

THE KHYBER PAKHTUNKHWA BONDED LABOUR SYSTEM

(ABOLITION) ACT, 2015.

(KHYBER PAKHTUNKHWA ACT NO. XIV OF 2015)

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THE KHYBER PAKHTUNKHWA BONDED LABOUR SYSTEM
(ABOLITION) ACT, 2015.

(KHYBER PAKHTUNKHWA ACT NO. XIV OF 2015)

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AN
ACT

to provide for abolition of bonded labour system in the
Province of the Khyber Pakhtunkhwa

Preamble---Whereas clause (2) of Article 11 of the Constitution of the Islamic Republic of Pakistan prohibits all forms of forced labour;

AND WHEREAS it is necessary to provide for abolition of bonded labour system with a view to preventing the economic and physical exploitation of the labour class in the country and for matters connected therewith or incidental thereto;

It is hereby enacted as follows:

1. Short title, extent and commencement.--- (1) This Act may be called the Khyber Pakhtunkhwa Bonded Labour System (Abolition) Act, 2015.

(2) It extends to the whole Province of the Khyber Pakhtunkhwa.

(3) It shall come into force at once.

2. Definitions.--- (1) 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 labourer under, or in pursuance of, the bonded labour system;

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

(d)

(e)

(f)

()

(2)

(3)

(4)

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

"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--

(i)

(ii)

(iii)

in consideration of an advance (peshgi) obtained by him or by any of the members of his family 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 the members of his family; he would--

render, by himself or through any member of his family, or any person dependent on him, labour or service to the creditor or for the benefit of the creditor, for a specified period or for an unspecified period, either without wages or for nominal wages; or

forfeit the freedom of employment or adopting other means of livelihood for a specified period or for an unspecified period; or

forfeit the right to move freely from place to place; or
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 family 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.

"family" means--

(i)

in the case of a male bonded labourer, the wife or wives, and
in the case of a female bonded labourer, the husband of the
bonded labourer, and

(ii) the parents, children, minor brother, and unmarried, divorced or widowed sisters of the bonded labourer wholly dependent

on him;

(g) "Government" means Government of the Khyber Pakhtunkhwa;

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

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

(ii) | 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;

(i) "prescribed" means prescribed by rules made under this Act; and

Gj) "Province" means the Province of the Khyber Pakhtunkhwa.

(2) The words and expressions used in this Act but not defined herein shall have the same meanings, as assigned to them in the relevant labour laws, for the time being in force.

3. 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.

4. 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 be void and inoperative.

5. 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 be deemed, on such commencement, to have been fully satisfied.

(4) Where, before the commencement of this Act, possession of any property belonging to a bonded labourer or a member of his family 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 encumbrance 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) or 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, direct the creditor to restore to the applicant the possession of the said property within such time as may be specified in the order.

(8) An order 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 works 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, on such commencement, stand dismissed.

(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.

6. Advance extended ___or taken after the commencement of this Act.--- (1) No advance shall be extended or taken for extracting or rendering any labour under the bonded labour system after the commencement of this Act.

(2) Notwithstanding anything contained in sub section (1), advance may be extended or taken as Qarza Hasana or interest free loan in a prescribed manner.

(3) Advance extended or taken under sub section (2) shall not exceed three times minimum rates of wages of a worker fixed by Government.

(4) No second advance shall be extended or taken till fulfillment of the first advance.

(5) The installments of recovery of the advance extended or taken shall not exceed one fourth of the wages of the worker.

(6) The employer shall maintain a proper record of the advance extended in respect of each and every worker in a prescribed manner.

7. 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, such monetary 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.

8. 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 fifteen 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 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.

9. Authorities who may be specified for implementing the provisions of this Act.---

Government may confer such powers and impose such duties on any officer as may be necessary for carrying into effect the provisions of this Act.

10. Duty of the authorized officers.--- (1) The officer authorized by Government under section 9, shall as far as practicable, try to promote the welfare of the freed 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 the officer authorized 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.

