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GOVERNMENT OF KHYBER PAKHTUNKHWA

Department of Social welfare, Special Education and Women Empowerment

Peshawar ____/____/2017.

No. F.17(1) 81-Pub:- The Following Act made by the Governor on the ____/____/2017 are hereby published for general information.

Act No. _____

A Bill.

TO ENSURE COMPREHENSIVE INCLUSION OF PERSONS WITH DISABILITIES IN THE COMMUNITY WITH FULL MEDICAL REHABILITATION, INCLUSIVE EDUCATION, ECONOMIC UPLIFT AND RIGHT BASED COMMUNITY INTEGRATION IN LINES WITH THE ISLAMIC TEACHINGS AND INTERNATIONAL BEST PRACTICES

WHEREAS it is expedient to put in place legal and institutional framework to protect the rights of the Persons with Disabilities in general and in lines with the UN Convention for the Rights of Persons with Disabilities in particular Pakistan has ratified the said convention in 2011 as a State Party

and

Whereas the 1973 constitution of Islamic Republic of Pakistan under article-25 provides for equal protection of its citizens and whereas article-38 provides for promotion of Social and economic well-being of the people;

It is hereby enacted as follows:

Chapter I: (Preliminary & Definitions)

Preliminary

1. Short title, extent and commencement – (1) This Act may be called the Persons with Disabilities (Rights, Rehabilitation & Empowerment of Persons with Disabilities) Act, 2017.
 - a. It shall extend to the whole of Khyber Pakhtunkhwa.
 - b. It shall come into force at once on such day as the Government may, by notification in the official gazette, appoint.
2. **DEFINITIONS:** In this Act, unless there is anything repugnant in the subject or context.
 - a) “Act” means the Persons with Disabilities (Rights, Rehabilitation & Empowerment of Persons with Disabilities) Act, 2017.
 - b) “Access” means meaningful and effective access to various physical and intangible means made suitable to fulfill the special needs of the Persons with Disabilities;
 - c) “Barrier” means any factor including communicational, cultural, economic, environmental, institutional, political, social, attitudinal or structural factors which hampers the full and effective participation of persons with disabilities in society;
 - d) “Chairman” means the Chairman of the Provincial Council for Rights, Rehabilitation & Empowerment of Persons with Disabilities;
 - e) “Care-giver/ attendant” means any person including parents and other family Members who with or without payment provides care, support or assistance to a person with disability;
 - f) “Communication” means any forms of communication, languages, display of text, Braille, tactile communication, signs, large print, accessible multimedia, written, audio, video, visual displays, sign language, plain-language, human-reader, augmentative and alternative modes and accessible information and communication technology;
 - g) “Discrimination” in relation to disability, means any distinction, exclusion, restriction on the basis of disability which is the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field and includes all forms of discrimination and denial of reasonable accommodation; “Universal design” means the design of products, environments, programmers and services to be usable by all people, to the greatest extent possible, without the need for adaptation or specialized

design. "Universal design" shall not exclude assistive devices for particular groups of persons with disabilities where this is needed.

