2011 Trc Service 12 and PLJ 2016 Trc Service 1353.
- G. **That** Article-10A of the Constitution of the Islamic Republic of Pakistan, 1973 read with Section-16 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 provides for the right of fair trial as per prescribed law and Rules but the appellant was not fairly treated in disciplinary proceedings and the impugned order, is void ab-initio as well as against the principle of natural justice. Moreover, the copy of the inquiry Report were not furnished to the appellant by the Department inspite of requests which is also violation of natural justice.
- H. **That** it is a settled legal principle that even in case of minor penalty regular inquiry is conducted where factual controversies are involved and accused must be associated with all stages of the enquiry including the collection of oral and documentary evidence in his presence and he/she must be confronted to the same and must be afforded an opportunity of cross-examining the witnesses. In the case in hand a summary enquiry was concluded in an irregular manner and appellant was illegally found guilty without any evidence. Thus the impugned enquiry being irregular and the impugned order based thereon is nullity in the eye of law and hence liable to be set aside.

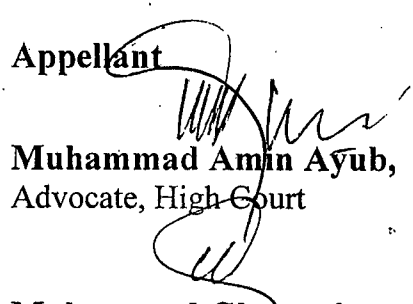
- I. **That** no opportunity of personal hearing was afforded to the appellant neither by the competent authority nor by the Enquiry Committee or by the appellate authority which are the mandatory requirements of law. Thus appellant was condemned unheard as the action has been taken at the back of the appellant which is against the principle of natural justice. Reliance is placed on **PLD 2018 Peshawar 170**.
- J. **That** the appellant served the Department, ever since 2003 and during that period she was never subjected to departmental proceedings thus, rendered meritorious service to the department.
- K. **That** appellant would like to offer some other grounds during the course of arguments.

It is, therefore, humbly prayed that the instant appeal may graciously be accepted as prayed for above.

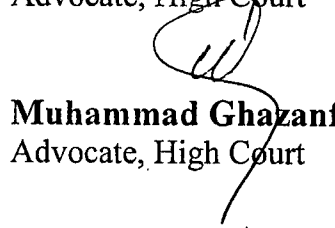
Any other relief as deemed appropriate in the circumstances of case not specifically asked for, may also be granted to appellant.

Through

Appellant


Muhammad Amin Ayub,
Advocate, High Court

&


Muhammad Ghazanfar Ali,
Advocate, High Court

Dated:16/05/2022

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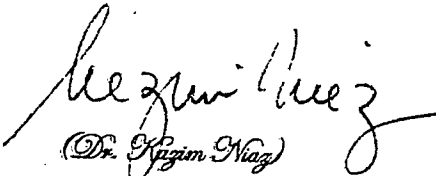
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CHARGE SHEET.

I, Dr. Kazim Niaz, Chief Secretary, Khyber Pakhtunkhwa, as Competent Authority, am of the opinion that Ms. Rohela Sayal, Associate Professor in Pakistan Studies (BPS-19) Govt. Girls Post Graduate College, Kohat has rendered herself liable to be proceeded against, as you committed the following acts/omissions, within the meaning of rule 03 of the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011.

That you, held responsible of violation of Prevention Electronic Crimes Act, 2016 by criticizing Ms. Jamila Khanum, Principal, Govt. Postgraduate Girls College, Kohat on Social Media/ Face book.

2. By reason of the above, you appear to be guilty of misconduct under the rule 03 of the Khyber Pakhtunkhwa, Peshawar Government Servants (Efficiency & Discipline), Rules, 2011 and have rendered yourself liable to all or any of the penalties specified in rule 04 of the Rules, ibid.
3. You are, therefore, required to submit your written defence within seven days of the receipt of this charge sheet to the Inquiry Officer/Committee, as the case may be.
4. Your written defence, if any, should reach the Inquiry Officer/Committee within the specific period, failing which it shall be assumed that you have no defence to put in and in that case ex-parte action shall be taken against you.
5. Intimate whether you desire to be heard in person.
6. A statement of allegations is enclosed.


(Dr. Kazim Niaz)
**CHIEF SECRETARY,
KHYBER PAKHTUNKHWA**

ATTESTED

14

DISCIPLINARY ACTION

I. Dr. Kazim Niaz, Chief Secretary, Khyber Pakhtunkhwa, as Competent Authority, am of the opinion that Ms. Rohela Sayal, Associate Professor in Pakistan Studies (BPS-19), Govt. Girls Post Graduate College, Kohat has rendered herself liable to be proceeded against, as she committed the following acts/omissions, within the meaning of rule 03 of the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011.

STATEMENT OF ALLEGATIONS.

That she, held responsible of violation of Prevention Electronic Crimes Act, 2016 by criticizing Ms. Jamila Khanum, Principal, Govt. Postgraduate Girls College, Kohat on Social Media/ Face book.

2. For the purpose of Inquiry against the said accused with reference to the above allegations, an Inquiry Officer/Inquiry Committee, consisting of the following, is constituted under rule 10(1)(a) of the ibid rules.

- i. Miss Faveeha Pami (PCS SG BS20)
- ii. Prof. Saeed Gul, Principal, Govt. GS college Pesh

3. The Inquiry Officer Inquiry Committee shall, in accordance with the provisions of the ibid rules, provide reasonable opportunity of hearing to the accused, record its findings and make, within thirty days of the receipt of this order, recommendations as to punishment of other appropriate action against the accused.

4. The accused and a well conversant representative of the department shall join the proceedings on the date, time and place fixed by the Inquiry Officer/Inquiry Committee.

Kazim Niaz
 (Dr. Kazim Niaz)
**CHIEF SECRETARY,
 KHYBER PAKHTUNKHWA**

ATTESTED

441971
Annex B
Copies
Copy

To

The Inquiry Officers,
1. Miss. Kurecha Paul (PCS SG DS-20)
2. Prof. Sharif Gul, Principal,
Govt Superior Science College, Peshawar.

Subject: DISCIPLINARY PROCEEDING AGAINST MRS. ROHEELA SAYAL,
ASSOCIATE PROFESSOR (BPS 19), OF PAKISTAN STUDIES,
GOVERNMENT GIRLS POSTGRADUATE COLLEGE KOTAL AND
MR. AIMAL KHAN, ASSISTANT PROFESSOR (BPS-18) OF
PAKISTAN STUDIES GOVERNMENT SUPERIOR SCIENCE
COLLEGE, PESHAWAR

Reference to the Directorate of Higher Education Khyber Pakhtunkhwa letter No. 17946-CA-I-Estt:Branch/A-12/Miss. Roheela Sayal/Pak-Studies dated 08.10.2020 on the subject noted above, received as on 15.10.2020 through registered post, wherein the undersigned is served with Statement of Allegations and Charge Sheet, it is stated that Charge Sheet served to the undersigned is journalized no specific violation has been mentioned therein which can conclude that undersigned is held responsible under the rule 03 of the Khyber Pakhtunkhwa, Peshawar Government Servants (Efficiency & Disciplinary) Rules 2011. However, Para wise reply to the charges leveled against the under signed are as under:

The undersigned is communicated that I have been held responsible of violation of Prevention Electronic Crime Act, 2016 by criticizing Ms. Kamla Khattun, Principal, Govt Postgraduate Girls College Kotal on Social Media/Facebook.

In defence of the above leveled allegation it is stated to the Inquiry Committee that no doubt I have some accounts on social media and I do respond to various posts but I have never ever used any un-parliamentary language/ words to any posts, specifically to the in-question principal. I have never used any abusive/ un-parliamentary language. If I have had, the same should be reflected in Charge Sheet as evidence. A charge sheet should be specific, to the point and duly supported by the evidences but in the instant case the undersigned is provided with a journalized form of charge sheet.

Freedom of expression is the constitutional right of every citizen. Every citizen has the right to express his opinion but not in a way to harm someone feelings. Following such principal, I have not used any word or language that could be dealt under Prevention Electronic Crimes Act, 2016. I went through the entire Act chapter by chapter but Chapter-III (29) Establishment of Investigative Agency and Chapter-III (30) Power of Investigation got my attention with regard to such nature cases. The committee is, therefore, requested that before arriving any conclusion the Prevention Electronic Crime Act 2016, as mentioned in my charge sheet Para-I, may please be visited so as not to create any controversy toward Prevention Electronic Crime Act 2016

(Handwritten signature)

ATTESTED

B

and Khyber Pakhtunkhwa, Peshawar, Government Servants (Efficiency & Discipline) Rules, 2011,


2 Vide Para-2 of the Charge Sheet the undersigned is intimated that I have appeared to be guilty of misconduct under the Rule 03 of the Khyber Pakhtunkhwa, Government Servants (Efficiency & Discipline) Rules, 2011 and have rendered liable to all or any of the penalties specified in rule 04 of the Rules ibid.

In defence of the above mentioned Para-2, Rule 03 of the Khyber Pakhtunkhwa, Government Servants (Efficiency & Discipline) Rules, 2011 whereupon I have been appeared guilty of misconduct, is re produced as under:

"Grounds for Proceedings-A Government servant shall be liable to be proceeded against under these rules, if he is-

- (a) Inefficient or has ceased to be efficient for any reason; or
- (b) Guilty of misconduct; or
- (c) Guilty of corruption; or
- (d) Guilty of habitually absenting himself from duty without prior approval of leave; or
- (e) Engaged or is reasonably believed to be engaged in subversive activities, or is reasonably believed to be associated with other engaged in subversive activities, or is guilty of disclosure of official secrets to any unauthorized person, and his retention in service is prejudicial to national security; or
- (f) Entered into plea bargaining under any law for the time being in force and has returned the assets or gains acquired through corruption or corrupt practices voluntarily.

I have already stated that I have never ever used any adverse/abusive/ un-parliamentary words on social media and for the subject Principal as well and I still have my words. I am still wonder that what heinous crime I have committed upon which I have been made liable for such major penalty.


