

No. LD/Legis-Act/222/2016. The following Act of Assembly received the assent of the President on the 08th day of February 2016, is hereby published for general information.

[Act XXV of 2016]

**An
Act**

to provide for care, protection, welfare and rights of child and matters ancillary and connected therewith

WHEREAS it is expedient to establish a Commission for the Child Welfare and Development to monitor, promote and protect Child’s rights and advocate for change in administrative and legislative framework to make it more child-protective;

AND WHEREAS, it is necessary to provide an environment for children that is free of violence, abuse and exploitation as espoused by the teachings of Islam and the United Nations Convention on the Rights of the Child;

It is hereby enacted as follows:-

CHAPTER-I

PRELIMINARIES

1. **Short title, Extent and Commencement.** - (1) This Act may be called the Child Rights (Care and Protection) Act, 2016.
(2) It extends to the whole of Azad Jammu and Kashmir.
(3) It shall come into force at once.
2. **Definitions.**- In this Act, unless there is anything repugnant to the subject or context, the following words and expressions shall have the meaning as hereby respectively assigned to them:-
 - (a) **“Abuse”**, in relation to a Child, means any form of harm, threat or ill-treatment deliberately inflicted on a Child, and includes—
 - (i) assaulting a Child or inflicting any other form of deliberate injury to a Child;
 - (ii) bullying by another Child;
 - (iii) a labour practice that exploits a Child; or
 - (iv) exposing or subjecting a Child to a behaviour that may harm the Child psychologically or emotionally;
 - (b) **“Adult”** means a person(s) who has completed 18th years of his age;
 - (c) **“Chairman”** means Chairman of the Commission;

- (d) **“Child”** means a person who has not yet attained the age of 18 years, at the time of any relevant proceeding;
- (e) **“Child at risk”** means a Child who: -
- (i) is an orphan or is a Victim of Neglect by his parents or lawful guardian, or whose parents or guardians are unfit or incapacitated to look after his needs and exercise control over him; or
 - (ii) is without a home or settled place of abode and without any ostensible means of subsistence; or
 - (iii) is accused of or convicted of an offence and living at a place of detention; be in a reformatory school, borstal institution, jail or any other place notified to detain children accused of or convicted of an offence; or
 - (iv) is living with his mother at a place of detention; be it a special women jail or district or central jail or any other place notified to detain women accused of or convicted of an offence; or
 - (v) is being or likely to be abused or exploited for immoral or illegal purpose or unconscionable gain, and/ or is being sexually abused; or
 - (vi) lives in a brothel or frequently visits any place being used for sex or is associated with any person who leads an immoral or depraved life; or
 - (vii) is forced into the worst forms of the child labour, exploitative labour, or beggary; or
 - (viii) has suffered harm, is suffering harm, or is at unacceptable risk of suffering harm; or
 - (ix) is a victim of any armed conflict, civil commotion or natural calamity; or
 - (x) is subjected to human trafficking within and outside Azad Jammu and Kashmir or Pakistan; or
 - (xi) is being misused for drug trafficking or peddling or is subjected to abuse of any intoxicating, hallucinating substances including glue, narcotic drugs, spirits etc.;
 - (xii) is affected or infected with a serious disease, disabled and without any care;
 - (xiii) is being subject of forced marriage by parents, guardian or any other person taking care of the Child; and
 - (xiv) is a special/disabled child who is not being provided with proper care and medical facilities which he/she should be provided for the treatment and care of that disability.

- (f) **“Child’s Home,” or “Home”** means a home set up for the care and protection of the child at risk, be it a child protection centre, orphanage, etc.;
- (g) **“Child Labour”** includes bonded labour and work or employment of a child under fourteen years of age or work which:-
- (i) is exploitative, hazardous or otherwise inappropriate for a person of that age; and
 - (ii) places at risk the child’s well-being, education, physical or mental health, or spiritual, moral, emotional or social development;
- (h) **“Commission”** means the Azad Jammu and Kashmir Commission for the Child Welfare and Development (AJKCCWD) established under Section 5 of the Act;
- (i) **“Committee”** means the United Nations Committee on the Rights of the Child in Geneva;
- (j) **“Convention”** means the United Nations Convention on the Rights of the Child, 1989;
- (k) **“Corporal Punishment”** means intentional use of physical force intended to cause a high degree of pain or discomfort for discipline, correction and control, changing behaviour or in the belief of educating or bringing up the child, that either results in or has a high likelihood of resulting in injury, psychological harm, mal-development or deprivation;
- (l) **“Director”** means the person appointed as such under this Act;
- (m) **“District Commission for Child Welfare and Development”** means District Commission for Child Welfare and Development (DCCWD) established under this Act;
- (n) **“Fund”** means the Child Protection Fund established under this Act;
- (o) **“Government”** means the Azad Government of the State of Jammu and Kashmir;
- (p) **“Guardian”** means a person having the care of the person of a minor ~~efor~~ his property, or ~~ef~~ of both his person and property;
- ~~(q)~~ **“Harm,”** to a child means;
- (q) ~~is~~ any detrimental effect of a significant nature on the child’s physical, psychological or emotional wellbeing;
- Explanation:-**
- (i) It is immaterial how the harm has been caused as it;
 - (ii) ~~————~~ **Harm** could be caused by:
 - a. ~~P~~physical, psychological, mental or emotional abuse or Neglect or;
 - b. ~~S~~Sexual Abuse or exploitation.
- (r) **“Licence”** means a licence granted under this Act;

