

THE KHYBER PAKHTUNKHWA DOMESTIC VIOLENCE AGAINST WOMEN

(PREVENTION AND PROTECTION) ACT, 2021

(KHYBER PAKHTUNKHWA ACT NO. III OF 2021)

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THE KHYBER PAKHTUNKHWA DOMESTIC VIOLENCE AGAINST WOMEN
(PREVENTION AND PROTECTION) ACT, 2021

(KHYBER PAKHTUNKHWA ACT NO. III OF 2021)

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Khyber Pakhtunkhwa in the Gazette of the Khyber Pakhtunkhwa,
(Extraordinary), dated the 08th February, 2020).

AN
ACT

to curb the menace of Domestic Violence against Women in
the Province of Khyber Pakhtunkhwa.

WHEREAS, Article 25 of the Constitution of the Islamic Republic of Pakistan while
guaranteeing general equality, enable the state to make any special provision for the
protection of Women;

AND WHEREAS, it is expedient to provide for prevention of Domestic Violence
against Women in order to protect women from sexual abuse, psychological abuse, economic
abuse and stalking and for the matters connected herewith and ancillary there to;

It is hereby enacted by Provincial Assembly of Khyber Pakhtunkhwa as follows:

1. Short title, extent and commencement.---(1) This Act may be called the Khyber
Pakhtunkhwa Domestic Violence against Women (Prevention and Protection) Act, 2021.

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

(3) It shall come into force at once.

2. Definitions.---(1) In this Act, unless the context otherwise requires, the following
expressions shall have the meanings hereby respectively assigned to them, that is to say,—

(a) “Child” for the purpose of this Act means a natural person who has not attained
the age of eighteen years;

(b) “Code” means the Code of Criminal Procedure, 1898 (V of 1898);

(c) “complainant” means the women against whom domestic violence has been
committed under this Act; and

(d) “complainee” means a person, who is in a domestic relationship with the
complainant and against whom relief has been sought under this Act;

(e) “Court” means the Court of District and Session Judge or an Additional District
and Session Judge, so notified by the Peshawar High Court, Peshawar;

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“Department” means Zakat, Usher, Social Welfare, Special Education and Women Empowerment Department, of Government;

“District Committee on the Status of Women” means the District Committee on the Status of Women established under the Khyber Pakhtunkhwa Commission on the Status of Women Act, 2016 (Khyber Pakhtunkhwa Act No. XXVIII of 2016);

“District Protection Committee” means a District Protection Committee constituted under section 4 of this Act;

“domestic relationship” means a relationship by consanguinity, marriage, kinship, affinity, or other family relationship;

“domestic violence” means the violence committed by the complainee against the complainant with whom the complainee is in domestic relationship;

“Government” means the Government of Khyber Pakhtunkhwa;

“monetary relief” means a monetary relief which a Court may grant under this Act;

“prescribed” means prescribed by rules made under this Act;

“rules” mean the rules made under this Act;

“service provider” means any such Government facility or voluntary organization registered with Government to work for providing services under this Act to protect complainant through any means including legal, medical, financial, or any other assistance; and

“violence” means and include but not limited to an act, omission, commission, or conduct of the complainee which result in any physical, psychological, emotional, and economic abuse to the complainant and also include but not limited to abetment, assault, criminal force, criminal intimidation, hurt, mischief, harassment, sexual abuse and wrongful confinement as defined in the Code.

Explanations: For the purpose of this clause-

(i) "economic abuse" means denial of food, clothing, or shelter in domestic relationships to the complainant by the complainee under legal obligation in accordance with the complainee income.

(ii) "psychological abuse" means psychological deterioration of aggrieved person which may result in anorexia, a suicide attempt, or clinically proven depression resulting from complainee oppressive behavior or limiting freedom of movement of the aggrieved person.

(iii) "sexual abuse" does not include ordinary and_ natural relationships amongst husband and wife so committed in accordance with injunctions of Islam.

(2) Words and expressions used but not defined in this Act shall have the same meaning assigned to them under the Pakistan Penal Code, 1860 (Act No. XLV of 1860)

for the time being enforce.

3. Protection against Domestic Violence.---(1) No person shall commit, aid and abet for the commission of the act of domestic violence.

(2) Any person, who commits an act pursuant to sub-section (1), shall be deemed to have committed an offence under this Act and shall be liable to imprisonment for a period not less than one year and up to a maximum of five years, in addition to fine as provided for the said offence in the Pakistan Penal Code, 1860 (Act No. XLV of 1860).

