

[AS PASSED BY THE NATIONAL ASSEMBLY]

A
BILL

to make provisions for protection against domestic violence

WHEREAS the Constitution recognizes the fundamental rights of women and men to dignity of person;

AND WHEREAS it is expedient to institutionalize measures which prevent and protect women and children from domestic violence and for matters connected therewith or incidental thereto;

It is hereby enacted as follows:-

1. Short title, extent and commencement.- (1) This Act may be called the Domestic Violence (Prevention and Protection) Act, 2009.

(2) It extends to the whole of Pakistan.

(3) It shall come into force at once.

2. Definitions.- (1) In this Act, unless the context otherwise requires,-

(a) "aggrieved person" means any woman, child, man or any vulnerable person who is or has been in a domestic relationship with the accused and who alleges to have been subjected to any act of domestic violence by the accused;

(b) "accused" means a person who is or has been in a domestic relationship with the aggrieved person and against whom the aggrieved person has sought any relief under this Act;

(c) "child" means any person under the age of eighteen years living in a domestic relationship with the accused and includes any adopted, step or foster child;

(d) "Code" means the Code of Criminal Procedure, 1898 (Act V of 1898);

(e) "court" means the court of the first class Magistrate as defined in Code;

(f) "domestic relationship" means a relationship between persons who live, or have, at any point of time, lived together in a household when they are related by consanguinity, marriage, kinship, adoption, employment, domestic help or are family members living together as a joint family;

(g) "domestic violence" has the same meaning as assigned to it in section 4;

(h) "Family Conciliatory Committee" means the concerned Committee constituted

under the respective Local Government Ordinance;

- (i) "harassment" means any course of conduct that evokes a fear of harm to the aggrieved person;
- (j) "household" means a household where the aggrieved person lives or at any stage has lived in a domestic relationship either singly or along with the accused and includes such a household whether owned or tenanted either jointly by the aggrieved person and the accused or owned and tenanted by either of them, any such household in respect of which either the aggrieved person or the accused or both jointly or singly have any right, title, interest or equity and includes such a household which may belong to the joint family of which the accused is a member, irrespective of whether the accused or the aggrieved person has right, title, interest in such a shared household;
- (k) "Local Government Ordinance" means any of the following, namely:-
 - (a) the Balochistan Local Government Ordinance, 2001 (XVIII of 2001);
 - (b) the North-West Frontier Province, Local Government Ordinance, 2001 (XIV of 2001);
 - (c) the Punjab Local Government Ordinance, 2001 (XIII of 2001); and
 - (d) the Sindh Local Government Ordinance, 2001 (XXVII of 2001).
- (l) "monetary relief" means a monetary relief which a court may order under section 9;
- (m) "notification" means a notification published in the Official Gazette;
- (n) "prescribed" means prescribed by the rules made under this Act;
- (o) "Protection Officer" means an officer appointed by the Provincial Government under section 18;
- (p) "Protection Committee" means a Committee constituted under section 14;
- (q) "Protection order" means an order granted in terms of section 8;
- (r) "residence order" means an order granted in terms of section 8;
- (s) "service provider" means any such government facility or registered voluntary organization established for the protection of aggrieved person in a household by any means including legal, medical, financial or any other assistance; and

- (t) "vulnerable person" means a person who is vulnerable due to old age, mental illness or handicap or physical disability or other special reason, or domestic help, or employment as a domestic servant.

(2). Words and phrases not defined in this Act shall have the meaning as described thereto in the Pakistan Penal Code, 1898 (Act XLV of 1898) and the Code of Criminal Procedure, 1860, (Act V of 1860).”

3. Duty of Government to ensure effective implementation of the Act.- (1) the Federal Government shall ensure that—

- (a) this Act and the contents thereof receive wide publicity through electronic and print media in Urdu and local languages;
- (b) the government officers, the police and the members of the judicial service are given periodic sensitization and awareness training on the issues addressed by this Act; and
- (c) effective protocols are formulated by the concerned Ministries and Departments dealing with health, education, employment, law and social welfare to address the issue of domestic violence and that the same are periodically revised.

