

THE AZAD JAMMU AND KASHMIR CONCILIATION COURTS

ACT, 1962

(Act II of 1962)

(Passed under Government Order No. 333/62 Dated 27-6-1962)

Whereas it is expedient to make provision for the establishment

of Conciliation Courts to enable people to settle certain disputes through conciliation, and for matters connected therewith;

It is hereby enacted as follows :-

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Short title, extent and commencement:- (1) This Act may be called the Azad Jammu and Kashmir Conciliation Courts Act, 1962.

(2) It extends to the whole of the Azad Jammu and Kashmir State.

(3) It shall come into force on such date as the Government may, by notification in the Official Gazette, appoint in this behalf.

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

(a) 'Cognizable offence' means a cognizable offence as defined in Section 4 of the Code of Criminal Procedure, 1898 (Act V of 1898), as in force in Azad Kashmir ;

(b) 'Conciliation Court' means a Conciliation Court constituted under this Act ;

(c) 'Controlling Authority' means, in the case of a Union Council, the Deputy Commissioner of the concerned District;

(d) 'Decree' means a decree as denoted in Section 2 of the Code of Civil Procedure, 1908 (Act V of 1908), as in force in Azad Kashmir.;

(e) 'District Judge' shall include as Additional District Judge, a Subordinate Judge and a Civil Judge;

(f) 'Government' means the Azad Government of the State of Jammu and Kashmir ;

(g) 'Party' shall include any person whose presence as such is considered necessary for a proper decision of the dispute and whom the Conciliation Court adds as party to such dispute;

(h) 'Union' means an area declared to be a Union under the Azad Jammu and Kashmir Basic Democracies Act, 1960 ;

(i) 'Union Council' means a Union Council constituted under the aforesaid Act.

Cases referable to conciliation:- (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (Act V of 1898), or in the Code of Civil Procedure, 1908 (Act V of 1908):-

(a) all cases falling under Part I of the Schedule shall, save as otherwise provided hereinafter, be referred to conciliation under this Act, and no civil or criminal Court shall have jurisdiction to try any such case ; and

(b) any of the cases falling under Part II of the Schedule may be so referred if all the parties thereto agree to such a reference.

(2) The following cases relating to matters falling under Section B of Part I of the Schedule or under Section B of Part II thereof shall be excluded from conciliation, namely :-

(a) cases in which the interest of a minor is involved ;

(b) cases where provision for arbitration has been made in a contract, between the parties ;

(c) cases by or against the Government or a public corporation or a public servant acting in the discharge of his duty ;

(d) cases which according to the customary law of a community are referable to a community panchayat.

(3) Government may, by notification in the Official Gazette, add to the Schedule any class of cases relating to such disputes between private parties as are of a local nature and are capable of settlement by compromise.

(4) Nothing in this Section shall apply to cases relating to an offence specified in the Schedule if the accused had previously been convicted of a cognizable offence.

Application for constitution of a Conciliation Court:- (1)

Whereas case is, under this Act, referable to conciliation, any party to the dispute may, in the prescribed manner, and on payment of the prescribed fee apply to the Chairman of the Union Council concerned for the constitution of a Conciliation Court for the settlement of a dispute, and unless the Chairman, for reasons to be recorded in writing, rejects the application, he shall proceed to constitute, in the prescribed manner, a Conciliation Court for the purpose ;

Provided that no application under this Section shall be made against a person of unsound mind.

(2) Any person aggrieved by an order of rejection under sub-section (1) may, on the ground that the order is mala-fide or substantially unjust, prefer, in the prescribed manner and within the prescribed time, an application for revision to the Controlling Authority, or to such other authority as may be prescribed.

Conciliation Courts, their composition, etc:- (1) A

Conciliation Court shall be a body consisting of Chairman and two representatives to be nominated, in the prescribed manner by each of the parties to the dispute :

Provided that one of the two representatives so nominated shall be a member of the Union Council concerned.

(2) The Chairman of the Union Council shall be the Chairman of the Conciliation Court, but where he is, owing to illness or any other cause, unable to act as Chairman, or does not, on account of any personal consideration, wish to do so, or his impartiality is challenged by any party to the dispute, any other person appointed in the prescribed manner, not being a person nominated by any party, shall be the Chairman of the Court.

