

[TO BE INTRODUCED IN THE NATIONAL ASSEMBLY]

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BILL

further to amend the Pakistan Penal Code, 1860, the Criminal Procedure Code, 1898 and the Qanun-e-Shahadat Order, 1984;

WHEREAS it is expedient further to amend the Pakistan Penal Code (Act XLV of 1860), the Code of Criminal Procedure (Act V of 1898) and the Qanun-e-Shahadat Order (Order X of 1984) and for the purposes hereinafter appearing;

It is hereby enacted as follows: -

1. **Short title and commencement.**- This Act may be called the Criminal Law (Amendment) Act, 2014.

(2). It shall come into force at once.

2. **Amendment of section 55, XLV of 1860**, In the Pakistan Penal Code (Act XLV of 1860) hereinafter referred to as the said code, in section 55, after the proviso, the following new proviso shall be inserted, namely :-

“Further provided that, in a case in which the sentence of imprisonment of life shall have been passed against an offender convicted for an offence punishable under sections 354-A, 376, 376-A, 376-B and 376-C, such punishment shall not be commuted”.

3. **Insertion of new sections, in Act XLV of 1860.**- In the said code, after section 166, the following new sections, shall be inserted, namely:

“166A. **Police or other officer disobeying direction under the law.** Whosoever, being a police officer, -

(a) knowingly disobeys any direction of the law with regard to offences punishable under section 336B, section 354, section 354A, section 376, section 376A, section 376B, section 376C or section 509, which prohibits him from requiring the attendance at any place of any person for the purpose of investigation into an offence or any other matter, or

(b) knowingly disobeys, to the prejudice of any person, any other direction of the law with regard to offences punishable under section 336B, section 354, section 354A, section 376, section 376A, section 376B, section 376C or section 509, regulating the manner in which he shall conduct such investigation, or

(c) knowingly disobeys any direction of the law regulating the manner in which a medical examination of a person against whom offences punishable under section 376, section 376A, section 376B and section 376C, have been committed and the results thereof preserved;

(d) fails to record any information given to him under sub-section (1) of section 154 of the Code of Criminal Procedure, 1898 in relation to cognizable offences punishable under section 336B, section 354, section 354A, section 376, section 376A, section 376B, section 376C or section 509,

shall be punished with rigorous imprisonment for a term which shall not be less than six months but which may extend to two years, and shall also be liable to fine”.

“**166B. Punishment for non-treatment of victim.** Whoever, being in charge of a hospital, public or private, whether run by the Federal Government, the Provincial Government, local bodies or any other person, contravenes the provisions of section 545A of the Code of Criminal Procedure, 1898, shall be punishable with fine which may extend to twenty five thousand rupees.”

4. Insertion of new sections, Act XLV of 1860.- In the said code, after section 228, the following new section shall be inserted, namely :-

“**228A. Disclosure of identity of the victim of certain offences etc.**

(1) Whoever prints or publishes the name or any matter which may make known the identity of any person against whom an offence under section 376, section 376A, section 376B or section 376C is alleged or found to have been committed (hereafter in this section referred to as the victim) shall be punished with imprisonment of either description for a term which may extend to two years and shall also be liable to fine.

(2) Nothing in sub-section (1) extends to any printing or publication of the name or any matter which may make known the identity of the victim if such printing or publication is-

(a) by or under the order in writing of the officer-in-charge of the police station or the police officer making the investigation into such offence, acting in good faith for the purposes of such investigation; or -

(b) by, or with the authorization in writing of, the victim; or

(c) where the victim is dead or minor or of unsound mind, by, or with the authorization in writing of the next of kin of the victim: ‘

Provided that no such authorization shall be given by the next of kin to anybody other than the chairman or the secretary, by whatever name called, of any recognized welfare institution or organization.

Explanation- For the purposes of this sub-section, "recognized welfare institution or organization" means a social welfare institution or organization recognized in this behalf by the Federal or Provincial Government."

5. Insertion of new section, Act XLV of 1860.- In the said code, after section 376, the following sections shall be inserted, namely:- .