(2) The Federal Government shall ensure that the National Commission on the Status of Women (NCSW) as mandated shall—

- (a) review from time to time the existing provisions of the law on domestic violence and suggest amendments therein, if any;
- (b) call for specific studies or investigation into specific incidence of domestic violence;
- (c) look into complaints and take suo moto notice of matters relating to domestic violence and the non-implementation of the law on domestic violence; and
- (d) participate and advise on the planning process for securing a safe environment free of domestic violence.

4. Domestic Violence.- Domestic Violence includes but is not limited to, all intentional acts of gender based or other physical or psychological abuse committed by an accused against women, children or other vulnerable persons, with whom the accused is or has been in a domestic relationship including but not limited to:

- (a) "assault" as defined in section 351 of the Pakistan Penal Code (Act XLV of 1860) hereinafter referred to in this section “as the said Code”;
- (b) "attempt" as defined in section 511 of the said Code to commit any of the offences enumerated in this section;

- (c) “criminal force” as defined in section 350 of the said Code;
- (d) “criminal intimidation” as defined in section 503 of the said Code;
- (e) "economic abuse" includes deprivation of economic or financial resources or prohibition or restriction to continued access to such resources which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship including but not limited to household necessities for the aggrieved person and her children, any property jointly or separately owned by the aggrieved person, payment of rental related to the household, and maintenance;
- (f) entry into aggrieved person's residence without his or her consent, where the parties do not share the same residence;
- (g) “harassment” as defined in section 2 clause (i) of this Act;
- (h) “hurt” as defined in section 332 of the said Code;
- (i) "mischief” as defined in section 425 of the said Code against the property of the aggrieved person;
- (j) "physical abuse" means any act or conduct which is of such a nature as to cause bodily pain, harm or danger to life, limb, or health or impair the health or development of the aggrieved person and includes assault, criminal force and criminal intimidation;
- (k) “stalking” includes, but is not limited to-
 - (i) following, pursuing or accosting the aggrieved person against his or her wishes; and
 - (ii) watching or loitering outside or near the building or place where the aggrieved person resides or works for gains or carries on business or visits frequently.
- (l) "sexual abuse" includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of the aggrieved person;
- (m) "verbal and emotional abuse" means any or persistent degrading or humiliating conduct of the accused towards the aggrieved person, including but not limited to-
 - (i) insults or ridicule;
 - (ii) threat to cause physical pain; and
 - (iii) threat of malicious prosecution;

- (n) willful or negligent abandonment of the aggrieved person;
- (o) “wrongful confinement” as defined in section 340 of the said Code; and
- (p) any other repressive or abusive behavior towards the aggrieved person where such a conduct harms or may cause imminent danger of harm to the safety, health or well-being of the aggrieved person.

5. Application to the Court. - (1) An aggrieved person or any other person authorized by the aggrieved person in writing in this behalf may present an application to the Court within whose jurisdiction offence was Committed for seeking any relief under this Act.

(2) The application under sub-section (1) shall be in such form and contain particulars as may be prescribed or as nearly as possible thereto.

(3) The court shall fix the first date of hearing, which shall not exceed three days from the date of the receipt of the application by the court.

(4) The application made under sub-section (1) shall be disposed of within a period of thirty days and any adjournment given during the hearing of the application shall be granted for reasons to be recorded in writing by the Court.

(5) For purpose of trial under this Act, the Court shall follow the procedure specified in Chapter XX of the Code.

6. Counseling.- (1) The court, at any stage of the proceedings under this Act, may direct the accused to undergo mandatory counseling with an appropriate service provider.

(2) Where the court has issued any direction under sub-section (1), it shall fix the next date of hearing of the case within a period not exceeding thirty days.

7. Right to reside in a household. - (1) Notwithstanding anything contained in any other law for the time being in force, the aggrieved person shall not be evicted from the household without consent, whether or not he or she has any right, title or beneficial interest in the same.

(2) The aggrieved person shall not be evicted from the household or any part of it by the accused save in accordance with law:

Provided that where the domestic relationship is based on employment or domestic help, the provisions of this section shall not apply.