- h) –"Impairment" means Problems in body function and structure such as significant deviation or loss.
- i) "Activity limitations" means difficulties an individual may have in executing activities. "Participation restrictions" means problems an individual may experience in involvement in life situations.
- j) Environmental factors mean the physical, social and attitudinal environment in which people live and conduct their lives. These are either barriers to or facilitators of the person's functioning.
- k) Persons with disabilities **include** those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others. "Person with disability" means a person suffering from not less than 35 per cent, of any disability as certified by a medical authority.
- l) "Disability" means a long term physical or mental condition that limits a person's movements, senses, or activities and shall include physical, mental, intellectual or sensory impairments which in interaction with various other physical and psychological barriers hinder performance of persons suffering from such conditions to participate fully and effectively in day to day performance and interaction with others on an equal basis;
- (i) "low vision" is defined as visual acuity of less than 6/18 but equal to or better than 3/60, or a corresponding visual field loss to less than 20°, in the better eye with the best possible correction. 'Blindness' is defined as visual acuity of less than 3/60, or a corresponding visual field loss to less than 10°, in the better eye with the best possible correction. 'Visual impairment' includes both low vision and blindness
- (ii) Disabling hearing loss: refers to hearing loss greater than 40 dB in the better hearing ear in adults and greater than 30 dB in the better hearing ear in children. A person who is not able to hear as well as someone with normal hearing – hearing thresholds of 25 dB or better in both ears – is said to have hearing loss.
- (iii) "Hearing impairment" means loss of sixty decibels or more in the better ear in the conversational range of frequencies:
- (iv) A physical impairment means any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genito-urinary, hemic and lymphatic, skin and endocrine.
- (v) " A mental disorder is a syndrome characterized by clinically significant disturbance in an individual's cognition , emotion regulation, or behavior that reflects a dysfunction in psychological, biological, or developmental processes underlying mental functioning.
- m) Neuro developmental disorders These are a group of conditions with onset in the developmental period. The disorders typically manifest early in development, often before the child enters grade school, and are characterized by developmental deficits that produce impairments of personal, social, academic, or occupational functioning.
- n) "Employee" means a regular or full time employee in an establishment / Organization, semi- government, autonomous body, public or private Sectors whether employed on daily, weekly or monthly basis, and includes an apprentice:
- o) "Rehabilitation" refers to a process aimed at enabling persons with disabilities to reach and maintain their optimal physical, sensory, intellectual, psychological or social functional levels;
- p) "Independent living" means environment to live with freedom, self-control, choice, and self-determination in everyday life;
- q) "Equality before law" includes principles of equality on equitable basis that Persons with Disability shall have in line with the constitution and international covenants in which Pakistan is a party;
- r) "Mobility" means the possible independence for Persons with Disabilities with access to quality mobility aids, devices, assistive technologies and forms of assistance and intermediaries, including by making them available at free of cost
- s) "Fund" means fund established under section-23;
- t) "Government" Government of Khyber Pakhtunkhwa;
- u) "Government Establishment" includes any autonomous or semi-autonomous body, University, college, professional school and any organization controlled or managed by the Government.
- v) "Private establishment" means a company, firm, cooperative or other society, associations, trust, agency, institution, organization, union, factory or such other establishment in which the number of employees at any time during a year is not less than 40.
- w) "inclusive education" means a system of education wherein students with and without disability learn together and the system of teaching and learning is suitably adapted to meet the learning needs of students with different types of disabilities;
- x) "institution" means an institution for the reception, care, protection, education, training, rehabilitation and any other activities for persons with disabilities;
- y) "Prescribed" means prescribed by rules.
- z) "Provincial Council" means Provincial Council for Rights, Rehabilitation & Empowerment of Persons with Disabilities" Established under Section-3;
- aa) "Secretary" means the Secretary of the Council:
- bb) "Staff" means the staff employed by the Council at Provincial or District Level.
- cc) "Social Welfare Officer" means District Officer of concerned District/Agency or Assistant Director (Provincial Council) in the Directorate as the case may be.
- dd) "Rules" rules made by Government under this Act.

Chapter II: (Council & Function)

3. ESTABLISHMENT OF PROVINCIAL COUNCIL

Government shall by notification in the official Gazette, establish a Provincial council for Rights, Rehabilitation & Empowerment of Persons with Disabilities which shall consist of the following members namely;-

- (i) The Secretary , Social Welfare, Special Education & Woman Empowerment Department who shall also be its Chairman:
- (ii) The Secretary of Labour Department.
- (iii) The Secretary of the Finance Department.
- (iv) The Secretary of the Health Department.
- (v) The Secretary of the Education Department
- (vi) The Secretary of the Communication & Works Department.
- (vii) The Secretary of the Energy & Power Department.
- (viii) The additional Secretary of Ushar& Zakat Department.
- (ix) Director, Social Welfare Department, who shall also be the Secretary of the Council.
- (x) One Representative of the Directorate of Technical Education Manpower Training Khyber Pakhtunkhwa Peshawar.
- (xi) Representative of the Chamber of Commerce.
- (xii) Representative of the registered Trade Unions, to be nominated by the Labour Department.
- (xiii) 03 Persons with disabilities as members
- (xiv) 03 persons nominated by the Government for a period of three years from amongst the well-known NGOs working for of Persons with Disabilities / NGOs; and

4. FUNCTIONS OF THE COUNCIL

The following shall be the functions of the council.