“**376A. Punishment for child rape:** Whosoever commits an offence under sub-section (1) of section 376-against a woman when she is under fourteen years of age shall be punished with imprisonment for life imprisonment or death.

376B. Punishment for Rape and Hurt: Whosoever, commits an offence punishable under sub-section (1) or subsection (2) of section 376 and in the course of such commission inflicts any injury punishable as an offence under section 333, section 335, section 337, section 337(iv), section

337-(v), section 337-(vi), section 337-C, section 337-F(v) or section 337-F(vi) shall be punished with imprisonment for life, or death.

376C. Punishment for repeat offenders. Whosoever has been previously convicted of an offence punishable under section 376, section 376A section 376B or section 376C and is subsequently convicted of an offence punishable under any of the said sections shall be punished with imprisonment for life or death.”

6. Amendment in section 154, Act V of 1898.- In the Code of Criminal Procedure, 1898, hereinafter referred to as said code, in section 154, the following provisos shall be inserted, namely:-

“Provided that if the information is given by the woman against whom an offence under section 336B, section 354, section 354A, section 376, section 376A, section 376B, section 376C or section 509 of the Pakistan Penal Code, 1860 is alleged to have been committed or attempted, then such information shall be recorded, by an investigating Officer in the presence of a female police officer or a female family member:

Provided further that ---

(a) in the event that the complainant against whom an offence under section 336B, section 354, section 354A, section 376, section 376A, section 376B, section 376C or section 509 of the Pakistan Penal Code, 1860 is alleged to have been committed or attempted, is distressed, such information shall be recorded by an investigating Officer, at the residence of the person seeking to report such offence or at a convenient place of such complainant's choice, in the presence of a female police officer, a female family member or an interpreter, as the case may be;

(b) the police officer shall get the statement of the complainant and the victim recorded by a Judicial Magistrate under clause (a) of sub-section (2) of section 164 as soon as possible.

Explanation- For the purposes of this section an “interpreter” means a member of a recognised social welfare organization, instructed and trained in the skill of facilitating communication between police officers and victims through the investigative process.”

7. Amendment in section 161, Act V of 1898.- In the said code, in section 161, the following proviso shall be inserted, namely: -

“Provided further that a statement of a woman against whom an offence under section 336B, section 354, section 354A, section 376, section 376A, section 376B, section 376C or section 509 of the Pakistan Penal Code, 1860 is alleged to have been committed or attempted, shall be recorded by an Investigating Officer in a private place, in the presence of a female police officer, a female family member or an interpreter, as the case may be;-

Provided further that a statement under this section shall not be recorded in the presence of the accused.”

8. **Insertion of new section, Act V of 1898.**- In the said code, after section 161, following new section shall be inserted, namely:-

“**161A. Legal Representation of the victim of rape.** — (1) Where an offence under section 376, section 376A, section 376B or section 376C of the Pakistan Penal Code, 1860 has been committed or attempted to be committed, the police officer, after recording the information under section 154, shall inform the victim against whom such offences have been committed or attempted to be committed, of her right to legal representation. ;

(2) For the purposes of providing legal aid to victims of rape under subsection (1), Police Stations shall engage with and maintain a register of recognised social welfare organization, who shall at the earliest be informed by the police officer of the commission of an offence under section 376, section 376A, section 376B or section 376C of the Pakistan Penal Code, 1860.

Provided that the police shall render all reasonable assistance to the lawyer thus designated to represent the victim under sub-section (1) and; shall ensure that all statements of the victim under section 161, section 162 and 164 are recorded in the presence of a lawyer and a family member.”

9. **Amendment of section 164, Act V of 1898.**- In the said code, in section 164, after sub-section (1-A) the following new sub-section shall be inserted, namely: -

“(1-A)(a) In cases punishable under section 354, section 354A, section 376, section 376A, section 376B, section 376C or section 509 of the Pakistan Penal Code, 1860 the Judicial Magistrate, shall record the statement of the complainant and the victim against whom such offence has been committed in the manner prescribed hereinafter as soon as the commission of the offence is brought to the notice of the police:

Provided that the statement of the victim, in all cases, and of the complainant, if she is a female, shall be recorded preferably by a female Judicial Magistrate; -

Provided further that if the victim making the statement is distressed, the Magistrate may take the assistance of an interpreter, defined in section 154, in recording the statement:

Provided further that if the victim making the statement is distressed, the statement made by the victim, with the assistance of an interpreter, shall, with the victim's consent, be videographed.”