4. District Protection Committee.---(1) Soon after the commencement of this Act, Government shall, by notification in the official Gazette, constitute at each District a District Protection Committee, consisting of the following:

(a) Deputy Commissioner of the concerned district; Chairperson

(aa) | One female member of the Provincial Assembly of Member

Khyber Pakhtunkhwa;

(b) Executive District Officer, Health; Member

(c) District Officer, Social Welfare; Member

(d) District Public Prosecutor; Member

(e) a representative of the District Police Officer; Member

(f) any female Government Officer not below the rank of BPS-17 from the concerned District;

Member

(g) two persons from civil society, who resides in the Members concerned District;

(h) District Khateeb of the District concerned; Member

(63) one Gynecologist of the District concerned; Member

Gg) one Psychologist of the District concerned; and Member

(k) Chairperson of the concerned District Committee on Member-cum-

the Status of Women or in his absence the District

Social Welfare Officer. Secretary

(2) The members at clause (g) shall be nominated by Government for a period of three years on such terms and conditions as may be prescribed.

(3) The members at clause (g) may tender resignation addressed to Government.

(4) The members at clause (g), shall be removed by Government, if he—

(a) is of unsound mind;

(b) has applied to be adjudicated as an insolvent and his application is pending;

(c) is an un-discharged insolvent;

(d) has been convicted by a Court of law for an offence involving moral turpitude;

(e) has been debarred from holding any office under any provision of

law for the time being in force; and

(f) has conflict of interest with such position:

Provided that no person shall be removed under this sub-section until he has been given a reasonable opportunity of being heard.

5. Meetings of the District Protection Committee.---(1) Meetings of the District Protection Committee shall be regulated in accordance with procedure as may be prescribed.

(2) The District Protection Committee shall meet at least once in a month.

(3) The Chairperson shall preside over the meetings of the District Protection Committee; provided that if a sitting female Member of the Provincial Assembly of Khyber Pakhtunkhwa is available in the District, meeting of the Committee shall be presided over by her, and in case of his/her absence, the member nominated by the Chairperson may preside over the meeting.

(4) Presence of six (06) members of District Protection Committee shall constitute the quorum for a meeting.

(5) The decisions of the District Protection Committee shall be taken by the majority of the members present and, in case of a tie, the person presiding over the meeting shall have a casting vote. All orders, determinations and decisions of the District Protection Committee shall be reduced into writing together with a record of the discussions held in the meeting.

6. Powers and functions of District Protection Committee.---(1) The District Protection Committee shall-

(a) aware the community at grass root level of their rights provided under this Act;

(b) assist the complainant in obtaining any medical treatment necessitated due to the domestic violence;

(c) assist the complainant in relocating to a safer place acceptable to the complainant, which may include a Shelter Home established by Government or any other safe place; and

(d) keep official record in respect of the incidents of domestic violence in its area of jurisdiction on the basis of information received, irrespective of the action taken under this Act and such records shall include-

(i) _ the first information received about the incident of domestic violence;

(ii) the assistance, if any provided by the District Protection Committee to the complainant;

(iii) | where applicable the reason for not taking action under this Act when an incident was brought to the notice of the District Protection Committee;

(iv) maintain the record of applications received from the complainant or his guardian and protection order issued by the Court; and

(v) perform such other functions that may be assigned to the District Protection Committee under this Act or rules made thereunder.

(2) The District Protection Committee may delegate any of its power and function to any of its member.

7. Report of the District Protection Committee.--- (1) Each District Protection Committee shall submit a biannual report to the Chairperson of Provincial Commission on the Status of Women.

(2) The Chairperson, Provincial Commission on the Status of Women shall be obligated to consolidate all reports received from District Protection Committees into an annual report to be submitted to the Provincial Assembly of Khyber Pakhtunkhwa through the Department.

8. Assistance to the complainant.---(1) The complainant or her guardian may file an application to the District Protection Committee for assistance.

(2) Upon receipt of an application of a complainant or her guardian, the District Protection Committee, while making an order for assistance, may refer the matter for mediation amongst the parties to the panel of mediators comprising one mediator each from the family of complainant and complainee and a neutral mediator to be appointed by the District Protection Committee, which shall try to reconcile the issue within a period of thirty days.

(3) The process of mediation shall not prevent the District Protection Committee from initiating its proceedings for the protection of complainant or taking other steps necessary in the matter.

(4) The District Protection Committee shall provide all reasonable assistance to the complainant, who needs such assistance in accordance with the provisions of this Act.

9. Duties and Responsibilities of the Secretary of the District Protection Committee .--- The Secretary of the District Protection Committee shall perform the following functions, namely:

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- (b)

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to report any domestic violence to the District Protection Committee;

to make an application on the recommendations of the District Protection Committee to the Court, with consent of complainant, claiming relief for issuance of a protection order;

to ensure that the complainant is provided legal aid;

to maintain a list of all services providers providing legal aid or counseling, shelter homes and medical facilities in a local area within the jurisdiction of the Court. Where the service providers are not available in the respective local area, a list of service providers from the nearest Districts shall be maintained;

to make available a safe place of residence, if the complainant so requires, and forward his lodging report in a shelter home to the District Protection Committee;

forward a copy of the medical examination report of the complainant to the District Protection Committee;

to ensure that the order for monetary relief under this Act is complied with and executed in accordance with the procedure prescribed by rules; and

to perform such other duties as may be assigned by the District Protection Committee.