- a) The Council shall be the executive authority to implement this Act to support the Persons with Disabilities to have the protection of law in enjoying their fundamental rights.
- b) The council shall coordinate the implementation of the principles of the UN Convention of Rights of Persons with Disabilities in the province
- c) The council shall evaluate the effectiveness of laws and policies and assess the implementation of the laws and policies at the Provincial level and recommend to the government about the changes required in the policies, laws and practices in order to provide barrier free environment to PWDs.
- d) The council shall be responsible to monitor the activities of the private and community based organizations to ensure that required standards of service are maintained and that funds generated by them in the name of Persons with Disabilities are appropriately used.
- e) The council shall have the powers to frame and enforce regulations and guidelines for its own efficient and professional working and for effective achievements of objects of this law shall make regulations.
- f) To formulate policy for the rights, rehabilitation and employment of the Persons with Disabilities:
- g) To take measures as necessary and overall responsibility for the achievement of the purposes of this act.
- h) Undertake appropriate projects for these purposes;
- i) To take stock of the extent of functional disabilities of Persons with Disabilities including neurodevelopment.
- j) Take up the cause of persons with disabilities with the concerned authorities and the international organizations with a view, to provide for schemes and projects for the disabled in the national plans and other programmes and policies evolved by the international agencies;
- k) Take such other steps to ensure barrier free environment in public places, work places, public utilities, schools and other institutions;
- l) To approve budget of the council on the recommendation of the Planning & Finance Committee.
- m) To monitor the right based activities undertaken by Government & Non-Governmental Organization in disability sector.
- n) To perform such other functions as may be prescribed by the Government.
- o) The Council shall meet on quarterly basis and in special circumstances as and when directed by the Chair.
- p) The quorum for council meeting shall be 1/3 of the members.
- q) The Secretary shall exercise such powers and perform such functions as may be assigned to him by the Council.
- r) The council shall have the power to constitute the committee/ working group for responsibility of achieving objectives of the Act and to assist the government in developing legal and institutional framework.

5. CONSTITUTION OF ANY OTHER COMMITTEE

The Council may constitute such Committee / Committees within or outside the council with such member as deem fit with TORs.

6. STAFF OF THE COUNCIL

- a) The Council shall appoint officers / officials and other staff for the smooth running of Council's affairs.
- b) All employees recruited by the Provincial Council shall be deemed to be public servants within the meaning of section 21 of the Pakistan Panel Code, 1860 (Act 45 of 1860).

Chapter III: (EDUCATION AND TRAINING FOR PWDs)

7. EDUCATION

- (i) No Persons with Disabilities shall be discriminated in admission into any educational institution, whether state owned or private, on ground of his/her disabilities.
- (ii) The Government shall ensure inclusive education at all levels focusing on personality development, creativity and strengthening of physical and mental capabilities of Persons with Disabilities.
- (iii) The private educational institutions shall allocate 5% quota for enrolled deserving persons with disabilities
- (iv) To remove architectural barriers from schools colleges or other institution, imparting vocational and professional training and shall plan their off.
- (v) There shall be redressal of grievances and parents teacher council shall be established.
- (vi) To promote and regulate of special education schools in Government and private sector for those in need of special education, in a manner as may be prescribed by the council.

8. ESTABLISHMENT OF TRAINING CENTRES.

- a) The government shall also establish adequate dedicated and general facilities for teacher training with a view to train adequate number of specially trained teachers equipped with skills to teach students with various disabilities.
- b) The Council shall arrange for the training of Persons with Disabilities in such trades / areas as deem fit and shall establish training centers for skill development in such manner as may be prescribed by the Government.