(3) If either party to the dispute consists of more than one person, the Chairman shall call upon the person constituting that party to nominate the two representatives, on its behalf and if they fail to nominate, shall authorise any one of such persons to do so, and thereupon the person so authorised shall alone have the right to nominate such representatives.

(4) Where representatives required under this Section to be nominated are not nominated within the prescribed time, then:-

(a) if the case falls under part I of the Schedule, the Conciliation Court shall, without such representatives, be deemed to have been validly constituted for the purpose of this Act, and conciliation shall proceed accordingly ; and

(b) if the case falls under Part II of the Schedule, the Chairman shall issue a certificate that conciliation has failed.

Jurisdiction of Conciliation Courts, etc:- A Conciliation Court shall be constituted and shall have jurisdiction to try a case only when the parties to the dispute ordinarily reside within the limits of the Union in which the offence has been committed or the cause of action has arisen.

Power of Conciliation Courts to award compensation:- (1) Save as otherwise provided in this Act, a Conciliation Court shall have no power to pass a sentence of imprisonment or fine, but if it holds a person guilty of an offence specified in the Schedule, it may order the accused to pay to the aggrieved person compensation the amount of which may not exceed two hundred and fifty rupees, but if the offence is one punishable under Section 428 or Section 429 of the Penal Code (Act XLV of 1860), as inforce in Azad Kashmir, the amount of compensation may exceed two hundred and fifty rupees but not five hundred rupees.

(2) In a case relating to a matter falling under Section B of Part I of the Schedule or under Section B of Part II thereof, the Conciliation Court shall have the power to order payment of money upto the amount specified therein in respect of such matter or delivery of property to the person entitled thereto.

Finality of the decisions of Conciliation Courts:- (1) Wherein a case referred to conciliation under this Act the decision of the Conciliation Court is unanimous, or, if the case fails under Part I of the Schedule, the decision is by a majority of four to one, the decision shall be binding on the parts and shall be enforceable in accordance with the provision of this Act.

(2) If the decision of a Conciliation Court is by a majority of three to two, and the case falls under Part I of the Schedule, any

party may, within thirty days of the decision, apply, in the prescribed manner: (a) to the Controlling Authority, if the case relates to a matter falling under Section A of that part, or (b) to the District Judge if the case relates to a matter falling under Section B thereof, and the Controlling Authority or the District Judge, as the case may be, if satisfied that there has been a failure of justice, may set aside or modify the decision, or direct that the dispute be referred back to the Conciliation Court for reconsideration.

(3) If the decision of a Conciliation Court is not unanimous, and the case falls under Part II of the Schedule, the Court shall issue a certificate that conciliation has failed.

(4) Notwithstanding anything contained in any law any matter decided by a Conciliation Court in accordance with the provisions of this Act shall not be tried in any Court, including a Conciliation Court.

Enforcement of decree:- (1) Where a Conciliation Court decides to award compensation to a person or to order the delivery of property, it shall pass a decree in such form and in such manner as may be prescribed, and shall enter the particulars thereof in the prescribed register.

(2) If any money is paid or any property is delivered in the presence of the Conciliation Court in satisfaction of the decree, it shall enter the fact of payment or delivery, as the case may be, in the aforesaid register.

(3) Where a decree relates to payment of compensation and the decretal amount is not paid within the prescribed time, the same shall, if the Chairman, of the Conciliation Court so directs, be recovered as arrears of land revenue, and on recovery, shall be paid to the decree-holder.

(4) Where the satisfaction of a decree can be had otherwise than by payment of compensation, the decree may be presented for execution to such Civil Court as the District Judge may, by special or general order, direct, and such court shall thereupon proceed to execute the decree as if it were a decree passed by itself.

(5) A Conciliation court may, if thinks fit, direct that the amount of compensation be paid in such installments as it may fix.

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Procedure on failure of Conciliation:- Where a certificate is issued that conciliation has failed, either under clause (b) of sub-section (4) of Section 5 or under sub-section (3) of Section 5, any party to the dispute may seek its remedy in the Court in which it would in law be entitled to seek such remedy if this Act has not been promulgated.