 I would like once again to bring kind attention of the committee towards the Charge Sheet where the word "Criticizing" is used which does not cover under Rule 03(b) of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011. Furthermore, it is also not clarified that what kind of criticism is made and upon what type of action such criticism is offered. Let suppose I have had criticized the Principal upon some actions/orders or anything else then who has certified that she had the authority/powers to do so, to say so upon which I have offered my criticism.

When we look into the matter certain questions arises which also need to be headed like (i) whether that criticism was offered only by me? (ii) whether I was the only member of that group and no one else was there? (iii) whether the principal was also the member of that group? (iv) how many members of that group has attested the allegation? (v) what is the percentage of such

ATTESTED

attestation? (vii) what is the relation of this person to the complainant (Principal)?
criticisms) with complainant (Principal)?

2. It is once again stated that I have not committed any wrong which is charged under any law, however, would like to bring some facts in the knowledge of the enquiry committee that my brother Mr. Amir Khan (Assistant Professor) who has also been made the part of such enquiry, is associated with Professors Association and now a day, I am in opposition. Just because of his affiliation with association, we both have been dragged in such enquiry. For the last two years I have submitted numbers of application for my transfer to Peshawar under spouse policy but every time my request is turned down because of my brother's presence in opposition.

3. Character assassination is being initiated and we are tortured by different means. The subject principal has personal grudges with me. She is using his authority for my character assassination. First she initiated complaint against me that I remained absent from my duty and visit the college just a day in a week. A reply to her complaint/explanation was given with evidence, I was assigned BS classes, who were taught throughout the session regularly. Attendance sheet of such classes have also been signed by such principal, whereupon I have been paid too. When the case was mitigated positively, she loaded the instant complaint.

4. Actually she had fraudulently drawn Rs. 10,00,000/- (One Million) out BS fund of Degree College for Boys Kohat. The issue come to the surface a year after, resultantly she was served with notice from District Accounts Office Kohat. She thought that me and my husband, being an Accounts Officer (Admin), were behind that while we have no hand in that notice or anything else. Since that she has started my character assassination.

5. The committee is once again informed that all the leveled allegations mentioned in charge sheet are baseless, I have neither criticized nor use any adverse/abusive/un-parliamentary words to the complainant on social media (Facebook). It is, therefore, requested that my humble submissions as stated above may kindly be considered while finalizing the enquiry report.

Dated: 19.10.2020

(ROHEELA SAYEL)
ASSOCIATE PROFESSOR (BS-19)

Amir C

To

The Hearing Officer,
Mr. Shakeel Ahmad,
Secretary to Govt. of Khyber Pakhtunkhwa,
Local Govt. & Rural Development

Subject: DISCIPLINARY PROCEEDING AGAINST MRS. ROHEELA SAYAL,
ASSOCIATE PROFESSOR (BPS-19) OF PAKISTAN STUDIES,
GOVERNMENT GIRLS POSTGRADUATE COLLEGE KOHAT AND MR.
AIMAL KHAN ASSISTANT PROFESSOR (BPS-18) OF PAKISTAN
STUDIES GOVERNMENT SUPERIOR SCIENCE COLLEGE,
PESHAWAR

Reference to Government of Khyber Pakhtunkhwa Local Government, Election and Rural Development Department Letter No. PS/SLG/Personal Hearing/2021 dated 18.10.2021 on the subject noted above. It is stated that Charge Sheet served to the undersigned in the subject matter (Annexure-I) has clearly mentioned that I have been held responsible for violation of Prevention Electronic Crimes Act, 2016 by criticizing Ms. Jamila Khanum, Principal Govt Postgraduate Girls College Kohat on Social Media Face book. By reason of the above I have been found guilty under the rule 03 of the Khyber Pakhtunkhwa, Government Servants (Efficiency & Disciplinary) Rules 2011 and have been charged under rule 04 of the above mentioned E&D rules.

2. Since the day first I am requesting to the committees constituted as (i) Facts Finding committee and (ii) Enquiry Committee to show me the evidences whereupon I have been charged for such major penalty but till date they have not presented a single evidence. Furthermore, proceedings based upon Prevention Electric Crimes Act, 2016 is not the mandate of any other authority except FIA (Cyber Crime Wing) because they have specialized equipment and skilled personals to access the social media and verify the allegation with proof. While in the instant case all the actions have been taken by the department one sided without consulting FIA (Cyber Crime) because the complainant is an influential person, having links in Directorate of Higher Education. Character assassination is being initiated and the undersigned is tortured by different means. The subject principal has personal grudges with undersigned. The principal is using her authority for my character assassination.

3. It is my humble request to your good self that all my written statements previously submitted to various committees in this enquiry, may please be read at least once before arriving any conclusion. Copies of written statements, submitted to different committees' forums are therefore enclosed at Annexure-II and III as a ready reference.

4. under Chapter-III (26- Establishment of Investigative Agency) and Chapter-III (27- Power of Investigation) of Prevention Electric Crimes Act, 2016, it is the mandate of FIA (Cyber Crime Wing). It is, therefore, requested that the matter may please be forwarded to FIA (Cyber

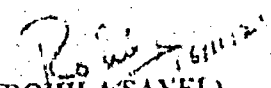
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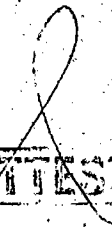
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Crime Wing) to assess the allegations under Prevention Electronic Crime Act, 2021 as mentioned in Charge Sheet (Annexure-1) so as to justify the major penalty imposed upon the undersigned.

5. The hearing officer is once again requested that all the leveled allegations as mentioned in charge sheet are baseless, I have neither criticized nor use any adverse/abusive/unparliamentary words to the complainant on social media (Facebook). It is, therefore, requested that my humble submissions as stated in Para-4 above may kindly be considered while finalizing the enquiry report.

Dated: 16.11.2021


(ROHILA SAYEL)
ASSOCIATE PROFESSOR (BS-19)


ATTESTED

SHOW CAUSE NOTICE

I, **Mehmood Khan**, Chief Minister, Khyber Pakhtunkhwa as competent authority, under the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, do hereby serve you, **Ms. Roheela Sayal**, Associate Professor of Pakistan Studies (BS-19), Govt. Postgraduate Girls College, Kohat, as follows: -

- i. That consequent upon the completion of inquiry conducted against you by the inquiry committee for which you were given opportunity of hearing vide communication No.KPPSC/PS-Secretary/010931-35 dated 20th October, 2020; and
- ii. On going through the findings and recommendations of the inquiry committee, the material on record and other connected papers including your defence before the inquiry committee.

I am satisfied that you have committed the following acts/omissions specified in rule-3 of the said rules:

- a. Guilty of inefficiency
- b. Guilty of misconduct


2. As a result, thereof, I, as Competent Authority have tentatively decided to impose upon you the penalty of withholding of pay under Rule-4 of the said rules.

3. You are, thereof, required to show cause as to why the aforesaid penalty should not be imposed upon you and also intimate whether you desire to be heard in person.

4. If no reply to this notice is received with seven (07) days or not more than 15 days of its delivery, it shall be presumed that you have no defence to put in, and in that case an ex-parte action shall be taken against you.

5. A copy of the findings of the enquiry committee is enclosed.

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(Mehmood Khan)
CHIEF MINISTER
KHYBER PAKHTUNKHWA

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Annex E-3

To

The Honorable Chief Minister, Khyber Pakhtunkhwa,
Mr. MEHMOOD KHAN

Subject: SHOW CAUSE NOTICE

Honorable Sir,

Kindly refer to the Show Cause Notice served to the undersigned, wherein it is communicated that undersigned is charged as (i) Guilty of inefficiency & (ii) Guilty of misconduct and have decided to impose the major penalty of "Withholding of two annual increments". Copy Annexed at I.

2. Keeping in view the imposition of above penalty, vide Para-3 of the Show Cause Notice, undersigned has given a chance to show cause as to why the aforesaid penalty should not be imposed upon the undersigned.

3. Honorable Sir, in defence it is stated that I have not committed any violation that could be charged under (i) Guilty of inefficiency & (ii) Guilty of misconduct. I would like to express all the facts in detail for your perusal and reconsideration of my request/appeal.

(a) At Para-5 of the aforementioned show cause notice it mentioned that "A copy of the findings of the enquiry committee is enclosed" while in fact the undersigned is provided with a single page of photocopied paper of "Show Cause Notice" by the principal of Hayatabad Girls College Peshawar. When the relevant documents were demanded from Directorate of Higher Education Peshawar, Secretariat of Higher Education Khyber Pakhtunkhwa and Principal of Hayatabad Girls College Peshawar they all refused to provide the same on the grounds that they were provided with only Show Cause Notice.

This happened not for the first with undersigned, at the time when enquiry was initially assigned to enquiry committee, the undersigned was also served with single pager show cause notice as like (Annexure-II). A detail reply to that Show Cause Notice was communicated to the enquiry officers, even though the undersigned was heard in person but was just a formality because the committee had no grounds to deny my response. Copy of the reply to that Show Cause Notice is Annexed at III, which may please be seen once.

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(b) The enquiry initially conducted by the two officers (i) Miss. Fareeha Paul (PCS SO BS-20) and (ii) Prof. Shurif Cial (Principal Govt Superior Science College, Peshawar) was totally based on baseless allegations and opinions of non-technical and impartial persons.

Allegation of "Criticizing of Principal on Social media" was leveled against the undersigned as well as her brother by Miss. Jamila Khanum, Principal Post Graduate College for Women, Kohat. Which was further exploited by the Directorate of Higher Education because of the involvement of my brother in Civil Employees Union of Education Department. This baseless enquiry was materialized by the and aforementioned enquiry officers who were under the rules "Prevention Electronic Crime Act, 2016" as mentioned in my Charge Sheet Notice, not capable to get the Forensic Audit of the medium whereupon such violation was committed. Furthermore, neither the inquiry committee officers had any technical specialization to conduct the Forensic Audit of the medium to extract evidences for justification of such violation nor consulted any authority of such capability. The inquiry was started from the allegation of the principal and ended upon the statements of few fellows of the principal. The main evidences of the case were not surfaced in the enquiry which could justify the violation of Prevention Electronic Crime Act, 2016 as per the procedure defined in Prevention Electronic Crime Act, 2016 for such violation.

