

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

Dated: 24th December, 2020

No. LD/Legis-Act/555-69/2020. The following Act, passed by the Azad Jammu and Kashmir Legislative Assembly on 26th November, 2020 and received the assent of the President on the 17th day of December, 2020, is hereby published for general information.

[ACT XXXV OF 2020]

An
Act

further to amend the Azad Penal Code, 1860 and the Code of Criminal Procedure, 1898

Whereas it is expedient further to amend the Azad Penal Code, 1860 (Act XLV of 1860) and the Code of Criminal Procedure, 1898 (Act V of 1898) for the purposes hereinafter appearing;

It is hereby enacted as follows:-

1. Short title and Commencement.- (1) This Act may be called the Criminal Law (Fifth Amendment) Act, 2020.

(2) It shall come into force at once.

2. Addition of a new Chapter XIX-A, Act XLV of 1860.- In the Azad Penal Code, 1860 (Act XLV of 1860), as adopted and in force in Azad Jammu and Kashmir, after Chapter XIX, the following new Chapter XIX-A shall be added, namely:-

“CHAPTER XIX-A

OFFENCES RELATING TO PROPERTY GRABBING

492-A. Definitions.- In this Chapter, unless there is anything repugnant in the subject or context,-

(a) “Occupier” means a person who is in lawful possession of public and private property;

(b) “Owner” means a person who actually owns the

property at the time of his dispossession, otherwise than through a process of law; and
(c) "Property" means immovable property.

492-B. Prohibition of Grabbing of Property, etc.- (1)

No one shall enter into or upon any property to dispossess, grab, control or occupy it without having any lawful authority to do so with the intention to dispossess, grab, control or occupy the property from Owner or Occupier of such property.

(2) Whoever holds a property under a lawful authority or occupies it lawfully in pursuance of provision of law, or a lawful order or a decree of a Court or an agreement, for a period of time specified or agreed upon as the case may be, on expiration of such period, as aforesaid, he shall be liable to surrender such property to such person who is entitled for the possession thereof.

(3) Whoever contravenes the provisions of the sub-section (1) or (2) shall, without prejudice to any punishment to which he may be liable under any other law for the time being in force, be punished with imprisonment which may extend to ten years and with fine and the victim of the offence shall also be compensated in accordance with the provision of Section 544-A of the Code.

492-C. Forcibly Dispossessing any lawful Owner or Occupier.- Whoever forcibly and wrongfully

dispossess any lawful owner or occupier of any property and his act does not fall within Section 492-B shall be punished with imprisonment which may extend to ten years or with fine or with both, in addition to any other punishment to which he may be liable and the Court may at its discretion impose compensatory cost on the accused in lieu of the expenses as well as mental agony faced by the complainant during the course of trial as the Court deems fit or appropriate."

Addition of Chapter No. XVI-A, Act V of 1898.- In the Code of Criminal Procedure, 1898 (Act V of 1898), as

adopted and in force in Azad Jammu and Kashmir, after Chapter No. XVI, a new Chapter No. XVI-A shall be added as under:-

“CHAPTER XVI-A

OF OFFENCES RELATING TO PROPERTY
GRABBING

203-D. Application.- Notwithstanding anything contained contrary to any other law or any other chapter of this Code, the provisions of this chapter shall apply in respect of offences under Chapter XIX-A of the Azad Penal Code, 1860, as added above.

203-E. Cognizance of Offence.- (1) The offences under Chapter XIX-A of the Azad Penal Code, 1860 (Act XLV of 1860) shall be triable by the Court of Sessions on a complaint:

Provided that in case of Government property the complaint shall be made by the concerned department after approval of the Law Department.

Provided further that in case of Government property, any person can invite attention of the Head of Office or Department regarding grabbing of Government property and if such head of Office or Department fails to take concrete steps, he may be proceeded under the disciplinary law for the time being in force.

(2) The offences under Chapter XIX-A of the Azad Penal Code, 1860 (Act XLV of 1860), shall be non-cognizable.

(3) The Court at any stage of the proceedings may direct the Police to arrest the accused.