11. Inspectors.--- Government may appoint Inspectors for the purposes of this Act.

12. Authorized officers, Inspectors, etc. to be public servant.---All officers and inspectors authorized, designated and appointed for the purposes of this Act shall be deemed

to be "public servants" within the meaning of the Pakistan Penal Code, 1860 (Act No. XLV of 1860).

13. Maintenance & production of record.---(1) Every employer shall maintain record of his employees and workers in a prescribed manner.

(2) The employer shall also maintain a record of advance extended and recovery thereof under section-6, in a prescribed manner, and provide a copy thereof, duly authenticated, to the worker.

(3) The employer shall produce record to the inspector on demand.

14, 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 may extend to five years but shall not be less than two years, or with fine which may extend to two hundred thousand rupees but shall not be less than fifty thousand rupees or with both.

15. 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 member of his family is required to render any service under the bonded labour system, shall be punishable with imprisonment for a term which may extend to five years but shall not be less than two years or with fine which may extend to three hundred thousand rupees but shall not be less than one hundred 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 percent of the minimum rate of wages fixed by the government for each day for which bonded labour was extracted from him.

16. 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, shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to fifty 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 percent of the minimum rate of wages fixed by the government for each day during which possession of the property was not restored to him.

17. Punishment for obstructing Inspector.---Whoever willfully obstructs an inspector

in the exercise of any of his power or conceals or fails to produce, on demand by an inspector, any register or other document in his custody required by him under the provisions of this Act and rules made hereunder, prevents any person in an establishment from inspection, shall be punishable with imprisonment which may extend to one month or with fine which may extend to one hundred thousand rupees but shall not be less than ten thousand rupees or with both. The subsequent commission of the offense shall be punishable with imprisonment which may extend to six months but shall not be less than one week or with fine which may extend to one hundred thousand rupees but shall not be less than twenty thousand rupees or with both.

18. Abetment to be an offence.---Whoever abets any offence punishable under this Act

shall, whether or not the offence abetted is committed, 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 Pakistan Penal Code, 1860 (Act No.XLV of 1860).

19. Vigilance Committee.--- (1) Vigilance Committees shall be set up at the District

level in the prescribed manner, consisting of representatives of the District Administration, Bar associations, press, recognized Social Services and Labour Department of Government and elders of the area.

(2) The functions of the Vigilance Committee shall be--

(a) to advise Government, both district and provincial, on matters relating to the effective implementation of the law and to ensure its implementation in proper manner;

(b) to help in the rehabilitation of the freed bonded labourer;

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

(d) to provide the bonded labourers such assistance as may be necessary to achieve the objectives of the law.

20. Offences to be tried by Magistrate.--- (1) A Magistrate of the first class shall try an offence under this Act..

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

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

22. Offences by companies.--- (1) Where an offence under this Act has been committed by a company, every person who, at the time of 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 be 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 firm, means a partner in the firm.

23. Protection of action taken in good faith.--- No suit, prosecution or other legal proceeding shall lie against Government or any officer of Government for anything which is done or intended to be done in good faith under this Act.

24. 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.

25. 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.

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

27. Protection against discrimination.---No discrimination shall be made on the basis of gender, religion, sect, colour, caste, creed, ethnic back ground and political affiliation with regard to the observance of this Act.

28. Repeal and _savings.--- (1) The Bonded Labour System (Abolition) Act, 1992 (Act No. III of 1992) is hereby repealed in its application to the extent of the Province of the Khyber Pakhtunkhwa.

(2) Notwithstanding the aforesaid repeal, anything done, action taken, rules made, and notification or order issued under the repealed Act, shall, so far as it is not inconsistent with the provisions of this Act, be deemed to have been done, taken, made or issued, under this Act, and shall have effect accordingly.

(3) Any document referring to the repealed Act shall be construed as referring to the corresponding provisions of this Act.