

# THE KHYBER PAKHTUNKHWA CHARITIES ACT, 2019

(KHYBER PAKHTUNKHWA ACT NO. XXIX OF 2019)

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# THE KHYBER PAKHTUNKHWA CHARITIES ACT, 2019

(KHYBER PAKHTUNKHWA ACT NO. XXIX OF 2019)

(First published after having received the assent of the Governor of the Khyber Pakhtunkhwa in the Gazette of the Khyber Pakhtunkhwa, (Extraordinary), dated the 31<sup>st</sup> July, 2019).

AN

ACT

to register and regulate charities and

collection of charitable funds.

It is necessary to make effective provisions for the registration, administration and regulation of charities, fund-raising appeals and collection of charitable funds for charities and other institutions and for matters incidental thereto;

1. Short title, extent and commencement—(1) This Act may be called the Khyber Pakhtunkhwa Charities Act, 2019.

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

(3) It shall come into force at once.

2. Definitions.—In this Act, unless the context otherwise provides,-

(a) “Assistant Commissioner” means the executive officer in charge of a tehsil;

(b) “charitable fund” includes the money and goods, collected for a limited period of time, for charitable purpose by a person or organization not registered as a charity;

(c) “charitable purpose” means the purpose which is for-

(i)

(ai)

(iii)

(iv)

(v)

(vi)

(vii)

(viii)

prevention and relief of poverty;  
promotion of education and learning;  
provision of health and lifesaving services;  
community development;

promotion of arts, culture and heritage;

promotion of human rights, conflict resolution  
reconciliation activities;

promotion of religious and racial harmony;

promotion of diversity and tolerance;

and

(d)

(e)

(f)

(g)

(h)

(ix) — environmental protection and environmental improvement;

(x) relief of those in need of it by reason of youth, age, ill health, or disability; and

(xi) such other purposes as the Commission may determine from

time to time;

“charity” means any association of persons, which is established for a charitable purpose and includes the following:

(i) an organization registered under the Voluntary Social Welfare Agencies (Registration and Control) Ordinance, 1961 (XLVI of 1961);

(ii) an organization registered under the Societies Registration Act, 1860 (XXI of 1860);

(iii) | an organization registered under the Companies Act, 2017 (XIX of 2017);

(iv) a public or private trust.

(v) an organization registered for charitable purposes under any law for the time being in force; and

“charity trustee” means the person or persons having the general administration, control and management of a charity;

“collection” means appealing for, receiving, collecting or attempting to collect any donations whether in money or in kind;

“collector” means a person actually engaged in collecting donations for a charitable purposes;

“Commission” means the Commission established under section 3 of this Act;

“declaration” means a declaration made by the charity or promoter of a charitable fund, stating:

(i) the names and addresses of the charity or promoter or promoters of the charitable fund;

(ii) the proposed value of the donation;

(iii) | the names and addresses of the collectors of the charitable fund;

(iv) the names and addresses of the recipients of the charitable fund;

(v) the objects and purposes for which the charitable fund shall be utilized;

(vi) | the names of the banks or the persons in whose custody the collection shall be kept; and

(vii) any other prescribed information;

Gj) “Deputy Commissioner” means the Deputy Commissioner of the district concerned, appointed under the Land Revenue Act, 1967 (Act No. XVII of 1967);

(ik) “Government” means Government of the Khyber Pakhtunkhwa;

() “prescribed” means prescribed by the rules or regulations;

(m) “promoter” means a person, other than a charity, responsible for

collection, custody, administration and accounting of the donations for a charitable fund or a charitable purpose;

(n) “recipient” means an individual, institution, association or society undertaking for whose benefit a charitable fund shall be collected;

(0) “registering authority” means the registering authority, mentioned in section '[18] of this Act;

(p) “regulations” mean regulations made under this Act;

(q) “rules” mean rules made under this Act; and

(r) “sanctioning authority” means the authority, mentioned in section 119] of this Act.