- (s) **“Licensee”** means the holder of licence to operate a Children’s Home under this Act;
- (t) **“Licensed home”** means a Child’s Home licensed under this Act;
- (u) **“Member”** means a Member of the Commission;
- (v) **“Neglect”**, in relation to a child, means a failure in the exercise of **parental** responsibilities to provide for the child’s basic physical, intellectual, emotional or social needs;
- (w) **“Offence”** means any act or omission made punishable under this law or any law for the time being enforced in Azad Jammu and Kashmir;
- (x) **“Prescribed”** means prescribed by the Rules made under this Act.
- (y) **“Sexual Abuse”**, in relation to **a eChild**, means:—
 - (i) Sexually abusing, molesting, ~~or~~ assaulting **a child** or allowing **a child him** to be sexually abused, molested or assaulted;
 - (ii) encouraging, inducing or forcing **a eChild** to be used for the sexual gratification of another person;
 - (iii) using **a eChild** in, or deliberately exposing **a child him** to sexual activities or pornography; or
 - (iv) procuring or allowing **a child him** to be procured for commercial sexual exploitation or in any way participating or assisting in the commercial sexual exploitation of **a eChild**.
- (z) **“State”** means the State of Azad Jammu and Kashmir;
- (aa) **“The best interests of a eChild”** where there is a reference in this Act to “the best interests of ~~the eChild~~”, the factors to be taken into account in determining the **eChild’s best interests** shall include;
 - (i) the **eChild’s** right to be protected from Abuse, Neglect and Harm or threat of harm;
 - (ii) the welfare, well being and safety of the Child;
 - (iii) the Child’s physical and emotional needs and level of development;
 - (iv) the Child’s family to be considered as the preferred environment for the care and upbringing and the responsibility for the protection of the Child, ~~to~~ rest primarily with the parents;
 - (v) the Child to be given ~~into~~ safe custody of a Guardian in case he is not having family or parents;
 - (vi) the quality of the relationship the Child has with a parent, ~~a~~ **Guardian** and the effect of maintaining that relationship;
 - (vii) the Child’s religious, cultural and spiritual views;
 - (viii) the Child’s level of education and educational requirements;

- (ix) the Child is given the opportunity to freely express his own views and opinion and these views are to be given due weight; ~~and~~
 - (x) ~~the~~ effect on the Child of a delay in making a decision; and
- (bb) “Victim” means the Child subjected to Abuse or Sexual Abuse or against whom an offence punishable by law has been committed.

3. **Protection of Child Rights.**– (1) The Government shall respect and ensure the rights of the Child as set out in the Convention and are mentioned in the Schedule to this Act.
- (2) The Government may amend the Schedule by a notification in the Official Gazette keeping in view the international obligations to this effect.
- (3) The Commission shall be responsible to make policy about ~~availability~~protection of the rights as mentioned in the Convention and the Schedule.
- (4) The Director and other staff of the Commission shall exercise executive authority in accordance with this Act, rules and policy laid down by the Commission for ~~availability~~provision of these rights to Child in collaboration ~~with the~~ relevant Government Agency or Department.
4. **Overriding effect.** – Notwithstanding anything contained in ~~any~~ judgment of ~~the~~ Supreme Court or ~~in~~ High Court, or in any law for the time being in force, the provisions of this Act shall have an overriding effect.

CHAPTER-II

ESTABLISHMENT AND MANAGEMENT OF THE COMMISSION ETC.

5. **Establishment of Commission:** - (1) The Government shall establish a Commission for carrying out the purposes of this Act, comprising of a Chairman and such number of Members as may be prescribed:
- Provided that Azad Jammu and Kashmir Commission for Child Welfare and Development (AJKCCWD) already constituted by the Government through Notification No. 1078-1112 dated 06-07-1998 shall ~~be~~ be deemed to have been constituted under this Act.
- (2) The Commission, established under sub-section (1), shall be a body corporate, having perpetual succession and a common seal, with power, subject to the provisions of this Act, to enter into agreements, contracts, acquire and hold property, both moveable and immoveable, and to sue and be sued in its name.
- (3) The Commission shall be independent in exercise of its functions and shall have administrative and financial autonomy.
- (4) The Director of the Commission shall be ex-officio Secretary of the Commission.

(5) The headquarter of the Commission shall be at Muzaffarabad, however, the Commission may establish its regional offices or units, as the case may be, at such other place ~~(s)~~ as it may consider necessary.

6. **Ex-Officio Members.** - The Government may nominate officers, not below ~~in-grade~~ the grade BPS-19, as ex-officio Members of the Commission from the departments of;

- (a) Law and Human Rights, ~~Law~~;
- (b) Finance,
- (c) Education,
- (d) Health,
- (e) Home,
- (f) Labour,
- (g) Youth Affairs,
- (h) Social Welfare,
- (i) Religious Affairs,
- (j) Planning and Development, and
- (k) Local Government.

7. **Terms and conditions of Office of the Members.** - (1) The Member, other than ex-officio Members, shall-

- (i) hold office for a term not ~~exceeding longer than~~ two years;
- (ii) be eligible for re-appointment only for two consecutive terms;
- (iii) act on gratis basis and shall be entitled to travelling and daily allowance as may be prescribed; and
- (iv) may resign from his office by writing under his hands and submit his resignation to the Government.