10. **Insertion of new section, Act V of 1898.**- In the said code, after section 164, the following sections shall be inserted, namely:-

“**164A. Medical examination of the victim of rape.**— (1) Where, during the stage when an offence of committing rape or attempt to commit rape under section 376, section 376A, section 376B or section 376C of the Pakistan Penal Code, 1860 is under investigation the woman with whom rape is alleged or attempted to have been committed, shall be examined by a medical expert, and such examination shall be conducted by a registered female medical practitioner employed in a hospital run

by the Government or a local authority and in the absence of a such a practitioner, by any other registered medical practitioner, with the consent of such woman or of a person competent to give such consent on her behalf and such woman shall be sent to such registered medical practitioner within twenty-four hours from the time of receiving the information relating to the commission of such offence.

Provided that in all cases where possible, the victim shall be escorted by a female police officer from a place of her convenience to the place of medical examination.

(2) The registered medical practitioner, to whom such woman is sent shall, without delay, examine her and prepare a report of the examination giving the following particulars, namely :-

- (i) the name and address of the woman and of the person by whom she was brought;
- (ii) the age of the woman;
- (iii) the description of material taken from the person of the woman for DNA profiling;
- (iv) marks of injury, if any, on the person of the woman;
- (v) general mental condition of the woman; and
- (vi) other material particulars in reasonable detail.

(3) The report shall state precisely the reasons for each conclusion arrived at.

(4) The report shall specifically record that the consent of the woman or of the person competent to give such consent on her behalf to such examination had been obtained.

(5) The exact time of commencement and completion of the examination shall also be noted in the report.

(6) The registered medical practitioner shall, without delay forward the report to the investigation officer who shall forward it to the Magistrate referred to in section 173 as part of the documents referred to in clause (a) of sub-section (5) of that section. -

(7) Nothing in this section shall be construed as rendering lawful any examination without the consent of the woman or of any person competent to give such consent on her behalf.

Explanation. - In this section, "registered medical practitioner" means a medical practitioner who possesses any qualification recognized as such under the Medical and Dental Council Ordinance, (XXXII of 1962) and whose name has accordingly been entered in a Register maintained by the Council.

164B. Mandatory DNA test of the rape victim. (1) Where an offence under section 376, section 376A, section 376B or section 376C of the Pakistan Penal Code, 1860 is committed or attempted to have been committed or is alleged to have been committed, a DNA sample shall be collected from the person of the rape victim during the medical examination, conducted under section 164A, within the Optimal Time period or within twenty-four (24) hours of receiving information relating to the commission of such offence, whichever is earlier.

(2) The DNA sample collected under subsection (1) shall at the earliest be sent for investigation to a forensic lab, whereat these shall be properly preserved.

Provided that the confidentiality of such results shall at all times be preserved.

Explanation ----- For the purposes of this section "Optimal Time" shall mean the time

period during which, in the view of a registered forensic scientist, viable DNA samples may be recovered from the person of the victim to ascertain the identity of the accused.”

11. **Amendment in section 344, Act V of 1898.**- In the said code, in section 344, the following proviso shall be inserted after subsection (l)

“Provided that when the inquiry or trial relates to an offence under section 336B, 354, section 354A, section 376, section 376A, section 376B, section 376C or section 509 of the Pakistan Penal Code, 1860 the inquiry or trial shall, as far as possible be completed within a period of two months from the date of filing of the charge sheet.”

12. **Substitution of section 352, Act V of 1898.**- In the said code, for Section 352 the following shall be substituted as follows:

“(1) The place in which any Criminal Court is held for the purpose of inquiring into or trying any offence shall be deemed an open Court, to which the public generally may have access, so far as the same can conveniently contain them:

Provided that the Presiding Judge or Magistrate may, if he thinks fit, order at any stage of any inquiry into or trial of, any particular case, that the public generally, or any particular person, shall not have access to, or be or remain in, the room or building used by the Court.

