

A

Bill

to provide for more effectual control over the
administration of Charitable and Religious Trusts

Preamble.--- WHEREAS it is expedient to provide facilities for obtaining of information regarding trust created for public purposes of a charitable or religious nature, and to enable the trustees of such trusts to obtain the directions of a Court on certain matters, and to make special provision for the payment of the expenditure incurred in certain suits against the trustees of such trusts;

it is hereby enacted as follows:

1. Short title, extent and commencement.--- (1) This Act may be called the Khyber Pakhtunkhwa Charitable and Religious Trusts Act, 2014.

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

(3) It shall come into force at once:

Provided that Government may, by notification in the official Gazette direct that this Act, or any specified part thereof, shall not extend to any specified area in the Province or to any specified trust or class of trusts.

2. Definitions.--- In this Act, unless there is anything repugnant in the subject or context--

(a) “Government” means the Government of the Khyber Pakhtunkhwa; and

(b) “Court” means the Court of the District Judge or any other Court empowered in this behalf by Government and includes the High Court in the exercise of its ordinary original civil jurisdiction.

3. Power to apply to the Court in respect of trusts of a charitable or religious nature.--- Save as hereinafter provided in this Act, any person having an interest in any express or constructive trust created or existing for a public purpose of a charitable or religious nature may apply by petition to the Court within the local limits of whose jurisdiction any substantial part of the subject matter of the trust is situate to obtain an order embodying all or any of the following directions, namely:

(a) directing the trustee to furnish the petitioner through the Court with particulars as to the nature and objects of the trust, and of the value, condition, management and application of the subject matter of the trust, and of the income belonging thereto, or as to any of these matters; and

- (b) directing that the accounts of the trust shall be examined and audited:

Provided that no person shall apply for any such direction in respect of accounts relating to a period more than three years prior to the date of the petition.

4. Contents and verification of petition.--- (1) The petition shall show in what way the petitioner claims to be interested in the trust, and shall specify, as far as may be, the particulars and the audit which he seeks to obtain.

(2) The petition shall be in writing and shall be signed and verified in the manner prescribed by the Code of Civil Procedure, 1908 (Act No. V of 1908) for signing and verifying plaints.

5. Procedure on petition.--- (1) If the Court on receipt of a petition under section 3, after taking such evidence and making such inquiry, if any, as it may consider necessary, is of opinion that the trust to which the petition relates is a trust to which this Act applies, and that the petitioner has an interest therein, it shall fix a date for the hearing of the petition, and shall cause a copy thereof, together with notice of the date so fixed, to be served on the trustee and upon any other person to whom in its opinion notice of the petition should be given.

(2) On the date fixed for the hearing of the petition, or on any subsequent date to which the hearing may be adjourned, the Court shall proceed to hear the petitioner and the trustee, if he appears, and any other person who has appeared in consequence of the notice, or who it considers ought to be heard, and shall make such further inquiries, if any, as it thinks fit. The trustee may and, if so required by the Court, shall, at the time of the first hearing or within such time as the Court may permit, present a written statement of his case. If he does present a written statement, the statement shall be signed and verified in the manner prescribed by the Code of Civil Procedure, 1908 (Act No. V of 1908), for signing and verifying pleadings.

(3) If any person appears at the hearing of the petition and either denies the existence of the trust or denies that it is a trust to which this Act applies, and undertakes to institute within three months a suit for a declaration to that effect and for any other appropriate relief, the Court shall order a stay of the proceedings and, if such suit is so instituted, shall continue the stay, until the suit is finally decided.

(4) If no such undertaking is given, or if after the expiry of the three months no such suit has been instituted, the Court shall itself decide the question.

(5) On completion of the inquiry provided for in sub-section (2), the Court shall either dismiss the petition or pass thereon such other order as it thinks fit:

Provided that, where a suit has been instituted in accordance with the provisions of sub-section (3), no order shall be passed by the Court which conflicts with the final decision therein.

(6) Save as provided in this section, the Court shall not try or determine any question of title between the petitioner and any person claiming title adversely to the trust.

6. Failure of trustee to comply with order under section 5.--- If a trustee without reasonable excuse fails to comply with an order made under sub-section (5) of section 5, such trustee shall, without prejudice to any other penalty or liability which he may incur under any law for the time being in force, be deemed to have committed a breach of trust affording ground for a suit under the provisions of section 92 of the Code of Civil Procedure , 1908 (Act No.V of 1908); and any such suit may, so far as it is based on such failure, be instituted without the previous consent of the Advocate General of the Province.