(c) Another allegation of absence from duty was leveled by the principal of Post Graduate College for Women, Kohat. Where in defence of such allegation, it is stated that undersigned has attended all his classes and have also completed the courses of assigned classes well in time. As an evidence, I have presented the attendance sheets of those BS classes which were assigned to the undersigned. It is worth mentioning here that 100% attendance and course completion certificates communicated to the Women University which were duly signed by the Principal Post Graduate College for Women Kohat itself.

As it is evident from the record that provincial government has spent lot of its financial resources upon procurement of Bio-Matric devices for the purpose of assuring attendance in colleges. But as per the direction of Principal of Post Graduate College for Women Kohat, Bio-Matric device was disconnected even

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27/1/2021
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though that was in working condition and attendance were recorded on plain papers just to give cover to the absentees of few blue eyed employees of the same institute. The same attendance page was kept under lock by the principal. Whenever the undersigned demanded the page for recording the attendance was refused to record her attendance.

(d) Principal Post Graduate College for Women Kohat, Miss. Jamila Khanum become personal with undersigned at the time when here true face disclosed to the staff of Post Graduate College for Women Kohat by surfacing the fact that Miss Jamila Khanum has fraudulently withdrawn Rs. 10,00,000/- out the BS fund of Boys College of Kohat. In this regard she has served with lots of reminders by the District Accounts Office Khoat for redepositing the withdrawn funds. Preliminary enquiry by the Directorate of Education has also been conducted in this regard.

Principal Post Graduate College for Women Kohat, Miss. Jamila Khanum was of the view that I have surfaced the news of fraudulent withdrawal of funds amounting to Rs. 10,00,000/-, whereupon she become personal with undersigned and fabricated the entire scam.

Keeping in view the above stated facts, it is my humble request to the Honorable Chief Minister of Khyber Pakhtunkhwa that entire inquiry is based upon the personal grudges and concealments of facts and actual evidences. In such circumstances imposition of major penalty of "Withholding of two annual increments" is unjustified. It is therefore payed that either wave off the penalty imposed by the inquiry committee or award this inquiry to Cyber Crime Wing (FIA) for Forensic Audit of the medium so as to ascertain the factual position of the allegation leveled by Miss. Jamila Khanum, Principal Post Graduate College for Women Kohat.

I hope your merciful sight will not overlook my genuine request and will help the undersigned in waving off the stigma from my professional charier in transparent manners.

Dated:

The humble requestee,
(Signature)
(ROHEELA SAYEL)
ASSOCIATE PROFESSOR (BS-19)

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GOVERNMENT OF KHYBER PAKHTUNKHWA
HIGHER EDUCATION, ARCHIVES &
LIBRARIES DEPARTMENT
CIVIL SECRETARIAT

Date the Peshawar 08/1

Subject: 13/11/2021/Rohela Sayal whereas the officer was proceeded under the Government of Khyber Pakhtunkhwa Servants (Efficiency & Discipline) Rules, 2011 for the purpose of the subject and statement of allegations dated 02.10.2020 and the order dated 02.10.2020 respectively.

Name & Designation	Penalty Imposed
Mrs. Rohela Sayal Associate Professor (BS-19) of Pak Studies, Govt. Girls Degree College No.2, Hayatabad, Peshawar	Withholding of two annual increments for two year

whereas an inquiry committee comprising, Mr. Fareeha Paul (PCS SC-38-20) as a member and Mr. Farooq (BS-20) Govt. Superior Science College, Peshawar was constituted for the purpose of the subject.

whereas the inquiry committee after having examined the charges, evidence and the statement of the accused officer, submitted report.

whereas the Competent Authority after having considered the charges, evidence and the statement in reply of the accused to the show cause notice and after affording the accused a personal hearing to the accused while exercising the powers conferred upon him under the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 has pleased to impose minor Penalty of "Withholding of two annual increments for two years" on Mrs. Rohela Sayal Associate Professor (BS-19), Govt Girls Degree College No.2, Hayatabad, Peshawar.

SECRETARY
Higher Education Department

Copy to
1. Mr. Secretary, Government of Khyber Pakhtunkhwa
2. Mr. Secretary, Higher Education Khyber Pakhtunkhwa
3. Mr. Chairman, Govt. Girls Degree College No.2, Hayatabad, Peshawar
4. Mr. Secretary, Government of Khyber Pakhtunkhwa, Higher Education Department.
5. Mr. Secretary, Government of Khyber Pakhtunkhwa, Higher Education Department.
6. Mr. Secretary, Government of Khyber Pakhtunkhwa, Higher Education Department.
7. Mr. Secretary, Government of Khyber Pakhtunkhwa, Higher Education Department.
8. Mr. Secretary, Government of Khyber Pakhtunkhwa, Higher Education Department.
9. Mr. Secretary, Government of Khyber Pakhtunkhwa, Higher Education Department.
10. Mr. Secretary, Government of Khyber Pakhtunkhwa, Higher Education Department.

(Riaz)
Section officer (colleges-I)

Received on 07/01/2022
13/12/2021

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GOVERNMENT OF KHYBER PAKHTUNKHWA
HIGHER EDUCATION, ARCHIVES &
LIBRARIES DEPARTMENT
CIVIL SECRETARIAT

Dated the Peshawar 08.12.2021

NOTIFICATION

NO.SO(C-I)HE/1-1/2021/Roheela Sayal/ Whereas the officer was proceeded under the Khyber Pakhtunkhwa Govt. Servants (Efficiency & Discipline) Rules, 2011 for the charges included in the charge sheet and statement of allegations dated 02.10.2020 and the following penalty was imposed tentatively:-

S.No.	Name & Designation	Penalty imposed
1.	Mrs. Roheela Sayal Associate Professor (BS-19) of Pak Studies, GGPGC, Kohat now working in GGDC No.2, Hayatabad, Peshawar	"Withholding of two annual increments for two years"

2. **And whereas** an Inquiry Committee comprising Miss Fareeha Paul, (PCS, SG-BPS-20) and Prof. Sharif Gul, Principal (BS-20), Govt. Super Science College, Peshawar was constituted to probe into the allegations.

3. **And whereas** the Inquiry Committee after having examined the charges, evidence on record and explanation of the accused officer submitted report.

4. **Now therefore** the Competent Authority after having considered the charges, evidence on record, the explanation/reply of the accused to the Show Cause Notice and after affording the opportunity of personal hearing to the accused while exercising the powers conferred upon him under Rule-4 of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, has been pleased to impose minor penalty of "**Withholding of two annual increments for two years**" on Mrs. Roheela Sayal, Associate Professor (BS-19), Govt. Girls Degree College No.2, Hayatabad, Peshawar.

SECRETARY
Higher Education Department

Endst: No. & Date Even

Copy forwarded to the:-

1. The Accountant General, Khyber Pakhtunkhwa.
2. Director, Higher Education, Khyber Pakhtunkhwa.
3. Principal, Govt. Girls Degree College No.2, Hayatabad, Peshawar.
4. Officer concerned.
5. PS to Secretary to Govt. of Khyber Pakhtunkhwa Higher Education Department.
6. Master file.

Sd/-
(Riaz)
Section Officer (Colleges-I)



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Office of the Secretary

Copy No. - 2136

Dated - 18/01/2022

[Signature]
18/01/2022

To

The Honorable Chief Minister,
Khyber Pakhtunkhwa.

Subject:

APPEAL REGARDING WITHHOLDING OF TWO ANNUAL INCREMENTS WHILE DECIDING DISCIPLINARY PROCEEDING AGAINST MRS. ROHELLA SAYAL, ASSOCIATE PROFESSOR (BPS-19) OF PAKISTAN STUDIES.

Respected Sir,

Kindly refer to the subject noted above and to state that undersigned was issued show cause notice by the Chief Minister Khyber Pakhtunkhwa (Annexure-A) in light of Charge Sheet and statement of allegation issued by the Chief Secretary, Khyber Pakhtunkhwa (Annexure-B)

2. Responding to above stated Show cause notice, Charge Sheet and Statement of Allegation your good self has been provided with humble reply which is placed at "Annexure-C" as a ready reference.

3. In the above referred Show-Cause Notice, placed at Annexure-A, I have been communicated that *I have committed the following acts/omissions specified in rule-3 of the said rules (a) Guilty of inefficiency and (ii) Guilty of misconduct. As a result, thereof, Chief Minister, as competent authority has tentatively decided to impose upon me the penalty of withholding of two annual increments under Rule-4 of the said rules.* Consequently, upon the completion of enquiry by the enquiry officer, the undersigned is communicated with notification of major punishment of withholding of two annual increments (Annexure-D).

4. It is pertinent to mention here that undersigned is charged upon the violation of Prevention of Electronic Crime Act 2016 (PECA) by criticizing Ms. Jamila Khanum, Principal, Govt. Postgraduate Girls College Kohat on Social Media/Facebook. By reason of that I have appeared to be guilty of misconduct under the rule 03 of the Khyber Pakhtunkhwa, Peshawar Government Servants (Efficiency & Discipline) Rules, 2011. (Annexure-B)

5. It is worth mentioning that under Prevention of Electric Crime Act 2016 (PECA), FIA Cyber Crime Wing has been established as a separate designated agency to conduct enquiry/ investigation for the offences. Therefore, Education Department would have to forward the same to FIA Cyber Crime Wing for investigation under PECA 2016. If

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undersigned is found guilty by the FIA Cyber Crime Wing in such enquiry, then the department may proceed under Khyber Pakhtunkhwa Government Servant (Efficiency & Discipline) Rule 2011.

