

## ERADICATION OF 'QABZA' GROUP ACTIVITIES

As if the umpteen problems currently faced by the law abiding citizens of this country were not enough, of late a new group of anti-social/criminal elements have surfaced whose immoral/illegal activities aims at depriving such innocent people of their property, land as well as residential dwelling. These elements usually operate in groups and have established links with the official functionaries such as revenue and Police personnel, whose backing they get for carrying out their nefarious activities. Their mode of operation range from taking unauthorised/illegal possession of someone's property to blackmailing and intimidating the owners of property, preparing forged documents and filing fictitious suits for laying claim to such property. Their operation, of course, is not restricted to occupying merely private property as community land and government property are equally vulnerable to their operations. Their activities previously confined to certain urban cities are fast spreading to other areas. The services of these groups are equally available for hire by other interested persons/groups. Some of the operators regard this activity as a mean of earning their livelihood while others take it as a normal trade or profession. In certain localities these groups operate not underground or under any cover but openly and visibly. Their activities are reported and their operations are known to the law enforcing agencies and yet no action is taken against them. This is so because these groups have the blessings of high and mighty and are often backed by powerful social, political and bureaucratic elite. The reason why these groups operate in open and with impunity is because the return in this trade is fairly high and their backing by the powerful elite makes it impossible for the law enforcing agencies to nab them. Yet another reason for this flourishing trade may perhaps be attributed to the flaws in our judicial system where litigation is costly, tedious and slow. Such factors indeed inhibit the aggrieved parties from bringing claims of litigation before the court of law. Consequently, the victims of Qabza Group almost invariably prefer an out-of-the-court compromise, meekly surrendering to the demands of these groups. The Police are often reluctant to register complaints of this nature, on the pretext that such matters being civil in character should preferably be settled through the civil courts. Consequently, the victims are without any adequate remedy. They run from pillar to post to get relief but in vain, and, at the end of the day they realise that their only remedy lies in either taking the law into

their own hands or surrendering to the demands of such groups. This state of affairs leads to lawlessness, nay anarchy and is a cause of concern and alarm to the society as a whole. It undermines respect for the rule of law and erodes the right of an individual to the protection of law. It clearly violates the constitutional right to acquire, hold, enjoy and dispose of one's property, in accordance with the law.

The Pakistan Law Commission, aware of the fact that innocent and law abiding citizens have often been the victim of these operations, and conscious of the reality that the law enforcing agencies have not been successful in nabbing and punishing the culprits involved in such nefarious operations, decided to propose a new draft legislation in the area. The proposed law aims at achieving the following objectives:

- 1- Proposing a comprehensive legislation in the area with a view to prohibit the activities of Qabza Group, deter the perpetrators of such unlawful and illegal activities from carrying out their operations and eliminate this scourge from the society.
- 2- To provide simple, inexpensive and expeditious mode of deciding complaints pertaining to the activities of Qabza Group.
- 3- Obliging the police to make expeditious investigations in the matter and report their findings within specified period.
- 4- Allowing the court to follow the existing procedure or adopt any other appropriate mode of trial with a view to decide the case within specified period.

Accordingly the Pakistan Law Commission proposes the following draft Act on the subject.

# **ERADICATION OF 'QABZA' GROUP (ACTIVITIES) ACT, 1993**

**An Act to protect the owners of immovable property from acts of illegal possession or forcible dispossession by the Qabza Group.**

**Whereas it is expedient to protect the owners of immovable property from illegal possession, or forcible dispossession by a person or group of persons commonly known as Qabza Group.**

**It is hereby enacted as follows:-**

- 1. Short title, extent and commencement.- (1) This Act may be called the "Eradication of Qabza Group (Activities), Act, 1993.**
  - (2) It extends to the whole of Pakistan; and**
  - (3) It shall come into force at once.**
  
- 2. Definition.- In this Act unless there is anything repugnant in the subject or context.-**
  - (a) "Court" means the Court of Sessions having jurisdiction.**
  - (b) "Code" means the Code of Criminal Procedure, 1989 (Act V of 1898);**
  - (c) "illegal possession" means possession without lawful authority;**
  - (d) "property" means immovable property;**
  - (e) "qabza group" means a person or group of persons committing an act of illegal possession of or illegal dispossession from property by**

means of fraud, intimidation, duress, assault or in any manner otherwise than in due course of law.

