

IN THE SUPREME COURT OF PAKISTAN
(Original Constitutional Jurisdiction)

Constitutional Petition No. ____/2013

1. **Dr. Shahnawaz Munami**
Son of Muhammad Shoaib Munami
Resident of C-5, 18/A, Quetta Town, Scheme 33, Main Super Highway, Karachi
2. **Ghulam Nabi Nizamani**
Son of Muhammad Ibrahim
Resident of Al-Imran City, Near Masjid Roze Dhani, Bakhoro Road, Sanghar
3. **Zahida Hameed Qureshi**
Daughter of Abdul Hameed Qureshi
Resident of House No. 2626/D1, Street No. 07, Near Timber Market, Railway Road, Multan
4. **Asim Zafar**
Son of Zafar Iqbal
Resident of House No. 182, Street No. 4, Shehzad Town, Islamabad
5. **Muhammad Shafiq-ur-Rehman**
Son of Muhammad Rafiq Mirza
Resident of 99-H1, Wapda Town, Lahore
6. **Jawaid Rais**
Son of Rais-ud-din
Resident of 42, Ground Floor, Al-Amna Plaza, M. A. Jinnah Road, Karachi

..... PETITIONERS

Versus

1. **The Federation of Pakistan**
Through the Ministry of Law, Justice and Human Rights,
Represented by its Secretary, Pakistan Secretariat, Constitution Avenue, Islamabad
2. **The Province of Balochistan**
Through the Ministry of Social Welfare, Special Education, Literacy & Human Rights,
Represented by its Secretary, Civil Secretariat, Quetta
3. **The Province of Punjab**
Through the Ministry of Social Welfare & Bait-ul-Maal,
Represented by its Secretary, Civil Secretariat, Lahore

4. **The Province of Sindh**
Through the Ministry of Women Development, Social Welfare and Special Education,
Represented by its Secretary, Civil Secretariat, Karachi
5. **The Province of Khyber Pakhtunkhwa**
Through the relevant Ministry,
Represented by its Secretary, Civil Secretariat, Peshawar
6. **National Council for the Rehabilitation of Disabled Persons**
Through its Chairman
Al-Farabi Special Education Complex, Opp NORI Hospital, Hanna Road, G-8/4, Islamabad
7. **Provincial Council for the Rehabilitation of Disabled Persons, Balochistan**
Through its Chairman
Quetta
8. **Provincial Council for the Rehabilitation of Disabled Persons, Punjab**
Through its Chairman
Lahore
9. **Provincial Council for the Rehabilitation of Disabled Persons, Sindh**
Through its Chairman
Karachi
10. **Provincial Council for the Rehabilitation of Disabled Persons, KP**
Through its Chairman
Peshawar
11. **Higher Education Commission**
Through its Chairman,
HEC Head Office, H-9, Islamabad
12. **Capital Development Authority**
Through its Chairman
Chairman's Secretariat, Khayaban-e-Suharwardi, Sector G-7/4, Islamabad
13. **Pakistan Railways**
Through its Chairman
Railways Headquarters, Empress Road, Lahore
14. **Punjab Metrobus Authority**
Through its Chairman
5th floor, Arfa Software Technology Park, Ferozepur Road, Lahore
15. **Pakistan Electronic Media Regulatory Authority**
Through its Chairman,
PEMRA Headquarters, Mauve Area, G-8/1, Islamabad
16. **Pakistan Broadcasting Services**
Through its Director General,
PBC Headquarters, Constitution Avenue, Sector G-5/2, Islamabad

17. **Pakistan Television Corporation**
Through its Managing Director,
PTV Headquarters, Constitution Avenue, Islamabad
18. **Pakistan Bureau of Statistics**
Through its Chief Statistician,
Statistics House, 21 Mauve Area, G-9/1, Islamabad
19. **Election Commission of Pakistan**
Through its Secretary
ECP Secretariat, Election House, Constitution Avenue, G-5/2, Islamabad

..... RESPONDENTS

**PETITION UNDER ARTICLE 184(3) OF THE CONSTITUTION OF THE ISLAMIC REPUBLIC OF
PAKISTAN, 1973**

Respectfully Sheweth:-

1. That Petitioner No. 1 is Community Ophthalmologist based in Karachi and the National Coordinator of the Community Based Inclusive Development [CBID] Network [hereinafter referred to as the 'CBID Network'], a network of around thirty member organizations which are working for the enforcement and protection of the rights of persons with disabilities in Pakistan. The CBID Network aims towards creating a rights based, barrier free, empowered society by promoting inclusive development and advocates the implementation of the United Nations Convention on the Rights of Persons with Disabilities in Pakistan, promotes linkages and alliances among stakeholders, particularly among organizations of persons with disabilities and their families, national and international non-governmental institutions/organizations, the academia, the media, the federal, provincial and local governments, donor agencies, and conducts research and publication on good practices and successful models in the area of enforcement and protection of the rights of persons with disabilities. He also works as a Disability Advisor at Comprehensive Health and Education Forum [CHEF] International, an organization working for mainstreaming of disability.
2. That Petitioner No. 2 is the International Coordinator of the CBID Network, the Secretary of the Community Based Rehabilitation Global Network and the Chairperson of the Community Based Rehabilitation Asia Pacific Network. He holds two Masters Degrees in Sociology and Economics respectively.

3. That Petitioner No. 3 is the Deputy National Coordinator of the CBID Network and the President of the Society for Special Persons, a Multan based organization working for the empowerment of persons with disabilities.
4. That Petitioner No. 4 is the Secretariat Coordinator of the CBID Network and works as Disability Development Officer at CHEF International.
5. That Petitioner No. 5 is the Provincial Coordinator (Punjab) of the CBID Network and the President of Milestone, a Lahore based organization working for raising awareness, capacity building and providing basic facilities to persons with disabilities.
6. That Petitioner No. 6 is the Provincial Coordinator (Sindh) of the CBID Network and the President of Disabled Welfare Association, a Karachi based organization working for the welfare of persons with disabilities.