10. Responsibilities of service provider.---A service provider shall —

(a)

(b)

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record the domestic violence incident in a prescribed form with the consent of complainant and forward a copy thereof, to the District Protection Committee;

get the complainant medically examined and forward a copy of the medical examination report thereof, to the Secretary; and

ensure that the complainant is provided shelter in a safe place of residence, if he/she so requires and forward a report of his/her lodging

in a safe place of residence to the Secretary of the District Protection

Committee.

11. Assistance by Government.---(1) The Government shall-

(a) establish a toll free help line for reporting of the domestic violence incidents;

(b) establish Shelter Homes in a phased manner;

(c) Government through Department shall ensure that this Act receive wide publicity through electronic and print media in Urdu and local languages;

(d) ensure that right available to women in Islam are widely publicized for awareness and visible efforts are made for their implementation and enforcement as well;

(e) hold periodic sensitization and awareness trainings on domestic violence issues to Government officers, Police and other public servants;

(f) make arrangements for psychological counseling of the complainee or complainant;

(g) take other necessary measures to accomplish the objective of this Act; and

(h) Government shall ensure that District Protection Committees receive

necessary wherewithal to perform their functions.

(2) The Shelter Homes already established by Government shall deem to be established under this Act.

12. Petition to the Court.---(1) | A complainant or her guardian or the Secretary of the District Protection Committee under sub-section (1) of section 8 of this Act, may file an application to the Court to sought relief under this Act, having territorial jurisdiction within fifteen days of the occurrence.

(2) The Court shall on taking cognizance of a case, proceed with the trial from day to day and shall decide the case within sixty days:

Provided that the Court shall not adjourn any trial unless such adjournment is, in its opinion, necessary in the interest of justice and no adjournment shall, in any case, be granted for more than two working days.

(3) The provisions of the Code shall mutatis mutandis apply to applications filed under this Act.

13. Power to grant interim order.---In any proceeding under this Act, the Court may pass any interim order deemed appropriate in the circumstances of the case at any stage before passing of final order.

14, Passing of orders by the Court.--- (1) The Court, when satisfied that domestic violence has taken place, may pass orders in favor of the complainant and prohibit the

complainee from-

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- (b)
- (c)

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committing any further act of domestic violence;

aiding or abetting the commission of acts of domestic violence;
entering the place of employment of the complainant or, his
educational institution or any other place frequently visited by the
complainant;

attempting to communicate in any form, whatsoever, with the
complainant including personal, oral, written, electronic, telephonic or

mobile phone contact;

causing violence to the dependents, his relatives or any person who
gives assistance to the complainant; and

committing any other act as specified in the order.

(2) In addition to the order under sub-section (1), or otherwise, the Court when
satisfied that domestic violence has taken place, may pass the following orders to—

(a) refrain the complainee from dispossessing, or in any other manner
disturbing the possession of the complainant from the household;

(b) direct the complainee to provide some additional measures for the
safety of life or property of the complainant or any member of his
family;

(c) require from the complainee to execute a bond, with or without
sureties, for keeping peace in the matter; and

(d) direct the complainee to return and put in possession the complainant
in the same property to which she is legally entitled.

(3) While making an order under sub-section (2), to impose on the complainee

obligation relating to the discharge of rent or other payment, having regards to the financial
needs and resources of the parties.

15. Monetary Relief.--- (1) The Court may, at any stage of the trial, on an application by
the complainant, direct the complainee to deposit expenses incurred and losses suffered by
the complainant and such relief may include-

(a)

(b)

compensation to the complainant for suffering as a consequence of economic abuse to be determined by the Court;

loss of earning;

(c) medical expense;

(d) the loss caused due to the destruction, damage or removal of any property from the control of the complainant; and

(e) the maintenance for the complainant and his children, if any, under family laws for the time being enforce.

(2) The complaine shall provide monetary relief to the complainant within the period specified in the order issued under sub-section (1) and in accordance with terms, thereof:

Provided that upon failure of the complaine to make payment, the Court may pass any order as deemed appropriate.

16. Duration and alteration of orders.--- (1) The interim order made under section 13 and the other order made under section 14 shall remain in force until the Court discharge such order on its own motion or upon the application made by either party.

(2) If the Court, on receipt of an application, at any stage, from the complainant or the complaine is satisfied that there is any change in the circumstances requiring alternation, or recalling of any order made under this Act, it may, for reasons to be recorded in writing, pass such order as it may deem appropriate.

(3) Nothing contained in sub-sections (1) and (2) shall prevent a complainant from making a fresh application after the previous order has been discharged.

17. Penalty for breach of an order of Court.---A breach of an order made by Court under this Act shall deem to be an offence and shall be punishable with imprisonment for a term which may extend to one year or fine which may extend to three hundred thousand rupees or with both.

18. Appeal.---Any person convicted by a Court under this Act may file an appeal to the High Court within thirty days in accordance of the Code.

19. Powers to make rules.---Government may make rules, by notification in the official Gazette, for carrying out the purposes of this Act.