

AZAD GOVERNMENT OF THE STATE OF JAMMU AND KASHMIR
LAW, JUSTICE, PARLIAMENTARY AFFAIRS AND HUMAN RIGHTS
DEPARTMENT MUZAFFARABAD

Dated: 27th March, 2017

No. LD/Legis-Act/220-231/2017. The following Act of Assembly received the assent of the President on the 16th day of March 2017, is hereby published for general information.

(ACT XV OF 2017)

An
Act
to provide for abolition of bonded labour system

WHEREAS it is necessary to provide a law for abolition of bonded labour system with a view to prevent the economic and physical exploitation of the labour class in the state and for matters ancillary or incidental thereto.

It is enacted hereby as follows:-

1. Short title, Extent and Commencement.- (1) This Act may be called the Azad Jammu and Kashmir Bonded Labour System (Abolition) Act, 2017.

(2) It shall extend to the whole of Azad Jammu and

Kashmir.

(3) It shall come into force at once.

2. Definitions.- In this Act, unless there is anything repugnant in

the subject or context,-

(a) "Advance (peshgi)" means an advance (peshgi) whether in cash or in kind, or partly in cash or partly in kind, made by one person (hereinafter referred to as the creditor) to another person (hereinafter referred to as the debtor);

(b) "Bonded debt" means an advance (peshgi) obtained, or presumed to have been obtained, by a bonded labour under, or in pursuance of, the bonded labour system;

(c) "Bonded labour" means any labour or service rendered under the bonded labour system;

(d) "Bonded labourer" means a labourer who incurs, or has, or is presumed to have, incurred, a bonded debt;

(e) "Bonded labour system" means the system of forced, or partly forced, labour under which a debtor enters, or has,

or is presumed to have, entered into an agreement with the creditor to the effect that,-

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in consideration of an Advance (peshgi) obtained by him or by any of his Family member, whether or not such Advance (peshgi) is evidenced by any document, and in consideration of the interest, if any, due on such Advance (peshgi), or

in pursuance of any customary or social obligation, or

for any economic consideration received by him or by any of his Family member; he would,-

qd) render, by himself or through any of his Family member or any person dependent on him, labour or service to the Creditor or for the benefit of the Creditor, for a specified, or for an unspecified, period without wages or for nominal wages, or

(2) forfeit the freedom of employment or adopting other means of livelihood for a specified period or for an unspecified period, or

(3) forfeit the right to move freely from place to place, or

(4) forfeit the right to appropriate or sell at market value any of his property or product of his labour or the labour of a member of his property or any person dependent on him, and includes the system of forced, or partly forced, labour under which a surety for a debtor enters, or has or is presumed to have entered, into an agreement with the creditor to the effect that, in the event of the failure of the debtor to repay the debt, he would render the bonded labour on behalf of the debtor;

(f) "Family member" means,-

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in the case of a male Bonded labourer, the wife

or wives, and in the case of a female, the husband of the Bonded labourer, and

the parents, children, minor brother, and unmarried, divorced or widowed daughters and sisters of the Bonded labourer, wholly dependent on him;

(g) "Government" means the Azad Government of the State of Jammu and Kashmir;

(h) "Nominal wages" in relation to any labour, means a wage which is less than,-

(a) the minimum wages fixed by the Government in relation to the same or similar labour, under any law for the time being in force; and

(b) where no such minimum wage has been fixed in relation to any form of labour, the wages that are normally paid for the same or similar labour, to the labourers working in the same locality, and

(i) "Prescribed" means prescribed by rules made under this Act.

Act to override other laws, etc.-The provisions of this Act shall have effect notwithstanding anything contained in any other law for the time being in force or in any instrument having effect by virtue of any such law.

Abolition of bonded labour system.- (1) On the commencement of this Act, the Bonded labour system shall stand abolished and every Bonded labourer shall stand freed and discharged from any obligation to render any Bonded labour.

(2) No person shall make any advance under, or in pursuance of, the Bonded labour system or compel any person to render any Bonded labour or other form of forced, labour.

Agreement, custom, etc., to be void.- Any custom or tradition or practice or any contract, agreement or other instrument, whether entered into or executed before or after the commencement of this Act, by virtue of which any person, or any member of his family, is required to do any work or render any service as a Bonded labourer, shall to the extent of Bonded labour be void and inoperative.