Chapter IV: (Registration & Rights)

9. REGISTRATION OF PERSONS WITH DISABILITIES.

- a) Any Persons with Disabilities desirous of being employed or otherwise rehabilitated, shall have his name registered in the register maintained by a District Officer, Social Welfare in such form and in such manner as may be prescribed by the Council.
- b) The Council shall, if it thinks necessary, cause each Persons with Disabilities registered under sub-section (a) of section 9 to be assessed as to the nature of his functional disability and also as to aptitude and the nature of Employment he is fit to do, by a medical officer, authorized by the Committee such Assessing Board Consisting of not less than one medical officer, as it may appoint, and the medical officer or, as the case may be, the assessing board shall submit its report to the Council in such form as may be prescribed by the Government.
- c) If the Persons with Disabilities is considered by the Council fit for Employment, it shall so inform the District Officer, indicating the nature of work for which he may be employed or the trade or vocation in which he may be trained, and an endorsement to that effect, shall be made against his name, in the register.
- d) If the Persons with Disabilities is not considered by the Council fit to work or employment, the Council shall inform the District Officer, accordingly for an endorsement to that effect being made against his name in the register, and the Council shall take such measures for his rehabilitation as it thinks fit.
- e) If a person is declared by the Council to be an able person, his name shall be struck off from the register.

10. **Equity in health and rehabilitation services.-**

- (1) The government shall ensure barrier free access to necessary public health services and infrastructure to Persons with Disabilities without any discrimination and without any cost to such persons.
- (2) The government shall encourage private sector health services to provide emergency healthcare services to Persons with Disabilities at affordable rates.
- (3) There shall be special health service for early identification and intervention of disabilities and medical services especially designed to prevent disability shall be implemented.
- (4) The government shall initiate, with the help of the medical and scientific community, research to identify causes of various disabilities and make efforts to create awareness in public to adopt practices that help prevent disabilities from happening.
- (5) The Government shall undertake initiatives to promote, support and implement community based rehabilitation and research initiatives at the community level.

11. **Women, children and elderly people with disabilities –**

(1) In view of the extraordinary vulnerability of women, children and senior citizens with disabilities, the government shall take special measures to ensure that such women, children and elderly people are given full protection under law in enjoying their rights.

(2) The government shall also take necessary measures to ensure development, advancement and empowerment of women, children and senior citizens with disabilities.

12. Ease of access and mobility –

(1) The government shall take necessary measures towards allowing ease of access to the Persons with Disabilities to the public buildings, hospitals, public transport, streets and roads for which the old buildings and vehicles shall be appropriately modified and new buildings and vehicles shall be built conforming to the appropriate standards.

(2) Removal of barriers and obstacles to access buildings, roads, modes of transportation, housing, hospitals, schools, workplaces, communication and information related services and get them implemented by the concerned authorities and persons both in public and private sectors as may be prescribed by the council.

(3) The council shall develop a set of minimum standards of access and related signage that each department, authority, entity, and major enterprise shall put in place to ensure necessary access of Persons with Disabilities.

(4) The government shall implement procedures and programs to promote the personal mobility of Persons with Disabilities at free of cost.

(5) The government shall ensure special seats in all means of transport for persons with disabilities and to allot parking space exclusively for the persons with disabilities at all public places. These spaces shall be nearest to that particular public place.

(6) The council shall develop and enforce guidelines allowing Persons with Disabilities to have full and appropriate access to all forms of mass communication including information technology to enjoy freedom of speech and freedom of information.

13. Improving access to assistive technology

(1) The government shall facilitate the access of Persons with disabilities to appropriate and high quality priority assistive products at an affordable cost

(2) Taxes & duty exemption on priority assistive products, Vans/Buses/Automobiles (at least 10 years old) equipment, materials and components specifically used for persons with disabilities.

14. Participation in sports, cultural and recreational activities.-

(1) The government shall ensure that no person is discriminated against in participation of any sports, games, cultural and recreational activities on ground of his disability. The government shall provide Assistive devices, equipment and latest technology shall be available for their inclusion in sports, cultural, recreational and leisure activities in the manners as may be prescribed.