(2) A vacancy in the Membership of the Commission shall be filled within sixty days of its occurrence, ~~for the unexpired portion of the term of the member vacating office.~~

8. **Disqualification from being a Member.** - A person shall be disqualified from being nominated or continuing as a Member of the Commission if he,-

- (a) becomes a Member of Azad Jammu and Kashmir Legislative Assembly ~~of Azad Jammu and Kashmir~~, or Council ~~Azad Jammu and Kashmir Council~~; or
- ~~(b)~~ becomes or declared to as an unsound mind or insolvent under any law for the time being in force; ~~or~~
- ~~(c)~~ (b) becomes an un-discharged insolvent; ~~or~~
- ~~(d)~~ (c) is serving or has served a sentence of imprisonment imposed by any court in Azad Jammu and Kashmir, Pakistan or any other country; or

(e)(d)_____ holds or enjoys any right or benefit under any contract made by or executed on behalf of the Commission; or

(f)(e)_____ has any financial or other interests as is likely to affect prejudicially the discharge of his functions as a Member of the Commission; or

(g)(f)_____ has abused the position or his powers as a Member during his term of as the case may be to render its continuance in office, detrimental to public interest: or

(h)(g)_____ has been negligent and/or reckless in addressing the issues of ~~the~~ Child:

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

9. **Meetings of the Commission.** - (1) The Commission shall meet at least twice a year at a place and times as the Commission may direct and shall be presided over by the Chairman or any other Member authorised by him in this behalf.

(2) Half of the total Members of the Commission shall constitute quorum of the meeting thereof.

(3) All decisions of the Commission shall be taken by votes of majority of the Members present ~~and voting~~, and in case of tie, the Chairman shall have the casting vote.

(4) All recommendations, orders and decisions of the Commission shall be authenticated by the signatures of Chairman or any other Member authorized by him in this behalf.

10. **Budget.** - The Government shall make annual budgetary allocations for establishment and functioning of the Commission.

11. **Reports.** - (1) The Commission shall prepare annual report of its activities and such other periodical or special reports as it may consider necessary.

(2) Reports of the Commission shall be laid before the Assembly through the Chairman.

12. **Rights and Liabilities of the Commission.** - All rights, liabilities and obligations of the existing Commission (AJKCCWD) constituted under the Government Notification no. 1078-1112 dated 06-07-1998, ~~AJKCCWD~~ whether arising out of any contract or otherwise, shall be deemed to have been transfer to, acquired or incurred by the Commission on commencement of this Act;:

Provided that these are consistent with the objectives of the Commission.

13. **Functions of the Commission.** - (1) Without prejudice to generality of its functions the Commission shall;

(a) protect rights of child given in the Schedule;

(b) act as a focal person for effective supervision and coordination of the Child's rights, related matters in general and the Child at risk in particular and co-ordinate with

the Government of Pakistan in respect of activities for the survival, development, protection and participation of the Child at national and international level;

- (c) propose new legislation; ~~one~~ rights of make Child impact-related or connected matters assessment to ensure ~~that the legislation will comply with~~ the best interests of the Child;
- (d) analyse existing law, policy and practice to assess compliance with the Convention and other international human rights obligations relating to the Child and make recommendations to the Government as and when required;
- (e) undertake inquiries and produce reports on any aspect of policy or practice affecting the Child;
- (f) promote respect for the views of the Child by ensuring that the Commission's work is directly supported by the views of the Child in order to reflect their priorities and perspectives;
- (g) raise awareness of the Child's rights among children and adults by producing and disseminating information about the Child's rights and organising related events;
- (h) analyse the Government statistics on the Child in general and Child at risk in particular to identify gaps and the need for disaggregated data and where there is a lack of existing information about their rights/lives, it shall produce data of its own through research, or to undertake any necessary research;
- (i) collect and publish data on the situation of Child in general and ~~Children~~ at risk in particular and take appropriate steps to protect and promote the rights of such Child;
- (j) incorporate ~~Children's~~ rights in to the school curriculum and press for inclusive education and contribute to the development of ~~the~~ necessary materials for Child of all ages, as well as promoting child-centered education;
- (k) engage or use media and encourage it to promote awareness about Child's rights and expose violations of those rights;
- (l) refrain and ensure to avoid media coverage of cases involving a Child so as the name and identity of the Child/~~children~~ remains secret/concealed, and if such media coverage is made, this should be done with prior approval of the Child and the parents/-guardian in writing;
- (m) take appropriate steps to provide training on ~~Children's~~ Child's rights to all professionals, working with children including judges, teachers, officers of relevant departments, health professionals, social workers, lawyers, ~~probation~~, police officials; or prison officers etc.;

- (n) set minimum standards of care for the Child at risk in the light of regional and international obligatory parameters and coordinate with ~~the~~ other departments and for their effective implementation;
- (o) ensure that Child as an individual or as a group, have effective means of redress when their rights are violated and monitor the availability, effectiveness and usage of complaints procedures that already exist, and identify gaps in the provision of complaints procedures, and analyse the findings from Child's complaints to identify patterns of concern, and incorporate these patterns into policy proposals and recommendations for change;
- (p) discharge reporting obligations under the Convention and other international human rights treaties and to ensure that recommendations made by the Committee or other International Human Rights Institutions are implemented while taking into account the best interests of the child;
- (q) assess the impact of the constitutional and administrative provisions having bearing on welfare and development of Child and suggest measures to provide full opportunities of their complete growth;
- (r) suggest amendments and addition in relevant ~~to~~ laws, wherever feasible necessary, so as to bring them into harmony conformity with the Convention;
- (s) formulate a policy for Child Welfare and Development;
- (t) formulate legislation to deter Child abuses in all its forms including physical violence, Child mutilation, exposure to drugs, Child labour and protection of the children who are handicapped (mentally or physically) or otherwise in need of special protection;
- (u) evaluating existing welfare and development services for the Child to identify needs and tasks, fix priorities and adopt measures to streamline and strengthen programs for the Child;
- (v) initiate and assist action oriented programs for promotion of optimum and integrated welfare and development of services for children and their families in urban and rural areas through Government and non-governmental al agencies engaged in Child Welfare and Development;
- (w) promoting, planning and development of child welfare work for school going children and specialized groups of children such as like the handicapped and rural children through Government and non governmental al agencies;
- (x) set up documentation and resource centre on child welfare and development including Child Protection Management Information System; and

(y) Collaborate with its administrative department for development schemes relating to child welfare and development projects.