6. Your good self is, therefore, requested that penalty imposed vide aforementioned notification at "Annexure-D" may please be reviewed and the same enquiry may please be forwarded to FIA Cyber Crime Wing for further investigation in the matter so as to ascertain that allegations leveled against the undersigned is true or being victimized on personal like & dislike and whether the undersigned has really violated the PECA 2016 as mentioned in my charge sheet?

7. I hope your good self will consider my appeal and will ink the matter favorably.

Dated: 08.01.2022

Yours faithfully,



(ROHEELA SAYAL)
ASSOCIATE PROFESSOR (BS-19)



Enclosure p. of to 08



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REGISTERED No. M-302
L-7646

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The Gazette of Pakistan



EXTRAORDINARY
PUBLISHED BY AUTHORITY

ISLAMABAD, MONDAY, AUGUST 22, 2016

PART I

Acts, Ordinances, President's Orders and Regulations

NATIONAL ASSEMBLY SECRETARIAT

Islamabad, the 19th August, 2016

No. F. 22(3)/2015-Legis.—The following Acts of *Majlis-e-Shoora* (Parliament) received the assent of the President on the 18th August, 2016 are hereby published for general information:—

ACT NO. XL OF 2016

An Act to make provisions for prevention of electronic crimes

WHEREAS it is expedient to prevent unauthorized acts with respect to information systems and provide for related offences as well as mechanisms for their investigation, prosecution, trial and international cooperation with respect thereof and for matters connected therewith or ancillary thereto;

It is hereby enacted as follows:—

(745)

Price: Rs. 20.50

[3545(2016)/Ex. Gaz.]

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CHAPTER I
PRELIMINARY

1. Short title, extent, application and commencement.—(1) This Act may be called the Prevention of Electronic Crimes Act, 2016.

(2) It extends to the whole of Pakistan.

(3) It shall apply to every citizen of Pakistan wherever he may be and also to every other person for the time being in Pakistan.

(4) It shall also apply to any act committed outside Pakistan by any person if the act constitutes an offence under this Act and affects a person, property, information system or data located in Pakistan.

(5) It shall come into force at once.

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

(i) “act” includes—

(a) a series of acts or omissions contrary to the provisions of this Act; or

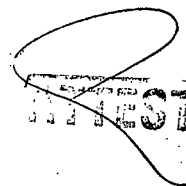
(b) causing an act to be done by a person either directly or through an automated information system or automated mechanism or self-executing, adaptive or autonomous device and whether having temporary or permanent impact;

(ii) “access to data” means gaining control or ability to use, copy, modify or delete any data held in or generated by any device or information system;

(iii) “access to information system” means gaining control or ability to use any part or whole of an information system whether or not through infringing any security measure;

(iv) “Authority” means the Pakistan Telecommunication Authority established under the Pakistan Telecommunication (Re-organization) Act, 1996 (XVII of 1996);

(v) “authorization” means authorization by law or by the person empowered to make such authorization under the law:


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Provided that where an information system or data is available for open access by the general public, access to or transmission of such information system or data shall be deemed to be authorized for the purposes of this Act;

- (vi) "authorized officer" means an officer of the investigation agency authorized to perform any function on behalf of the investigation agency by or under this Act;
- (vii) "Code" means the Code of Criminal Procedure, 1898 (Act V of 1898);
- (viii) "content data" means any representation of fact, information or concept for processing in an information system including source code or a program suitable to cause an information system to perform a function;
- (ix) "Court" means the Court of competent jurisdiction designated under this Act;
- (x) "critical infrastructure" means critical elements of infrastructure namely assets, facilities, systems, networks or processes the loss or compromise of which could result in,—
- (a) major detrimental impact on the availability, integrity or delivery of essential services including those services, whose integrity, if compromised, could result in significant loss of life or casualties, taking into account significant economic or social impacts; or
- (b) significant impact on national security, national defense, or the functioning of the state;

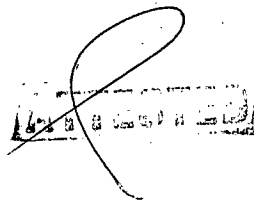
Provided that the Government may designate any private or Government infrastructure in accordance with the objectives of sub-paragraphs (i) and (ii) above, as critical infrastructure as may be prescribed under this Act;

- (xi) "critical infrastructure information system or data" means an information system, program or data that supports or performs a function with respect to a critical infrastructure;
- (xii) "damage to an information system" means any unauthorized change in the ordinary working of an information system that impairs its performance, access, output or change in location whether temporary or permanent and with or without causing any change in the system;

Approved

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- (xiii) "data" includes content data and traffic data;
- (xiv) "data damage" means alteration, deletion, deterioration, erasure, relocation, suppression of data or making data temporarily or permanently unavailable;
- (xv) "device" includes,—
- (a) physical device or article;
 - (b) any electronic or virtual tool that is not in physical form;
 - (c) a password, access code or similar data, in electronic or other form, by which the whole or any part of an information system is capable of being accessed; or
 - (d) automated, self-executing, adaptive or autonomous devices, programs or information systems;
- (xvi) "dishonest intention" means intention to cause injury, wrongful gain or wrongful loss or harm to any person or to create hatred or incitement to violence;
- (xvii) "electronic" includes electrical, digital, magnetic, optical, biometric, electrochemical, electromechanical, wireless or electromagnetic technology;
- (xviii) "identity information" means an information which may authenticate or identify an individual or an information system and enable access to any data or information system;
- (xix) "information" includes text, message, data, voice, sound, database, video, signals, software, computer programmes, any forms of intelligence as defined under the Pakistan Telecommunication (Reorganization) Act, 1996 (XVII of 1996), and codes including object code and source code;
- (xx) "information system" means an electronic system for creating, generating, sending, receiving, storing, reproducing, displaying, recording or processing any information;
- (xxi) "integrity" means, in relation to an electronic document, electronic signature or advanced electronic signature, the electronic document, electronic signature or advanced electronic signature that has not been tampered with, altered or modified since a particular point in time;



- (xxii) "interference with information system or data" means and includes an unauthorized act in relation to an information system or data that may disturb its normal working or form with or without causing any actual damage to such system or data;
- (xxiii) "investigation agency" means the law enforcement agency established by or designated under this Act;
- (xxiv) "minor" means, notwithstanding anything contained in any other law, any person who has not completed the age of eighteen years;
- (xxv) "offence" means an offence punishable under this Act except when committed by a person under ten years of age or by a person above ten years of age and under fourteen years of age, who has not attained sufficient maturity of understanding to judge the nature and consequences of his conduct on that occasion;
- (xxvi) "rules" means rules made under this Act;
- (xxvii) "seize" with respect to an information system or data includes taking possession of such system or data or making and retaining a copy of the data;
- (xxviii) "service provider" includes a person who,—
- (a) acts as a service provider in relation to sending, receiving, storing, processing or distribution of any electronic communication or the provision of other services in relation to electronic communication through an information system;
 - (b) owns, possesses, operates, manages or controls a public switched network or provides telecommunication services; or
 - (c) processes or stores data on behalf of such electronic communication service or users of such service;
- (xxix) "subscriber information" means any information held in any form by a service provider relating to a subscriber other than traffic data;
- (xxx) "traffic data" includes data relating to a communication indicating its origin, destination, route, time, size, duration or type of service;
- (xxxi) "unauthorized access" means access to an information system or data which is not available for access by general public, without authorization or in violation of the terms and conditions of the authorization;

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- (xxxii) "unauthorized interception" shall mean in relation to an information system or data, any interception without authorization; and
- (xxxiii) "unsolicited information" means the information which is sent for commercial and marketing purposes against explicit rejection of the recipient and does not include marketing authorized under the law.

(2) Unless the context provides otherwise, any other expression used in this Act or rules made thereunder but not defined in this Act, shall have the same meanings assigned to the expressions in the Pakistan Penal Code, 1860 (Act XLV of 1860), the Code of Criminal Procedure, 1898 (Act V of 1898) and the Qanoon-e-Shahadat, 1984 (P.O.No.X of 1984), as the case may be.

CHAPTER II

OFFENCES AND PUNISHMENTS

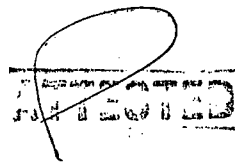
3. Unauthorized access to information system or data.—Whoever with dishonest intention gains unauthorized access to any information system or data shall be punished with imprisonment for a term which may extend to three months or with fine which may extend to fifty thousand rupees or with both.

4. Unauthorized copying or transmission of data.—Whoever with dishonest intention and without authorization copies or otherwise transmits or causes to be transmitted any data shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to one hundred thousand rupees or with both.

5. Interference with information system or data.—Whoever with dishonest intention interferes with or damages or causes to be interfered with or damages any part or whole of an information system or data shall be punished with imprisonment which may extend to two years or with fine which may extend to five hundred thousand rupees or with both.

6. Unauthorized access to critical infrastructure information system or data.—Whoever with dishonest intention gains unauthorized access to any critical infrastructure information system or data shall be punished with imprisonment which may extend to three years or with fine which may extend to one million rupees or with both.

7. Unauthorized copying or transmission of critical infrastructure data.—Whoever with dishonest intention and without authorization copies or otherwise transmits or causes to be transmitted any critical infrastructure data shall be punished with imprisonment for a term which may extend to five years, or with fine which may extend to five million rupees or with both.



8. Interference with critical infrastructure information system or data.—Whoever with dishonest intention interferes with or damages, or causes to be interfered with or damaged, any part or whole of a critical information system, or data, shall be punished with imprisonment which may extend to seven years or with fine which may extend to ten million rupees or with both.

9. Glorification of an offence.—(1) Whoever prepares or disseminates information, through any information system or device, with the intent to glorify an offence relating to terrorism, or any person convicted of a crime relating to terrorism, or activities of proscribed organizations or individuals or groups shall be punished with imprisonment for a term which may extend to seven years or with fine which may extend to ten million rupees or with both.

Explanation.—For the purposes of this section “glorification” includes depiction of any form of praise or celebration in a desirable manner.

