

THE KHYBER PAKHTUNKHWA SENTENCING ACT, 2021.

(KHYBER PAKHTUNKHWA ACT NO. XXV OF 2021)

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THE KHYBER PAKHTUNKHWA SENTENCING ACT, 2021.

(KHYBER PAKHTUNKHWA ACT NO. XXV OF 2021)

(First published after having received the assent of the Governor of the Khyber Pakhtunkhwa in the Gazette of the Khyber Pakhtunkhwa, (Extraordinary), dated the 24th September, 2021)

**An
Act**

to lay down factors to be considered by Courts while passing sentences to improve consistency in sentencing.

WHEREAS It is expedient to lay down the factors to be considered by the Courts while passing sentences to improve consistency in sentencing and for the matters connected therewith and incidental thereto;

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

**PART I
INTRODUCTION**

1. Short title, extent and commencement.---(1)This Act may be called the Khyber Pakhtunkhwa Sentencing Act, 2021.

- (2) It shall extend to whole of the Province of Khyber Pakhtunkhwa.
- (3) It shall come into force at once.

2. Definitions. -In this Act, unless the context otherwise requires-

- (a) "aggravating factors" mean factors, mentioned in sub-section (1) of section 7 of this Act;
- (b) "Council" means the Sentencing Council, established under section 16 of this Act;
- (c) "Court" means the Courts of Magistrate 1st Class, the Senior Civil Judge, the Additional District and Sessions Judges and the District and Sessions Judge, where trials are conducted under the Code of Criminal Procedure, 1898 (Act No. V of 1898), including all other Special Courts, conducting trials under the special laws;
- (d) "custodial sentence" means sentence curtailing the liberty of an offender by means of imprisonment;
- (e) "Government" means the Government of Khyber Pakhtunkhwa;
- (f) "mitigating factors" mean the factors, mentioned in sub-section (2) of section 7 of this Act;
- (g) "proscribed organization" means an organization proscribed under the Anti-Terrorism Act, 1997(XXVII of 1997);
- (h) "prosecutor" means a public prosecutor, appointed under the Khyber Pakhtunkhwa Prosecution Service (Constitutions, Functions and Powers) Act, 2006 (Act No.III of 2006), but does not include a private prosecutor whether appearing with permission of the public prosecutor or otherwise;

- (i) "public order offence" means any offence which lead to public disorder or a breach of the public peace, nuisance, affray or rioting;
- (j) "regulatory offence" means an offence under a Provincial law which prescribes the manner of doing a thing, or prohibits of doing a thing in a manner not approved or described by law;
- (k) "Schedule" means the Schedule appended to this Act;
- (l) "sentence" means the punishment, awarded by a Judge or Magistrate, to a person who has been convicted of a crime;
- (m) "terrorist offence" means an offence under the Anti-Terrorism Act, 1997 (XXVII of 1997); and
- (n) "time range of imprisonment" means the time range of imprisonment that the relevant statute provides for convictions of an offence.

PART II

GENERAL PROVISIONS ABOUT SENTENCING

3. Scope and application of this Act.--- (1)The provisions of this Act shall be applicable in cases where a time range of imprisonment is a punishment.

(2) The provisions of this Act shall not be applicable in cases where capital punishment is provided within the range of punishments.

4. Purpose of sentencing.--- A Court, dealing with an offender in respect of his offence, shall have regard to the purposes of sentencing being the-

- (a) punishment of offenders;
- (b) reduction of crime including its reduction by deterrence;
- (c) reform and rehabilitation of offenders;
- (d) protection of the public; and
- (e) making of reparation by offenders to persons affected by their offences.

5. Determining the sentence. - In determining a sentence, the Court shall take into account-

- (a) the purpose of sentencing as mentioned in section 4 of this Act; and
- (b) seriousness of an offence under the provisions of this Act.

6. Determining the seriousness of an offence.---In considering the seriousness of any offence, the Court shall consider the aggravating and mitigating factors proved during trial.

7. Aggravating and mitigating factors.---(1) In sentencing or otherwise dealing with an offender, the Court shall take into account the following aggravating factors to the extent that they are applicable in the case that the-

- (a) offence involved actual or threatened violence or the actual or threatened use of a weapon;
- (b) offence involved unlawful entry into or unlawful presence in a dwelling place;
- (c) offence was committed while the offender was on bail or still subject to a sentence;
- (d) extent of any loss, damage or harm resulting from the offence;
- (e) marked cruelty in the commission of an offence;

- (f) offender was abusing a position of trust or authority in relation to the victim;
- (g) victim was a police, a lawyer, a prosecutor or a judge acting in the course of his duty;
- (h) victim was particularly vulnerable because of his age or health or because of any other factor known to the offender;
- (i) offender committed the offence partly or wholly because of hostility towards a group of persons who have an enduring common characteristic such as race, color, nationality, religion, gender identity, sexual orientation, age or disability i.e-
 - (i) the hostility is because of the common characteristic; and
 - (ii) the offender believed that the victim has that characteristic;
- (j) nature and extent of any connection between the offending and the offender's i.e-
 - (i) participation in a proscribed organization; and
 - (ii) involvement in any other form of organized criminal association;
- (k) premeditation on the part of the offender and, if so, the level of premeditation involved;
- (l) number seriousness, date, relevance and nature of any previous convictions of offenders and of any convictions for which the offender is being sentenced or otherwise dealt with at the same time;
- (m) any failure by the offender personally or failure by the offender's lawyer, arising out of the offender's instructions to, or failure or refusal to co-operate with his lawyer, to comply with a procedural requirement that, in the opinion of the Court, has done either or both of the following:
 - (i) caused a delay in the disposition of the proceedings; and
 - (ii) had an adverse effect on a victim or witness; and
- (n) previous conviction, particularly where a pattern of repeat offending is disclosed.

