

An Act further to amend the Pakistan Penal Code, 1860, the Code of Criminal Procedure, 1898 and the Qanun-e-Shahadat, 1984

WHEREAS it is expedient further to amend the Pakistan Penal Code, 1860 (Act XLV of 1860), the Code of Criminal Procedure, 1898 (Act V of 1898) and the Qanun-e-Shahadat, 1984 (P.O. No. 10 of 1984) for the purposes hereinafter appearing;

It is hereby enacted as follows:—

1. Short title and commencement.—(1) This Act may be called the Criminal Law (Amendment) (Offences Relating to Rape) Act, 2016.

(2) It shall come into force at once.

2. Amendment of section 55, Act XLV of 1860.—In the Pakistan Penal Code, 1860 (Act XLV of 1860), hereinafter referred to as the Penal Code, in section 55, in the proviso, for full stop at the end, a colon shall be substituted and thereafter the following second proviso shall be added, namely:—

“Provided further that in a case in which the sentence of imprisonment for life has been passed against an offender convicted for an offence punishable under sections 354A, 376, 376A, 377 or 377B, or where the principle of *fasad-fil-arz* is attracted, such punishment shall not be commuted.”.

3. Amendment of section 166, Act XLV of 1860.—In the Penal Code, in section 166, the existing provision shall be re-numbered as sub-section (1) of that section and after sub-section (1), re-numbered as aforesaid, the following new sub-section shall be added, namely:—

“(2) Whoever being a public servant entrusted with the investigation of a case fails to carry out the investigation properly or diligently or fails to pursue the case in any court of law properly and in breach of his duties shall be punished with imprisonment of either description for a term which may extend to three years or with fine or with both.”.

4. Amendment of section 186, Act XLV of 1860.—In the Penal Code, in section 186, the existing provision shall be re-numbered as sub-section (1) of that section and,—

- (a) in sub-section (1), re-numbered as aforesaid,—
 - (i) for the words “three months” the words “one year” shall be substituted; and
 - (ii) for the words “one thousand five hundred” the words “fifty thousand” shall be substituted; and
- (b) after sub-section (1), amended as aforesaid, the following new sub-section shall be added, namely:—

“(2) Whoever intentionally hampers, misleads, jeopardizes or defeats an investigation, inquiry or prosecution or issues a false or defective report in a case under any law for the time being in force shall be punished with imprisonment for a term which may extend to three years or with fine or with both.”.

5. Amendment of section 376, Act XLV of 1860.—In the Penal Code, in section 376,—

- (a) after sub-section (1), the following new sub-section (1A) shall be inserted, namely:—

“(1A) Whoever commits an offence punishable under sub-section (1) or sub-section (2) or section 377 or section 377B and in the course of such commission causes any hurt punishable as an offence under section 333, section 335, clauses (iv), (v) and (vi) of sub-section (3) of section 337, section 337C, clauses (v) and (vi) of section 337F shall be punished with death or imprisonment for life and fine.”; and

- (b) after sub-section (2), the following new sub-sections (3) and (4) shall be inserted, namely:—

“(3) Whoever commits rape of a minor or a person with mental or physical disability shall be punished with death or imprisonment for life and fine.

(4) Whoever being a public servant including a police officer, medical officer or jailor, taking advantage of his official position, commits rape shall be punished with death or imprisonment for life and fine.”.

6. Insertion of new section 376A, Act XLV of 1860.—In the Penal Code, after section 376, the following new section shall be inserted, namely:—

“376A. Disclosure of identity of victim of rape, etc.—(1) Whoever prints or publishes name or any matter which may make known identity of victim, against whom an offence under sections 354A, 376, 376A, 377 and 377B is alleged or found to have been committed, shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine.

(2) Nothing in sub-section (1) extends to any printing or publication if it is—

- (a) by or under order in writing of officer-in-charge of the police station or police officer making investigation into such offence acting in good faith for the purposes of such investigation; or
- (b) by or under order of Court; or
- (c) by or with authorization in writing of the victim; or
- (d) by or with the authorization in writing of natural or legal guardian of the victim where the victim is dead or a minor or of unsound mind.

Explanation.—Printing or publication of judgment of any High Court, the Federal Shariat Court or the Supreme Court in law journals does not amount to an offence within the meaning of this section.”.