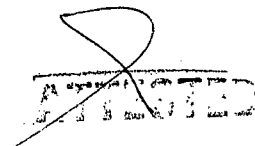
10. Cyber terrorism.—Whoever commits or threatens to commit any of the offences under sections 6, 7, 8 or 9, where the commission or threat is with the intent to,—

- (a) coerce, intimidate, create a sense of fear, panic or insecurity in the Government or the public or a section of the public or community or sect or create a sense of fear or insecurity in society; or
- (b) advance inter-faith, sectarian or ethnic hatred; or
- (c) advance the objectives of organizations or individuals or groups proscribed under the law, shall be punished with imprisonment of either description for a term which may extend to fourteen years or with fine which may extend to fifty million rupees or with both.

11. Hate speech.—Whoever prepares or disseminates information, through any information system or device, that advances or is likely to advance interfaith, sectarian or racial hatred, shall be punished with imprisonment for a term which may extend to seven years or with fine or with both.

12. Recruitment, funding and planning of terrorism.—Whoever prepares or disseminates information, through any information system or device, that invites or motivates to fund, or recruits people for terrorism or plans for terrorism shall be punished with imprisonment for a term which may extend to seven years or with fine or with both.

13. Electronic forgery.—(1) Whoever interferes with or uses any information system, device or data, with the intent to cause damage or injury to the public or to any person, or to make any illegal claim or title or to cause any person to part with property or to enter into any express or implied contract, or



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with intent to commit fraud by any input, alteration, deletion, or suppression of data, resulting in unauthentic data with the intent that it be considered or acted upon for legal purposes as if it were authentic, regardless of the fact that the data is directly readable and intelligible or not, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine which may extend to two hundred and fifty thousand rupees or with both.

(2) Whoever commits offence under sub-section (1) in relation to a critical infrastructure information system or data shall be punished with imprisonment for a term which may extend to seven years or with fine which may extend to five million rupees or with both.

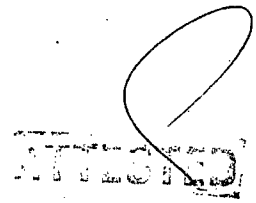
14. Electronic fraud.—Whoever with the intent for wrongful gain interferes with or uses any information system, device or data or induces any person to enter into a relationship or deceives any person, which act or omission is likely to cause damage or harm to that person or any other person shall be punished with imprisonment for a term which may extend to two years or with fine which may extend to ten million rupees or with both.

15. Making, obtaining, or supplying device for use in offence. — Whoever produces, makes, generates, adapts, exports, supplies, offers to supply or imports for use any information system, data or device, with the intent to be used or believing that it is primarily to be used to commit or to assist in the commission of an offence under this Act shall, without prejudice to any other liability that he may incur in this behalf, be punished with imprisonment for a term which may extend to six months or with fine which may extend to fifty thousand rupees or with both.

16. Unauthorized use of identity information.—(1) Whoever obtains, sells, possesses, transmits or uses another person's identity information without authorization shall be punished with imprisonment for a term which may extend to three years or with fine which may extend to five million rupees, or with both.

(2) Any person whose identity information is obtained, sold, possessed, used or transmitted may apply to the Authority for securing, destroying, blocking access or preventing transmission of identity information referred to in sub-section (1) and the Authority on receipt of such application may take such measures as deemed appropriate for securing, destroying or preventing transmission of such identity information.

17. Unauthorized issuance of SIM cards etc.—Whoever sells or otherwise provides subscriber identity module (SIM) card, re-usable identification module (R-IUM) or universal integrated circuit card (UICC) or other module designed for authenticating users to establish connection with the network and to be used in cellular mobile, wireless phone or other digital devices



A handwritten signature in dark ink is written over a rectangular official stamp. The stamp contains some illegible text, possibly a name or title, and a date. The signature is a large, stylized cursive mark.

such as tablets, without obtaining and verification of the subscriber's antecedents in the mode and manner for the time being approved by the Authority shall be punished with imprisonment for a term which may extend to three years or with fine which may extend to five hundred thousand rupees or with both.

18. Tampering, etc. of communication equipment.—Whoever unlawfully or without authorization changes, alters, tampers with or re-programs unique device identifier of any communication equipment including a cellular or wireless handset and starts using or marketing such device for transmitting and receiving information shall be punished with imprisonment which may extend to three years or with fine which may extend to one million rupees or with both.

Explanation.—A “unique device identifier” is an electronic equipment identifier which is unique to a communication device.

19. Unauthorized interception.—Whoever with dishonest intention commits unauthorized interception by technical means of—

- (a) any transmission that is not intended to be and is not open to the public, from or within an information system; or
- (b) electromagnetic emissions from an information system that are carrying data, shall be punished with imprisonment of either description for a term which may extend to two years or with fine which may extend to five hundred thousand rupees or with both.

20. Offences against dignity of a natural person.—(1) Whoever intentionally and publicly exhibits or displays or transmits any information through any information system, which he knows to be false, and intimidates or harms the reputation or privacy of a natural person, shall be punished with imprisonment for a term which may extend to three years or with fine which may extend to one million rupees or with both:

Provided that nothing under this sub-section shall apply to anything aired by a broadcast media or distribution service licensed under the Pakistan Electronic Media Regulatory Authority Ordinance, 2002 (XIII of 2002).

(2) Any aggrieved person or his guardian, where such person is a minor, may apply to the Authority for removal, destruction of or blocking access to such information referred to in sub-section (1) and the Authority on receipt of such application, shall forthwith pass such orders as deemed reasonable in the circumstances including an order for removal, destruction, preventing transmission of or blocking access to such information and the Authority may also direct any of its licensees to secure such information including traffic data.

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21. Offences against modesty of a natural person and minor.—

(1) Whoever intentionally and publicly exhibits or displays or transmits any information which,—

- (a) superimposes a photograph of the face of a natural person over any sexually explicit image or video; or
- (b) includes a photograph or a video of a natural person in sexually explicit conduct; or
- (c) intimidates a natural person with any sexual act, or any sexually explicit image or video of a natural person; or
- (d) cultivates, entices or induces a natural person to engage in a sexually explicit act,

through an information system to harm a natural person or his reputation, or to take revenge, or to create hatred or to blackmail, shall be punished with imprisonment for a term which may extend to five years or with fine which may extend to five million rupees or with both.

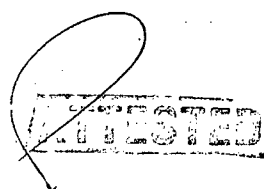
(2) Whoever commits an offence under sub-section (1) with respect to a minor shall be punished with imprisonment for a term which may extend to seven years and with fine which may extend to five million rupees:

Provided that in case of a person who has been previously convicted of an offence under sub-section (1) with respect to a minor shall be punished with imprisonment for a term of ten years and with fine.

(3) Any aggrieved person or his guardian, where such person is a minor, may apply to the Authority for removal, destruction of or blocking access to such information referred to in sub-section (1) and the Authority, on receipt of such application, shall forthwith pass such orders as deemed reasonable in the circumstances including an order for removal, destruction, preventing transmission of or blocking access to such information and the Authority may also direct any of its licensees to secure such information including traffic data.

22. Child pornography.—(1) Whoever intentionally produces, offers or makes available, distributes or transmits through an information system or procures for himself or for another person or without lawful justification possesses material in an information system, that visually depicts—

- (a) a minor engaged in sexually explicit conduct;
- (b) a person appearing to be a minor engaged in sexually explicit conduct; or
- (c) realistic images representing a minor engaged in sexually explicit conduct; or
- (d) discloses the identity of the minor,



shall be punished with imprisonment for a term which may extend to seven years, or with fine which may extend to five million rupees or with both.

(2) Any aggrieved person or his guardian, where such person is a minor, may apply to the Authority for removal, destruction of or blocking access to such information referred to in sub-section (1) and the Authority, on receipt of such application, shall forthwith pass such orders as deemed reasonable in the circumstances, including an order for removal, destruction, preventing transmission of or blocking access to such information and the Authority may also direct any of its licensees to secure such information including traffic data.

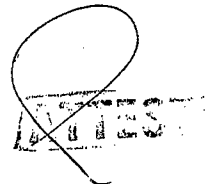
23. Malicious code.—Whoever willfully and without authorization writes, offers, makes available, distributes or transmits malicious code through an information system or device, with intent to cause harm to any information system or data resulting in the corruption, destruction, alteration, suppression, theft or loss of the information system or data shall be punished with imprisonment for a term which may extend to two years or with fine which may extend to one million rupees or with both.

Explanation.—For the purpose of this section, the expression “malicious code” includes, a computer program or a hidden function in a program that damages an information system or data or compromises the performance of such system or availability of data or uses it without proper authorization.

24. Cyber stalking.—(1) A person commits the offence of cyber stalking who, with the intent to coerce or intimidate or harass any person, uses information system, information system network, the Internet, website, electronic mail or any other similar means of communication to—

- (a) follow a person or contacts or attempts to contact such person to foster personal interaction repeatedly despite a clear indication of disinterest by such person;
- (b) monitor the use by a person of the internet, electronic mail, text message or any other form of electronic communication;
- (c) watch or spy upon a person in a manner that results in fear of violence or serious alarm or distress, in the mind of such person; or
- (d) take a photograph or make a video of any person and displays or distributes it without his consent in a manner that harms a person.

(2) Whoever commits the offence specified in sub-section (1) shall be punished with imprisonment for a term which may extend to three years or with fine which may extend to one million rupees or with both:



Provided that if victim of the cyber stalking under sub-section (1) is a minor the punishment may extend to five years or with fine which may extend to ten million rupees or with both.

(3) Any aggrieved person or his guardian, where such person is a minor, may apply to the Authority for removal, destruction of or blocking access to such information referred to in sub-section (1) and the Authority, on receipt of such application, shall forthwith pass such orders as deemed reasonable in the circumstances including an order for removal, destruction, preventing transmission of or blocking access to such information and the Authority may also direct any of its licensees to secure such information including traffic data.