14. Powers of the Commission. (1) The Commission may summon any person whose attendance is considered necessary for the purpose of any business before it and the person so summoned shall be bound to appear at the time and place mentioned in the summons.

(2) The Commission may form committees, as may be prescribed, to look into the specific pattern of violations of the Child's rights.

(3) All the executive authorities and citizens shall act in aid and assistance of the Commission in ~~the~~ performance of its functions.

(4) Decisions made by the Commission shall be binding on the concerned executive authorities and citizens:

Provided that ~~the executive authority or the citizen concerned feeling any authority or person~~ aggrieved from the decision of the Commission may appeal to the Government.

(5) The Commission may, subject to such conditions as it may specify, delegate any of its powers under this Act to ~~its committee of the Commission~~, Member ~~Director~~ or any ~~other officer of its officer the Commission or or officer of~~ the Government.

15. Management of the Commission. - (1) The Government shall appoint ~~an a senior~~ officer ~~not below than~~ ~~in~~ grade-19 as the Director of the Commission, as may be prescribed.

(2) The Director shall exercise all administrative and financial powers of the Commission ~~under this Act~~ ~~as may be prescribed~~.

~~(3) The Director may resign from his office by writing under his hands to the Government.~~

16. Employment of Officers and servants. - (1) The Government shall appoint ~~permanent~~, qualified and highly skilled staff in the Commission ~~as may be prescribed~~.

(2) The Commission may appoint advisors, consultants and experts having specialization and expertise in ~~the~~ child's rights and related matters for provision of expert assistance from time to time as it may consider necessary for the performance of its functions, on such terms and conditions as ~~it~~ may ~~be~~ deem fit.

17. District Commission for Child Welfare and Development (DCCWD).- (1) There shall be a District Commission for Child Welfare and Development (DCCWD) in each district comprising of a chairman and such number of Members as may be notified:

Provided that District Commission for Child Welfare and Development already established shall be deemed to have been established under this Act.

(2) The tenure and terms and conditions of the Chairman and the Members shall be such, as may be prescribed.

(3) The Chief District Officer of the department mentioned in Section 6 shall be ex-officio Member of the DCCWD.

18. **District Child Protection Unit.-** There shall be a child protection unit at each district to carry out the purposes of this Act in the respective district and to provide secretarial support to the DCCWD.

19. **Child Protection Officer.-** (1) The Government may, for carrying out the purposes of this Act, appoint as many Child Protection Officers for ~~the~~ district as may be necessary, on such terms and conditions, as may be prescribed:

Provided that unless Child Protection Officers are appointed, Social Welfare Officers already appointed in different districts shall be deemed to be Child Protection Officers for the areas within their jurisdiction.

(2) Subject to the provisions of ~~this~~ Act the Child Protection Officer may, within the local limits for which he is appointed, and in any other area with the permission of the Commission,-

- (a) inspect any Child Home or any other such establishment or building where shelter or training facilitation offered or purported to be offered to the Child at risk, run under governmental or non-governmental organization, the means employed for livelihood of such children, their living conditions and all relevant record etc;
- (b) enter and search, with police assistance, if any, as he deems necessary, any building, premises or place, in which he has reason to believe that an offence under this Act has been or is being committed or may continue to be committed;
- (c) seize such materials and articles which he has reason to believe may furnish evidence of the commission of an offence punishable under this Act or any other law for the time being in force;
- (d) call any person to be present as witness in the course of search in connection with any other matter under this Act where the presence of witnesses is necessary; and
- (e) exercise such other powers as the Commission may delegate to it, for carrying out the purposes of this Act.

(3) The provisions of the Code of Criminal Procedure, 1898 (Act No. V of 1898) as enforced in Azad Jammu and Kashmir shall apply to searches and seizures made under this Act.

(4) The Child Protection Officer may, with prior authorization of Director, in writing register First Information Report (FIR) or complaint against any person or persons who have committed any offence under this Act or any other law for the time being in force.

20. **Child Protection Management Information System (CPMIS).**- (1) The Commission shall develop a uniform structure for data collection and computerized data recording named as Child Protection Management Information System (CPMIS) on all child related indicators.

(2) The CPMIS shall be developed as a set of key indicators to measure the situation of Child rights, elaboration of monitoring procedure and collection of data tools, developing an informatic's system and state database, training of specialized staff working in the monitoring system, developing annual/regular reports.

(3) Without prejudice to generality of related uses, the CPMIS shall be used;

- a) to report on the situation of Child rights in Azad Jammu and Kashmir to be submitted under the Convention;
- b) to initiate primary prevention activities targeting the Child awareness campaigns;
- c) to initiate secondary prevention activities including identification of Child being at special risk of abuse or exploitation etc. as may be prescribed; and
- d) to rehabilitate Children who have been protected from special risks under clause (c) and prevent them from re-entering to situation having risk of abuse.

Chapter-III

CHILD RESCUE AND PROTECTION

21. **Rescue of Child at risk.**- A Child Protection Officer upon information or complaint, may take into protection a Child at risk and send him to Child Home and report the case to the Director:

Provided that where such a Child is in the protection of his parent or guardian, the officer shall not take him into protection but shall in the first instance, make a report to the Director:

Provided further that the first proviso shall not be applicable in the case of a Child who is found begging or is a victim of an offence alleged to have been committed by his parents or Guardian.