Power of Conciliation Courts to summon witnesses, etc:- (1)
A Conciliation Court may issue summons to any person to appear and give evidence, or to produce or cause the production of any document :

Provided that:- (a) no person who is exempt from personal appearance in Court under sub-section (1) of Section 133 of the Code of Civil Procedure, 1908 (Act V of 1908), shall be required to appear in person ;

(b) a Conciliation Court may refuse to summon a witness or to enforce a summon already issued against a witness when, in the opinion of the Court, the attendance of the witness cannot be procured without such delay, expense or inconvenience as in the circumstances would be unreasonable ;

(c) a Conciliation Court shall not require any person living beyond its Jurisdiction to give evidence or to produce or cause the production of a document unless such sum of money is deposited for payment to him as the Court would think sufficient for defraying his travelling and other expenses.

(2) If any person to whom a Conciliation Court has issued summons to appear and give evidence or to produce or cause the production of any document before it willfully disobeys such summons, the Conciliation Court may take cognizance of such disobedience, and after giving such person an opportunity to explain, sentence him to a fine not exceeding twenty five rupees.

Contempt of conciliation Courts:- A person shall be guilty of contempt of a Conciliation Court if he, without lawful excuse :

(a) Offers any insult to the Conciliation Court or any member thereof while the Court is functioning as such; or

(b) causes any interruption in the work of the Conciliation

Court; or

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(c) fails to produce or deliver a document when ordered by the Conciliation Court to do so; or

(d) refuses to answer any question of the Conciliation Court which he is bound to answer ; or (c) refuses to take oath to state the truth or to sign any statement made by him when required by the Conciliation Court to do so ; and the Conciliation Court, may, without any complaint having been made to it forthwith try such person for such contempt and sentence him to a fine not exceeding fifty rupees.

Recovery of fine:- (1) Where a Conciliation Court imposes a fine under Section 11 or Section 12 and such fine is not immediately paid, it shall record an order seating the amount of fine imposed and the fact that it has not been paid, and shall forward the same to the nearest Magistrate who shall proceed to recover it in accordance with the provisions of the Code of Criminal Procedure, 1898 (Act V of 1898), as if it were fine imposed by himself, and such Magistrate may also sentence the accused to imprisonment in default of payment of such fine.

(2) All fines paid to a Conciliation Court under Section 11 and 12, or collected on behalf of a Conciliation Court under this section shall form part of the funds of the Union Council concerned.

Limitation, etc. in certain cases:- Where a case relating to a matter falling under Section B of Part II of the Schedule is referred to conciliation and conciliation fails, and the case is subsequently taken to a Civil Court, in computing the period of limitation prescribed therefore by or under any law for the time being in force, the time spent on conciliation proceedings, commencing from the date of the application made under Section 4 and ending on the day the certificate of failure of Conciliation is issued, shall, notwithstanding anything in the Limitation Act, 1908 (IX of 1908), be excluded.

Procedure:- (1) Save as otherwise expressly provided by or under this Act, the provisions of the Evidence Act, 1872 (I of 1872), the Code of Criminal Procedure, 1898 (Act V of 1898), and of the Code of Civil Procedure, 1908 (Act V of 1908), as in force in Azad Kashmir, shall not apply to proceedings before any Conciliation Court.

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(2) Sections 8 to 11 of the Oaths Act, 1873 (X of 1873), shall apply to all proceedings before Conciliation Courts.

No appearance through Counsel:- (1) Notwithstanding anything contained in the Legal Practitioners Act, 1879 (XVIII of 1879), no legal practitioner shall be permitted to appear on behalf of any party to a dispute before any Conciliation Court or before any Controlling Authority or other authority exercising powers under this Act.

(2) If a person required under this Act to appear before a Conciliation Court is a purda-nashin lady, the Conciliation Court may permit her to be represented by a duly authorised agent who shall in no case be a paid agent.

Transfer of certain cases:- (1) Where the Controlling Authority is of the opinion that the circumstances of a case relating to a matter falling under Section A of Part I of the Schedule or under Section A of Part II thereof, and pending before a Conciliation Court, are such that the public interest and the ends of justice demand its trial in a Criminal Court. The said Authority may, notwithstanding anything contained in this Act, withdraw the same from the Conciliation Court and direct that it be referred to the Criminal Court for trial and disposal.