(2) Government shall make arrangements for Barrier-free access to media programs, films, theatres, parks, stadiums, play grounds, beaches and other places of leisure, recreation, sports and cultural activities.

(3) The government shall fully facilitate participation of Persons with Disabilities in scouting, art classes, outdoor camps, hunting, tourism and adventure activities and shall also help to develop and utilize their artistic, creative and intellectual capabilities.

15. POLITICAL PARTICIPATION

(1) Person with Disabilities shall have full right to participate in the political activity in the province including exercising right to vote and right to be elected to an elected body.

(2) The Election Commission of Pakistan shall ensure that each polling station is accessible to the Persons with Disabilities and necessary arrangements are made for them to cast their votes confidentially and without any difficulty. Any act by any person to cause hindrance on exercise of right to vote, by a person with disability shall be deemed as forceful obstruction that shall be adjudicated under the law by the Presiding Officer as an offence. The Commission shall ensure that effect of such forceful obstruction is rectified.

16. PROTECTION OF PERSONS WITH DISABILITIES IN RISK AND DISASTER SITUATIONS

(1) All Persons with Disabilities shall be given top priority in providing suitable protection and safety in situations of risk and natural disasters and they shall immediately be moved to a safer place on priority.

(2) In situations of disaster, the police, civil administration and other functionaries shall take appropriate measures on priority to ensure the safety, protection and removal of PWDS

(3) All authorities engaged in reconstruction activity subsequent to any situation of armed conflict, humanitarian emergencies or natural disasters shall ensure that Persons with Disabilities are accorded priority in reconstructing their institutions, homes and other facilities and restoring services.

(4) The council shall keep a close coordination with the disaster management authorities for protection and removal to safety and keep record of such persons caught in such situation and ensure early rehabilitation.

17. ESTABLISHMENTS TO FURNISH INFORMATION:-

Every Establishment shall furnish to such person or authority such information required for the implementation of the provisions of this Act in such form and in such manner as the Council may, by notification in the official Gazette of Khyber Pakhtunkhwa.

18. APPEAL

- a) Any person aggrieved by an order under section 10 may prefer an appeal to the Chairman of the Council within thirty days of the date of the order.
- b) The Chairman may call for the record of the case and may, after giving the parties an opportunity of being heard or after making such further enquiry as deem fit, stay or suspend the operation of the order or may pass such order as deems fit.

Chapter V: (Privileges)

19. PRIVILEGES TO PERSONS WITH DISABILITIES

- a) 3% Employment quota for PWDS in Public & Private Sector.
- b) Duty free cars for Person with Disabilities (in coordination with Ministry of Commerce) subject to fulfillment of terms and conditions.
- c) 50% concession in Air and rail fares for PWDs and 25% concession for his/her care-giver/ attendant.
- d) PWDs are allowed to appear in CSS/PMS examination
- e) Free medical treatment to PWDs and their dependents in Provincial Government Hospitals.
- f) 10 years relaxation in upper age limit of Persons with Disabilities for Government employment in BS-1 to 15.
- g) Age relaxation up to 10 years for taking admission in any higher Education both public & private sector Institution.
- h) Free education, boarding lodging and food.
- i) Special transport facilities will be provided to PWDs for their mobility with in the premises of Institution/ college.
- j) Facility for Visually Impaired to open individual bank account.
- k) Free of charge entry to public museums, libraries, Parks and recreation facilities.

Chapter VI: (Employment & Rehabilitation)