22. **Powers of the Director to intervene.** - (1) The Director or any other officer authorised by the Commission shall have powers to intervene, on report of Child Protection Officer under Section 21 or otherwise, into a specific case of violation of the Child rights or a

specific pattern of abuse that the Child is at risk or the best interests of children are not being considered or protected and take legal action in circumstances where it is impossible or inappropriate for the Child to do so on his own behalf and where concern has been expressed by any person including,-

- (a) Child himself; or
- (b) interested adults; or
- (c) a person who, in the course of his or her professional work or other paid employment delivers health care, welfare, education, Child's services, residential services, or law enforcement, wholly or partly, to children; or
- (d) a person who holds a management position in an organisation the duties of which include direct responsibility for, or direct supervision of, the provision of health care, welfare, education, Child's services, residential services, or law enforcement, wholly or partly, to the Child.

(2) If a person to whom this Section applies;

- (a) has reasonable grounds to suspect that a Child is at risk; and
- (b) those grounds arise during the course of or from the person's work, the person must, as soon as practicable, report to the Director the name, or a description, of the Child and the grounds for suspecting that the Child is at risk.

(3) A person to whom this section applies satisfies his or her obligations under subsection (2) in relation to the case where two or more children that constitute a particular class of the Child if the person reports that class of Child to the Director together with:

- (a) a description that is sufficient to identify the Child who constitute the class; and
- (b) the grounds for suspecting that the Child of that class are at risk.

23. Protection of persons who make reports or provide certain information. - If, in relation to a Child or a class of the Child, a person makes a report in good faith to the Director or to a person who has the power or responsibility to protect the Child or the class of Child;

- (a) the making of the report shall not constitute a breach of professional etiquette or ethics or a departure from accepted standards of professional conduct;
- (b) no liability for defamation shall be incurred because of the report; and
- (c) ~~the~~ the making of the report shall not constitute a ground for civil proceedings for malicious prosecution or for conspiracy:

Provided that in case a report is wrongful or false in nature then apology shall be regarded as sufficient to end of such proceedings.

24. **Abolishment of corporal punishment.**- (1) Corporal punishment stands abolished in all its kinds and manifestations and its practice in any form is prohibited as provided under Section 89 of the Azad Penal Code, 1860 (Act No. XLV of 1860).
(2) The Commission shall prescribe alternate measures progressively for ensuring discipline in educational institutions including madrassas and boarding houses where the Child are residing for education or otherwise.

CHAPTER-IV

CHILDREN HOMES

25. **Establishment of the Child Home.**- (1) The Government may establish, organize, manage, maintain and control one or more Child Protection Institutions at such place or places in the State, as it may deems fit.
(2) The Commission may authorise any person or a body of the persons to inspect, check and supervise any Child Protection Institution as to whether it is functioning in accordance with the provisions of this Act.
(3) Every Child Protection Institution shall have specialized and well-equipped separate arrangements for the reception of the Child at risk.
(4) The Child Protection Institution shall not only provide the Child at risk with accommodation, treatment, maintenance and facility for education, but also provide him the facility for the development of his character and abilities and give him necessary training for protecting himself against moral dangers or exploitations.
(5) The Child Protection Institution shall perform such other functions as may be prescribed.
(6) In case a Child Protection Institution is found acting contravention of the provisions of this Act, the Commission may pass such orders as it may deems fit for the proper management or maintenance of such institution or its complete disbandment.
(7) No order shall be passed by the Commission under sub-section (6) of this section, unless the management thereof is provided with an opportunity of hearing.
26. **Licence to operate Child's Home.**- (1) No person~~(s)~~ or authority and / or office shall establish or maintain or operate a Child's Home in private sector for the Child at risk in the State except under a valid licence granted to him by the Commission in respect of the Child's Home:

Provided that nothing in this sub-section shall apply to,-

- (a) a juvenile correctional centre;
- (b) any school, other than a school required by the Commission to be licensed;
- (c) any house where five or more children are boarded and maintained by relatives of such children, or by the wish or with the consent of the parents

or lawful guardians of such children, save in cases where the Commission, by notice in writing, expressly requires any such house to be licensed;

(d) any home, in present or in future, maintained or operated wholly by the Government under any other law.

(2) Save with the prior written permission of the Commission, no person shall maintain a Child's Home at any address or location other than that provided for in the licence granted in respect of the home.

(3) A licence shall be valid for a period of three years from the date of its issue and may be renewed successively upon satisfaction of the Commission.

(4) Save with the prior written permission of the Commission, no licence shall be transferred to the name of any person other than the licensee.

27. **Application for licence.** - Every person who desires to establish and maintain a Child's Home shall make application to the Commission, in the prescribed form and manner, for a licence.

28. **Power of the Commission in respect of licences.** - (1) The Commission may refuse to grant a licence in respect of any Child's Home, or may refuse to permit the transfer of a licence or to renew a licence.

(2) The Commission ~~shall~~ may impose such terms and conditions as given in Regulations while granting a licence ~~attach thereto such terms and conditions as it may, in any case, think fit.~~

(3) At all reasonable times-

- (a) any person authorized by the Commission; or
- (b) an officer of Commission;

may visit and inspect any Child's Home for the purpose of verifying that the home is licensed, ensuring that the home is properly maintained-administered and that the children residing therein are receiving adequate care and attention.