3. The Commission—(1) Government shall, by notification, established a Commission

to be known as the Charitable Commission, which shall consist of not less than three and not more than five Commissioners including the Chairperson.

(2) A Commissioner shall be a person who is known for integrity, expertise, experience and eminence in the field of law, administration, social work or any other related field.

(3) Government may appoint the Commissioners from amongst serving or retired civil servants, retired judges and private sector preferably from the youth on such terms and conditions as may be prescribed and until so prescribed as it may determine.

(4) Subject to the provisions of this Act, the Commission shall discharge its functions, exercise its powers and conduct its proceedings in the prescribed manner and until so prescribed in the manner as the Commission may determine.

(5) The term of the office of the Commissioner shall be two years.

(6) A Commissioner shall perform such functions as may be prescribed or

assigned to him by the Commission.

4. Chairperson of the Commission.(1) Government shall appoint one of the Commissioners as the Chairperson of the Commission but a Commissioner shall not be appointed as Chairperson for more than two consecutive terms.

(2) The Chairperson and the Commissioners shall be responsible for the due discharge of the mandate of the Commission.

' The figure “17” substituted by Khyber Pakhtunkhwa Act No. XIX of 2020.

\* The figure “18” substituted by Khyber Pakhtunkhwa Act No. XIX of 2020.

5. Functions of the Commission.—(1) The Commission shall perform such functions as may be necessary for accomplishing the purposes of this Act.

(2) Without prejudice to the generality of the foregoing powers, the Commission

shall-

(a) maintain public trust and confidence in charities;

(b) issue guidance and directions to the registering authority while registering the charities;

(c) protect charities and the beneficiaries thereof;

(d) ensure that charities and promoters comply with their legal obligations in exercising control and management of the administration of the charitable funds;

(e) issue necessary advice to the charities and charity trustees;

(f) ensure effective use of charitable funds;

(g) institute a mechanism for effective monitoring and accountability of charities, promoters, collectors and recipients;

(h) hold, if necessary, an enquiry into the affairs of a charity or charitable fund;

(i) alter or set aside sanction of collection accorded by the Deputy Commissioner;

Gj) receive and examine annual audit report of a charity or charitable fund;

(k) conduct or cause to be conducted a special audit of a charity or charitable fund;

(l) issue guidelines for proper accounting, management and utilization of a charity or charitable fund;

(m) issue such directions to the Deputy Commissioners and Assistant Commissioners as may be necessary for the due discharge of the functions under this Act; and

(n) perform such other related functions as Government may assign to it.

6. Chief Executive Officer—(1) Government shall, in consultation with the

Commission, appoint the Chief Executive Officer of the Commission on such terms and conditions as may be prescribed and until so prescribed as the Government may determine.

(2) The Chief Executive Officer shall be responsible for the day to day administration of the Commission and shall perform such other functions as may be prescribed or assigned by the Commission.

7. Power to call for record of charities, etc—(1) The Commission may call for any

record, data or information about a charity, a charity trustee, the beneficiaries, recipient, promoters, a charitable fund and expenditure on charity by a corporate entity.

(2) The Commission may seek verification of the financial records from financial institutions and may utilize the services of a law enforcing agency for the purpose.

8. Power to appoint charity trustee—(1) Each charity shall be assisted by a charity trustee to run its affairs, general administration, management and control. If a charity fails to appoint a charity trustee, during such a period as may be prescribed the Commission shall have the power to appoint such charity trustee, in the best public interest.

(2) The charity shall have the power to terminate the services of a charity trustee if-

(a) he has been convicted of an offence involving moral turpitude, dishonesty or deception;

(b) he has been adjudged bankrupt; or

(c) his conduct is so detrimental as to cause the charity owing to mismanagement or other reasons as may be determined by a Court of competent jurisdiction or the Commission, as the case may be.

(3) The Commission shall, by exercising the powers under sub-section (1), provide an opportunity of defence and hearing to the charity or the person likely to be affected by the decision of the Commission.

