

The Jammu and Kashmir Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 2010

JAMMU & KASHMIR

India

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Act 19 of 2010

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The Jammu and Kashmir Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 2010 Act No. 19 of 2010 [Received the assent of Governor on 23rd October, 2010 and published in the Government Gazette dated 25th October, 2010.] An Act to provide for the prohibition of employment of manual scavengers as well as construction or continuance of dry latrines and for the regulation of construction and maintenance of water-seal latrines and for matters connected therewith or incidental thereto. Be it enacted by the Jammu and Kashmir State Legislature in the Sixty-first Year of the Republic of India as follows:-

Chapter 1

Preliminary

1. Short title and commencement.

(1) This Act may be called the Jammu and Kashmir Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 2010. (2) It shall come into force from the date of its publication in the Government Gazette.

2. Definitions.

- In this Act, unless the context otherwise requires, -(a) "area", in relation to any provision of this Act, means such area as the Government may, having regard to the requirements of that provision, specify by notification; (b) "building" means a house, out-house, stable, latrine, urinal, sheet house,

hut, wall (other than a boundary wall) or any other structure whether made of masonry, bricks, wood, mud, metal or other material ;(c)"dry latrine" means a latrine other than a water-seal latrine ;(d)"environment" includes water, air and land and the interrelationship which exists among and between water, air and land and human beings, other living creatures, plants, micro-organism and property ;(e)"environmental pollutant" means any solid, liquid or gaseous substance present in such concentration as may be, or tend to be, injurious to environment ;(f)"environmental pollution" means the presence in the environment of any environmental pollutant ;(g)"Executive Authority" means an Executive Authority appointed under sub-section (1) of section 5 ;(h)"HUDCO" means the Housing and Urban Development Corporation Limited, a Government company registered by that name under the Companies Act, 1956 (1 of 1956) ;(i)"Government" means the Government of Jammu and Kashmir ;(j)"latrine" means a place set apart for defecation together with the structure comprising such place, the receptacle therein for collection of human excreta and the fittings and apparatus, if any, connected therewith ;(k)"manual scavenger" means a person engaged in or employed for manually carrying human excreta and the expression "manual scavenging" shall be construed accordingly ;(l)"notification" means a notification published in the Government Gazette ;(m)"prescribed" means prescribed by rules made under this Act ; and(n)"water-seal latrine" means a pour-flush latrine, water flush latrine or a sanitary latrine with a minimum water-seal of 20 millimetres diameter in which human excreta is pushed in or flushed by water.

Chapter II

Prohibition of Employment of Manual Scavengers

3. Prohibition of employment of manual scavengers.

(1)Subject to sub-section (2) and the other provisions of this Act, with effect from such date and in such area as the Government may, by notification, specify in this behalf, no person shall, -(a)engage in or employ for or permit to be engaged in or employed for any other person for manually carrying human excreta ; or(b)construct or maintain a dry latrine.(2)The Government shall not issue a notification under subsection (1) unless -(i)it has, by notification, given not less than ninety days' notice of its intention to do so ;(ii)adequate facilities for the use of water-seal latrines in that area exist ; and(iii)it is necessary or expedient to do so for the protection and improvement of the environment or public health in that area.

4. Power to exempt.

- The Government may, by a general or special order published in the Government Gazette, and upon such conditions, if any, as it may think fit to impose, exempt any area, category of buildings or class of persons from any provisions of this Act or from any specified requirement contained in this Act or any rule, order, notification or scheme made thereunder or dispense with the observance of any such requirement in a class or classes of cases, if it is satisfied that compliance with such provisions or such requirement is or ought to be exempted or dispensed within the circumstances of the case.

Chapter III

Implementing Authority and Schemes

5. Appointment of Executive Authority and their powers and functions.

- The Government may, by order published in the Government Gazette, appoint an Executive Authority to exercise jurisdiction within such area as may be specified in the order and confer such powers and impose such duties on him, as may be necessary to ensure that the provisions of this Act are properly carried out and the Executive Authority may specify the officer or officers, subordinate to him, who shall exercise all or any of the powers, and perform all or any of the duties, so conferred or imposed and the local limits within which such powers or duties shall be carried out by the officer or officers so specified.(2)The Executive Authority appointed under sub-section (1) and the officer or officers specified under that sub-section shall, as far as practicable, try to rehabilitate and promote the welfare of the persons who were engaged in or employed for as manual scavengers in any area in respect of which a notification under sub-section (1) of section 3 has been issued by securing and protecting their economic interests.

