

A
BILL

*to prohibit the business and practices of money-lending and
advancing personal loans on usurious rates of interest*

Preamble.---WHEREAS there exists an urgent need to curb the menace created by private loan sharks and money lenders who are charging exorbitantly usurious interest rates and then molest the borrowers for recovery thereof;

AND WHEREAS while protecting all genuine private commercial transactions involving reasonable rates of returns, it is felt necessary and expedient to ban the rampant business of money-lending on exorbitantly high and usurious interest rates;

WHEREAS it is also felt necessary to introduce legislative measures for the protection of the borrowers of the money lent on such high rates, and matters connected therewith;

It is hereby enacted as follows:

1. **Short title, extent and commencement.**--- (1) This Act may be called the Khyber Pakhtunkhwa Prohibition of Usurious Loans Act, 2014.

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

(3) It shall come into force at once.

2. **Definitions.**--- In this Act, unless there is anything repugnant in the subject or context-

(a) "bank rate" means unless another rate is so specifically notified by the Government shall either be the discount rate so notified by the State Bank of Pakistan on the date of creation of loan or the Karachi Inter Bank Offer Rate (KIBOR) of three month tenure added with three hundred base points, whichever is higher;


(b) "borrower or debtor" means a person to whom a loan is advanced;

(c) "Code" means the Code of Criminal Procedure, 1898 (Act No. V of 1998);

(d) "financial institution" includes a State Bank of Pakistan, a commercial or investment bank, a leasing company, a modaraba or other concerns, so defined in terms of section 2(a) of the Financial Institutions (Recovery of Finances) Ordinance, 2001 (Ordinance No. XLVI of 2001);

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

(f) "interest" includes the return to be made over and above what was actually lent, whether the same is charged or sought to be recovered specifically by way of interest or otherwise, or found so to be recoverable by a competent Court;


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- (g) "loan or debt" means an advance whether of money or in kind at interest, and includes any transaction which the Court finds in substance to amount to such an advance, including a personal loan but does not include—
- (i) a deposit of money or other property in a financial institution, an insurance company, or in any other company as defined in the Companies Ordinance, 1984 (Ordinance No. XLVII of 1984) or with a co-operative society to earn profits thereupon;
 - (ii) an advance made to any loan floated by the Government of Pakistan, or Government of Khyber Pakhtunkhwa or any other province;
 - (iii) an advance made by a financial institution, or a co-operative society or an advance made from a provident, pension or gratuity or other fund to which any federal or provincial law relating to terminal or employment benefits applies;
 - (iv) an advance made by Government or by any person authorized by Government to make advances in their behalf, or by any local authority;
 - (v) an advance made by any authority specified by Government by notification in the official Gazette;
 - (vi) an advance made by a trader bona fide carrying on any business, other than money lending, if such loan is advanced, in the regular course of such business; and
 - (vii) any other transaction that Government specifically excludes from the operation of this Act, by notification in the official Gazette;
- (h) "molest"—a person shall be deemed to molest another person if he—
- (i) obstructs, or uses violence or criminal force to or criminally intimidates, such other person;
 - (ii) interferes with any property owned or used by him or deprives him of, or hinders him in the use of any such property; and
 - (iii) does any act calculated to annoy or intimidate the members of the family or such other person;
- (i) "money lender" means a person whose main or subsidiary occupation is the business of advancing and realizing loans or acceptance of deposits in the course of such business and includes any person appointed by him to be in charge of a branch office or branch offices or a liaison office or any other office by whatever name called, of his principal place of

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business and a pawn broker who carries on the business of taking goods and chattels in pawn or pledge for a loan, offering pay day loans, small personal loans, credit chits etc, but does not include—

- (a) a financial institution;
- (b) the State Life Insurance Corporation of Pakistan or any other insurance concern, doing business under the Insurance Ordinance, 2000;
- (c) any institution established by or under a federal or provincial legislature, which grants any loan or advance in pursuance of the provisions of that Act; and
- (d) any institution in the public sector, whether incorporated or not exempted by Government by notification;

Explanation I.— Where a money lender, who carries on, in the Province, the business of advancing and realizing loans is resident outside the province, the agent of such person resident in the Province, shall be deemed to be the money lender in respect of that business for the purposes of this Act.

Explanation II.— the word “person” shall include “an association of persons, company or firm”, whether registered under any law or otherwise.

- (j) “prescribed” means prescribed by rules under this Act;
- (k) “principal amount” in relation to loan means the amount actually lent to the debtor;
- (l) “Province” means the Province of the Khyber Pakhtunkhwa;
- (m) “rules” means rules made under this Act; and
- (n) “usurious interest” means a rate of interest per annum more than the bank rate.