9. Enquiry.—(1) The Commission, on its own motion or on receipt of a request from the Government or a complaint from any person, may hold an enquiry into the affairs of a charity to ascertain whether any charitable funds have been misused, misapplied, misappropriated or there is any breach of trust.

(2) If as a result of enquiry, under sub-section (1), the Commission finds that an offence has been committed under any law or any trust has been breached, it may move a reference to Government to proceed further in the manner in accordance with such law for the time being in force.

10. Employees.—(1) The Commission may, from time to time, employ persons to assist the Commission in the performance of its functions.

(2) The employees of the Commission shall be paid such remuneration and allowances and shall hold their employment on such terms and conditions as may be prescribed.

11. Appointment of advisers, consultants etc —The Commission may, with the approval of Government, employ such consultants, technical professionals or advisers as may be necessary for the due discharge of its functions under this Act, on such terms and conditions as may be prescribed and until so prescribed, as Government may determine.

12. Charities to be registered—(1) Every charity shall get itself registered with the registering authority not later than such date as Government may, by notification, determine.

(2) A charity shall not collect charitable funds or seek collection the charitable funds unless it is registered under this Act.

13. Exemption.—Government may, after recording reasons, exempt charity from the provisions of section 12 of this Act: provided that a charity which is not registered as a non-profitable company shall not be so exempted.

14. Register of charities—(1) The Commission shall maintain a register of charities in such manner as may be prescribed and until so prescribed as the Commission may determine.

(2) The register of charities shall contain the name of every charity so registered and such other particulars and information relating to a charity as may be prescribed or as the Commission may determine, as the case may be.

15. Application for registration—(1) Every charity, required to be registered under this Act, shall provide to the registering authority the information regarding the objectives of the charity, the source or sources of income of the charity and the nature of its spending and such other documents or information as may be prescribed.

(2) The registering authority may, for reasons to be recorded in writing, refuse registration of a charity if in its opinion the objects of such charity, stated in declaration, are not in consonance with the charitable purpose or for any other reasonable cause.

16. Registration to be public document.—(1) The register of charities shall be a public document and shall be open to public inspection at all reasonable times.

(2) A person may obtain copies of particulars of register of charities or documents supplied by a charity subject to payment of such fee as may be prescribed:

Provided that no information shall be provided if it relates to the integrity of Pakistan or any matter ancillary thereto.

(3) The Commission shall publish on its website such information in the register of charities as may be necessary to create general awareness about the work and conduct of charities:

Provided that such information shall not contain any material which are detrimental to the integrity of Pakistan.

17. Cancellation of registration—The Commission may, after affording an opportunity of hearing, suspend or cancel the registration of a charity if the Commission is satisfied that-

(a) the charity is not furthering any charitable purpose;

(b) the charity has committed a serious violation of the provisions of this Act or the rules; or

(c) the Commission is of the view that such charity is endangering the solidarity of Pakistan.

18. Registering authority—For the purpose of registration of charity, under this Act, the following are the registering authority:

(a) the Commission, in case the operation of a charity extends to the whole of the Khyber Pakhtunkhwa Province or two or more districts, as the case may be;

(b) The Deputy Commissioner, when the operation of a charity extends to the limits of a district; and

(c) the Assistant Commissioner when the operation of the charity extends to a tehsil.

19. Sanctioning authority—For the purpose of sanctioning and collection of charitable

funds, the following shall be the sanctioning authority:

(a) the Commission, if the collection of charitable fund is to be made from whole of the Khyber Pakhtunkhwa Province or two or more districts, as the case may be;

(b) the Deputy Commissioner, if the collection of charitable fund is made from within the district; and

(c) the Assistant Commissioner, if such collection is from within the tehsil.

20. Prohibition on collection —(1) A promoter shall not make or solicit collection for any

charitable fund unless before the start of the collection, he makes a declaration in respect of the intended collection and delivers the declaration to the sanctioning authority, and the sanctioning authority sanctions, in writing, the collection.

(2) The sanctioning authority may refuse to sanction the collection of charitable fund under this section if it is not satisfied with regard to good faith of the promoter or persons proposing to make the collection, or if the authority is not satisfied with regard to the proper custody of the charitable fund or the due administration of such fund for the purpose for which it is to be collected.