7. Powers of trustee to apply for directions.---(1) Save as hereinafter provided in this Act, any trustee of an express or constructive trust created or existing for public purpose of a charitable or religious nature may apply by petition to the Court, within the local limits of whose jurisdiction any substantial part of the subject-matter of the trust is situate, for the opinion, advice or direction of the Court on any question affecting the management or administration of the trust property, and the Court shall give its opinion, advice or direction, as the case may be, thereon:

Provided that the Court shall not be bound to give such opinion, advice or direction on any question which it considers to be a question not proper for summary disposal.

(2) The Court on a petition under sub-section (1), may either give its opinion, advice or direction thereon forthwith, or fix a date for the hearing of the petition, and may direct a copy thereof, together with notice of the date so fixed, to be served on such of the persons interested in the trust, or to be published for information in such manner, as it thinks fit.

(3) On any date fixed under sub-section (2) or on any subsequent date to which the hearing may be adjourned, the Court, before giving any opinion, advice or direction, shall afford a reasonable opportunity of being heard to all persons appearing in connection with the petition.

(4) A trustee stating in good faith the facts of any matter relating to the trust in a petition under sub section (1), and acting upon the opinion, advice or direction of the Court given thereon, shall be deemed, as far as his own responsibility is concerned, to have discharged his duty as such trustee in the matter in respect of which the petition was made.

8. Costs of petition under this Act.--- The costs, charges and expenses of and incidental to any petition, and all proceedings in connection therewith, under the foregoing provisions of this Act, shall be in the discretion of the Court, which may direct the whole or any part of any such costs, charges and expenses to be met from the property or income of the trust in respect of which the petition is made, or to be borne and paid in such manner and by such persons as it thinks fit:

Provided that no such order shall be made against any person other than the petitioner who has not received notice of the petition and had a reasonable opportunity of being heard thereon.

9. Savings.---No petition under the foregoing provisions of this Act in relation to any trust shall be entertained in any of the following circumstances, namely :

- (a) if a suit instituted in accordance with the provisions of section 92 of the Code of Civil Procedure, 1908(Act No.V of 1908), is pending in respect of the trust in question;
- (b) if the trust property is vested in the Treasurer of Charitable Endowments, the Administrator-General, the Official Trustee, or any Society registered under the Societies Registration Act, 1860(Act XXI of 1860); and
- (c) if a scheme for the administration of the trust property has been settled or approved by any Court of competent jurisdiction, or by any other authority acting under the provisions of any enactment.

10. Power of Courts as to costs in certain suits against trustees of charitable and religious trusts.---(1) In any suit instituted under section 92 of the Code of Civil Procedure, 1908(Act No.V of 1908), the Court trying such suit may, if, on application of the plaintiff and after hearing the defendant and making such inquiry as it thinks fit, it is satisfied that such an order is necessary in the public interest, direct the defendant either to furnish security for any expenditure incurred or likely to be incurred by the plaintiff in instituting and maintaining such suit, or to deposit from any money in his hands as trustees of the trust to which the suit relates such sum as such Court considers sufficient to meet such expenditure in whole or in part.

(2) When any money has been deposited in accordance with an order made under sub-section (1), the Court may make over to the plaintiff the whole or any part of such sum for the conduct of the suit. Before making over any sum to the plaintiff, the Court shall take security from the plaintiff for the refund of the same in the event of such refund being subsequently ordered by the Court.

11. Provisions of the Code of Civil Procedure to apply.----(1) The provisions of the Code of Civil Procedure, 1908 (Act No.V of 1908), relating to—

- (a) the proof of facts by affidavit;
- (b) the enforcing of the attendance of any person and his examination on oath;
- (c) the enforcing of the production of documents; and
- (d) the issuing of commissions, shall apply to all proceedings under this Act, and the provisions relating to the service of summonses shall apply to the service of notices thereunder.

(2) The provisions of the said Code relating to the execution of decrees shall, so far as they are applicable, apply to the execution of orders under this Act.

12. Barring of appeals.--- No appeal shall lie from any order passed or against any opinion, advice or direction given under this Act.

13. Repeal.----(1) The Charitable and Religious Trust Act, 1920 (Act No.XIV of 1920), in its application to the Province of Khyber Pakhtunkhwa, is hereby repealed.

(2) Notwithstanding the repeal of the Charitable and Religious Trusts Act, 1920 (Act No.XIV of 1920), anything done, or action taken or decision or order made under the repealed Act, shall have effect as if done, taken or made under this Act.

MINISTER-IN-CHARGE