The Petitioners have been striving hard for the welfare of persons with disabilities in Pakistan, who form a significant portion of the population of Pakistan, and share a firm commitment towards the ideals of rule of law and protection of Fundamental Rights as embodied in Chapter I of Part II of the Constitution of the Islamic Republic of Pakistan, 1973. In pursuit of the aforementioned objectives, the Petitioners seek intervention of this august Court for the enforcement of the Fundamental Rights of millions of persons with disabilities in Pakistan, particularly those mentioned in Articles 9, 10A, 14, 15,16, 17, 18, 19, 19A, 23, 25, 25A, 26 and 27, in the backdrop of the following facts & circumstances:

- i. That the instant Petition has been drafted in the People First Language. The People First Language is an objective and respectful way to speak about persons with disabilities by emphasizing on the person first, rather than the disability. The rationale behind the use of People First Language is that every individual deserves to be treated with dignity and respect, regardless of gender, religion, race, ethnicity, disability or any other factor. When persons are defined through terms and labels, it often reinforces the barriers created by negative and stereotypical attitudes. It is important to be considerate when choosing words while referring to persons with disabilities. The focus should be on the person, and derogatory terms like 'handicapped', 'dumb', 'retarded', 'psycho', 'cripple', 'midget' etc., that label, generalize, stereotype, devalue or discriminate, should never be used. The People First Language puts the person before the disability, and highlights a person's value, individuality and capabilities. Several useful guides to People First Language have been annexed with the instant Petition for the perusal of this Hon'ble Court with the specific request that the proceedings of the instant case be conducted in the People First Language, as well as all orders and judgment which flow from the instant case be written in People First Language.

- ii. That 'disability' is an evolving concept. Historically speaking, disabilities have often been cast in a negative light. An individual thus affected was seen as being a 'patient', subject either to cure or to ongoing medical care. His or her condition was seen as disabling; the social reactions to it were considered justified, and the barriers were deemed as unavoidable. Today, this position is known as the 'medical model of disability'. Over the past two decades, a competing view known as the 'social model of disability' has come to the fore. In this model, disability is seen more as a *social construction* than a *medical reality*. It has been argued that although their impairments may cause them pain or discomfort, what really *dis-ables* people as members of society is a socio-cultural system which does not recognize their right to genuine equality. Under the social model, dismantling physical barriers, like setting up adaptations such as wheelchair ramps, are some of the ways through which a disability can be overcome. Lately, the social model has also been complemented by the 'human rights based approach to disability', which emphasizes on the realization of the basic human rights of persons with disabilities, foremost being the rights to a meaningful life, liberty and equality.
- iii. That the movement for the enforcement of rights of persons with disabilities is now an integral part of the global human rights movement. Mainstreaming of disability has been the key demand of the international disability movement for decades. It is also the central theme of United Nation's Standard Rules on Equalization of Opportunities for Persons with Disabilities. The ultimate goal is to achieve disability equality. Global efforts for the enforcement of rights of persons with disabilities have resulted in the drafting of the United Nations Convention on the Rights of Persons with Disabilities [hereinafter referred to as the 'UNCRPD'] which was adopted by the UN General Assembly in 2006. It is respectfully submitted that the Islamic Republic of Pakistan [hereinafter referred to as 'Pakistan'] ratified the UNCRPD on 5th of July, 2011, as the 101st country in the world to have ratified the said instrument. As defined by the UNCRPD, 'disability' results from the interaction between persons with impairments, and attitudinal and environmental barriers, that hinders their full and effective participation in society on an equal basis with others. 'Impairment' here means a physical or mental condition that limits a person's movements, senses, or activities. Such impairments can be of various types, including physical impairments affecting movement, such as muscular dystrophy, post-polio syndrome, spina bifida and cerebral palsy, lack of or amputation of limbs or other body parts, sensory impairments, such as visual or hearing impairments, neurological impairments, such as epilepsy, cognitive impairments such as autism or Down Syndrome, psychiatric conditions such as depression and schizophrenia. It is important to note that some impairments are not obvious to the outside observers; these are termed as invisible impairments. According to the UNCRPD, 'Persons with disabilities' are defined as those who have long-term physical, mental, intellectual or sensory impairments which, in interaction with various barriers, hinder their full and effective participation in society on an equal basis with others. The emphasis, as we can see, is not on the impairments, but

on the barriers which hinder full and effective participation in society on an equal basis with others, clearly demonstrating the adoption of the social by the United Nations and the global human rights movement.

- iv. That persons with disabilities are one of the most neglected, marginalized and unrepresented groups in Pakistan, who face a multitude of social, economic, physical and political barriers which hamper their mainstreaming in society, as will be highlighted before this Hon'ble Court in the following paragraphs. The adverse situation of persons with disabilities was brought into focus in Pakistan in the 1980s with the observance of 1981 as the UN International Year of Disabled Persons. In order to provide for policy making, policy implementation, employment and rehabilitation of persons with disabilities, the Disabled Persons (Employment & Rehabilitation) Ordinance, 1981 [hereinafter referred to as the '1981 Ordinance'] was promulgated in 1981. The 1981 Ordinance was a first step, as it did not provide for an exhaustive framework for the enforcement of the rights of persons with disabilities and ensuring disability equality. One of the most glaring features of the 1981 Ordinance in this regard was that it did not include any provisions with regards to ensuring accessibility for persons with disabilities, which, as will be shown in the following paragraphs, is one of the most important steps towards achieving disability equality. Despite the 1981 Ordinance not being exhaustive in nature, no further legislation was done during the past three decades for providing a comprehensive framework for the enforcement and protection of the rights of persons with disabilities and for achieving disability equality in Pakistan. In fact, even the 1981 Ordinance was not implemented in totality, nor was it revised or updated in light of the developments in theory and praxis which have taken place around the world over the past decades, most important among them being them the fundamental conceptual shift from the medical model to the social model [the 1981 Ordinance is based on the medical model, hence obsolete according to the current international standards and practices]. In addition to the promulgation of the 1981 Ordinance, the Federal Government also established the Directorate General of Special Education in 1985 for the purposes of provision of special education to persons with disabilities in special institutions. Directorates of Special Education were also established at the provincial levels. Although the rationale behind the idea of special education is to facilitate the education of persons of disabilities, the creation of separate institutions eventually results in exclusion of persons with disabilities from the national mainstream, as a result of which the idea of special education has been rejected over the past few decades. It is for this reason that the UNCRPD has provided for 'inclusive education' at all levels and expressly prohibited the exclusion of persons with disabilities from the general education system. Apart from these measure, a National Policy for Persons with Disabilities was drafted in 2002 [hereinafter referred to as the '2002 Policy'] by the Federal Ministry of Women Development, Social Welfare and Special Education, and a National Plan of Action [hereinafter referred to as the '2006 Plan of Action'] was developed in 2006 to translate