(2) In sentencing or otherwise dealing with an offender, the Court shall take into account the following mitigating factors to the extent that they are applicable in the case-

- (a) the age of the offender;
- (b) whether and when the offender pleaded guilty;
- (c) the conduct of the victim;
- (d) that there was a limited involvement of the offender in the offence;
- (e) that the offender has, or had at the time, the offence was committed, diminished intellectual capacity or understanding;
- (f) any remorse shown by the offender;
- (g) any actions taken by the offender to undo the loss or injury caused by him;
- (h) that the offender has taken steps during the proceedings, other the steps to comply with procedural requirements, to shorten the proceedings or reduce their cost;

- (i) any adverse effects on the offender of a delay in the disposition of the proceedings caused by a failure by the prosecutor or law enforcement agencies and any other agency associated with the trial, to comply with a procedural requirement; and
 - (j) any evidence of the previous good character of the offender.
- (3) Nothing in sub-sections (1) and (2)-
- (a) shall prevent the Court from taking into account any other aggravating or mitigating factor that the Court may think fit; or
 - (b) implies that a factor referred to in sub-sections (1) and (2) shall be given greater weight than any other factor that the Court may have taken into account.
- (4) The Court shall take into account the mutual exclusivity of the mitigating and aggravating factors and only in special circumstances to be explicitly mentioned in the judgment may treat them concurrently.

PART III SPECIAL PROVISIONS ABOUT SENTENCING

8. Sentences for cases involving violence against or neglect of child under fourteen years.---(1)This section applies if the Court is sentencing or otherwise dealing with an offender in a case involving serious violence against a child under the age of fourteen years in the following circumstances:

- (a) the defenselessness of the victim;
- (b) in relation to any harm resulting from any offence, any serious or long term physical or psychological effect on the victim;
- (c) the magnitude of the breach of any relationship of trust between the victim and the offender;
- (d) threats by the offender to prevent the victim reporting the offence; and
- (e) deliberate concealment of the offending from authorities.

(2) The Court shall treat the facts provided in sub-section (1), as aggravating factors.

9. Sentences for cases involving religious aggravation.---(1) This section applies where a Court determining the sentence of an offence pertaining to any of the provisions envisaged under any law relating to death, serious injury, criminal damage, public order offences and harassment in the circumstances where the offender demonstrated continued hostility towards the victim because of his religious beliefs.

(2) If the offence was religiously aggravated, the Court shall-

- (a) treat that fact was an aggravating factor; and
- (b) state in the judgment that the offence was so aggravated.

10. Sentences for aggravation related to terrorist activities. ---(1)This section applies where the Court is determining the sentence of terrorist offence committed immediately before or after the commission of the offence, and the offender demonstrated hostility towards the victim or intended victim because of his -

- (a) religious beliefs;
- (b) political ideology; and
- (c) cultural outlook.

(2) The Court shall treat the facts provided in sub-section (1), as aggravating factors.

11. Sentencing under laws designed to protect the public from injury.---(1)This section applies where the Court is determining the sentence of a regulatory offence committed in any of the following circumstances:

- (a) a serious injury was caused to one or more persons as a consequence of the offence;
- (b) the offender had been warned to take remedial action but had omitted to do so; and
- (c) the offender had taken action to thwart a law enforcement agency from inspecting or otherwise dealing with the offence in accordance with law.

(2) The Court shall treat the facts, provided in sub-section (1), as aggravating factors.

12. Reduction in sentences for guilty pleas.--- (1)In determining what sentence to pass on an offender who has pleaded guilty to an offence in proceedings before the Court, the Court shall take into account-

- (a) the stage in the proceedings at which the offender indicated his intention to plead guilty, and if such plea is made at the outset or substantially saves the time of the Court, the Court shall reduce by one fourth the custodial period calculated for the offence on the basis of section 7 of this Act; and
- (b) the circumstances in which this indication was given, and if such circumstances render the possibility of sufficing the purposes of sentencing.

(2) Nothing in this section shall bind a Court to pass a lower sentence in which sentencing factor pertaining to marked cruelty is proved against the offender.

PART IV PROCEDURE

13. Issues to be stated in judgment.--- (1)A judgment shall indicate whether a custodial sentence or other sentence is the most appropriate and reasonable for the same.

(2) Where the Court imposes a custodial sentence, it shall indicate the mitigating factors in existence if it imposes a sentence in Zone A of the Schedule, and aggravating factors if it imposes a sentence as specified in the Schedule in Zone-C or Zone-D.