25. Spamming.—(1) A person commits the offence of spamming, who with intent transmits harmful, fraudulent, misleading, illegal or unsolicited information to any person without permission of the recipient or who causes any information system to show any such information for wrongful gain.

(2) A person including an institution or an organization engaged in direct marketing shall provide the option to the recipient of direct marketing to unsubscribe from such marketing.

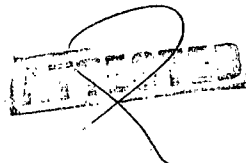
(3) Whoever commits the offence of spamming as described in sub-section (1) by transmitting harmful, fraudulent, misleading or illegal information, shall be punished with imprisonment for a term which may extend to three months or with fine of rupees fifty thousand which may extend upto rupees five million or with both.

(4) Whoever commits the offence of spamming as described in sub-section (1) by transmitting unsolicited information, or engages in direct marketing in violation of sub-section (2), for the first time, shall be punished with fine not exceeding fifty thousand rupees, and for every subsequent violation shall be punished with fine not less than fifty thousand rupees that may extend up to one million rupees.

26. Spoofing.—(1) Whoever with dishonest intention establishes a website or sends any information with a counterfeit source intended to be believed by the recipient or visitor of the website, to be an authentic source commits spoofing.

(2) Whoever commits spoofing shall be punished with imprisonment for a term which may extend to three years or with fine which may extend to five hundred thousand rupees or with both.

27. Legal recognition of offences committed in relation to information system.—(1) Notwithstanding anything contained in any other law for the time being in force, an offence under this Act or any other law shall not be



denied legal recognition and enforcement for the sole reason of such offence being committed in relation to or through the use of an information system.

(2) References to "property" in any law creating an offence in relation to or concerning property, shall include information system and data.

28. Pakistan Penal Code, 1860 (Act XLV of 1860) to apply.—The provisions of the Pakistan Penal Code, 1860 (Act XLV of 1860), to the extent not inconsistent with anything provided in this Act, shall apply to the offences provided in this Act.

CHAPTER III

ESTABLISHMENT OF INVESTIGATION AGENCY AND PROCEDURAL POWERS FOR INVESTIGATION

29. Establishment of investigation agency.—(1) The Federal Government may establish or designate a law enforcement agency as the investigation agency for the purposes of investigation of offences under this Act.

(2) Unless otherwise provided for under this Act, the investigation agency and the authorized officer shall in all matters follow the procedure laid down in the Code to the extent that it is not inconsistent with any provision of this Act.

(3) The investigation agency shall establish its own capacity for forensic analysis of the data or in information systems and the forensic analysis reports generated by the investigation agency shall not be inadmissible in evidence before any court for the sole reason that such reports were generated by the investigation agency.

(4) Notwithstanding provisions of any other law, the Federal Government shall make rules for appointment and promotion in the investigation agency including undertaking of specialized courses in digital forensics, information technology, computer science and other related matters for training of the officers and staff of the investigation agency.

30. Power to investigate.—Only an authorized officer of the investigation agency shall have the powers to investigate an offence under this Act:

Provided that the Federal Government or the Provincial Government may, as the case may be, constitute one or more joint investigation teams comprising of an authorized officer of the investigation agency and any other law enforcement agency for investigation of an offence under this Act and any other law for the time being in force.

31. Expedited preservation and acquisition of data.—(1) If an authorized officer is satisfied that—

- (a) specific data stored in any information system or by means of an information system is reasonably required for the purposes of a criminal investigation; and
- (b) there is a risk or vulnerability that the data may be modified, lost, destroyed or rendered inaccessible,

the authorized officer may, by written notice given to the person in control of the information system, require that person to provide that data or to ensure that the data specified in the notice be preserved and the integrity thereof is maintained for a period not exceeding ninety days as specified in the notice:

Provided that the authorized officer shall immediately but not later than twenty-four hours bring to the notice of the Court, the fact of acquisition of such data and the Court on receipt of such information may pass such orders as deemed appropriate in the circumstances of the case including issuance of warrants for retention of such data or otherwise.

(2) The period provided in sub-section (1) for preservation of data may be extended by the Court if so deemed necessary upon receipt of an application from the authorized officer in this behalf.

32. Retention of traffic data.—(1) A service provider shall, within its existing or required technical capability, retain its specified traffic data for a minimum period of one year or such period as the Authority may notify from time to time and, subject to production of a warrant issued by the Court, provide that data to the investigation agency or the authorized officer whenever so required.

(2) The service providers shall retain the traffic data under sub-section (1) by fulfilling all the requirements of data retention and its originality as provided under sections 5 and 6 of the Electronic Transactions Ordinance, 2002 (LI of 2002).

(3) Any owner of the information system who is not a licensee of the Authority and violates sub-section (1) shall be guilty of an offence punishable, if committed for the first time, with fine which may extend to ten million rupees and upon any subsequent conviction shall be punishable with imprisonment which may extend to six months or with fine or with both:

Provided that where the violation is committed by a licensee of the Authority, the same shall be deemed to be a violation of the terms and conditions of the licensee and shall be treated as such under the Pakistan Telecommunication (Re-organization) Act, 1996 (XVII of 1996).

33. Warrant for search or seizure.—(1) Upon an application by an authorized officer that demonstrates to the satisfaction of the Court that there exist reasonable grounds to believe that there may be in a specified place an information system, data, device or other articles that—

- (a) may reasonably be required for the purpose of a criminal investigation or criminal proceedings which may be material as evidence in proving a specifically identified offence made out under this Act; or
- (b) has been acquired by a person as a result of the commission of an offence, the Court may issue a warrant which shall authorize an officer of the investigation agency, with such assistance as may be necessary, to enter the specified place and to search the premises and any information system, data, device or storage medium relevant to the offence identified in the application and access, seize or similarly secure any information system, data, device or other articles relevant to the offence identified in the application.

(2) In circumstances involving an offence under section 10, under which a warrant may be issued but cannot be obtained without the apprehension of destruction, alteration or loss of data, information system, data, device or other articles required for investigation, the authorized officer, who shall be a Gazetted officer of the investigation agency, may enter the specified place and search the premises and any information system, data, device or other articles relevant to the offence and access, seize or similarly secure any information system, data, device or other articles relevant to the offence:

Provided that the authorized officer shall immediately but not later than twenty-four hours bring to the notice of the Court, the fact of such search or seizure and the Court on receipt of such information may pass such orders as deemed appropriate in the circumstances of the case.

34. Warrant for disclosure of content data.—(1) Upon an application by an authorised officer that demonstrates to the satisfaction of the Court that there exist reasonable grounds to believe that the content data stored in an information system is reasonably required for the purpose of a criminal investigation or criminal proceedings with respect to an offence made out under this Act, the Court may, after recording reasons, order that the person in control of the data or information system, to provide such data or access to such data to the authorized officer.

(2) The period of a warrant issued under sub-section (1) may be extended beyond seven days if, on an application, a Court authorizes an extension for a further period of time as may be specified by the Court.

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35. Powers of an authorized officer.—(1) Subject to provisions of this Act, an authorized officer shall have the powers to—

- (a) have access to and inspect the operation of any specified information system;
- (b) use or cause to be used any specified information system to search any specified data contained in or available to such system;
- (c) obtain and copy only relevant data, use equipment to make copies and obtain an intelligible output from an information system;
- (d) have access to or demand any information in readable and comprehensible format or plain version;
- (e) require any person by whom or on whose behalf the authorized officer has reasonable cause to believe, any information system has been used to grant access to any data within an information system within the control of such person;
- (f) require any person having charge of or otherwise concerned with the operation of any information system to provide him reasonable technical and other assistance as the authorized officer may require for investigation of an offence under this Act; and
- (g) require any person who is in possession of decryption information of an information system, device or data under investigation to grant him access to such data, device or information system in unencrypted or decrypted intelligible format for the purpose of investigating any such offence:

Explanation.—Decryption information means information or technology that enables a person to readily retransform or unscramble encrypted data from its unreadable form and from ciphered data to intelligible data.

(2) In exercise of the power of search and seizure of any information system, program or data the authorized officer at all times shall,—

- (a) act with proportionality;
- (b) take all precautions to maintain integrity and secrecy of the information system and data in respect of which a warrant for search or seizure has been issued;

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- (c) not disrupt or interfere with the integrity or running and operation of any information system or data that is not the subject of the offences identified in the application for which a warrant for search or seizure has been issued;
- (d) avoid disruption to the continued legitimate business operations and the premises subjected to search or seizure under this Act; and
- (e) avoid disruption to any information system, program or data not connected with the information system that is not the subject of the offences identified in the application for which a warrant has been issued or is not necessary for the investigation of the specified offence in respect of which a warrant has been issued.

(3) When seizing or securing any data or information system, the authorized officer shall make all efforts to use technical measures to maintain its integrity and chain of custody. The authorized officer shall seize an information system, data, device or articles, in part or in whole, as a last resort only in the event where it is not possible under the circumstances to use such technical measures or where use of such technical measures by themselves shall not be sufficient to maintain the integrity and chain of custody of the data or information system being seized.

(4) Where an authorized officer seizes or secures any data or information system, the authorized officer shall ensure that data or information system while in the possession or in the access of the authorized officer is not released to any other person including competitors or public at large and details including log of any action performed on the information system or data is maintained in a manner prescribed under this Act.

36. Dealing with seized data or information system.—(1) If any data or information system has been seized or secured following a search or seizure under this Act, the authorized officer who undertook the search or seizure shall, at the time of the seizure,—

- (a) make a list of what has been seized or rendered inaccessible, with the date and time of seizure; and
- (b) give a copy of that list to,—
 - (i) the occupier of the premises; or
 - (ii) the owner of the data or information system; or
 - (iii) the person from whose possession the data or information system has been seized, in a prescribed manner in the presence of two witnesses.

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(2) The authorized officer, upon an application of the owner of the data or information system or an authorized agent of the owner and on payment of prescribed costs, shall provide forensic image of the data or information system to the owner or his authorized agent within a time prescribed under this Act.