the Policy into concrete practices; however the lack of interest and ownership on part of the relevant ministries and organizations of the Federal and Provincial Governments has rendered these two instruments as redundant and ineffective. Moreover, since the omission of the Concurrent Legislative List contained in Part II of the Fourth Schedule to the Constitution of Pakistan, 1973, [hereinafter referred to as the '1973 Constitution'] vide the Constitution (Eighteenth Amendment) Act, 2010, [hereinafter referred to as the '18th Amendment'], the subjects of 'mental illness and mental retardation, including places for the reception or treatment of the mentally ill and mentally retarded' and 'population planning and social welfare', contained in entries 23 and 25 of the Concurrent Legislative List, have devolved on to the four Provinces, and the Federal Ministry of Social Welfare, which dealt with the matters pertaining to persons with disabilities, has been abolished. Moreover, the 1981 Ordinance was originally in the Federal ambit, however, since the subjects on which the 1981 Ordinance was enacted devolved to the provinces by virtue of the 18th Amendment, hence it was adopted, with amendments, by Respondent No. 3 through the Disabled Persons (Employment and Rehabilitation) (Amendment) Act, 2012 and by Respondent No. 5 through the Disabled Persons (Employment and Rehabilitation) (Amendment) Act, 2012 [hereinafter referred to as the 'provincial Acts']. These provincial Acts do not contain Sections 3 and 4 of the 1981 Ordinance, which envisage the establishment of Respondent No. 6. Respondents No. 4 and 6, however, are yet to pass laws on the subject matter of the 1981 Ordinance. Lastly, Pakistan signed the UNCRPD in 2009 and ratified it in 2011; however, no measures whatsoever have been taken so far for its implementation despite the passage of more than two and a half years.

- v. That it is humbly submitted that no official information pertaining to incidence of disability in the population of Pakistan exists for the years prior to 1961. Data pertaining to incidence of disability was gathered for the first time in the Population Census of 1961, wherein the percentage of persons with disabilities was determined to be around 0.23 percent of the total population. The disabilities which were enumerated in the 1961 Census included 'blindness', 'deafness', 'dumbness' and 'physical crippledness'. The definitions and criteria for determining these disabilities were arbitrary and unscientific. For example, the surveyors were instructed to record 'blindness' if a person could not count the interviewer's fingers from one foot. Data pertaining to incidence of disability was again gathered during the Housing, Economic and Demographic Survey of 1973, wherein the percentage of persons with disabilities was determined to be around 2.08 percent of the total population. However, in the Population Census of 1981 it was determined to be around 0.44 percent of the total population, considerably less than what was determined in 1973. In the Population Census of 1998, it was determined to be around 2.49 percent of the total population. Disability was placed under seven categories, 'blind', 'deaf/ mute', 'crippled', 'insane', 'mentally retarded', 'multiple disability' and 'other'. It is important to mention that in the Population Censuses of 1961,

1981 and 1998, and the Housing, Economic and Demographic Survey of 1973, the information was collected on the long form i.e. collected from a sample of households which are selected on probability basis; this survey is conducted soon after the main census count. All information on disabilities was recorded as reported by, supposedly, an adult of the household. These respondents, males or females, have varied biases towards reporting incidents of disability in the household. Moreover, the degree of disability is totally left to the perceptions of the respondent. All of these factors point out towards the unreliability and inaccuracy of the data. It is further submitted that the only instance in Pakistan's history when a serious effort was made for the purposes of ascertaining the incidence of disability in Pakistan was when the Federal Bureau of Statistics [hereinafter referred to as the 'FBS'), the predecessor of Respondent No. 15, had conducted a Special National Survey of persons with disabilities in 1984-85. Similar to census, this survey too focused on household level information, collected on a quarterly basis. The survey concentrated on specific physical and mental impairments that could place serious constraints on individuals' mobility for more than six months, and persons with disabilities were divided into seven categories: 'blind', 'deaf', 'dumb', 'leper', 'retarded', 'handicapped' and 'lame'. A national sample of 5638 households was enumerated to assess these disabilities. Unfortunately, the categories and definitions for disabilities were not consistent with those of the Population Census of 1981, thus making it impossible to compare disability specific rates. Nevertheless, the data collected through this special survey is considered to be of better quality than the data collected during the Population Censuses of 1961, 1981 and 1998, and the Housing, Economic and Demographic Survey of 1973. However, after a passage of nearly three decades, this data too has become redundant and of no value whatsoever for today's policy and decision makers. It is important to mention here that apart from the Special National Survey of 1985-86, another attempt to collect in-depth and valid information regarding persons with disabilities was made in 1986 by conducting a Special Pilot Survey in the Districts of Islamabad and Rawalpindi. This pilot survey encompassed a comprehensive instrument through which individuals were first screened and detailed information was asked on 'mental retardation', 'visual and hearing disability', 'physical disability in the shape of paralysis', 'deformity', 'wasting of limbs' etc. Details were also collected about the cause and date of onset of their disabilities. The advantage of this survey was the physical verification by professionals and highly trained staff to enumerate simplified questionnaire with close supervision. It was realized that the procedures adopted in standard censuses were deficient and erratic. For example, not all persons with disabilities were personally examined by the surveyors during previous censuses, and the respondents' subjective judgments has played an important role in defining the degrees of hearing, visual and physical impairments. Moreover, no differentiation had been made between temporary and permanent impairments, as duration of impairment was not taken into account. The Special Pilot Survey of 1986 tried to address many of these issues, however, due to the limited sample of the survey the figures could not be