20. ESTABLISHMENTS TO EMPLOY PERSONS WITH DISABILITIES

- a) Every establishment shall appoint in every establishment such percentage of vacancies not less than three percent for persons or class of persons with disability of which one per cent. Each shall be reserved for persons suffering from-
 - (i) Blindness or low vision;
 - (ii) Hearing impairment;
 - (iii) Physically Impaired in the posts identified for each disability:
- b) Not less than three per cent of the total number of persons employed by any establishment at any time shall be Persons with Disabilities whose names have been registered with the District Officer, Social Welfare of the area in which such establishment is located and against whose names, in the register maintained under section 10, an endorsement exists to the effect that they are fit to work / employment.
- c) The Persons with Disabilities employed against any post in pursuance of sub-section (i) shall be entitled to the terms and conditions which are not less favorable than those of the other persons employed by the establishment against similar posts.
- d) When calculating the percentage of the posts in an establishment for the purposes of employment of Persons with Disabilities, the fraction of 0.5 and above shall count as a whole number.
- e) The 3% quota in employment or appointment of Persons with Disabilities will be applicable on total strength of the establishment or organization.
- f) In case more than one Persons with Disabilities, apply for any rehabilitative aid, the severely Persons with Disabilities shall be preferred, in case of any limitation.

21. ESTABLISHMENTS TO PAY INTO THE FUND

- a) An establishments which does not employ a Persons with Disabilities as required by section-15, shall pay in to the funds each month the sum of money it would have paid as salary or wages to a Person with Disability had he been employed.
- b) Fund for Rehabilitation of Persons with Disabilities (DFR) shall be deducted from the bills to be made to contractors having business of one million or above @ Rs. 2000/= per each Million and to be deposited in council account.

22. FUND

- a) There shall be established by the Government a non lapsable fund to be known as the Persons with Disabilities, Rehabilitation Fund which shall comprise.
 - (i) All sums paid by the establishment if not complying with Section-15
 - (ii) All grants if any made by the Government or Federal Government, or local bodies; and
 - (iii) Donations, if any, made by private individuals, Institutions in land or abroad.
- b) The Fund shall be administered by the Council which shall, in consultation with the Government, make such allocations to the Council as it thinks necessary.
- c) The fund shall be utilized for.
 - (i) The establishment of training centers for Persons with Disabilities;
 - (ii) Financial assistance to Persons with Disabilities who are not fit to undertake any employment;
 - (iii) Disbursement of stipends or scholarships to Persons with Disabilities receiving training.
 - (iv) Providing surgical interventions and medical treatment to Persons with Disabilities.
 - (v) Grant-in-Aid to Registered NGOs exclusively working for the welfare of Persons with Disabilities; and
 - (vi) Necessary equipment, assistive technology , tools and machinery etc for Person with Disabilities.
 - (vii) Empowerment through self-employment through soft loan.

23. POWER TO DEBAR FURTHER EMPLOYMENT

- a) The Secretary of the Council may debar from further employment or training for such period as may be specified by him any Persons with Disabilities who, without valid reasons, refuses to accept or abandon his employment or training under this Act or otherwise acts in a manner detrimental to the interests of the trade or profession in which he is employed or undergoing training.
- b) No Persons with Disabilities shall be debarred under Section 19 sub-section (a) unless he has been given an opportunity of being heard.

Chapter –VII (Miscellaneous)

24. POWER TO EXEMPT

The Government may, by notification in the official Gazette, exempt any establishment or class from the provisions of this Act.

25. DELEGATION OF POWER

The Council may delegate all or any of its powers under this Act to any of its members subject to such conditions as it may specify.

26. PENALTY

- (a) Any establishment which fails to deposit into the Fund any sum it is required to pay under section 10, shall be punishable with fine extent to ten thousand rupees and, in the case of nonpayment of fine, with an additional fine which may extend to hundred rupees for every day during which the payment or fine is not made.
- (b) Whoever fraudulently avails or attempts to avail, any benefit meant for persons with disabilities, shall be punishable with imprisonment for a term which may extend to two years or with fine which may extend to two hundred thousand rupees or with both.

27. COGNIZANCE OF OFFENCES ETC

No court shall take cognizance of an offence punishable under this Act except upon a complaint in writing made by, or under the authority of the Government.

28. POWER TO MAKE RULES

Council may make rules for carrying out the purposes of this act.

29. REPEAL

Persons with Disabilities (Employment & Rehabilitation) Ordinance 1981 & Persons with Disabilities (Employment & Rehabilitation) Amendment Act 2012, to the extent of Khyber Pakhtunkhwa province is hereby repealed