29. **Terms and Conditions to operate a Child's Home.** - The terms and conditions for the functioning of Child's Homes and minimum standards of care to be observed by the operators shall be regulated ~~prescribed~~ by the Commission.

30. **Responsibility of the licensee.** - It shall be the duty of every licensee to-

- (a) act in the best interests of every Child in Child's Home;
- (b) ensure that the Home is registered and it will be sole responsibility of the Licensee;
- (c) ensure that every Child in his Home receives at all times careful and humane treatment and suitable education; and

(d) ensure that all the provisions of this Act and all the terms and conditions of the licence and the directions of the Commission are at all times complied with in respect of the Child's Home and every Child maintained therein.

31. **Visits.** The Commission shall have ~~the~~an authority of making visit to any Child's Home without any prior notice and the premises of the Child's Home should be made available for inspection. ~~provided for examination.~~

Chapter-V

PENALTIES AND PROCEDURE OF TRIAL

32. **Penalty for breach of license of Child Home.-** Whoever breaches the terms and conditions of licence shall, as prescribed by the Commission for operating a Child's Home, be punished with imprisonment of either description for a term which may extend to three years and liable to fine which may extend to fifty thousand rupees:

Provided that nothing shall prevent any court from punishing the accused under any other law for the time being in force for the offence committed against the Child.

33. **Penalty for inflicting Corporal Punishment.-** Whosoever causes or permits to cause corporal punishment, through omission or commission, in any form, under any circumstances or for any purpose, to a Child, shall be punished with imprisonment for a term which may extend to six months or with fine which may extend to fifty thousand rupees, or with both.

34. **Cognizance and Compounding of Offences.-** (1) The offences under this Act shall be non-cognizable by police and non-compoundable.

(2) The Court shall not take the cognizance of any offence under this Act unless a complaint has been filed by the Commission or a person duly authorised by it in writing.

35. **Code of Criminal Procedure 1898 to apply.-** (1) Except where a different procedure is provided under this Act, the Code of Criminal Procedure 1898 as adapted in Azad Jammu and Kashmir, shall apply for all proceedings including investigation and trial before the competent court of law.

(2) The court of law shall include Criminal Court of competent jurisdiction including magistrate.

CHAPTER-VI

CHILD PROTECTION FUND

36. **Child Protection Fund. -** (1) In addition to the annual budgetary allocations by the Government under Section 10 of this Act, the Commission shall establish a Fund to be known as "Child Protection Fund" for incurring all necessary expenditures by the Commission to perform its functions under this Act.

(2) Fund shall be credited to such voluntary donations, contributions or subscriptions as may be made by the Government, local Governments, Bait-ul-mal, Zakat or any individuals or other national and international organisations.

(3) The Fund, created under sub-section (1), shall be administered by the Commission, which shall make such allocations for specific targets and activities, as may be deemed appropriate.

(4) The Fund shall be utilized for-

(a) performing functions of the Commission;

(b) promotion and protection of the rights as mentioned in the Schedule and welfare of the Child; ~~and~~

(c) such other activities, which may fall within the purview of the Commission; ~~and~~

(d) payment of compensation, fines or damages on behalf of a Child in accordance with the orders of the Court where parents or guardian of such Child ~~owing due~~ to poverty or any other reason are not able to pay such amount.

~~(5) Subject to the approval from the Commission, the Director may allocate any amount from this fund to other agencies established by the Government for the protection of the Child.~~

37. Financial Control. - (1) The Secretary Social Welfare Department or any other officer authorized by the Government in this behalf shall be the Principal Accounting Officer of the Commission in respect of expenditures incurred from the Fund and shall, for this purpose, exercise all the powers delegated by the Commission.

(2) The accounts shall be maintained in accordance with standards as prescribed by the Accountant General;

(3) The Commission shall, in consultation with Auditor General, cause audit of the accounts of the Commission on annual basis.

(4) The auditor referred to in sub-section (3) shall be appointed on such remuneration and on such terms and conditions as the Commission may, in consultation with the Auditor General, determine.

CHAPTER-VII MISCELLANEOUS

38. Officers to be public servants. - The officers appointed or authorized under this Act shall be deemed to be public servants within the meanings of Section 21 of the Azad Penal Code 1860 (XLV of 1860).

39. Immunity. - No suit, prosecution or other legal proceeding shall be instituted or initiated against any person, acting or purporting to act under this Act, in good faith and ~~for~~ the best interests of the Child.

40. **Aid to the Commission.**- All executive authorities and institutions shall act in aid of the Commission in performance of its functions under this Act.
41. **Powers to make Rules and Regulations.**- (1) The Government may, by notification in the official Gazette, make rules for carrying out the purposes of this Act.
(2) The Commission may make regulations for conduct of its business or to perform its functions, not inconsistent with this Act and Rules made under sub-section (1).
42. **Power to remove difficulties.** - If any difficulty arises in giving effect to the provisions of this Act, the Government may, by order, not inconsistent with the provisions of this Act, remove such difficulty.

(Ch. Muhammad Nawaz)
Section Officer (Legislation)

THE SCHEDULE

THE RIGHTS OF CHILDREN

(See sub-section (1) of Section 3)

1. **Respect for Child Rights.** - (1) The Commission shall ensure the rights set forth in this Schedule be enjoyed by the Child without discrimination of any kind and irrespective of the Child's or his parent's or Guardian's race, colour, sex, language, religion, political or other affiliation, national, ethnic or social origin, property, disability, birth or other status.
(2) The Commission shall take all appropriate measures to ensure that the Child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the Child's parents, Guardians, or family Members.
(3) In all actions concerning the Child, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the Child shall be a primary consideration.
(4) The Commission, undertake to ensure for the Child such protection and care as it is necessary for his well-being, taking into account the rights and duties of his parents, Guardians, or other individuals legally responsible for him, and shall take all appropriate legislative and administrative measures.