compared with any census or national level survey. Moreover, no further surveys of similar nature were ever conducted in other parts of the country. In light of the facts presented above, it is respectfully submitted that, on the whole, the data pertaining to incidence of disability in the population of Pakistan presents a number of problems including that of definitions, reference period, inconsistent categories, heavy dependence on respondent's judgment thus obscuring objectivity and inter-data set comparison. There are reporting errors encompassing respondent's biases, interviewer's mistakes in coding, recording, fatigue, rapport, interest in data collection, interviewer's biases and manner of presenting questions, and his or her training and degree of supervision. Consequently, nothing concrete can be concluded about the status and magnitude of incidence of disability in the population of Pakistan on the basis of large number of incomparable, invalid and unreliable data sets. It is humbly submitted that existence of reliable data in this regard is crucial for the purposes of devising and implementing concrete and effective laws and policies for persons with disabilities in Pakistan. It is further submitted that due to the unreliability and paucity of official data on the subject, different international and national nongovernmental and semi government organizations have carried out surveys which disclose significant incidence of disability in the population of Pakistan. For example, the World Health Organization has estimated the incidence of disability to be around 7% in 2011. The World Report on Disability 2011, which derived its disability estimates from a World Health Survey from 2002 to 2004, found a disability prevalence of 13.4% for Pakistan with 9.6 years of full health lost to disability per 100 persons in 2004. Another organization, the Pakistan Poverty Alleviation Fund [hereinafter referred to as the 'PPAF'], was keen to determine the implications of disability in its development initiatives, therefore it undertook a comprehensive carpet survey of 23 union councils comprising 80,000 households in 2011-2012 to determine the type and frequency of disability among other socio-economic indicators. The carpet survey involved identification of persons with disability and their thorough medical examination by specialists to document impairments and categorize the type and severity of disability. It was probably the first time that such an extensive exercise was carried out in Pakistan. The results were staggering – eight out of every 100 Pakistanis was a person with disability of some degree or other; and one out of every 130 persons was found to have some form of severe disability. The survey also found that multiple disabilities were common among the population. The PPAF Disability Survey not only endorsed global estimates of disability prevalence, but also raised an important issue of social inclusion that was lacking in public and private development interventions. Based on the data compiled by various organizations including those mentioned above, the incidence of disability in the population of Pakistan can be safely assumed to be between 10 to 15 percent. According to PPAF estimates, 66 percent of persons with disabilities live in rural areas; only 28 percent of persons with disabilities are literate; only 14 percent of them are employed, while 70 percent of them are reliant on family members for financial and other support.

- vi. That despite the fact that Pakistan has ratified the UNCRPD, which provides a comprehensive framework for the enforcement and protection of the rights of persons with disabilities, and the 1973 Constitution, under its Articles 9, 10A, 14, 15,16, 17, 18, 19, 19A, 23, 25, 25A, 26 and 27, provides guarantees to *all citizens* of Pakistan with regards to protection of life and liberty, right to a fair trial and due process of law, inviolability of the dignity of the individual and privacy of home, freedom of movement, assembly, association, trade, business, profession and speech, right to information and free and compulsory education up to the primary level, protection of property, equality before law, access to public places and non discrimination in government service, persons with disabilities continue to remain deprived of these most basic rights, therefore, the Original Constitutional Jurisdiction of this Hon'ble Court is being invoked for the enforcement of the Fundamental Rights of persons with disabilities, which is a matter of public importance as it affects not only persons with disabilities but also their families and the society at large, and seeking appropriate orders in this regard, *inter alia*, on the following:

GROUND

- A. That the Respondent No. 1 ratified the UNCRPD on the 5th of July, 2011, which provides a comprehensive framework for the enforcement and protection of the rights of persons with disabilities, however, despite passage of more than two years, no meaningful steps have been taken by it for the purposes of its implementation in Pakistan. The Respondent No. 1 has *inter alia*, not only failed to adopt the social model of disability, but has also failed to take appropriate steps for the purposes of improving accessibility and personal mobility for persons with disabilities, providing them inclusive education, health facilities, employment and access to justice, collecting relevant data and statistics, protecting political rights and rights to freedom of expression and access to information.
- B. That Articles 9, 10A, 14, 15,16, 17, 18, 19, 19A, 23, 25, 25A, 26 and 27 of the 1973 Constitution provide guarantees to all citizens of Pakistan with regards to protection of life and liberty, right to a fair trial and due process of law, inviolability of the dignity of the individual and privacy of home, freedom of movement, assembly, association, trade, business, profession and speech, right to information and free and compulsory primary education, protection of property, equality before law, access to public places and non discrimination in government service. It is respectfully submitted that despite these express guarantees in the 1973 Constitution, persons with disabilities continue to be deprived of their most basic rights, including the right to livelihood, inviolability of dignity, freedom of movement, trade, business, profession and speech, right to information and free and compulsory primary education, protection of property, equality before law, access to public places and non discrimination in government service.