(2) A Conciliation Court may, if it is of the opinion that in a case relating to matter as aforesaid and pending before it the ends of justice demand a punishment for the accused, forward the case to the Criminal Court for trial and disposal.

(3) The District Judge may, for reasons to be recorded, withdraw any civil case from a Conciliation Court and direct that it be referred to a Civil Court for disposal.

Investigation by Police:- Nothing in this Act shall prevent the police from investigation of a cognizable case by reason of the fact that the case relates to an offence specified in Section A of Part 1 of the Schedule, but if any such case is taken to a Criminal Court, Court may, if it thinks fit, direct that it be referred to conciliation under this Act.

Pending cases:- This Act shall not apply to cases referable under this Act to conciliation which , immediately before the coming

into force of this Act, are pending in any Civil or Criminal Court,

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and such cases shall be disposed of by those Courts as if this Act had not been promulgated :

Provided that if all the parties to any such case agree to have the same decided by a Conciliation Court, the proceedings thereof shall terminate, and the case shall be referred to conciliation in accordance with the provisions of this Act.

Power to exempt:- Government may, by notification in the official Gazette, exempt any area or areas, or any case or class of cases, or any community from the operation of all or any of the provisions of this Act.

Power to make rules:- Government may, by notification in the Official Gazette, make rules to carry into effect the provisions of this Act.

SCHEDULE PART I

SECTION A CRIMINAL CASES

Sections 143 and 147 of the Azad Kashmir Penal Code (Act XLV of 1860) read with the Third or the Fourth clause of Section 141 of that Code, as in force in Azad Kashmir, when the common object of the unlawful assembly is to commit an offence under Section 323 or 426 or 447 of that Code, and when not more than ten persons are involved in the unlawful assembly.

Sections 160, 323, 334, 341, 342, 352, 358, 426, 447, 504, 506 (first part) 508, 509 and 510 of the Azad Kashmir Penal Code.

Sections 403, 406, 417 and 420 of the Azad Kashmir Penal Code, when the amount in respect of which the offence is committed does not exceed one hundred rupees.

Section 427 of Azad Kashmir Penal Code, when the value of the property involved does not exceed one hundred rupees.

Sections 428 and 429 of Azad Kashmir Penal Code, when the value of the animal does not exceed one hundred rupees.

Sections 24; 26 and 27 of the Cattle Trespass Act, 1871 (I of 1871).

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Attempts to commit or the abetment of the commission of any of the above offences.

SECTION B CIVIL CASES

Suit for the recovery of money due on contracts, receipts or other documents.

Suit for the recovery of moveable property or for the value thereof.

Suit for compensation for wrongfully taking or damaging moveable property.

Suit for damages by cattle trespass.

PART II SECTION A CRIMINAL CASES

Sections 324, 343, 355, 357, 427, 430, 448, 461, 498, 500, 501 and 502 of Azad Kashmir Penal Code (Act XLV of 1860).

Section 379 of Azad Kashmir Penal Code, when the value of the property involved does not exceed two hundred and fifty rupees.

Sections 380 and 381 of Azad Kashmir Penal Code, when the value of the property involved does not exceed one hundred rupees.

Sections 403, 406, 417 and 420 of Azad Kashmir Penal Code, when the amount in respect of which the offence is committed exceeds one hundred rupees, but does not exceed two hundred and fifty rupees.

Section 408 of Azad Kashmir Penal Code, when the value of the property involved does not exceed two hundred and fifty rupees.

Section 411 of Azad Kashmir Penal Code, when the value of the property involved does not exceed two hundred and fifty rupees.

Sections 428 and 429 of Azad Kashmir Penal Code, when the value of the animal exceeds one hundred rupees but does not exceed live hundred rupees.

8. Section 451 of Azad Kashmir Penal Code, when the offence is committed with intention of committing any of the offences mentioned in Section A of Part I of this Schedule or in this section.

9. Attempts to commit or the abetment of the commission of any of the above offences.

SECTION B CIVIL CASES

All civil cases mentioned in Section B of Part I of this Schedule, in which the value of the claim exceeds two hundred rupees but does not exceed five hundred rupees.