

THE PUNJAB CHARITIES ACT 2018

(V of 2018)

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TEXT

'THE PUNJAB CHARITIES ACT 2018

(V of 2018)

[7 March 2018]

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 other purposes.

Be it enacted by the Provincial Assembly of the Punjab as follows:

1. Short title, extent and commencement.— (1) This Act may be cited as the Punjab Charities Act 2018.

(2) It extends to whole of the Punjab.

(3) It shall come into force at once.

2. Definitions.— In this Act:

(a) "Act" means the Punjab Charities Act 2018;

(b) "Assistant Commissioner" means the executive officer incharge of a Tehsil;

(c) "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;

(d) "charitable purpose" means the purpose which is for:

(i) prevention and relief of poverty;

(ii) promotion of education and learning;

(iii) provision of health and lifesaving services;

(iv) community development;

(v) promotion of arts, culture and heritage;

(vi) promotion of human rights, conflict resolution and reconciliation activities;

(vii) | promotion of religious and racial harmony;

(viii) | promotion of diversity and tolerance;

(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.

'This Act was passed by the Provincial Assembly of the Punjab on 28 February, 2018; assented to by the Governor of the Punjab on 7 March 2018; and, was published in the Punjab Gazette (Extraordinary), dated: 8 March 2018, pp. 6329-6336

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“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 (XX/ of 1860);

(iii) | an organization registered under the Companies Act, 2017 (XIX of 2017) or under any other law for the time being in force;

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

(v) a public or private trust.

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

“collect” or “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 purpose;

“Commission” means the Charity Commission established under the 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 fund;

(ii) the proposed value of the donation;

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

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

(v) the objects and purposes for which the 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.

“Deputy Commissioner” means the executive officer incharge of a district or any other person appointed by the Government as Deputy Commissioner for purposes of the Act;

“Government” means Government of the Punjab;

“prescribed” means prescribed by the rules or regulations made under the Act;

“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;

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

(p) “registering authority” means the registering authority mentioned in section 18 of the Act; and

“sanctioning authority” means the authority mentioned in section 19 of the Act.

3. The Commission.— (1) The Commission shall consist of not less than three and not more than five Commissioners including the Chairperson, as the Government may determine.

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

(4) Subject to the provisions of the 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 the Commission may determine.

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

(6) | A Commissioner shall perform such functions as may be prescribed or assigned by the Commission.

4. Chairperson of the Commission.— (1) The 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.

5. Chief Executive Officer.— (1) The 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.

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

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

- (a) maintain public trust and confidence in charities;
- (b) register 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 a Deputy Commissioner;
- (j) 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 the Act; and
- (n) perform such other related functions as the Government may assign.

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 of a charity, 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) The Commission may appoint a charity trustee or any officer or office-bearer of a charity if such charity fails to remove a trustee or appoint a new trustee or officer where:

- (a) a trustee or officer has been convicted of an offence involving moral turpitude, dishonesty or deception; or
- (b) a trustee has been adjudged bankrupt; or
- (c) the conduct of a trustee or officer is detrimental to the cause of the charity owing to mismanagement or other reasons as may be determined by a court or the Commission.

(2) | The Commission shall 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 misapplied or

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 the Government to proceed further in accordance with law.

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 the Government, employ such consultants, or technical professionals or advisers as may be necessary for the due discharge of its functions under the Act, on such terms and conditions as may be prescribed and until so prescribed, as the Government may determine.

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

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

13. Exemption— The Government may, after recording reasons, exempt an organization or charity from the provisions of section 12 of the Act, but an organization which is not registered as a not-for-profit 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 shall contain:

(a) | the name of every registered charity; and

(b) — such other particulars of, and such other information relating to, every such charity as may be prescribed or as the Commission may determine.

15. Application for registration— (1) Every organization required to be registered under the 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 an organization if in its opinion the objects of charity stated in declaration are not in consonance with the charitable purpose or for any other reasonable cause.

16. Register 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.

(3) | The Commission shall publish on its website such information in the

Register as may be necessary to create general awareness about the work and conduct of charities.

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 organization or association of persons is not furthering any charitable purpose; or

(b) — the charity has committed a serious violation of the provisions of the Act or the rules.

18. Registering authority— (1) The Commission shall be the registering authority when the operation of a charity extends to the whole of the Punjab or two or more districts.

(2) | The Deputy Commissioner shall be the registering authority when the operation of a charity does not extend beyond the district.

(3) | The Assistant Commissioner shall be the registering authority where the operation of a charity extends only to a Tehsil.

19. Sanctioning authority.— (1) The Commission may sanction the collection of charitable funds if the collection is proposed to be made from the whole of the Punjab or two or more districts or for a period of more than twelve months.