6. Power of the Government to make schemes.

(1)The Government may, by notification, make one or more schemes for regulating conversion of dry latrines into, or construction and maintenance of water-seal latrines, rehabilitation of the persons who were engaged in or employed for as manual scavengers in any area in respect of which a notification under sub-section (1) of section 3 has been issued in gainful employment and administration of such schemes and different schemes may be made in relation to different areas and for different purposes of this Act :Provided that no such scheme as involving financial assistance from the HUDCO shall be made without consulting it.(2)In particular, and without prejudice to the generality of the foregoing power, such schemes may provide for all or any of the following matters, namely : -(a)time-bound phased programme for the conversion of dry latrines into water-seal latrines ;(b)provision of technical or financial assistance for new or alternate low cost sanitation to local bodies or other agencies ;(c)construction and maintenance of community latrines and regulation of their use on pay and use basis ;(d)construction and maintenance of shared latrines in slum areas or for the benefit of socially and economically backward classes of citizens ;(e)registration of manual scavengers and their rehabilitation ;(f)specification and standards of water-seal latrines ;(g)procedure for conversion of dry latrines into water-seal latrines ;(h)licensing for collection of fees in respect of community latrines or share latrines.bed.

7. Power of Government to issue direction.

- Notwithstanding anything contained in any other law but subject to the other provisions of this Act, the Government may, in the exercise of its powers and performance of its functions under this Act, issue directions in writing to any person, officer or local or other authority and such person, officer or a local or other authority shall be bound to comply with such directions.

8. Executive Authorities, Inspectors, officers and other employees of such authorities to be public servants.

- All Executive Authorities, all officers and other employees of such authorities including the officers authorised under sub-section (1) of section 5, all Inspectors appointed under sub-section (1) of section 9 and all officers and other employees authorised to execute a scheme or order made under this Act, when acting or purporting to act in pursuance of any provisions of this Act, or the rules or schemes or orders or directions issued thereunder, shall be deemed to be public servants within the meaning of section 21 of the Ranbir Penal Code.

9. Appointment of Inspectors and their powers of entry and inspection.

(1)The Government may, by notification, appoint such persons as it may think fit to be Inspectors for the purposes of this Act, and define the local limits within which they shall exercise their powers under this Act.(2)Every Inspector within the local limits of jurisdiction of an Executive Authority shall be subordinate to such authority.(3)Subject to any rules made in this behalf by the Government, an Inspector may, within the local limits of his jurisdiction, enter, at all reasonable times, with such assistance as he considers necessary, any place for the purpose of -(a)performing any of the functions of the Executive Authority entrusted to him ;(b)determining whether and if so in what manner, any such functions are to be performed or whether any provisions of this Act or the rules, orders or schemes made thereunder or any notice, order, direction or authorisation served, made, given or granted under this Act is being or has been complied with ;(c)examining and testing any latrine, or for conducting an inspection of any building in which he has reason to believe that an offence under this Act or the rules, orders or schemes made thereunder has been or is being or is about to be committed and to prevent or mitigate environmental pollution.

10. Power of Executive Authority to prevent environmental pollution in certain cases.

(1)On receipt of information with respect to the fact or apprehension of any occurrence of contravention of the provisions of section 3, whether through intimation by some person or on a report of the Inspector or otherwise, the Executive Authority shall, as early as practicable, besides taking any other action under this Act, direct the owner or occupier of the premises to take such remedial measures, as may be necessary, within such reasonable time as may be specified therein and in case the owner or occupier, as the case may be, fails to comply with such directions, causes such remedial measures to be taken as are necessary to prevent or mitigate the environmental pollution at the cost of such owner or occupier of the premises.(2)The expenses, if any, incurred by the Executive Authority with respect to the remedial measures referred to in sub-section (1), together with interest at such rate as the Government may specify from the date when a demand for the expenses is made until it is paid, may be recovered by such authority or agency from the person concerned as arrears of land revenue.

11. Seeking of financial assistance.

(1) For implementation of such schemes for the construction of water-seal latrines as may be made under section 6, the Government may seek the financial assistance from HUDCO. (2) The financial assistance referred to in sub-section (1) may be extended by HUDCO on such terms and conditions (including on easy and concessional rates of interest) and in such manner as it may think fit in each case or class of cases.

12. Power to levy fee.

- Any order or scheme which the Government is empowered to make under this Act may, notwithstanding the absence of any express provision to that effect, provide for levy of fees in respect of - (a) community latrines constructed under a scheme on pay and use basis ; or (b) shared latrines constructed under a scheme ; or (c) supply of copies of documents or orders or extracts thereof ; or (d) licensing of contractors for construction of water-seal latrines ; or (e) any other purpose or matter involving rendering of service by any officer, committee or authority under this Act or any rule, direction, order or scheme made thereunder : Provided that the Government may, if it considers necessary so to do, in the public interest, by general or special order published in the Government Gazette, grant exemption on such grounds as it deems fit from the payment of any such fee either in part or in full.