(5) The Commission shall ensure that the institutions, services and facilities responsible for the care or protection of the Child shall conform to the standards established by competent authorities, particularly in the areas of safety, number and suitability of their staff, as well as competent supervision.

(6) The Commission shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in this Schedule. With regard to economic, social and cultural rights, the Commission, shall undertake such measures within its available resources and, where needed, within the framework of international cooperation.

(7) The Commission shall, undertake to make the principles and provisions of the Convention widely known by appropriate and active means to adults and Child alike.

(8) The Commission shall respect the responsibilities, rights and duties of parents or, where applicable, the Members of the extended family or community as provided by local custom, legal guardians or other persons legally responsible for the Child, to provide, in a manner consistent with evolving capacities of the Child, appropriate direction and guidance for exercise by the Child of the rights recognized in this Schedule.

2. **Inherent Right of Life.** - (1) The Commission recognize that every Child has the inherent right of life.

(2) The Commission shall ensure to the maximum extent possible the survival and development of the Child.

3. **Birth Registration.**- (1) The Commission shall ensure that every Child is registered immediately after birth and shall have a right from birth to a name, the right to acquire a nationality and, as far as possible, the right to be known and be cared for and by his or her parents.

(2) The Commission shall devise policy relating to registration at birth and facilitate the relevant institution for timely registration of birth in collaboration with Local Government and Rural Development Department. The Commission shall also launch awareness campaign for parents in this regard.

4. **Preservation of Identity.** - The Commission undertake to respect the rights of the Child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.

5. **Parents.** - (1) The Commission shall ensure that a Child shall not be separated from his parents against his will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the Child. Such determination may be necessary in a particular case such as one involving Abuse or Neglect of the Child by the parents, or

one where the parents are living separately and a decision must be made as to the Child's place of residence.

(2) In any proceedings pursuant to sub-section (1), all interested parties shall be given an opportunity to participate in the proceedings and make their views known.

(3) The right of the Child shall be respected, who is separated from one or both parents, to maintain personal relations and make direct contact with both parents on a regular basis, except where it is contrary to the Child's best interests.

6. **Child's Views.**- (1) The Commission shall ensure that a Child, who is capable of forming his views exercise his right to express views freely in all matters affecting him, the views of the Child being given due consideration and weight keeping in view the age and maturity of the Child.

(2) For the purposes of sub-section (1), the Child shall in particular be provided the opportunity to be heard in any judicial proceedings affecting the Child, either directly, or through a representative or an appropriate body, in a manner consistent with law.

7. **Freedom of Expression.**- (1) Every Child shall have the right of freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally or in writing or in print, or in the form of art, or through any other media of the Child's choice. The exercise of this right shall be subjected to restrictions as provided by law.

(2) The Commission in this regard recognizes the important function performed by the mass media and shall ensure that the Child has access to information and material from different national and international sources, especially those aimed at the promotion of his social, spiritual and moral well-being and physical and mental health.

8. **Freedom of Religion.**- (1) The Commission shall respect the right of the Child to freedom of thought, conscience and religion.

(2) The Commission shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the Child in the exercise of his right in a manner consistent with capacity of the Child.

9. **Freedom of Association.**- The Commission recognize the rights of the Child to freedom of association and to freedom of peaceful assembly. No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in the interests of national security or public safety, public order, protection of public health or morals or protection of the rights and freedoms of others.

10. **Right to Privacy.** - No Child shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and

reputation; and every Child shall have the right of protection of the law against such interference or attacks.

11. **Upbringing the Child.** - (1) The Commission shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for upbringing and development of the Child. Parents or, as the case may be Guardians, have the primary responsibility for the upbringing and development of the Child. The best interests of the Child shall be their basic concern.

(2) For the purpose of guaranteeing and promoting the rights set forth in this Schedule, the Commission shall render appropriate assistance to parents and ~~legal~~ Guardians in the performance of their responsibilities and shall ensure the development of institutions, facilities and services for the care of the Child.

12. **Protection from Violence.** - (1) The Commission shall take all appropriate legislative, administrative, social and educational measures to protect the victim or Child from all forms of physical or mental violence, injury or Abuse, Neglect or negligent treatment, maltreatment or exploitation, including Sexual Abuse, while in the care of parent, Guardian or any other person who has the care of the Child.

(2) Such protective measures, as described in sub-section (1), shall, as appropriate, include effective procedures for the establishment of social programs to provide necessary support for the Child or Victim and for those who have the care of the Child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of Child maltreatment, and, as appropriate, for judicial involvement.

(3) A Child temporarily or permanently deprived of his family environment, or in his own best interests he cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the Commission who shall, in accordance with law, ensure alternative care for such Child.

13. **Rights of disabled Child.** - (1) The Commission recognizes that a mentally or physically disabled Child should enjoy a full and decent life, which ensure his dignity, promote self-reliance and facilitate his active participation in the community life.

(2) The Commission recognizes the right of the disabled Child to special care and attention and shall encourage and ensure assistance, subject to available resources, to the deserving Child and those who are responsible for his care.

(3) For such assistance, the Commission on an application sanction such amount or mode of assistance which is appropriate to the Child's condition and to the circumstances of the parents or others caring for the Child.

(4) Recognizing the special needs of a disabled Child, assistance extended in accordance with sub-section (1) to (3) shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the Child, and shall be designed to ensure that the disabled Child has effective access to and receives education, training, health care, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the Child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development.