(3) The sanctioning authority may sanction the collection of charitable fund subject to such conditions as it may consider necessary for ensuring the proper custody of the charitable fund and its due administration and utilization for the objects and purposes of the charitable fund.

(4) If the sanctioning authority sanctions the collection, it shall issue or cause to be issued a certificate for a specified period, to the promoter in such form and in such manner as the Commission may, by regulations, prescribe, authorizing him to make the collection through identified collectors and for identified recipients.

(5) The Commission or the Deputy Commissioner may, being sanctioning authorities, alter or set aside a sanction of collection, accorded by the Deputy Commissioner in the district or Assistant Commissioner in a tehsil, as the case may be.

(6) The Commission or the Deputy Commissioner may, as the case may be, being registering authority, may issue such directions to the Deputy Commissioner or the Assistant Commissioner, as the case may be, as may be necessary for achieving the objectives of this Act.

21. Periodic evaluation of charities—The Commission shall undertake a periodic evaluation of the charities to review the performance of the charity trustees under this Act.

22. Administrative actions.—(1) If, after evaluation or audit, the Commission is satisfied that any charity has failed to comply with the obligations, envisaged under this Act, the Commission may suspend or cancel the registration of that charity and impose such fine, on such charity, as it may deem appropriate, but shall not be increased the limits as specified in section 28 of this Act.

(2) The Commission shall not take any action under sub-section (1) unless the charity is afforded a reasonable opportunity of hearing and showing cause against the proposed action.

23. Reports.—The Commission shall, from time to time, publish reports, highlighting the areas of operations carried out by the Commission and other administrative actions taken during the period under report.

24. Obligations of charity trustees.—A charity trustee shall:

(a) comply with the terms and conditions of the governing instrument which envisages the establishment of the charity trustee with the relevant authority;

(b) co-ordinate with the other charities, operating in the respective domain, for purposes of consolidated efforts at achieving the objectives and targets under this Act;

(c) immediately inform the Commission about any change in the constituent document of the charity;

(d) controlling the assets of the charity;

(e) protection, proper investment and utilization of the charitable fund;

(f) ensuring that the charitable funds are not used for any purpose other than the declared purpose;

(g) ensuring that the charitable funds or property is not misused or allowed to go waste as a result of mismanagement or for any other reasons;

(h) the sale, lease or other disposal of the property relating to charity and its insurance; and

(i) ensuring that no unnecessary encumbrances are created on the property of charity.

25. Accounting records of a charity—(1) The charity trustees shall ensure that accurate accounting records are maintained in respect of the charity, which shall be preserved for such period as may be prescribed.

(2) The accounting records shall mention all the transactions of the charity and shall also reflect on the financial position of the charity.

(3) The accounting records shall contain-

(a) entries pertaining to all sums of money received and expended by the charity each day;



- (b) matters in respect of which the receipt and expenditure takes place; and
- (c) the details of assets and liabilities of the charity.
- (4) The charity trustee shall prepare annual statement of accounts.

(5) If the amount given to a charity in a calendar month exceeds fifty thousand rupees, the charity shall deposit the amount in a dedicated bank account and shall provide information of the bank account to the sanctioning authority.

26. Audit and inspection—(1) The sanctioning authority may, for reasons to be recorded, direct that the accounts of a charity shall be audited or re-audited by a specified auditor at the expense of the charity or the person who has applied for the special audit of the charity.

(2) The sanctioning authority may inspect or cause to be inspected any accounts maintained under this Act or the rules.

27. Misapplication of funds—(1) A charity, promoter, collector or recipient of a charitable fund shall not use the fund for any purpose or object other than the purpose or object for which it was collected except with the prior permission of the Commission.

(2) A person authorized to hold charitable fund shall not transfer the custody of charitable fund to any other person except with the prior approval, in writing, of the sanctioning authority.