(3) If the authorized officer has reasons to believe that providing forensic image of the data or information system to the owner under sub-section (2) may prejudice,—

- (a) the investigation in connection with which the search was carried out; or
- (b) another ongoing investigation; or
- (c) any criminal proceedings that are pending or that may be brought in relation to any of those investigations, the authorized officer shall, within seven days of receipt of the application under sub-section (2), approach the Court for seeking an order not to provide copy of the seized data or information system.

(4) The Court, upon receipt of an application from an authorized officer under sub-section (3), may after recording reasons in writing pass such order as deemed appropriate in the circumstances of the case.

(5) The costs associated with the exercise of rights under this section shall be borne by the person exercising these rights.

37. Unlawful on-line content.—(1) The Authority shall have the power to remove or block or issue directions for removal or blocking of access to an information through any information system if it considers it necessary in the interest of the glory of Islam or the integrity, security or defence of Pakistan or any part thereof, public order, decency or morality, or in relation to contempt of court or commission of or incitement to an offence under this Act.

(2) The Authority shall, with the approval of the Federal Government, prescribe rules providing for, among other matters, safeguards, transparent process and effective oversight mechanism for exercise of powers under sub-section (1).

(3) Until such rules are prescribed under sub-section (2), the Authority shall exercise its powers under this Act or any other law for the time being in force in accordance with the directions issued by the Federal Government not inconsistent with the provisions of this Act.

(4) Any person aggrieved from any order passed by the Authority under sub-section (1), may file an application with the Authority for review of the order within thirty days from the date of passing of the order.

(5) An appeal against the decision of the Authority in review shall lie before the High Court within thirty days of the order of the Authority in review.

38. Limitation of liability of service providers.—(1) No service provider shall be subject to any civil or criminal liability, unless it is established that the service provider had specific actual knowledge and willful intent to proactively and positively participate, and not merely through omission or failure to act, and thereby facilitated, aided or abetted the use by any person of any information system, service, application, online platform or telecommunication system maintained, controlled or managed by the service provider in connection with a contravention of this Act or rules made thereunder or any other law for the time being in force:

Provided that the burden to prove that a service provider had specific actual knowledge, and willful intent to proactively and positively participate in any act that gave rise to any civil or criminal liability shall be upon the person alleging such facts and no interim or final orders, or directions shall be issued with respect to a service provider by any investigation agency or Court unless such facts have so been proved and determined:

Provided further that such allegation and its proof shall clearly identify with specificity the content, material or other aspect with respect to which civil or criminal liability is claimed including but not limited to unique identifiers such as the Account Identification (Account ID), Uniform Resource Locator (URL), Top Level Domain (TLD), Internet Protocol Addresses (IP Addresses), or other unique identifier and clearly state the statutory provision and basis of the claim.

(2) No service provider shall under any circumstance be liable under this Act, rules made thereunder or any other law for maintaining and making available the provision of their service in good faith.

(3) No service provider shall be subject to any civil or criminal liability as a result of informing a subscriber, user or end-users affected by any claim, notice or exercise of any power under this Act, rules made thereunder or any other law:

Provided that the service provider, for a period not exceeding fourteen days, shall keep confidential and not disclose the existence of any investigation or exercise of any power under this Act when a notice to this effect is served upon it by an authorized officer, which period of confidentiality may be extended beyond fourteen days if, on an application by the authorized officer, the Court authorizes an extension for a further specified period upon being satisfied that reasonable cause for such extension exists.

(4) No service provider shall be liable under this Act, rules made thereunder or any other law for the disclosure of any data or other information that the service provider discloses only to the extent of the provisions of this Act.

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(5) No service provider shall be under any obligation to proactively monitor, make inquiries about material or content hosted, cached, routed, relayed, conduit, transmitted or made available by such intermediary or service provider.

39. Real-time collection and recording of information.—(1) If a Court is satisfied on the basis of information furnished by an authorized officer that there are reasonable grounds to believe that the content of any information is reasonably required for the purposes of a specific criminal investigation, the Court may order, with respect to information held by or passing through a service provider, to a designated agency as notified under the Investigation for Fair Trial Act, 2013 (I of 2013) or any other law for the time being in force having capability to collect real time information, to collect or record such information in real-time in coordination with the investigation agency for provision in the prescribed manner:

Provided that such real-time collection or recording shall not be ordered for a period beyond what is absolutely necessary and in any event for not more than seven days.

(2) Notwithstanding anything contained in any law to the contrary the information so collected under sub-section (1) shall be admissible in evidence.

(3) The period of real-time collection or recording may be extended beyond seven days if, on an application, the Court authorizes an extension for a further specified period.

(4) The Court may also require the designated agency to keep confidential the fact of the execution of any power provided for in this section and any information relating to it.

(5) The application under sub-sections (1) and (2) shall in addition to substantive grounds and reasons also,—

- (a) explain why it is believed that the data sought will be available with the person in control of an information system;
- (b) identify and explain with specificity the type of information likely to be found on such information system;
- (c) identify and explain with specificity the identified offence made out under this Act in respect of which the warrant is sought;
- (d) if authority to seek real-time collection or recording on more than one occasion is needed, explain why and how many further disclosures are needed to achieve the purpose for which the warrant is to be issued;

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- (e) specify what measures shall be taken to prepare and ensure that the real-time collection or recording is carried out whilst maintaining the privacy of other users, customers and third parties and without the disclosure of information of any person not part of the investigation;
- (f) explain why the investigation may be frustrated or seriously prejudiced unless the real time collection or recording is permitted; and
- (g) why, to achieve the purpose for which the warrant is being applied, real time collection or recording by the person in control of the information system is necessary.

40. Forensic laboratory.—The Federal Government shall establish or designate a forensic laboratory, independent of the investigation agency, to provide expert opinion before the Court or for the benefit of the investigation agency in relation to electronic evidence collected for purposes of investigation and prosecution of offences under this Act.

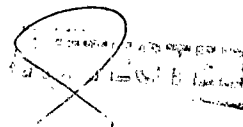
41. Confidentiality of information.—Notwithstanding immunity granted under any other law for the time being in force, any person including a service provider while providing services under the terms of lawful contract or otherwise in accordance with the law, or an authorized officer who has secured access to any material or data containing personal information about another person, discloses such material to any other person, except when required by law, without the consent of the person concerned or in breach of lawful contract with the intent to cause or knowing that he is likely to cause harm, wrongful loss or gain to any person or compromise confidentiality of such material or data shall be punished with imprisonment for a term which may extend to three years or with fine which may extend to one million rupees or with both:

Provided that the burden of proof of any defense taken by an accused service provider or an authorized officer that he was acting in good faith, shall be on such a service provider or the authorized officer, as the case may be.

CHAPTER IV

INTERNATIONAL COOPERATION

42. International cooperation.—(1) The Federal Government may upon receipt of a request, through the designated agency under this Act, extend such cooperation to any foreign government, 24 x 7 network, any foreign agency or any international organization or agency for the purposes of investigations or proceedings concerning offences related to information systems, electronic



communication or data or for the collection of evidence in electronic form relating to an offence or obtaining expeditious preservation and disclosure of data by means of an information system or real-time collection of data associated with specified communications or interception of data under this Act.

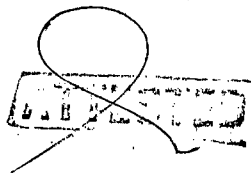
(2) The Federal Government may forward to a foreign government, 24x7 network, any foreign agency or any international agency or organization any information obtained from its own investigations if it considers that the disclosure of such information might assist the other government, agency or organization etc., as the case be, in initiating or carrying out investigations or proceedings concerning any offence under this Act.

(3) The Federal Government shall require the foreign government, 24 x 7 network, any foreign agency or any international organization or agency to keep the information provided confidential and use it strictly for the purposes it is provided.

(4) The Federal Government may, through the designated agency, send and answer requests for mutual assistance the execution of such requests or their transmission to the authorities competent for their execution.

(5) The Federal Government may refuse to accede to any request made by a foreign government, 24 x 7 network, any foreign agency or any international organization or agency, if,—

- (a) it is of the opinion that the request, if granted, would prejudice sovereignty, security, public order or other essential public interest of Pakistan;
- (b) the offence is regarded by the Federal Government as being of a political nature;
- (c) there are substantial grounds for believing that the request for assistance has been made for the purpose of prosecuting a person on account of that person's race, sex, religion, nationality, ethnic origin or political opinions or that that person's position may be prejudiced for any of those reasons;
- (d) the request relates to an offence the prosecution of which in the requesting State may be incompatible with the laws of Pakistan;
- (e) the assistance requested requires the Federal Government to carry out compulsory measures that may be inconsistent with the laws or practices of Pakistan had the offence been the subject of investigation or prosecution under its own jurisdiction; or



(f) the request concerns an offence which may prejudice an ongoing investigation or trial or rights of its citizens guaranteed under the Constitution.

(6) Where the Federal Government decides to provide the requested cooperation, the relevant requirements and safeguards provided under this Act and rules framed thereunder shall be followed.

(7) The designated agency shall maintain a register of requests received from any foreign government, 24 x 7 network, any foreign agency or any international organization or agency under this Act and action taken thereon.

CHAPTER - V

PROSECUTION AND TRIAL OF OFFENCES

43. Offences to be compoundable and non-cognizable.—(1) All offences under this Act, except the offences under sections 10, 21 and 22 and abetment thereof, shall be non-cognizable, bailable and compoundable:

Provided that offences under section 17 shall be cognizable by the investigation agency on a written complaint by the Authority.

(2) Offences under sections 10, 21 and 22 and abetment thereof shall be non-bailable, non-compoundable and cognizable by the investigation agency.

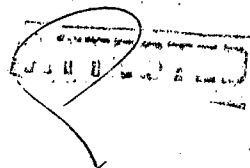
44. Cognizance and trial of offences.—(1) The Federal Government, in consultation with the Chief Justice of respective High Court, shall designate presiding officers of the Courts to try offences under this Act at such places as deemed necessary.