14. Procedure to be followed in arriving at sentence.---(1)A sentencing Court shall assess the following before deciding the sentence-

- (a) whether there is a statutory minimum sentence or mandatory sentence that must be imposed in case of a guilty verdict;
- (b) whether there is a sentencing guideline on the subject and its recommendations;
- (c) whether there involve the aggravating factors and mitigating factors;
- (d) the impact of the crime on the victim or potential victim; and
- (e) the sentences of the accused in the case of already convicted and sentenced.

(2) The Court before imposing the sentence shall consider the medical and educational reports of the offender.

(3) The offender shall, after conviction continue to be on bail or in judicial custody, as the case were before conviction, and the Court shall schedule a separate hearing for sentencing at least seven days after the date of conviction of the offender.

(4) The Court shall, in sentencing an offender to imprisonment, state whether the offender shall be eligible for conditional release through parole after undergoing the minimum period, and shall then prescribe a minimum period of imprisonment for the said offender, which shall not be less than $\frac{2}{3}$ rd in sentences falling in Zone-A and Zone-B, as specified in the Schedule and not less than $\frac{1}{2}$ in sentences falling in Zone-C and Zone-D.

15. Notice to prosecution. -Where a Court proposes to impose a fine only in an offence where a sentence of imprisonment of more than twelve months or fine may be imposed by law, the Court shall provide an opportunity to the prosecutor or prosecuting agency to address the Court on sentencing.

PART V SENTENCING COUNCIL

16. Establishment of Council.---As soon as may be, Government shall establish a Sentencing Council which shall perform its functions under this Act.

17. Composition of the Council.---(1) The Council shall consist of such number of members, including the Chairperson, as may be specified by Government but such member shall not be less than five or more than seven.

(2) A member shall be a person who is known for his integrity, expertise, experience and eminence in law, social policy and/or criminal justice.

(3) Government may appoint members of the Council from serving or retired civil servants, prosecutors, judges, lawyers and criminal justice practitioners on such remuneration and allowances as Government may determine.

18. Chairperson of the Council.---Government shall appoint one of the members as the Chairperson of the Council, and no member shall be appointed Chairperson for more than two consecutive terms.

(2) Government shall appoint a Chief Executive Officer of the Council who shall be responsible for the day to day administrations of the affairs of the Council and shall act subject to the regulations made by the Council.

19. Term of office. -Each member shall be appointed for a term not exceeding five years from the day of his appointment as a member.

20. Appointment of employees of the Council.---Government may, from time to time, employ person to be employees of the Council, who shall be paid such remuneration and allowances and shall hold their employment on such terms and conditions as may be determined by Government.

21. Functions of the Council. -The Council shall perform the following functions-

- (a) develop and issue sentencing guidelines which are in consonance with the provisions of this Act;
- (b) monitor and assess the impact of sentencing provisions and guidelines on sentencing practice;
- (c) consider the impact of policy and legislative proposals relating to sentencing, when requested by Government;

- (d) promote awareness among the public regarding the realities of sentencing and publishing information regarding sentencing practice in Magistrate's and Sessions Court.
- (e) consider the impact of sentencing decisions on victims; and
- (f) play a greater part in promoting understanding of, and increasing public confidence in, sentencing and the criminal justice system.

22. Court to consider sentencing guidelines.---(1)Every Court shall have regard to any relevant sentencing guideline while sentencing an offender.

(2) Where a Court imposes a sentence of a different kind or outside the range indicated in a Council guideline it shall state its reasons for doing so.

23. Publication of annual reports.---At the conclusion of each Calendar year, the Council shall publish an annual report regarding the performance of its functions during the year and present its report in the Provincial Assembly .

PART VI MISCELLANEOUS

24 Power to make rules.---Government may make rules within six months of the commencement of this Act for carrying out the purposes of this Act.

SCHEDULE [see sections 2(j), 13(2) and 14(3) and (4)] (Sentencing Table) Sentencing Zones

Sr. No.	Range of Punishment	Zone A	Zone B	Zone C	Zone D
1	Up to 6 Months	Less than 1.5 months	More than 1.5-3 months	More than 3 months- 4.5 months	More than 4.5 months - 6 months
2	Up to 1 year	Less than 3 months	More than 3-6 months	more than 6 months-9 months	More than 9 months - 12 months
3	Up to 3 years	Less than 6 months	More than 6 months - 1 year	More than 1 year-2 year	More than 2 years - 3 years
4	Up to 7 years	Less than 2 years	More than 2 years-3 years and 6 months	more than 3 years and 6 months-5 years and 6 months	More than 5 years and 6 months - 7 years
5	Up to 10 years	Less than 2.5 years	More than 2 years and 6 months-5 years	more than 5 years- 7 years and 6 months	More than 7 years 6 months - 10 years
6	Up to 14 years	Less than 3 years and 6 months	More than 3 years and 6 months -7 years	More than 7 years- 10 years and 6 months	more than 10 years and 6 months - 14 years
7	Up to 25 years	Less than 10 years	10 - 15 years	More than 15 years-20 years	More than 20 years - 25 years