Furthermore, the Article 37 of the 1973 Constitution provides that the state shall promote the educational and economic interests of backward classes, remove illiteracy, provide free and compulsory secondary education within minimum possible period, and make technical and professional education generally available and higher education equally accessible to all on the basis of merit. Article 38 provides that the state shall secure the well-being of the people, irrespective of sex, caste, creed or race, by raising their standard of living and provide basic necessities of life, such as food, clothing, housing, education and medical relief, for all such citizens, irrespective of sex, caste, creed or race, as are permanently or temporarily unable to earn their livelihood on account of infirmity, sickness or unemployment. While Articles 37 and 38 only lay down principles of state policy which are not justiciable in any court of law, it is the responsibility of each organ and authority of the state, and of each person performing functions on behalf of an organ or authority of the state, to act in accordance with those principles in so far as they relate to the functions of that organ or authority. It is respectfully submitted that the state has failed to follow these principles while conducting its affairs, especially when dealing with persons with disabilities.

- C. That under Section 3 of the 1981 Ordinance, the Respondent No.1 was required to constitute, by notification in the Official Gazette, the Respondent No.6, consisting of twenty one members including (a) the Secretary, Ministry of Health and Social Welfare, who shall also be its Chairman; (b) one representative each of the three Armed Forces; (c) one representative of the Manpower Division; (d) one representative of the Labour Division; (e) one representative of the Health Division; (f) one representative of the Education Division; (g) one representative of the Communications Division; (h) one representative of the Ministry of Water and Power; (i) one representative of the Ministry of Petroleum and Natural Resources; (j) one representative of the Industries Division; (k) one representative of the Planning Division; (l) a nominee of the Administrator-General Zakat; (m) four persons to be nominated by the Federal Government from amongst the persons engaged in the welfare of disabled persons; (n) one representative of the National Council of Social Welfare; (o) one representative of the registered trade unions, to be nominated by the Labour Division; and (p) the Deputy Secretary, Health and Social Welfare Division dealing with social welfare, who shall also be the Secretary of Respondent No. 6. It is further submitted that the various functions specified in Section 4 of the 1981 Ordinance clearly show that Respondent No. 6 is the policy making and executive authority under the 1981 Ordinance. It is humbly submitted that Respondent No. 6 has failed to perform its functions in accordance with the law, as enumerated in Section 4 of the 1981 Ordinance.
- D. That under Section 5 of the 1981 Ordinance, the Respondents No. 2 to 5 were to constitute, by notification in the Official Gazette, the Respondents No. 7 to 10, each consisting of eighteen members to be appointed by the respective Provincial

Governments, including (a) the Secretary, Social Welfare Department, who shall also be its Chairman; (b) the Secretary, Labour Department; (c) one representative of the Planning and Development Department; (d) one representative of the Manpower Department; (e) one representative of the Health Department; (f) one representative of the Education Department; (g) one representative of the Communications Department; (h) one representative of the Water and Power Department; (i) one representative of the Chamber of Commerce; (j) Chief Administrator of Zakat; (k) one representative of the Social Welfare Council; (l) one representative of the Social Services Board; (m) one representative of the registered Trade Unions to be nominated by the Labour Department; (n) four persons nominated by the Provincial Government from amongst the persons engaged in the welfare Work of disabled persons ; and (o) Director, Social Welfare Department, who shall also be the Secretary of the Council. It is submitted that the various functions specified in Section 6 of the 1981 Ordinance clearly show that the Respondents No. 7 to 10, subject to any direction from the Respondent No. 6, were to execute the policy made by Respondent No. 6. Moreover, under Section 13 of the 1981 Ordinance, Training Centers were to be established by Respondents No. 7 to 10 for the training of disabled persons in such trades or vocations as it thinks fit. Following the enactment of the provincial Acts in the provinces of Punjab and Khyber Pakhtunkhwa, the composition of the Respondents No. 8 was altered while that of Respondent No. 10 remained the same, and their functions were altered mainly to the extent that the role of Respondent No. 6 was omitted, thus giving more autonomy to Respondents No. 8 and 10 for the purposes of carrying out their functions in their respective provinces. It is respectfully submitted that Respondents No. 7 to 10 have failed to perform their functions in accordance with the law, as enumerated in Sections 6 and 13 of the 1981 Ordinance, and the relevant provisions of the respective provincial Acts.

- E.** That under Section 10 of the 1981 Ordinance, not less than one percent (1%) (hereinafter referred to as the 'employment quota') of the persons employed by an establishment shall be 'disabled persons' (as defined by Section 2(c) of the 1981 Ordinance). 'Establishment', as defined by Section 2(f) of the 1981 Ordinance, includes a government establishment and non-governmental establishments including commercial establishments and industrial establishments, in which the number of workers employed at any time during a year is not less than one hundred. The employment quota, therefore, extends not only to the government establishments, but also to non-government commercial and industrial establishments. It is further submitted that the provincial Acts have increased the employment quota provided under the 1981 Ordinance to two percent (2%) in the provinces of Punjab and Khyber Pakhtunkhwa respectively. The onus of implementation of these employment quotas lies on Respondents No. 1 to 10. It is humbly submitted that persons with disabilities are being denied their constitutional and statutory right to employment due to non implementation of the relevant provisions of the 1981 Ordinance and the Provincial Acts. It is further submitted

that under Section 11 of the 1981 Ordinance and the provincial Acts, an establishment which does not fulfill the requirements of Section 10, has to pay an amount equal to the sum of money that it would have paid as salary or wages to a person with disability had he been employed in compliance of the provisions of Section 10 of the 1981 Ordinance, to the Disabled Persons Rehabilitation Funds created under Section 17 of the 1981 Ordinance and the provincial Acts. It is humbly submitted that the Respondents No. 1 to 10 have not implemented the relevant provisions of law with respect to collection of funds as envisioned under the relevant provisions of the 1981 Ordinance and the provincial Acts.