7. Insertion of new section 53A, Act V of 1898.—In the Code of Criminal Procedure, 1898 (Act V of 1898), hereinafter referred to as the Code, after section 53, the following new section shall be inserted, namely:—

“53A. Examination of person accused of rape, etc. by medical practitioner.—(1) When a person is arrested on a charge of committing an offence of rape, unnatural offence or sexual abuse or an attempt to commit rape, unnatural offence or sexual abuse under section 376, section 377 and section 377B respectively and there are reasonable grounds for believing that an examination of the arrested person will afford evidence as to the commission of such offence, it shall be lawful for a registered medical practitioner employed in a hospital run by the Government or by a local authority to make such an examination of the arrested person and to use such force as is reasonably necessary for that purpose.

(2) The registered medical practitioner conducting examination under sub-section (1) shall, without delay, examine such person and prepare a report of his examination giving the following particulars, namely:—

- (a) name and address of the accused and of the person by whom he was brought;
- (b) age of the accused;

- (c) marks of injury, if any, on person of the accused;
 - (d) description of material taken from person of the accused for DNA profiling; and
 - (e) other material particulars in reasonable detail.
- (3) The report under sub-section (2) shall state precisely the reasons for each conclusion arrived at.
- (4) The exact time of commencement and completion of the examination under sub-section (1) shall also be noted in the report under sub-section (2). The registered medical practitioner shall, without delay, forward the report to the investigating officer who shall forward it to the Magistrate through public prosecutor referred to in section 173 as part of the report referred to in that section.”

8. Amendment of section 154, Act V of 1898.—In the Code, in section 154, for full stop at the end, a colon shall be substituted and thereafter the following provisos shall be added, namely:—

“Provided that if the information is given by the woman against whom an offence under section 336B, section 354, section 354A, section 376 or section 509 of the Pakistan Penal Code, 1860, (Act XLV of 1860) is alleged to have been committed or attempted, then such information shall be recorded by an investigating officer in presence of a female police officer or a female family member or any other person with consent of the complainant, as the case may be:

Provided further that if the information, given by the woman against whom an offence under section 336B, section 354, section 354A, section 376 or section 509 of the Pakistan Penal Code, 1860 (Act XLV of 1860) is alleged to have been committed or attempted, is distressed such information shall be recorded by an investigating officer at residence of the complainant or at a convenient place of the complainant’s choice in presence of a police officer or family member or any other person with consent of the complainant, as the case may be.”

9. Amendment of section 161, Act V of 1898.—In the Code, in section 161, in sub-section (1), for full stop at the end, a colon shall be substituted and thereafter the following proviso shall be added, namely:—

“Provided that a statement of a woman against whom an offence under section 336B, section 354, section 354A, section 376 or section 509 of the Pakistan Penal Code, 1860 (Act XLV of 1860) is alleged to have been committed or attempted, shall be recorded by an investigating officer in presence of a female police officer or a female family member or other person of her choice.”

10. Insertion of section 161A, Act V of 1898.—In the Code, after section 161, the following new section shall be inserted, namely:—

“161A. Legal representation of victim of rape, etc.—(1) Where an offence under section 354A, section 376, section 377 or section 377B of the Pakistan Penal Code, 1860 (Act XLV of 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 his right to legal representation.”

(2) If the victim under sub-section (1) requires free legal aid the police officer shall provide him the list of lawyers maintained by the Provincial Bar Councils for this purpose.”

11. Insertion of new sections 164A and 164B, Act V of 1898.—In the Code, after section 164, the following new sections shall be inserted, namely:—

“164A. Medical examination of victim of rape, etc.—(1) Where an offence of committing rape, unnatural offence or sexual abuse or attempt to commit rape, unnatural offence or sexual abuse under section 376, section 377 or section 377B respectively of the Pakistan Penal Code, 1860 (Act XLV of 1860) is under investigation, the victim shall be examined by a registered medical practitioner, in the case of female victim by a female registered medical practitioner, immediately after commission of such offence:

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

(2) The registered medical practitioner to whom such victim is sent under sub-section (1) shall, without delay, examine the victim and prepare a report of examination giving the following particulars, namely:—

- (a) name and address of the victim and of the person by whom she was escorted;
- (b) age of the victim;
- (c) description of material taken from body of the victim for DNA profiling;
- (d) marks of injury, if any, on body of the victim;
- (e) general mental condition of the victim; and
- (f) other material particulars in reasonable detail.

(3) The report under sub-section (2) shall state precisely the reasons for each conclusion arrived at.

(4) The report under sub-section (2) shall specifically record that consent of the victim or of his or her natural or legal guardian to such examination had been obtained.

(5) The exact time of commencement and completion of the examination under sub-section (1) 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 along with other requirements as specified under clause (a) of sub-section (1) of section 173.

