

EXTRAORDINARY
GOVERNMENT



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REGISTERED NO. PIII
G A Z E T T E

KHYBER PAKHTUNKHWA

Published by Authority

PESHAWAR, WEDNESDAY, 24th NOVEMBER, 2021.

PROVINCIAL ASSEMBLY SECRETARIAT
KHYBER PAKHTUNKHWA

NOTIFICATION

Dated Peshawar, the 24th November, 2021.

No. PA/Khyber Pakhtunkhwa/Bills-189/2021/8227.— The Khyber Pakhtunkhwa Public Property (Removal of Encroachment) (Amendment) Bill, 2021 having been passed by the Provincial Assembly of Khyber Pakhtunkhwa on 09th November, 2021 and assented to by the Governor of the Khyber Pakhtunkhwa on 19th November, 2021 is hereby published as an Act of the Provincial Legislature of the Khyber Pakhtunkhwa.

THE KHYBER PAKHTUNKHWA PUBLIC PROPERTY (REMOVAL OF ENCROACHMENT) (AMENDMENT) ACT, 2021.
(KHYBER PAKHTUNKHWA ACT NO. XXXIII 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 November, 2021).

AN
ACT

further to amend the Khyber Pakhtunkhwa Public Property (Removal of Encroachment) Act, 1977.

WHEREAS it is expedient further to amend the Khyber Pakhtunkhwa Public Property (Removal of Encroachment) Act, 1977 (Khyber Pakhtunkhwa Act No. V of 1977), for the purposes hereinafter appearing;

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

1. **Short title and commencement.**—(1) This Act may be called the Khyber Pakhtunkhwa Public Property (Removal of Encroachment) (Amendment) Act, 2021.

(2) It shall come into force at once.

2. **Amendment of section 2 of the Khyber Pakhtunkhwa Act No. V of 1977.**---
In the Khyber Pakhtunkhwa Public Property (Removal of Encroachment) Act, 1977 (Khyber Pakhtunkhwa Act No. V of 1977), hereinafter referred to as the said Act, in section 2,-

(a) after clause (a), the following new clause shall be inserted, namely:

“(a-i) **“authorized officer”** means any person, appointed or authorized, generally or specially, by Government, a Department of Government or its attached department or subordinate office, an autonomous entity, a public sector company, a local government, a development authority of Government or any other authority of Government, vested with the possession, management or control of a public property, to carry out all or any of the purposes of this Act and rules made there-under;”;

(b) after clause (b), the following new clause shall be inserted, namely:

“(b-i) **“Department”** means a Department, as defined in the Khyber Pakhtunkhwa Government Rules of Business, 1985;”;

(c) for clause (e), the following shall be substituted, namely:

“(e) **“land”** includes any space beneath or on the surface of the earth, including land under water, well, foot-path, road, tunnel, culvert, nullah, bridge, street and anything attached to the earth or temporarily or permanently fastened to anything attached to the earth;”;

(d) in clause (h), after the words and comma “autonomous body,”, the words “public sector company” shall be inserted;

(e) after clause (h), as so amended, the following new clause shall be inserted, namely:

“(h-i) **“public sector company”** means a public sector company as defined in the Public Sector Companies (Corporate Governance) Rules, 2013;” and

(f) in clause (j), in sub-clause (iii), after the word “family”, the words and comma “or a member of the family of any person inducted by the lessee or licensee into the public property under sub-clause (i),” shall be inserted.

3. Substitution of section 3 of the Khyber Pakhtunkhwa Act No. V of 1977.---
In the said Act, for section 3, the following shall be substituted, namely:

“3. Vacation of property and removal of encroachment.---(1) If the authorized officer is satisfied that a person is an unauthorized occupant, he may, by order in writing, direct such person to vacate the public property and to remove the structure at his own risk and cost, if any, raised by him on the public property, within such period as may be specified in the order:

Provided that such period shall not be less than three days:

Provided further that where the encroachment is on a road, a public thoroughfare, a water body, a river or a river bed, the authorized officer shall dispense with the issuing of order and shall forthwith proceed to remove the encroachment or structure at the sole risk and cost of the encroacher.