203-F. Investigation and Procedure.- (1) Upon a complaint, the Court may direct the Officer-Incharge of

(3)

(4)

a Police Station to investigate and complete the investigation and forward the same within a period of fifteen days to the Court:

Provided that the Court may extend the time in case where sufficient reasons are shown for not doing so within the time specified in this sub-section but not more than thirty days:

Provided further that whenever a local inquiry is necessary for the purpose of this Act, the Court may direct a Magistrate or a Revenue Officer in the District to make inquiry and submit its report within a specified period as the Court may direct and the report of Magistrate or Revenue Officer, as the case may be, shall be construed as evidence in the case.

(2) On taking cognizance of a case, the Court shall proceed with the trial on day to day basis and shall decide the case within a period of sixty days and if any delay occurred due to any unavoidable circumstances, which is beyond human control, the Court shall record the sufficient reason thereto.

The Court shall not adjourn the trial, unless such adjournment is, in its opinion, necessary in the interest of justice and no adjournment shall be extended or allowed beyond seven days.

If the Court reaches at the conclusion after conducting the trial that complaint is frivolous, false or vexatious, the Court may award compensatory cost upon the complainant which may extend to five hundred thousand rupees.

203-G. Power to Attach Property.- (1) When the Court is of the opinion that property is not in the possession of any person immediately before the commission of the offence, the Court may attach the Property till final decision of the case.

(2) In case of attachment of property under sub-section (1), the Court shall determine the mode of its management, safeguard against natural decay or deterioration.

(3)

(4)

(5)

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203-H. Eviction and mode of recovery as an interim relief.- (1) If during trial the Court is satisfied that a

person is found prima facie to be not in lawful possession, the Court shall, as an interim relief direct him to put the owner or occupier, as the case may be, in possession.

(2) Where the person against whom any such order is issued under sub-section (1) fails to comply with the direction of Court, the Court shall notwithstanding anything in any other law for the time being in force, take such measures and pass such direction as may be deemed necessary to put the possession of property to its Owner or Occupier.

The Court may authorize any official or officer to take possession of immovable property for securing compliance with its directions under sub-section (1) and the person so authorized may use or cause to be used such force as may be just and deemed necessary to the extent of dispossession.

If any person, authorized by the Court, under sub-section (3), requires Police assistance to implement court direction in the exercise of his powers under this Chapter, he may send a requisition for rendering such assistance as may be required and the Officer Incharge of the Police Station or any other person so authorized in this behalf shall be bound to provide such assistance as expeditiously as possible.

The failure of the Officer-Incharge of Police Station to provide or render such assistance under sub-section (4) shall amount to misconduct for which the Court may pass such order against him as the Court deems fit or direct departmental authorities to take strict action against him.

203-I. Delivery of Possession of Property to

Owner, etc.- (1) On conclusion of the trial, if it is proved that an Owner or Occupier of the Property was illegally dispossessed or grabbed under Section 492-B or 492-C the Court may, at the time of passing order

under sub-section (3) of Section 492-B direct the accused or any person claiming through him for restoration of the possession of the Property to the Owner or, as the case may be, the Occupier forthwith, if not already restored to him under Section 203-H.

(2) For the purpose of sub-section (1), the Court may, where it is required, direct the Officer-Incharge of the Police Station for such assistance as may be required for restoration of the possession of the Property to the Owner or Occupier, as the case may be.

203-J. Appeal.- Any person aggrieved by the final judgment or order of the Court under this Chapter may, within thirty days prefer an appeal to the High Court and the High Court shall decide the appeal within 30 days.

Provided that no appeal shall lie against any interlocutory order of the Court during the proceedings pending before it under this Chapter.”

Overriding effect.- The provisions of this Act shall have effect notwithstanding anything contained in any other law. Amendment of Schedule II, Act V of 1898.- In the said Code, in Schedule I], after Section 491, in column (1) and

the corresponding entries relating thereto in columns (2) to (8), the following shall be added, namely:-

“1 2 3 4 5 6 7 8

492-B [Prohibition May not |Warrant|Not Compoundablilmpisonment of |Court of
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Grabbing —_ without fine and
lof Property, jwarrant compensation.
etc.

492-C |Forcibly Ditto Ditto | Ditto Ditto —_ ‘ [[mpisonment of | Ditto”
dispossess ten years and
any lawful fine or with both.
lowner or
loccupier of
property

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Sd/-
(Gulfranz Ahmed Khan)
Section Officer (Legislation)

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