(2) Notwithstanding anything contained in sub-section (1), the inquiry into and trial of rape or an offence under section 376, section 376A, section 376B or section 376C of the Pakistan Penal Code, 1860 shall be conducted through live-link:

Provided that where the use of video-link is not possible, screens shall be used to ensure that a person against whom an offence under section 376, section 376A, section 376B or section 376C of the Pakistan Penal Code, 1860 has been committed or alleged to have been committed, does not have to confront the accused.

Provided that the presiding judge may, if he thinks fit, or on an application made by either of the parties, allow any particular person to have access to, or be or remain in, the room or building used by the court.”

13. **Amendment of section 353, Act V of 1898.**- In the said code, in section 353, the following proviso shall be inserted, namely: -

“Provided that where the evidence of a person who is alleged to have been subjected to rape or any other sexual offence, is to be recorded, the court may take appropriate measures, such as the use of screens, to ensure that such woman is not confronted by the accused while at the same time ensuring the right to cross-examination of the accused.”

14. **Insertion of new section, Act V of 1898.**- In the said code, after section 545, the following new section be inserted:--

“545A. All hospitals, public or private, whether run by the Federal Government, the Provincial Government, local bodies or any other person, shall immediately, provide the first-aid or medical treatment, free of cost, to the victims of any offence, covered under section 336A,

section 336B, section 376, section 376A, section 376B or section 376C of the Pakistan Penal Code, 1860 and shall immediately inform the police of such incident."

15. Amendment in the II Schedule, Act V of 1898.- In the said code, in schedule II,

(1) after section 166 in column 1 and entries relating thereto in columns 2 to 8, the following shall be inserted, namely:

1	2	3	4	5	6	7	8
166A	Police or other officer disobeying direction under law	Shall not arrest without warrant	Summons	Bailable	Not compoundable	Imprisonment for a term which shall not be less than six months but which extend to two years, and shall also be liable to fine	Magistrate of the first or second class
166B	Punishment for non-treatment of victim	Ditto	Ditto	Ditto	Ditto	Fine which may extend to twenty five thousand rupees	Magistrate of the first or second class

(2) after section 228 in column 1 and entries relating thereto in columns 2 to 8, the following shall be inserted, namely;

1	2	3	4	5	6	7	8
228A	Disclosure of identity of the victim of certain offences etc	Shall not arrest without warrant	Summons	Bailable	Not compoundable	Rigorous imprisonment of either description for a term which may extend to two years and shall also be liable to fine	Magistrate of the first class

(3) after section 376 in column 1 and entries relating thereto in columns 2 to 8, the following shall be inserted, namely :

1	2	3	4	5	6	7	8
376A	Punishment for child rape	May arrest without warrant	Warrant	Not bailable	Not compoundable	Imprisonment for life or death	Court of Sessions
376B	Punishment for Rape and Hurt	Ditto	Ditto	Ditto	Ditto	Imprisonment for life or death	Court of Sessions
376C	Punishment for repeat offenders	Ditto	Ditto	Ditto	Ditto	Imprisonment for life or death	Court of Sessions

16. Insertion of new Article Order, Order X of 1984.- In the Qanun-e-Shahadat Order, 1984, hereinafter referred to as the said Order, after article 67, the following section shall be inserted, namely:-

“67A. Evidence of character or previous sexual experience not relevant. In a prosecution of an offence under section 376, section 376A, section 376B or section 376C of the Pakistan Penal Code, 1860 or for attempt to commit any such offence, where the question of consent is in issue, evidence of the character of the victim or of such person’s previous sexual experience with any person shall be irrelevant on the issue of such consent or the quality of consent.” -

17. Insertion of new Article, Order X of 1984.- In the said Order, after Article 129, the following new Article shall be inserted, namely:-

“129A. Presumption as to absence of consent in certain prosecution for rape. In a Prosecution for rape under clause (ii) clause (iii) or clause (iv) of Section 376 of Pakistan Penal Code, 1860 where intercourse by the accused is proved and the question is whether it was without the consent of the woman alleged to have been raped and such woman states in her evidence before the court that she did not consent the court shall presume that she did not consent.”