Liability to repay Bonded debt to stand extinguished.- (1) On

the commencement of this Act, every obligation of a Bonded labourer to repay Bonded debt, or such part of any Bonded debt as remains unsatisfied immediately before such commencement, shall stand extinguished.

(2) After the commencement of this Act, no suit or other proceeding shall lie in any civil court, tribunal or before any other authority for the recovery of any Bonded debt or any part thereof.

(3) Every decree or order for the recovery of Bonded debt, passed before the commencement of this Act and not fully satisfied before such commencement, shall not be effected by the provisions of this Act.

(4) Where, before the commencement of this Act, possession of any property belonging to a Bonded labourer or any of his Family member was forcibly taken by any Creditor for the recovery of any Bonded debt, such property shall be restored, within ninety days of such commencement, to the possession of the person from whom it was seized.

(5) Every attachment made before the commencement of this Act for the recovery of any Bonded debt shall, on such commencement, stand vacated and, where in pursuance of such attachment, any movable property of the Bonded labourer was seized and removed from his custody and kept in the custody of any court, tribunal or other authority pending sale thereof such movable property shall be restored, within ninety days of such commencement, to the possession of the Bonded labourer:

Provided that, where any attached property was sold before the commencement of this Act, in execution of a decree or order for the recovery of a Bonded debt, such sale shall not be affected by any provision of this Act.

(6) Subject to the proviso to sub-section (5), any sale, transfer or assignment of any property of a Bonded labourer made in any manner, whatsoever before the commencement of this Act, for recovery of Bonded debt, shall not be deemed to have created or transferred any right or interest in or ambience upon any such property and such property shall be restored within ninety days of such commencement, to the possession of the Bonded labourer.

(7) If restoration of the possession of any property referred to in sub-section (4), sub-section (5) or sub-section (6) is not made within ninety days from the commencement of this Act, the aggrieved person may, within such time as may be Prescribed, apply to the Prescribed authority for the restoration of the possession of such property and the Prescribed authority may, after giving the creditor a reasonable opportunity of being heard, and decide the matter as he may deem appropriate under this Act.

(8) An order made by any prescribed authority under sub-section (7) shall be deemed to be an order made by a civil court and may be executed by the court of the lowest pecuniary jurisdiction within the local limits of whose jurisdiction the

creditor voluntarily resides or carries on business or personally work for gain.

(9) Where any suit or proceeding for the enforcement of any obligation under the Bonded labour system, including a suit or proceeding for the recovery of any Advance (peshgi) made to a Bonded labourer, is pending at the commencement of this Act, such suit or other proceeding shall be decided under this Act.

(10) On the commencement of this Act, every Bonded labourer who has been detained in civil prison, whether before or after judgment, shall be released from detention forthwith.

Property of Bonded labour to be freed from mortgage, etc.-

(1) All property vested in a Bonded labourer which was, immediately before the commencement of this Act, under any mortgage, charge, lien or other encumbrance in connection with any Bonded debt shall, in so far as it is relatable to the Bonded debt, stand freed and discharged from such mortgage, charge, lien or other encumbrance; and where any such property was, immediately before the commencement of this Act, in the possession of the mortgagee or the holder of the charge, lien or encumbrance, such property shall, except where it was subject to any other charge, on such commencement, be restored to the possession of the Bonded labourer.

(2) If any delay is made in restoring any property referred to in sub-section (1) to the possession of the Bonded labourer, such labourer shall be entitled, on and from the date of such commencement, to recover from the mortgagee or holder of the lien, charge or encumbrance, or other benefits as may be determined by the civil court of the lowest pecuniary jurisdiction within the local limits of whose jurisdiction such property is situated.

Creditor _not_to_accept payment against extinguished _debt.-

(1) No creditor shall accept any payment against any Bonded

debt which has been extinguished or deemed to have been extinguished or fully satisfied by virtue of the provisions of this Act.

(2) Whoever contravenes the provisions of sub-section (1) shall be punishable with imprisonment for a term which may extend to three years, or with fine which shall not be less than fifty thousand rupees, or with both.

(3) The court convicting any person under sub-section (2) may, in addition to the penalties which may be imposed under

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that sub-section, direct such person to deposit, in court, the amount accepted in contravention of the provisions of sub-section (1), within such period as may be specified in the order for being refunded to the Bonded labourer.