(2) Subject to subsection (1):

(a) the Deputy Commissioner may sanction the collection of charitable funds if the collection is to be made from within a district; and

(b) the Assistant Commissioner may sanction the collection of charitable funds if the collection is to be made from within a 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 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 fund or the due administration of the fund for the purpose for which it is to be collected.

(3) | The sanctioning authority may sanction the collection subject to such conditions as it may consider necessary for ensuring the proper custody of the 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 manner as the Commission may, by regulations, prescribe, authorizing him to make the collection through identified collectors and for identified recipients.

(5) The Deputy Commissioner may alter or set aside a sanction of collection accorded by an Assistant Commissioner in the district.

21. Powers of sanctioning authority The sanctioning authority may, at any time, for sufficient reasons and after affording opportunity of hearing, cancel or alter any order made or direction given by it under the Act .

22. Residuary powers of the Commission.— The Commission may issue such directions to the Deputy Commissioners and Assistant Commissioners as may be necessary for achieving the objectives of the Act.

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

24. Administrative actions.— (1) If, after evaluation or audit, the Commission is satisfied that any charity has failed to comply with the obligations envisaged under the Act, the Commission may:

(a) | suspend or cancel the registration of that charity under the Act;
and

(b) impose fine, not exceeding one million rupees, on the charity or organization.

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

25. 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.

26. Obligations of charity trustees — (1) 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) coordinate with the other charities operating in the respective domain for purposes of consolidated efforts at achieving the objectives and targets under the Act; and

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

27. Fiduciary responsibilities of charity trustees.— A charity trustee shall be responsible for:

(a) controlling the assets of the charity;

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

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

(d) 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;

(e) the sale, lease or other disposal of the charity property and insurance of the charity property; and

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

28. Accounting records of a charity.— (1) The charity trustees shall ensure that accurate accounting records are maintained in respect of the charity.

(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 in particular 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 trustees shall preserve the accounting records for such period as may be prescribed.

(5) The charity trustee shall prepare annual statement of accounts.

(6) 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 or the registering authority, as the case may be.

29. Accounting of charitable funds.— The charity trustees shall ensure that accounting records of a charitable fund are maintained as required under section 28.

30. Audit and Inspection.— (1) The Commissioner or 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 Commission or sanctioning authority may inspect or cause to be inspected any accounts maintained under the Act or the rules.

31. 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 the charitable fund to any other person except with the prior approval in writing of the Commission or 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 misapplied or misappropriated in any manner, every person concerned with the collection or administration of the 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.

32. 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 the Act applies shall be deemed to have contravened the Act.

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

33. Cognizance and summary trial.— (1) An offence under the Act shall be cognizable and non-bailable.

(2) | A Magistrate of the first class shall conduct the trial of an offence under the Act in accordance with the provisions of Chapter XX// of the Code of Criminal Procedure, 1898 (V of 1898) relating to the summary trials.

34. Compounding of offence— (1) Subject to subsection (2), the Commission or any person specifically authorized in this behalf by the Commission may, at any stage, compound an offence under the Act subject to the deposit of administrative penalty which shall not be less than twenty five thousand rupees.

(2) | The offence under the Act shall not be compoundable if the accused had been previously convicted under the Act or his previous offence had been compounded by the Commission or the officer authorized by the Commission.

35. Confiscation— A court trying an offence under the Act may order the confiscation or recovery of any fund wrongfully collected or misapplied by any person in contravention of the Act.

36. Appeal— (1) Any person aggrieved by an order or direction of the Commission, may within thirty days of the order, prefer an appeal to the Appellate Committee.

(2) | The Government shall, by notification, constitute the Appellate Committee consisting of the Chairperson and such members as it may determine.

(3) | The Committee shall perform its functions in the prescribed manner and until so prescribed, the Committee shall regulate its own procedure.

37. Application of other laws.— The provisions of the Act shall be in addition to and not in derogation from any other law.

38. Rules.— (1) The Government may, by notification, make rules to carry out the purposes of the 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.

39. Regulations.— Subject to the Act and the rules, the Commission may, by notification, frame regulations to give effect to the provisions of the Act.

40. 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 the Act.

41. Revision.— Subject to section 36, the 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 and pass such order in accordance with the Act as it may deem proper.

42. Repeal and savings.— (1) The Charitable Funds (Regulation of Collections) Act, 1953 (XXXI of 1953) is hereby repealed.

(2) Notwithstanding the repeal of the Charitable Funds (Regulation of Collections) Act, 1953 (XXXI of 1953), anything done or action taken under the repealed Act, shall have the effect as if the thing is done or action is taken under the Act.

43. Repeal. The Punjab Charities Ordinance 2018 (I of 2018) is hereby repealed.