14. Right to Health. - (1) The Commission recognize the right of the Child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. In this regard, the Commission shall strive to ensure that no Child is deprived of his or her right of access to such health care services.

(2) The Commission shall pursue full implementation of this right and, in particular, shall take appropriate measures mainly;

- (a) to diminish infant and Child mortality;
- (b) to ensure the provision of necessary medical assistance and health care to the Child with emphasis on the development of primary health care;
- (c) to combat diseases and malnutrition, including within the framework of primary health care, through inter alia, the application of readily available technology, adequate nutritious foods and clean drinking-water, taking into consideration the dangerous and risks of environmental pollution;
- (d) to ensure appropriate pre-natal and post-natal health care for mothers;
- (e) to ensure that all segments of society, in particular parents and the Child, are informed, have access to education and are supported in the use of basic knowledge of Child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents; and
- (f) to develop preventive health care, guidance for parents and family planning education and services.

(3) The Commission shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to health of the Child.

(4) The Commission recognize the right of every Child to a standard of living adequate for the Child's physical, mental, spiritual, moral and social development. The parent(s) or others responsible for the Child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the Child's development. The Commission, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the

Child to implement this right and shall, in case of need, provide material assistance and support programs, particularly with regard to nutrition, clothing and housing.

15. **Education.**- The Commission recognize the right of the Child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:

- (a) Make primary education compulsory and available free to all;
- (b) encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every Child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;
- (c) make higher education accessible to all on the basis of merit by every appropriate means;
- (d) make educational and vocational information and guidance available and accessible to all children; and
- (e) take measures to encourage regular attendance at schools and the reduction of drop-out rates.

16. **Rest & Recreation.** - The Commission recognize the right of the Child to rest and leisure, to engage in play and recreational activities appropriate to the age of the Child and to participate freely in cultural life and arts. They shall, respect and promote the right of the Child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activities.

17. **Child Labour.**- (1) The Commission recognize the right of the Child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the Child's education, or to be harmful to the Child's health or physical, mental, spiritual, moral or social development.

(2) The Commission shall take legislative, administrative, social and educational measures to ensure the implementation of this provision. To this end, the Commission shall in particular:

- (a) Provide for a minimum age or minimum ages for admission to employment which shall not be less than 14 years;
- (b) provide for appropriate regulation of the hours and conditions of employment;
- (c) provide safeguard from bonded labour; and
- (d) provide for appropriate penalties or other sanctions to ensure the effective enforcement of this provision.

18. **Drugs.-** The Commission shall take all appropriate measures, including legislative, administrative, social and educational measures, to protect children from the illicit use of narcotic drugs and psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the illicit production and trafficking of such drugs and substances.
19. **Sexual Abuse.-** (1) The Commission undertake to protect the Child from all forms of sexual exploitation and Sexual Abuse. For these purposes, the Commission shall in particular take all measures to prevent:
- (a) The inducement or coercion of a Child to engage in any unlawful sexual activity;
 - (b) the exploitative use of children in prostitution or other unlawful sexual practices;
 - (c) the exploitative use of children in pornographic performances and materials; and
 - (d) the Commission shall take all appropriate measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.
20. **Juvenile Justice.-** (1) The Commission shall ensure that:
- (a) No Child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by Child;
 - (b) no Child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a Child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;
 - (c) every Child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his age. In particular, every Child deprived of liberty shall be separated from adults unless it is considered in the Child's best interest not to do so and shall have the right to maintain contact with his family through correspondence and visits, save in exceptional circumstances; and
 - (d) every Child deprived of his liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.
- (2) The Commission shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a Victim of any form of Neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment

or punishment, or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the Child.

21. **Rights of Children in Care.--** The Commission shall take all appropriate measures to ensure that children in any Children's Home or Child protection centre, or any other such place, or children living with their accused or convicted mothers enjoy the following rights--
- (a) to be fed, clothed and nurtured according to prescribed minimum standards;
 - (b) to be consulted, according to the Child's abilities, to express his views about significant decisions affecting the Child;
 - (c) to reasonable privacy and to possession of the Child's personal belongings;
 - (d) to be free from corporal punishment and Commission shall in collaboration with schools, madrassas and other institutions where the children are being educated or residing etc.. The Commission shall help such schools, madrassas and institutions to adopt alternate disciplined measures progressively;
 - (e) to be informed of the standard of behaviour expected by the caregivers and of the consequences of not meeting that standard;
 - (f) to receive medical and dental care (including psychological care) when required;
 - (g) to participate in social and recreational activities appropriate to the Child's abilities and interests;
 - (h) to receive the education, and, as far as may be reasonably practicable, to participate in the religious activities, of the Child's choice;
 - (i) to privacy during discussions with a family Member or a legal representative; and
 - (j) to be informed of the Child's rights under this Act and the procedures available for enforcing these rights.

No. LD/Legis-Act/222/2016

AZAD GOVERNMENT OF THE STATE OF JAMMU AND KASHMIR
Law, Justice, Parliamentary Affairs and Human Rights Department

'Muzaffarabad'
Dated: 09.02.2016

To,

The Controller,
Govt. Printing Press,
Muzaffarabad.

SUBJECT: THE CHILD RIGHTS (CARE AND PROTECTION) ACT, 2016.

Sir,

Undersigned is directed to enclose herewith a copy of the Child Rights (Care and Protection) Act, 2016 (XXV of 2016), for publication in the extraordinary Official Gazette on "Top Priority" basis under intimation to this office.

Yours faithfully,

(Ch. Muhammad Nawaz)
Section Officer (Legislation)