Authorities who may be specified for implementing the provisions of this Act.- The Government may confer such powers and impose such duties on a District Magistrate or any officer of Labour Department as may be necessary to ensure that the provisions of this Act are properly carried out and the District Magistrate etc., may designate an officer subordinate to him to exercise all or any of the powers, and perform all or any of the duties, so conferred or imposed and specify the local limits within which such powers or duties shall be carried out by such officer.

Duty of district Magistrate and other Officers designated to him.- (1) The District Magistrate authorized by the Government

under Section 9, and the officer designated by the District Magistrate under that Section, shall as far as practicable, try to promote the welfare of the free Bonded labourer by securing and protecting the economic interests of such Bonded labourer so that he may not have any occasion or reason to contract any further Bonded debt.

(2) It shall be the duty of every District Magistrate and every officer designated by him under section 9 to inquire whether, after the commencement of this Act, any Bonded labour system or any other form of forced labour is being enforced by, or on behalf of, any person resident within the local limits of his jurisdiction and if, as a result of such inquiry, any person is found to be enforcing the Bonded labour system or any other system of forced labour, he shall forthwith take such action as may be necessary to implement the provisions of this Act.

Punishment for enforcement of Bonded labour.- Whoever, after the commencement of this Act compels any person to render any Bonded labour shall be punishable with imprisonment for a term which shall not be less than two years and more than five years, or with fine which shall not be less than seventy five thousand rupees, or with both.

Punishment for extracting Bonded labour under the Bonded labour system.- Whoever enforces, after the commencement of

this Act any custom, tradition, practice, contract, agreement or

other instrument, by virtue of which any person or any of his
Family member is required to render any service under the

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Bonded labour system, shall be punishable with imprisonment for a term which shall not be less than two years and more than five years, or, with fine which shall not be less than seventy five thousand rupees, or with both; and out of the fine, if recovered, payment shall be made to the Bonded labourer at the rate of not less than fifty rupees for each day for which Bonded labour was extracted from him.

Punishment for omission or failure to restore possession of property to Bonded labourer.- Whoever, being required by this

Act to restore any property to the possession of any Bonded labourer, omits or fails to do so, within a period of ninety days from the commencement of this Act, after trial be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to fifteen thousand rupees, or with both; and out of the fine, if recovered, payment shall be made to the Bonded labourer at the rate of twenty five rupees for each day during which possession of the property was not restored him.

Abetment_to_be_an_Offence.- Whoever abets any offence punishable under this Act shall, whether or not the offence abetted is tenanted, be punishable with the same punishment as is provided for the offence which has been abetted.

Explanation: For the purpose of this Section, ““abetment” has the same meaning as is assigned to it in the Azad Penal Code, 1860 (Act XLV of 1860), as enforced in Azad Jammu and Kashmir.

Vigilance Committees.- Vigilance Committees shall be set up at the District level in the Prescribed manner, consisting of claimed representatives of the area, representatives of the District Administration, Bar Associations, Press, recognized Social Services and Labour Departments of the Government.

(2) The following shall be the functions of the Vigilance Committees, namely:-

(a) to advise the District Administration on matters relating to the effective implementation of the law and to ensure its implementation in proper manner, to help in the rehabilitation of the freed Bonded labourer,

(b) to keep an eye on the working of the law; and

(c) to provide the Bonded labourers such assistance as may

be necessary to achieve the objectives of the law.

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Offences to be tried by the Magistrate.- (1) A Magistrate of the first class empowered in this behalf by the Government may try any offence under this Act.

(2) An offence under this Act shall be tried summarily.

Cognizance of offences.- Every offence under this Act shall be cognizable and bailable.

Offences by Companies.- (1) Where an offence under this Act has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to a guilty of the offence and shall be liable to be proceeded against and punished accordingly.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act, has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any director, manager or other officer of the company, such director, manager or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation: For the purposes of this Section,-

(a) "company" means a body corporate, and includes a firm or other association of individuals; and

(b) "director" in relation to a company or firm, means a partner in the company/ firm.

Protection or action taken in good faith.- No suit, prosecution or other legal proceeding shall lie against Government or any

officer of the Government for the thing which is in good faith done or intended to be done under this Act.

Jurisdiction of Courts barred.- Save as otherwise provided in this Act, no court shall have jurisdiction in respect of any matter

to which any provision of this Act applies and no injunction shall be granted by any court in respect of anything which is done or intended to be done under this Act.

Power to make rules.- The Government may by notification in the official Gazette, make rules for carrying out the purposes of this Act.

Sd/-
(Mehr-un-Nisa Qadri)
Section Officer (Legislation)