- F.** That lack of access to quality education is one of the key issues being faced by persons with disabilities. It is submitted that Respondent No. 1 has established the Directorate General of Special Education at the federal level and the Respondents No. 2 to 5 have established Directorates of Special Education at the provincial levels for the provision of special education to persons with disabilities, and dozens of institutions are operating under these Directorates for the purposes of provision of primary and secondary education to persons with disabilities. The existence of these separate institutions for persons with disabilities, although *prima facie* beneficial for persons with disabilities, is highly discriminatory, and detrimental in the long term, as it involves segregation on the basis of disability which results in the exclusion of persons with disabilities from the national mainstream. Such exclusive models which exclude persons with disabilities from the general education system are being discarded by countries around the world, which are now focusing on inclusivity in order to provide education without any discrimination and on the basis of equal opportunity. Special support is being provided to those persons with disabilities who require *within* the general education systems. It is further submitted that the UNCRPD, which Pakistan has ratified, has expressly rejected the idea of exclusive education and has bound the ratifying states to implement measures for promoting inclusive education. It is humbly submitted that Respondents No. 1 to 5 have failed to promote inclusive education for persons with disabilities in clear violation of the Article 24 of the UNCRPD and Articles 9, 25 and 25A of the 1973 Constitution.
- G.** That it is further submitted that apart from exclusion from the general education system at the primary and secondary level, persons with disabilities have been completely excluded and deprived from higher education. It is submitted that regardless of the quality of education or the size of campuses, there is not a single university or institute of higher education in Pakistan which is completely accessible for persons with disabilities, or provides facilities for persons with visual, hearing and others impairments. The prospectuses and admission forms of most varsities do not even mention any details or provide any guidelines in this regard. There are no standard operating procedures at the universities, nor has any disability-friendly policy been formulated by the Respondent No. 11, which, as per the provisions of the Higher Education Commission Ordinance, 2002, [hereinafter referred to as the 'HEC Ordinance'], is responsible, *inter alia*, for the

evaluation, improvement, and promotion of higher education, research and development in Pakistan, preparing plans for the development of higher education, allocating funds to public sector institutions out of financial provision received from the government and other resources on the performance and need basis, and reviewing and examining the financial requirements of the public sector institutions. Respondent No. 11, it submitted, is the primary public body responsible for promoting and regulating higher education in Pakistan. According to Petitioners' information, following a meeting between the Respondent No. 11 and architects in 2008, a letter was circulated at Respondent No. 11's approved universities to ensure that ramps, railings, special washrooms and other necessities are available to assist students with various disabilities. But neither were any steps taken by the universities in this regard nor was the matter further pursued by the Respondent No. 11. Consequently, persons with disabilities continue remain excluded from the higher education system of the country. Currently, in most universities of Pakistan, students with visual impairments cannot appear in written tests or examinations or access course material and academic libraries [due to non availability of Braille book], students with hearing impairments cannot attend classes and lectures, and students with physical impairments have to struggle to move around on campuses as buildings, including hostels, academic blocks and libraries, especially the upper floors, are inaccessible for them and there are no guidelines, especially for wheelchair users, on how to navigate through the campuses. There are no reserved seats for persons with disabilities, and no specialized admission process. The level of neglect is evident from the fact that neither the Respondent No. 11 nor any other government or private body has figures as to the number of students with visual, hearing and other physical impairments enrolled in institutions of higher education. The overall impression that emanates from the current situation is that persons with disabilities are simply not acceptable and welcome in institutions of higher education. Currently, a large number of persons with disabilities are being deprived of higher education altogether, and where they are enrolled in institutes of higher education, they are being deprived of proper education facilities, in clear violation of Articles 9 and 25 of the 1973 Constitution.

- H.** That apart from being deprived of education and employment, inaccessibility of buildings, public places and means of transportation is one of the most serious barriers for persons with disabilities in the realization of their basic right to a meaningful life, as it restricts their mobility and independence and makes them dependant on others. In order to enable persons with disabilities to live independently and participate fully in all aspects of life, appropriate measures need to be enforced in order to ensure to persons with disabilities access, on an equal basis with others, to their physical environment and means of transportation, and to any other facilities and services open or provided to the public, both in urban and in rural areas. These measures, which include the identification and elimination of obstacles and barriers to accessibility, relate, *inter alia*, to buildings, roads, transportation and other indoor and outdoor facilities, including schools, housing,

medical facilities and workplaces. It is humbly submitted that Respondents No. 1 to 5 and various local development authorities operating under them, including Respondent No. 12, have either failed to develop and promulgate minimum standards and guidelines for the accessibility of facilities and services open or provided to the public, or where these minimum standards exist, they have failed to implement them. Moreover, they have failed to ensure that private entities that offer facilities and services which are open or provided to the public take into account all aspects of accessibility for persons with disabilities. Similarly, Respondents No. 1 to 5 and various public transport organizations operating under them, including Respondents No. 13 and 14, have failed to implement minimum standards of accessibility in public transport systems. It is humbly submitted that both the national railways as well as the famous Lahore Metrobus Service are inaccessible for persons with disabilities. In failing to ensure that public spaces including buildings and roads, private spaces which are providing services and facilities for the public, and public transport facilities, are accessible for persons with disabilities, Respondents No. 1 to 5, and all local development authorities and public transport organizations operating under them including Respondents No. 12 to 14, are clearly violating the rights of persons with disabilities guaranteed to them under Articles 9, 15, 25 and 26 of the 1973 Constitution.