18. Insertion of new Article, Order X of 1984.- In the said Order, in Article 141, for the existing proviso, the following proviso shall be substituted, namely:-

“Provided that in a prosecution for an offence under section 376, section 376A, section 376B or section 376C of the Pakistan Penal Code, 1860 or for attempt to commit any such

offence, where the question of consent is in issue, it shall not be permissible to adduce evidence or to put questions in the cross-examination of the victims to the general immoral character, or previous sexual experience, of such victim with any person for proving such consent or the quality of consent."

STATEMENT OF OBJECTS AND REASONS

Rape is a physical and psychological attack on a woman's dignity, body, her mental well-being, integrity and privacy, and affects her ability to function in society. Rape is an attack on critical public values, which undermine the social and moral fabric of a community, and therefore mandates the mobilisation of the State's protective and condemnatory forces.

Sections 375 and 376 of the Pakistan Penal Code, 1860 define the offence of rape and prescribe punishment for commission thereof. The law, however, does not take account of aggravating circumstances in the commission of the offence that logically command stronger censure, such as the age of the victim, repeated misfeasance or causing 'grievous hurt to her person. The law makes no provision for the social suffering and ostracism that a rape victim may be subject to, magnified further through wide publication regarding commission of the offence against her.

At the procedural end, the investigation and prosecution of rape remains marred by abuse and criminal lapses, with concerned government agencies often aiding or protecting offenders. Investigative and trial procedures employed by the police, "medical practitioners or the Courts are ill-suited for a rape victim, make no allowance for her emotional and psychological trauma, and instead further exploit her vulnerability. Given the weakness of such procedures, most cases are dismissed for lack of evidence, a problem exacerbated in the absence of a legally mandated requirement of DNA testing. Unscrupulousness in the system and structural failures result in a miserably low conviction rate in rape cases, estimated at 2 to 4 percent.

It is the obligation of the State to guard against crime, to prevent the abuse of the process of law, to protect the vulnerable from exploitation and ensure the life and dignity of women. Lacunae in the current law render difficult the fulfilment of these obligations.

The object of this Bill is twofold: to amend the procedural and substantive law on rape so as to recognise and tackle the lapses and challenges in the investigation and prosecution of the offence; and to sensitize the law to the needs and vulnerabilities of the rape victim. The proposed amendments take direction from and are in line with the recommendations regarding the conduct of rape trials made by the Honourable Supreme Court of Pakistan in judgment reported in 2013 SCMR 203. -

The proposed amendments are on the following rationale:

The police or magistrates, positioned at the fore-of the prosecutorial process, often act as elders or abettors as guardians of the accused refusing or delaying, on various pretexts, the lodging of an FIR and employing intimidation tactics to secure unlawful settlements between the victim and her aggressor. The process of investigation and prosecution of rape is in such instances rendered toothless. Section 166A has been added to the Pakistan Penal Code, 1860 in recognition of and with an object to weed out such misfeasance in the State's agencies.

Publication regarding the commission of the offence, providing direct reference to the identity of the rape victim, is likely to, add to the trauma and social rebuke to which she may be subjected. Pakistani print and screen media, in complete disregard to the sensitivity of such matters and the Consequences flowing therefrom, has in the recent past, published such stories with complete impunity. Section 228A has accordingly been inserted in the Pakistan Penal Code, 1860 to guard the privacy of the rape victim.

The existing law on rape, encapsulated in subsection (1) of section 376 of the Pakistan Penal Code, 1860 prescribes a uniform punishment of rape, death or imprisonment for a minimum term of 10 years and maximum term of twenty-five years and liability to fine. The offence of gang rape, in recognition of the severity of the wrong perpetrated on the rape victim, is subject to a graver punishment of life imprisonment or death, under subsection (2) of section 376. The Pakistan Penal Code, 1860 does not separately recognise the offence of child rape, the infliction of severe injury' in the commission of rape or the repeated commission of rape, as independent offences demanding separate recognition and stronger censure. Through insertion of section 376A, section 376B and section 376C to the Pakistan Penal Code, 1860 and the prescription of the death penalty or life imprisonment in relation thereto, such recognition and censure has been provided in the law, signifying and symbolizing the strength of the State's condemnation.