(2) The Federal Government shall, in consultation with the Chief Justice of respective High Court, arrange for special training of the presiding officers of the Court to be conducted by an entity notified by the Federal Government for training on computer sciences, cyber forensics, electronic transactions and data protection.

(3) Prosecution and trial of an offence under this Act committed by a minor shall be conducted under the Juvenile Justice System Ordinance, 2000 (XXII of 2000).

(4) To the extent not inconsistent with this Act, the procedure laid down under the Code and the Qanoon-e-Shahadat, 1984 (P.O.No.X of 1984), shall be followed.

45. Order for payment of compensation.—(1) The Court may, in addition to award of any punishment including fine under this Act, make an order for payment of compensation to the victim for any damage or loss caused and the compensation so awarded shall be recoverable as arrears of land revenue:



Provided that the compensation awarded by the Court shall not prejudice any right to a civil remedy for the recovery of damages beyond the amount of compensation so awarded.

46. Appointment of amicus curiae and seeking expert opinion.—The Court may appoint *amicus curiae* or seek independent expert opinion on any matter connected with a case pending before it.

47. Appeal.—An appeal against the final judgment or order of a Court shall, within thirty days from the date of provision of its certified copy free of cost, lie—

- (a) to the High Court concerned against such judgment or order if passed by a court of sessions; or
- (b) to the court of sessions concerned against such judgment or order if passed by a magistrate.

CHAPTER VI

PREVENTIVE MEASURES

48. Prevention of electronic crimes.—(1) The Federal Government or the Authority, as the case may be, may issue directives to be followed by the owners of the designated information systems or service providers in the interest of preventing any offence under this Act.

(2) Any owner of the information system who is not a licensee of the Authority and violates the directives issued under sub-section (1) shall be guilty of an offence punishable, if committed for the first time, with fine which may extend to ten million rupees and upon any subsequent conviction shall be punishable with imprisonment which may extend to six months or with fine or with both:

Provided that where the violation is committed by a licensee of the Authority, the same shall be deemed to be a violation of the terms and conditions of the licensee and shall be treated as such under the Pakistan Telecommunication (Re-organization) Act, 1996.

49. Computer emergency response teams.—(1) The Federal Government may constitute one or more computer emergency response teams to respond to any threat against or attack on any critical infrastructure information systems or critical infrastructure data, or widespread attack on information systems in Pakistan.

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(2) A computer emergency response team constituted under sub-section (1) may comprise of technical experts of known expertise officers of any intelligence or agency or any sub-set thereof.

(3) A computer emergency response team shall respond to a threat or attack without causing any undue hindrance or inconvenience to the use and access of the information system or data as may be prescribed.

CHAPTER VII

MISCELLANEOUS

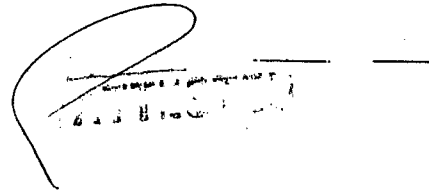
50. Relation of the Act with other laws.—(1) The provisions of this Act shall have effect not in derogation of the Pakistan Penal Code, 1860 (Act XLV of 1860), the Code of Criminal Procedure, 1898 (Act V of 1898), the Qanoon-e-Shahadat, 1984 (P.O. No. X of 1984), the Protection of Pakistan Act, 2014 (X of 2014) and the Investigation for Fair Trial Act, 2013 (I of 2013).

(2) Subject to sub-section (1), the provisions of this Act shall have effect notwithstanding anything to the contrary contained in any other law on the subject for the time being in force.

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

(2) Without prejudice to the generality of the foregoing powers, such rules may specify,—

- (a) qualifications and trainings of the officers and staff of the investigation agency and prosecutors;
- (b) powers, functions and responsibilities of the investigation agency, its officers and prosecutors;
- (c) standard , operating procedures of the investigation agency;
- (d) mode and manner in which record of investigation under this Act may be maintained;
- (e) manner to deal with the seized data, information system, device or other articles;
- (f) working of joint investigation teams;

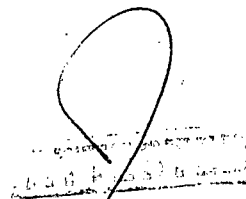
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- (g) requirements for seeking permission of the Authority to change, alter or re-programme unique device identifier of any communication equipment by any person for research or any other legitimate purpose;
- (h) procedure for seeking appropriate orders of the Authority for removal, destruction or blocking access to information under this Act;
- (i) constitution of computer emergency response team and the standard operating procedure to be adopted by such team;
- (j) appointment of designated agency having capability to collect real time information;
- (k) manner of coordination between the investigation agency and other law enforcement and intelligence agencies including designated agency;
- (l) for management and oversight of the forensic laboratory;
- (m) qualifications and trainings of the officers, experts and staff of the forensic laboratory;
- (n) powers, functions and responsibilities of the forensic laboratory, its officers, experts and staff;
- (o) standard operating procedures of the forensic laboratory to interact with the investigation agency;
- (p) manner of soliciting and extending international cooperation; and
- (q) matters connected or ancillary thereto.

52. Removal of difficulties.—If any difficulty arises in giving effect to the provisions of this Act, the Federal Government may, within two years of the commencement of this Act and by order published in the official Gazette, make such provisions not inconsistent with the provisions of this Act as may appear to be necessary for removing the difficulty.

53. Report to Parliament.—The agency designated or established under section 29 of the Act shall submit a half yearly report to both houses of the Parliament for consideration by the relevant Committee in camera, in respect of its activities, without disclosing identity information, in a manner as prescribed under this Act.



54. Amendment of Electronic Transactions Ordinance, 2002 (LI of 2002) and pending proceedings.—(1) Sections 36 and 37 of the Electronic Transactions Ordinance, 2002 (LI of 2002) are omitted.

(2) Any action taken by or with the approval of the Authority or proceedings pending under the provisions of the Electronic Transactions Ordinance, 2002 (LI of 2002) repealed by sub-section (1), shall continue and be deemed to have been taken or initiated under this Act.

55. Savings of powers.—Nothing in this Act shall affect, limit or prejudice the duly authorized and lawful powers and functions of the institutions controlled by the Governments exercised and performed in good faith.

ACT NO. XLI OF 2016

An Act further to amend the Banks (Nationalization) Act, 1974

WHEREAS it is expedient further to amend the Banks (Nationalization) Act, 1974 (XIX of 1974), for the purposes hereinafter appearing;

AND WHEREAS the Supreme Court of Pakistan in a case reported as 'Muhammad Idris vs Federation of Pakistan, PLD 2011 SC 213' held that the amendments in question in section 11 of the Banks (Nationalization) Act, 1974, did not fall within the ambit of sub-clause (a) to (g) of clause (2) of Article 73 of the Constitution thus could not have been introduced by way of Finance Act, 2007;

It is hereby enacted as follows:—

1. Short title and commencement.—This Act may be called the Banks (Nationalization) (Amendment) Act, 2016.

(2) It shall come into force at once and shall be deemed to have taken effect on the 1st July, 2007.

2. Amendment of section 11, Act XIX of 1974.—In the Banks (Nationalization) Act, 1974 (XIX of 1974), in section 11,—

(a) in sub-section (1), for clause (b), the following shall be substituted, namely:—

“(b) not less than five and not more than seven other members including one or more directors whose election by the private shareholders, removal and other matters shall be governed by the Companies Ordinance, 1984 (XLVII of 1984).” ;and

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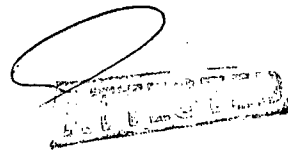
(b) in sub-section (3),—

(i) after the word "Board", the words "representing the Federal Government's direct and indirect shareholding", shall be added; and

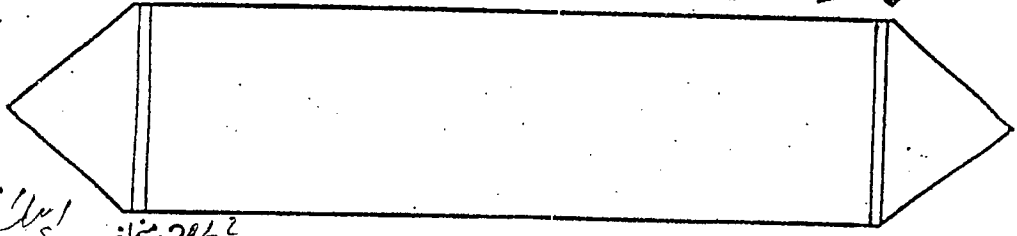
(ii) for clause (d), the following shall be substituted, namely:—

"(d) may be re-appointed for second and final term by the Federal Government, in consultation with the State Bank of Pakistan, for a further period of three years."

ABDUL JABBAR ALI,
Secretary.

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بعدالت



2012ء منجانب ایسٹرن

روٹنڈی سٹیٹ بینک

موزخہ
مقدمہ
دعویٰ
جرم

باعث تحریر آنکھ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیری دی وہ جواب دہی وکل کاروائی متعلقہ،
آن مقام کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز
وکیل صاحب کو راضی نامہ کرنے و تقرر ثالثہ فیصلہ برحلف دیئے جواب دہی اور اقبال دعویٰ اور
بصورت ڈگری کرنے اجراء اور صولی چیک و روپیہ ارضی دعویٰ اور درخواست ہر قسم کی تصدیق
زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی
نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور
کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار
ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ باختیارات حاصل ہوں گے اور اس کا ساختہ
پرواختہ منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ دہر جانہ التوائے مقدمہ کے سبب سے دہوگا۔
کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی
مذکورہ کریں۔ لہذا وکالت نامہ لکھ دیا کہ سند ہے۔

المرقوم 16 ماہ 5 مئی 2012ء

واہ العباد

کے لئے منظور ہے۔

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بمقام

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