- I. That apart from inaccessibility of buildings, public places and means of transportation, persons with disabilities are also suffering from inaccessibility of information, especially the information available through electronic media. It is humbly submitted that, according to the Petitioners' information, there is not a single television channel in Pakistan, including the ones operated by the Respondent No. 17, a government run organization, which caters for the needs of persons with hearing impairments by providing live sign language interpretation. Furthermore, there are no television channels or radio stations in Pakistan, including the ones run by Respondents No. 16 and 17, both government run organizations, which devote air time to persons with disabilities. In fact, persons with disabilities are frequently humiliated and discriminated against on various television channels and radio stations through usage of derogatory terms like '*loola langra*', '*bhainga*', '*psycho case*' etc. which violates their dignity and subjects them to unjustified negative stereotyping and discrimination on the basis of their disability. It is submitted that Respondent No. 15 is the primary public body regulating electronic media in Pakistan under Section 4 of the Pakistan Electronic Media Regulatory Authority Ordinance, 2002 [hereinafter referred to as the '*PEMRA Ordinance*']. The purpose of establishment of Respondent No. 15, according to the Preamble of the PEMRA Ordinance, is to provide for the development of electronic media in Pakistan in order to improve the standards of information, education and entertainment, enlarge the choice available to the people of Pakistan in the media for news, current affairs, religious knowledge, art, culture, science, technology, economic development, social sector concerns, music, sports, drama and other subjects of public and national interest,

improve the access of the people to mass media at the local and community level and to ensure accountability, transparency and good governance by optimizing the free flow of information. Under Section 18 of the PEMRA Ordinance, the Respondent No. 15 can issue licenses for broadcast media and distribution service; under Section 20, a licensee has to ensure that all programs and advertisements do not contain or encourage violence, terrorism, racial, ethnic or religious discrimination, sectarianism, extremism, militancy, hatred, pornography, obscenity, vulgarity or other material offensive to commonly accepted standards of decency; and under Section 30, the Respondent No. 15 can revoke or suspend the license of a broadcast media or distribution service by an order in writing on the ground that, *inter alia*, the licensee has contravened any provision of the PEMRA Ordinance or rules or regulations made thereunder or the licensee has failed to comply with any condition of the license. Furthermore, clause (1)(c) of the Code of Conduct for Media Broadcasters or Cable TV Operators prescribed by the Respondent No. 15 in Schedule A of the Pakistan Electronic Media Regulatory Authority Rules, 2009 [hereinafter referred to as the 'PEMRA Rules'], clearly states that no program shall be aired which contains an abusive comment that, when taken in context, tends to or is likely to expose an individual or a group or class of individuals to hatred or contempt on the basis of race or caste, national, ethnic or linguistic origin, color or religion or sect, sex, sexual orientation, age or *mental or physical disability*. It is, therefore, humbly submitted that it is the statutory duty and one of the basic functions of Respondent No. 15 to ensure that the information being disseminated through electronic media is accessible for persons with disabilities and to prevent their humiliation, violation of their dignity, negative stereotyping and discrimination on television channels and radio stations. It is further submitted that the Respondent No. 15 has failed to aforementioned statutory duty resulting in violation of the Fundamental Rights of persons with disabilities enshrined in Articles 9, 14, 19A and 25 of 1973 Constitution.

- J. That apart from the aforementioned issues of education, employment and accessibility, one of the most significant issues affecting persons with disabilities in Pakistan is the paucity of comprehensive and reliable data regarding prevalence and magnitude of disability in the population. It is humbly submitted for the information of this Hon'ble Court that Article 11 of the UNCPRD requires state parties to collect appropriate information, including statistical and research data, to enable them to formulate and implement policies to give effect to the Convention. In Pakistan, since the enactment of the General Statistics (Reorganization) Act in 2011 [hereinafter referred to as the 2011 Act], it is the function of Respondent No. 18 under Section 4 of the said Act to, *inter alia*, *collect, compile, analyze, abstract, publish, market and disseminate statistical information relating to the commerce and trade, industrial, financial, social, economic, demographic, agriculture and any other area to be specified by the Federal Government, and conditions of the people of Pakistan; plan, execute and publish the census of population and housing of Pakistan, the census of agriculture of Pakistan or other censuses at national level as*

required from time to time; to facilitate policymaking by undertaking overall planning, coordination and annual programming of surveys and censuses in Pakistan; to develop program for national censuses and surveys in line with policy priorities and plan, coordinate, execute and publish them accordingly; and to strive and endeavour to ensure that collection of statistical data is in accordance with practices and standards of the United Nations and other international bodies for the purpose of fulfilling the international obligations of Pakistan in the field of statistics. Sections 5 and 6 of the 2011 Act further provide that the powers and functions of the Bureau and the general and overall direction, management, control and superintendence of the affairs of Respondent No. 18 shall vest in a Governing Council, to be constituted by Respondent No. 1 and consisting of at least seven members, and all actions, decisions, guidelines, directions, orders and policies made or issued by the Governing Council in the exercise of the said powers and functions shall be sent to the Bureau for compliance and implementation. Furthermore, while Sections 31 and 37 of the 2011 Act allow the Respondent No. 1 to direct the Respondent No. 18 to conduct national population and housing censuses and agriculture censuses respectively, Section 39 of the 2011 Act further provides that the Respondent No. 1 may, by notification in the official Gazette, direct the Respondent No. 18, to collect, compile, analyze information and publish censuses in respect of any other censuses it may consider necessary from time to time and thereupon the provisions of this Act shall, *mutatis mutandis*, apply in relation to such censuses. It is humbly submitted in light of the foregoing submissions that the Respondent No. 1 has powers to direct the Respondent No. 18 to carry out special censuses for specific purposes, which includes special census for ascertaining the incidence of disability in the population of Pakistan, as there is nothing the language of the 2011 Act which expressly or impliedly bars such an exercise. In fact, the very purpose of establishment of Respondent No. 18, as enumerated in the Preamble of the 2011 Act, is to produce reliable, authentic, timely and transparent data compatible with the needs of the economy and socioeconomic development requirements of the nation. It is humbly submitted that failure on part of Respondents No. 1 and 18 to carry out a comprehensive survey of incidence of disability in the population of Pakistan is not in violation of Articles 9 and 19A of the 1973 Constitution, but also in violation of Pakistan's international obligations under the UNCRPD.