The sentence of life imprisonment is, however, in most cases invariably commuted to a term of fourteen years pursuant to the discretionary powers accorded to the Provincial Government under section 55 of the Pakistan Penal Code, 1860. The severity of the offence of rape and hurt by corrosive substance demands that offenders may not be permitted the advantage of such commutation. Accordingly this Bill has proposed the insertion of a proviso to section 55, removing the offences defined in sections 354-A, 376, 376-A, 376-B and 376-C of the Pakistan Penal Code, 1860 from the ambit of this discretionary power.

The investigative and prosecutorial procedures currently employed in cases of rape need to be sensitized to the emotional and psychological state and needs of a rape victim. When questioned by a male police officer or a magistrate, or made to testify publicly or before her offender in open Court, a rape victim' is unlikely to provide valuable and effective testimony to aid her case, and may in fact recoil from reporting/narrating a full account of her suffering. The amendments

proposed to section 154, section 161 and section 164 of the Code of Criminal Procedure, 1898 accordingly make provision for the recording of information statement of a rape victim or a complainant by a police officer in the presence of a female police officer, female family member or interpreter, or a female magistrate, whilst permitting a distressed victim to have her statement given under section 164, videographed.

The guarantee of legal representation of a rape victim, under the proposed section 161A of the Code of Criminal Procedure 1898, additionally seeks to ensure that the victim is not disadvantaged for lack of such representation and is kept abreast with the investigation of and evidence with regard to the offence committed against her, and the same are followed through.

Proposed amendments to section 352 and section 353 of the Code of Criminal Procedure, 1898, make provision for in trials through live-link and the use of screens during trials to protect the rape victim from the trauma of being made to confront her offender, and to maintain the neutrality of the prosecutorial process. The amendments to the Qanun-e-Shahadat Order, 1984 have also been proposed with the intent to protect the rape victim from further trauma and to counter bigoted presumptions that she may have invited such atrocity upon herself. Through the insertion/amendment of Article 67A and Article 141 of the Qanun-e-Shahadat Order, 1984, questions regarding or reference to the character of the victim or her previous sexual experience or sexual history cannot be directed at her to determine the existence and nature of consent for the purposes of section 376, section 376A, section 376B or section 376C of the Pakistan Penal Code, 1860.

The absence of sufficient evidence is often cited as among the main reasons behind the low rate of conviction in rape cases. Medical evidence is critical towards determining both the commission of the offence and the culpability of the accused. In several cases of rape, however, medical-legal examination of a victim is either not conducted or is undertaken after a destructive time lag, or body samples thereby secured are not duly preserved. In view of the aforementioned lapses-in collection of evidence, the insertion of section 164A and section 164B to the Code of Criminal Procedure, 1898 has been proposed to make mandatory the administration of DNA testing and preservation of DNA samples in cases of rape and to provide a detailed guide regarding the medical examination of a rape victim.

Apart from the necessity of a medical examination, a rape victim is often in critical need of medical help or treatment, to which she may not, for several reasons, have access. The insertion of section 545A to the Code of Criminal Procedure, 1898 ensures victims of rape and acid violence free medical care at government or private hospitals and the proposed insertion of section 166B to the Pakistan Penal Code, 1860 recognises refusal to provide such care as a criminal offence.

Certain procedural safeguards and concessions provided to rape victims under the proposed Amendments/additions have also been extended to victims of "Hurt by corrosive substance," which has been recognised as an offence under section 336A and section 336B of the Pakistan Penal Code, 1860, inserted therein through the Criminal Law (Second Amendment) Act, 2011.

The above changes are essential to ensure that the criminal procedure and the law of evidence adopted in rape cases do not, even inadvertently, favour offenders.

The proposed amendments adhere to the principles of Islam, the mandate of the Constitution of the Islamic Republic of Pakistan and international human rights, and are essential to meet the challenges in the investigation and prosecution of rape cases.

Sd/-
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