(3) If any part of any donations, collected for any charitable fund, is used for any purpose or object other than that for which it was collected, or is otherwise misused, misapplied or misappropriated in any manner, every person concerned with the collection or administration of the charity fund, whether as a promoter, collector or a recipient, shall unless he proves that the misuse, misapplication or misappropriation occurred without his knowledge and that he had used all due diligence to prevent such misuse, misapplication or misappropriation, shall be deemed to have committed the misuse, misapplication or misappropriation of the charitable fund.

28. Penalty—(1) Any person who dishonestly or fraudulently tampers with, conceals or destroys any records pertaining to the collection of any charitable fund to which this Act applies or violates the provisions of this Act, shall be deemed to have been committed an offence under this Act.

(2) A person, who contravenes any provision of this Act or the rules or of any order made, direction given or condition imposed under this Act, shall be liable to imprisonment for a term which may extend to six months but shall not be less than fifteen days and fine which may extend to rupees one hundred thousand but shall not be less than rupees twenty-five thousands.

(3) The Magistrate of First Class, trying an offence under this Act, may order the confiscation or recovery of any fund wrongfully collected, misused, misapplied or misappropriate by any person in contravention of this Act.

29. Cognizance of offence and summary trial—(1) An offence under this Act shall be cognizable and non-bailable.

(2) A Magistrate of the First Class shall conduct the trial of an offence under this Act in accordance with the provisions of Chapter XXII of the Code of Criminal Procedure, 1898 (V of 1898), relating to the summary trials.

30. Compounding of offence—The Commission or any person specifically authorized in this behalf by the Commission may, at any stage, compound an offence under this Act, subject to the deposit of administrative penalty which may be to the extent, as specified in sub-section (2) of section 28 of this Act:

Provided that the offence under this Act shall not be compoundable if the accused had been previously convicted under this Act or his previous offence had been compounded by the Commission or the officer authorized by the Commission.

31. | Appeal—(1) Any person aggrieved by an order or direction of the Commission, registering authority or sanctioning authority, as the case may be, may, within thirty days of the order, prefer an appeal to the Appellate Committee, constituted by Government, by notification, consisting of the Chairperson and such members as it may determine.

(2) The Appellate Committee shall perform such functions and exercise such powers as may be prescribed and until so prescribed by conduct of procedure made by the Appellate Committee.

32. Application of other laws—The provisions of this Act shall be in addition to and not in derogation from any other relevant law, for the time being in force.

33. Indemnity.—No prosecution, suit or other legal proceedings shall be instituted against any person in respect of anything which is, in good faith, done or intended to be done under this Act.

34. Revision.— Subject to section 35, Government may, at any time, on its own motion or on the application of any aggrieved person, revise any decision or direction of the Commission, registering authority, sanctioning authority or Appellate Committee and pass such order in accordance with this Act as it may deem proper.

35. Power to make rules—(1) Government may, by notification, make rules to carry out the purposes of this Act.

(2) Without prejudice to the generality of the foregoing powers, the rules may provide for-

(a) the form and contents of declarations and the verification of statements made in a declaration;

(b) the period for which declarations shall remain in force and the manner in which the period may be extended or terminated;

(c) the form and manner in which receipts for donations may be given and the maintenance of proper vouchers for purposes of the accounts;

(d) the maintenance of proper books of account and the auditing of the accounts;

- (e) the periodical submission of statements of accounts;
- (f) the supervision, inspection and examination of accounts; and
- (g) the payment of charges for forms of declarations and certificates.

36. Power to make regulations.—Subject to this Act and the rules, the Commission may, by notification, make regulations to give effect to the provisions of this Act.

37. Repeal and savings.—(1) The Charitable Funds (Regulation of Collections) Act, 1953 (XXXI of 1953) to the extent of this Province, is hereby repealed.

(2) Notwithstanding the repeal of the Charitable Funds (Regulation of Collections) Act, 1953 (XXXI of 1953), under sub-section (1), anything done, action taken, order made and direction issued, under the repealed Act, shall have the effect as if thing is done, taken, made and issued under this Act.