(2) The order, under sub-section (1), may be served by-

- (a) giving or tendering it to the unauthorized occupant or any adult male person residing with him; or
- (b) affixing it at a conspicuous place on or near the public property to which it relates.

(3) The order, under sub-section (1), may, inter alia, contain-

- (a) the date from which the person is in un-authorized occupation of the public property that may be determined, inter alia, by use of technology authorized in terms of section 9A of this Act; and
- (b) the recovery of costs, penalties and fine, and the punishment that may be imposed upon the un-authorized occupant as provided under this Act.”

4. Amendment of section 4 of the Khyber Pakhtunkhwa Act No. V of 1977.---
In the said Act, in section 4,-

- (a) in sub-section (1), for the words “Government or any authority or officer”, the words “the authorized officer” shall be substituted; and
- (b) in sub-section (2), for the words and commas “Government or, as the case may be, the authority or officer as aforesaid,”, the words “the authorized officer.” shall be substituted.

5. Amendment of section 5 of the Khyber Pakhtunkhwa Act No. V of 1977.---
In the said Act, in section 5,-

- (a) in sub-section (1),-
 - (i) for the words "any officer authorized in this behalf by Government", the words "the authorized officer" shall be substituted; and
 - (ii) after the word "person", appearing at the end, the comma and words ", at the sole risk and cost of that person" shall be added;
- (b) in sub-section (2), for the words "an officer authorized by Government in this behalf", the words "the authorized officer" shall be substituted; and
- (c) in sub-section (3), for the words, brackets and figure "any officer authorized to take action under sub-section (1)", the words "authorized officer" shall be substituted.

6. Amendment of section 8 of the Khyber Pakhtunkhwa Act No. V of 1977.---
In the said Act, in section 8, for sub-section (1), the following shall be substituted, namely:

"(1) Any person, who has made encroachment, shall, in addition to eviction from the public property and removal of such encroachment at his sole risk and cost, be punished with imprisonment of either description for a term which may extend to three years or with fine of 0.10% per day of the value of the said public property, as determined by the authorized officer while, inter alia, taking into account the valuation of land as notified by the Revenue and Estate Department of Government, from time to time, for the respective area, or with both:

Provided that for determination of fine under this section, the period of un-authorized occupancy shall include the period of any legal proceedings, if any, that may be filed against any order issued under this Act;

Provided further that the imprisonment for the repeated offender under this sub-section may extend to five years but not less than three years."

7. Insertion of new section 8A in the Khyber Pakhtunkhwa Act No. V of 1977.---In the said Act, after section 8, the following new section shall be inserted, namely:

"8A. Recovery of fine.---The fine, imposed upon any person in pursuance of section 8, with markup at prevailing bank rates, if any, accrued thereon, may, in addition to any other mode of recovery of such fines as provided in any other law, be recovered from such person as arrears of land revenue."

8. **Amendment of section 9 of the Khyber Pakhtunkhwa Act No. V of 1977.**--- In the said Act, in section 9, in sub-section (1), for the words "officer authorized by Government in this behalf", the words "authorized officer" shall be substituted.

9. **Insertion of new section 9A in the Khyber Pakhtunkhwa Act No. V of 1977.**---In the said Act, after section 9, the following new section shall be inserted, namely:

"9A. Use of technology for determination of un-authorized occupancy.— (1) The authorized officer may use or authorize the use of technology, including satellite imagery or mapping, to determine the period of un-authorized occupancy of the public property for the purposes of this Act;

(2) A centralized database of encroachers shall be setup by utilizing the available resources of the Government to curb the menace of encroachment and identify the offender of repeat encroachers."

10. **Insertion of new section 16A in the Khyber Pakhtunkhwa Act No. V of 1977.**---In the said Act, after section 16, the following new section shall be inserted, namely:

"16A. Act to override other laws.---The provisions of this Act shall have effect notwithstanding anything to the contrary contained in any other law for the time being in force."

BY ORDER OF MR. SPEAKER
PROVINCIAL ASSEMBLY OF KHYBER
PAKHTUNKHWA

(KIFAYAT ULLAH KHAN AFRIDI)
Secretary
Provincial Assembly of Khyber Pakhtunkhwa