(7) Nothing in this section shall be construed as rendering lawful any examination without consent of the victim or of any person authorized under sub-section (4).

Explanation.—In this section, “registered medical practitioner” means a medical practitioner who possesses any qualification recognized as such under the Pakistan Medical and Dental Council Ordinance, 1962 (XXXII of 1962) and whose name has accordingly been entered in the Register maintained in this behalf under the said Ordinance and has been authorized by the Government to conduct such examination.

164B. DNA test.—(1) Where an offence under section 376, section 377 or section 377B of the Pakistan Penal Code, 1860 (XLV of 1860) is committed or attempted to have been committed or is alleged to have been committed, Deoxyribo Nucleic Acid (DNA) samples, where practicable, shall be collected from the victim with his or her consent or with the consent of his or her natural or legal guardian and the accused during the medical examinations conducted under section 164A within optimal time period of receiving information relating to commission of such offence.

(2) The DNA samples collected under sub-section (1) shall at the earliest be sent for investigation to a forensic laboratory where these shall be properly examined and preserved:

Provided that confidentiality of such examination shall at all times be observed.”

12. Insertion of new section 344A, Act V of 1898.—In the Code, after section 344, the following new section shall be inserted, namely:—

“**344A. Conclusion of trial.**—The Court shall, upon taking cognizance of a case under sections 354A, 376, 377 and 377B of the Pakistan Penal Code, 1860 (Act XLV of 1860), decide the case within three months failing which the matter shall be brought by the Court to the notice of the Chief Justice of the High Court concerned for appropriate directions.”

13. Amendment of section 352, Act V of 1898.—In the Code, in section 352, the existing provision shall be re-numbered as sub-section (1) of that section and after sub-section (1), re-numbered as aforesaid, the following new sub-sections shall be added, namely:—

“(2) Notwithstanding anything contained in sub-section (1), the trial of offences under sections 354A, 376, 376A, 377 and 377B of the Pakistan Penal Code, 1860 (Act XLV of 1860) shall be conducted in camera:

Provided that the Presiding Officer, 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 Court.

(3) Where any proceedings are held under sub-section (2), the Government may adopt appropriate measures, including holding of the trial through video link or usage of screens, for protection of the victim and the witnesses.

(4) Where any proceedings are held under sub-section (2), it shall not be lawful for any person to print or publish or broadcast any matter in relation to any such proceedings, except with permission of the Court.”

14. Amendment of section 417, Act V of 1898.—In section 417 of the Code, after sub-section (4), the following new sub-section shall be added, namely:—

“(5) An appeal against an order of conviction or acquittal under sections 354A, 376, 376A, 377 or 377B of the Pakistan Penal Code, 1860 (Act XLV of 1860) shall be decided within six months.”

15. Amendment of Schedule II, Act V of 1898.—In the Code, in Schedule II, in column 1,—

(a) after section 166 and corresponding entries relating thereto in columns 2 to 8, the following new section and the entries relating thereto shall be inserted, namely:—

1	2	3	4	5	6	7	8
“166(2)	Public servant fails to carry out the investigation properly or diligently or fails to pursue the case, and in breach of his duties.	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for three years, or fine, or both.	Ditto”

(b) against section 186,—

(i) in column 7, for the figure and word “3 months”, the words “one year” and for the figure “1500” the figure “50,000” shall be substituted; and

(c) after section 186 and entries relating thereto in columns 2 to 8, amended as aforesaid, the following new section and the entries relating thereto shall be inserted, namely:—

1	2	3	4	5	6	7	8
“186(2)	Public servant fails to carry out the investigation properly etc;	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for three years, or fine, or both.	Ditto”;

(d) in section 376, for the entry in column 7 the following shall be substituted, namely:—

7
Death or imprisonment not less than ten years or more than twenty- five years and fine.
Death or imprisonment for life.
Death or imprisonment for life if the offence is committed by two or more persons in furtherance of common intention.
Death or imprisonment for life and fine.
Death or imprisonment for life and fine.

(e) after section 376 and the corresponding entries relating thereto in columns 1 to 8, amended as aforesaid, the following new section and entries relating thereto shall be inserted, namely:—

1	2	3	4	5	6	7	8
376A	Disclosure of identity of the victim	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description upto three years and fine	Ditto

16. Amendment of Article 151, Order X of 1984.—In the *Qanun-e-Shahadat*, 1984 (P.O. No. 10 of 1984), in Article 151, clause (4) shall be omitted.

QAMAR SOHAIL LODHI,
Acting Secretary.