(2) The words not defined under this Act shall bear the meaning as assigned to them in the Pakistan Penal Code.

3. **Offence.-** Whoever as a qabza group is involved in an act of illegal possession of or illegal dispossession from, shall be punished with imprisonment for a term which may extend to seven years and fine upto the market value of the suit property.

4. **Jurisdiction.-** Notwithstanding anything contained in any law, for the time being in force, an offence mentioned in this Act shall be exclusively triable by the Court of Sessions having jurisdiction and the trial shall proceed to a conclusion notwithstanding the pendency of a civil suit on the same subject.

5. **Taking of cognizance.-** (1) The Officer-in-Charge of a police station shall complete the investigation and forward directly to the Court a report under section 173 of the Code of Criminal Procedure within fourteen days in respect of the case triable by the Court. Provided that the Court may extend the time within which such report is to be forwarded in a case where good reasons are shown for not doing so within the time specified in this sub-section.

(2) Any default on the part of an Officer-in-Charge of a police station, an Investigation Officer or any other person required by law to perform any functions in connection with the investigation, which results in, or has the effect of delaying the investigation or the submission of the report under sub-section (1), shall be deemed to be a wilful disobedience of the order of the Court and dealt with under the law accordingly.

(3) The Court may directly take cognizance of a case without the case being sent to it under section 190 of the Code.

**6. Procedure of Court.- (1) On taking cognizance of a case, the Court shall proceed with the trial from day to day and shall decide the case within thirty days and for any delay, sufficient reasons shall be recorded.**

**(2) The Court shall not adjourn any trial for any purpose unless such adjournment is, in its opinion, necessary in the interest of justice and no adjournment shall in any case be granted for more than two working days.**

**(3) The Court shall proceed to enquire into the matter and for that purpose notwithstanding any procedure laid down in any law for the time being in force, may adopt any appropriate procedure as it deems fit for the ends of justice.**

**7. Burden of Proof.- Where any person is accused of having committed an offence under section 3 of this Act and is in possession of or has under his control such property shall be deemed to have committed the offence unless proved otherwise.**

**8. Eviction of trespasser and mode of recovery as an interim relief.- (1) If a person is found prima facie to be not in lawful possession, the Court shall, as an interim relief direct the offender to put the owner in possession.**

**(2) Where the person against whom any such order is passed fails to comply with the same, the Court shall, notwithstanding any other law for the time being in force, commit him to prison until such time the order is carried out.**

**(3) The Court may depute any person to take possession for securing compliance with its orders under sub-section (1).**

- (4) If any person, authorised by the Court, requires police assistance, in the exercise of his power under this Act, he may send a requisition to the Officer-in-Charge of a police station who shall on such requisition render such assistance as required.
9. Power to attach property.- (1) If the Court is satisfied that none of the persons are in possession immediately before the commission of the offence, the Court may attach the property until final determination of the rights of the parties.
- (2) In case of attachment, the methods of its safeguard against natural decay or deterioration shall be determined by the Court.
10. Powers of the Court.- For the purpose of conducting inquiry under this Act the Court shall have all powers necessary for issuing summons, warrants in order to compel attendance of witnesses, production of documents, examination of witnesses, issuing commission for inspection of sites and such other matters as the Court deems fit.
11. Bail.- (1) An accused person shall not be released on bail, if there appears reasonable grounds for believing that he has been guilty of the offence, nor shall the accused be so released unless a notice has been given to the prosecution.
- (2) Where an accused person is released on bail, the amount of bail shall be fixed having regard to the gravity of the charge against such person and shall not be less than twice the market value of the property involved.

## **STATEMENT OF OBJECTS AND REASONS**

**This bill seeks to provide a speedy forum for eradicating the illegal activities of Qabza Group so as to protect the individual property.**