3. **Lending of money.**---(1) No money lender either individually or in group of persons shall carry on or continue to carry on the business of money lending to lend money or advance loan to any person for the purpose of receiving usurious interest thereon.

(2) Whoever contravenes the provisions of sub-section (1) shall be punished with imprisonment which may extend to seven years but shall not be less than three years or a fine of one million rupees or with both.

4. **Abetment.**--- Whoever intentionally and willfully abets, engages, assists or aids the money lender to lend money or assist in lending the money in contravention of sub-section (1) of section 3 shall also be liable to punishment with the punishment provided for offence under sub-section (2) of section 3 of this Act.

5. **Molestation.**--- Whoever molest any borrower or debtor, whether on his own behalf or on behalf of anybody else with intention to force such borrower or debtor to pay back any loan or debt or any part thereof or any interest thereupon, shall be

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punished with rigorous imprisonment for term which may extend to five years or fine up to five hundred thousand rupees or with both.

6. **Complaint.**---A justice of peace, on receipt of any application or complaint with regard to lending of money for the purpose of interest on above bank rate from any person or debtor that a person or groups of persons, are carrying on business in contravention of sub-section (1) of section 3 of this Act or any such person is directly or indirectly molesting any borrower, if satisfied, with a view to preventing any such person from carrying such business or molesting any borrower or debtor, shall direct the local police to register a case against such person or group of persons for violation of the provisions of this Act.

7. **Liability to pay interest on debt to stand extinguished.**--- On the commencement of this Act, every obligation of any debtor or borrower to pay usurious interest on debt or such part of interest as remained unpaid over and above bank rate immediately before such commencement shall stand extinguished.

8. **Offences to be tried by Court.**--- No Court inferior to that of Judicial Magistrate of the first class shall try an offence under this Act.

9. **Cognizance of offences.**--- Notwithstanding anything to the contrary contained in the Code or any other law for the time being in force an offence under this Act shall be cognizable and non-bailable.

10. **Confiscation of principal amount.**--- A Court trying an offence under this Act, if it is proved that the money lender committed an offence under this Act, may order the confiscation of principal amount and realized an interest accrued thereon partly paid to the money lender and may waive off the outstanding remainder amount of usurious interest payable on such amount.

11. **Recovery of sums.**--- Where penalty imposed on money lender or any person under this Act or the confiscation of principal amount, is not paid-

- (a) the Court may order to recover the amount so payable by selling the assets belonging to such person; and
- (b) in case the amount cannot be recovered from such person in the manner provided in clause (a) the Court may prepare and sign a certificate specifying the amount due from such person and send it to the collector of the district in which such person owns any property or resides or carries on business; and the collector of the district on receipt of such certificate shall proceed to recover from the said person the amount specified in the certificate as if it is an arrear of land revenue.

12. **Appeal.**--- Save as provided, any person aggrieved by any decision given, sentence passed or order made by the trial court under this Act, may within thirty days of such decision, sentence or order prefer an appeal under the provisions contained in chapter XXXI of the Code.

13. **Power to deposit in Court money due on loan.**--- (1) Where any lender, whether a money lender as defined in this Act or otherwise, refuses to accept the whole or any portion of the money or other property due in respect of his loan without payment of interest over and above Bank rate, the debtor may deposit the said money or property into the Court having jurisdiction to entertain a suit for recovery of such loan and apply to the Court record full or part satisfaction of the loan, as the case may be.

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(2) Where any such application is made, the Court shall, after due inquiry, pass orders recording full or part-satisfaction of the loan as the case may be.

(3) The procedure laid down in the Code of Civil Procedure 1908 (Act No. V of 1908), for the trial of suits shall, as far as may be, apply to applications under this section.

(4) An appeal shall lie from an order passed by a Court under sub-section (2) within thirty days excluding the time for obtaining a certified copy of the order as if such an order relates to the execution, discharge or satisfaction of a decree within the meaning of section 47 of the Code of Civil Procedure, 1908 (Act No. V of 1908).

14. **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.

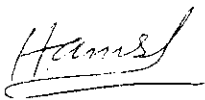
15. **Indemnity.**--- No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done in pursuance of this Act or of any rules made thereunder.

16. **Power to make rules.**--- Government may make rules for carrying out the purposes of this Act.

17. **Repeal.**---The Khyber Pakhtunkhwa Interest of Personal Loans Prevention Act, 2007 (Khyber Pakhtunkhwa Act No. III of 2007) is hereby repealed.

STATEMENT OF OBJECT AND REASONS.

It is desirable to curb the menace created by private loan sharks and money lenders who are charging exorbitantly usurious interest rates and then molest the borrowers for recovery thereof. Hence, this Bill.



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MINISTER-IN-CHARGE

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