- K.** That another significant issue affecting persons with disabilities is their inability to exercise their right to vote in national, provincial and local elections. It is respectfully submitted that Articles 51(2) and 106(2) of the 1973 Constitution clearly provide that every person is entitled to vote for the purposes of election of members of the National Assembly and the Provincial Assemblies if he is a citizen of Pakistan, not less than eighteen years of age, his name appears on the electoral roll and he has not been declared by a competent court to be of unsound mind. It is respectfully submitted that despite this constitutional entitlement, many persons with disabilities are not able to exercise their right to vote because the Respondent No. 19, which, under Article 218(3) of

the 1973 Constitution, has the constitutional duty to organize and conduct elections and to make necessary arrangements in order to ensure that the elections are conducted honestly, justly, fairly and in accordance with the law, has failed to make appropriate arrangements by virtue of which persons with disabilities can cast their votes at polling booths on the election day, including, *inter alia*, providing accessible polling booths, sign language interpretation and Braille ballot papers. It is further submitted that such arrangements are not only being already made in many democratic countries around the world, but the UNCRPD also obligates states parties to ensure that persons with disabilities can freely exercise their right to vote. However, the Respondent No. 19 has failed to make such arrangements as consequence of which persons with disabilities in Pakistan are being deprived of their right to choose their representatives and to participate in the democratic process in sheer and blatant violation of Articles 2-A, 9, 19, 51, 106 and 218 of the 1973 Constitution.

- L. That further grounds may be argued at the time of oral submissions, with the permission of this Hon'ble Court.

PRAYER

In view of the submissions made herein above, it is most respectfully prayed that for the enforcement of Fundamental Rights of citizens embodied in Articles 9, 10A, 14, 15, 16, 17, 18, 19, 19A, 23, 25, 25A, 26 and 27 of the Constitution of the Islamic Republic of Pakistan, 1973, this Hon'ble Court may graciously be pleased to:

- (a)** Direct Respondents No. 1 to 10 to make full disclosure regarding their efforts to implement and enforce the 1981 Ordinance and the provincial Acts since their enactment;
- (b)** Direct the Respondents No. 1 to 10 to fully and effectively implement all the relevant provisions of the 1981 Ordinance and the provincial Acts for the purposes of establishing the bodies/institutions/funds which are to be established under these laws at the federal and provincial levels, within a specified period of time, as determined by this Honorable Court, and where these bodies/institutions/funds have been established, to ensure their proper functioning/utilization in accordance with the law;
- (c)** Direct the Respondents No. 1 to 10 to fully and effectively implement the relevant provisions of the 1981 Ordinance and the provincial Acts for the purposes of ensuring the employment of persons with disabilities against the disability quota in all government establishments, commercial establishments and industrial establishments, at the federal

and provincial levels, in accordance with the law, within a specified period of time, as determined by this Honorable Court;

- (d)** Direct the Respondents No. 1 to 5 to: a) implement necessary measures for the purposes of facilitating inclusive education for persons with disabilities at the primary and secondary levels; b) ensure that persons with disabilities receive the support required, within the general education system, to facilitate their effective education; and c) ensure that persons with disabilities are not excluded from the general education system on the basis of disability, and that children with disabilities are not excluded from free and compulsory primary education, or from secondary education, on the basis of disability, and that persons with disabilities can access an inclusive, quality and free primary education and secondary education on an equal basis with others in the communities in which they live;
- (e)** Direct the Respondent No. 11 to: a) implement necessary measures in order to ensure that institutions of higher education are fully accessible for persons with disabilities; and b) ensure that persons with disabilities receive all the necessary support required to facilitate their effective education;
- (f)** Direct the Respondents No. 1 to 5 and various local development authorities and public transport organizations operating under them, including Respondents No. 12 to 14, to ensure that public spaces including buildings and roads and private spaces which are providing services and facilities for the public, particularly educational institutions, banks, hospitals, shopping malls, police stations, airports, railway stations, bus stops, and hotels, and all public transport facilities including mass transit systems, railway systems and airlines, are accessible for persons with disabilities, and to provide maximum facilities on footpaths for persons on wheel chairs and persons with visual impairments;
- (g)** Direct Respondent No. 15 to implement measures in order to ensure that the information being disseminated through electronic media is accessible for persons with disabilities and to prevent their humiliation, violation of their dignity, negative stereotyping and discrimination on television channels and radio stations, and to take strict measures against all licensees involved in such acts;
- (h)** Direct Respondents No. 16 and 17 to implement measures in order to ensure that the information being disseminated through their radio stations and television channels is accessible for persons with disabilities, including introduction of live sign language interpretation on television channels, and to air specific programs for persons with disabilities in Pakistan;
- (i)** Direct Respondents No. 1 and 18 to carry out a comprehensive national survey of incidence of disability in the population of Pakistan, after addressing the issues of definitions,

reference period and inconsistent categories, which have hampered earlier efforts in this regard, by consulting all relevant stakeholders, researchers and academics, and ensure that such survey is carried out by properly trained staff and involves physical verification of disability by professionals in order to ensure proper identification of persons with disability, documentation of impairments and categorization of the type, cause, duration and severity of disability;

- (j) Direct the Respondent No. 19 to implement all necessary measures for the purposes of ensuring the full participation of persons with disabilities in the democratic process, including making appropriate arrangements by virtue of which persons with disabilities can cast their votes at polling booths on the election day, including, *inter alia*, providing accessible polling booths, sign language interpretation and Braille ballot papers;
- (k) Direct all Respondents to submit before this Hon'ble Court, on a quarterly basis, a complete report regarding measures implemented by them for the purposes of enforcing the orders of this Hon'ble Court in the instant case, until such orders have been fully complied with;

The Petitioners also pray for the grant of any other relief deemed appropriate by this Hon'ble Court keeping in view the facts and circumstances of the case, for ensuring the enforcement and protection of the Fundamental Rights of persons with disabilities in Pakistan.

Drawn and Settled by

Filed By

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1-A, St. 26, Sector F-6/2, Islamabad,

MEHMOOD.A.SHEIKH

Advocate on Record

Certificate U/O XXV Rule VI of the Supreme Court Rules, 1980:

It is certified that this is the first Constitutional Petition on this issue under Article 184(3) of the Constitution and Petitioners have not moved the Hon'ble High Court for the same relief.

ADVOCATE ON RECORD