13. Constitution of Committees.

(1) The Government may, by notification, constitute - (a) one or more Co-ordination Committees for coordinating and monitoring of the programmes for the construction of water-seal latrines in the State and rehabilitation of the persons who were engaged in or employed for as manual scavengers in any area in respect of which a notification under sub-section (1) of section 3 has been issued ; (b) such other committees for such purpose of this Act and with such names as the Government may deem fit. (2) The composition of the committees constituted by the Government, the powers and functions thereof, the terms and conditions of the members of such committees and other matters connected therewith shall be such as the Government may prescribe. (3) The members of the committees under sub-section (1) shall be paid such fees and allowances for attending the meetings as may be prescribed.

Chapter IV

Penalties and Procedure

14. Penalty for contravention of the provisions of the Act and rules, orders, directions and schemes.

- Whoever fails to comply with or contravenes any of the provisions of this Act, or the rules or schemes made or orders or directions issued thereunder, shall, in respect of each such failure or

contravention be punishable with imprisonment for a term which may extend to one year or with fine, which may extend to two thousand rupees, or with both, and in case the failure or contravention continues, with additional fine which may extend to one hundred rupees for every day during which such failure or contravention continues after the conviction for the first such failure or contravention.

15. Offences by companies.

(1) If person committing an offence under this Act is a company, the company as well as every person incharge of, and responsible to, the company for the conduct of its business at the time of the commission of the offence, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly : Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence. (2) Notwithstanding anything contained in sub-section (1), where an 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 that the commission of the offence is attributable to any neglect on the part of any director, manager, managing agent or such other officer of the company, such director, manager, managing agent or such other officer shall also 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 any 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.

16. Offence to be cognizable.

- Notwithstanding anything contained in the Code of Criminal Procedure Samvat, 1989 (Act No. XXIII of 1989), every offence under this Act shall be cognizable.

17. Provision in relation to jurisdiction.

(1) The offences under this Act shall be triable by a Judicial Magistrate of the First Class. (2) No prosecution for any offence under this Act shall be instituted except by or with the previous sanction of the Executive Authority. (3) No court shall take cognizance of any offence under this Act except upon a complaint made by a person generally or specially authorised in this behalf by the Executive Authority.

18. Limitation of prosecution.

- No court shall take cognizance of an offence punishable under this Act unless the complaint thereof is made within three months from the date on which the alleged commission of the offence came to the knowledge of the complainant.

Chapter V

Miscellaneous

19. Information, reports or returns.

- The Government may, in relation to its functions under this Act, from time to time, require any person, officer or other authority to furnish to it or to any prescribed authority or officer any reports, returns, statistics, accounts and other information as may be deemed necessary and such person, officer or other authority, as the case may be, shall be bound to do so.

20. Protection of action taken in good faith.

- No suit, prosecution or other legal proceedings shall lie against the Government or any officer or other employee of the Government or any authority constituted under this Act or executing any scheme made under this Act or any member, officer or other employee of such authority or authorities in respect of anything which is done or intended to be done in good faith in pursuance of this Act or the rules or schemes made, or the orders or directions issued, thereunder.

21. Effect of other laws and agreements inconsistent with the Act.

(1) Subject to the provisions of sub-section (2), the provisions of this Act, the rules, schemes or orders made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act, custom, tradition, contract, agreement or other instrument. (2) If any act or omission constitutes an offence punishable under this Act and also under any other Act, then the offender found guilty of such offence shall be liable to be punished under the other Act and not under this Act.

22. Power to make rules.

(1) The Government may, by notification, make rules to carry out the provisions of this Act. (2) Without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely : - (i) the composition of Co-ordination Committees and other committees constituted by the Government under subsection (1) of section 13, the powers and functions thereof, the number of members and their terms and conditions of appointment and other matters connected therewith ; (ii) the fees and allowances to be paid to the members of the committees constituted under sub-section (1) of section 13 ; (iii) any other matter which is required to be, or may be, prescribed.

23. Power to remove difficulties.

- If any difficulty arises in giving effect to the provisions of this Act, the Government may, by order published in the Government Gazette, make such provisions, not inconsistent with the provisions of

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this Act, as may appear to it to be necessary or expedient for the removal of the difficulty.