8. Passing of protection orders and residence orders.- (1) The court on being satisfied that domestic violence has taken place may pass a protection order in favour of the aggrieved person and prohibit the accused from-

- (a) committing any act of domestic violence;
 - (b) aiding or abetting in the commission of acts of domestic violence;
 - (c) entering the place of employment of the aggrieved person or, if the aggrieved person is a child, his or her educational institution or any other place frequented by the aggrieved person;
 - (d) attempting to communicate in any form, whatsoever with the aggrieved person, including personal, oral or written, electronic or telephonic or mobile phone contact;
 - (e) causing violence to the dependants, other relatives or any person who gives the aggrieved person assistance against domestic violence; and
 - (f) committing any other act as specified in the protection order;
- (2) In addition to the order under sub-section (1), or otherwise, the court on being satisfied that domestic violence has taken place may pass a residence order to-
- (a) restrain the accused from dispossessing or in any other manner disturbing the possession of the aggrieved person from the household;
 - (b) restrain the accused or any of his relatives from entering the household; and
 - (c) direct the accused to secure alternative accommodation for the aggrieved person or if the circumstances so require to pay rent for the same.
- (3) The court may impose any additional conditions or pass any other direction which it may deem reasonably necessary to protect and provide for the safety of the aggrieved person or any child of such aggrieved person.
- (4) The court may require from the accused to execute a bond, with or without sureties, for preventing the commission of domestic violence.
- (5) While making an order under sub-sections (1), (2) or (3), the court may also pass an order directing the officer in charge of the nearest police station to give protection to the aggrieved person or to assist the aggrieved person or the person making an application on his or her behalf in the implementation of the order.
- (6) While making an order under sub-section (2), the court may impose on the accused obligations relating to the discharge of rent or other payments, having regards to the financial needs and resources of the parties.
- (7) The court may direct the officer in charge of the police station in whose jurisdiction the court has been approached to assist in the implementation of the protection order.

(8) The court may direct the accused to return to the possession of the aggrieved person any property or valuable security to which she is entitled to.

(9) The court shall in all cases where it has passed any order under this section, order that a copy of such order, shall be given to the parties to the application, the officer in charge of the police station in the jurisdiction of which the court has been approached as well as to the service provider located within the local limits of the jurisdiction of the court:

Provided that where the domestic relationship is based on employment or domestic help the provisions of this section shall not apply.

9. Monetary relief.- (1) The court may, at any stage of the trial on an application by the aggrieved person, direct the accused to pay monetary relief to meet the expenses incurred and losses suffered by the aggrieved person and such relief may include, but is not limited to-

- (a) loss of earning;
- (b) medical expense;
- (c) the loss caused due to the destruction, damage or removal of any property from the control of the aggrieved person; and
- (d) the maintenance for the aggrieved person as well her children, if any, including an order under or in addition to an order of maintenance under family laws.

(2) The accused shall pay monetary relief to the person aggrieved within the period specified in the order made in terms of sub-section (1) and in accordance with terms thereof.

(3) The court may, upon failure on part of the accused to make payment in terms of the order under sub-section (2) direct an employer or debtor, of the accused, to directly pay the aggrieved person or to deposit with the court a portion of the wages or salaries or debt due to or accrued to the credit of the accused, which amount may be adjusted towards the monetary relief payable by the accused.

10. Custody orders.- The court may, at any stage of the application for protection order or for any other relief under this Act grant temporary custody of an aggrieved person who is;

- (a) a child to a person under the Guardians and Wards Acts 1890 (VIII of 1890); and
- (b) an adult to a service provider in accordance with the will of the aggrieved person to some other person:

Provided that in any case where a complaint of sexual abuse of a child has been made and the court is prima facie satisfied that such allegation is true, the court shall grant custody to the aggrieved person or the person making an application on his or her behalf and no order

for arrangements for visitation by the accused shall be made.

Provided further that where the domestic relationship is based on employment or domestic help, the provisions of this section shall not apply.”

11. Power to grant interim order.- (1) In any proceeding before him under this Act, the court may pass such interim order as it deems just and proper.

(2) If the court is satisfied that an application prima facie discloses that the accused is committing, or has committed an act of domestic violence or that there is a likelihood that the accused may commit an act of domestic violence, it may issue order on the basis of the affidavit in such form, as may be prescribed, of the aggrieved person under sections 8, 9 and 10 against the accused.

12. Duration and alteration of protection and residence orders.- (1) The protection order made under section 8 shall remain in force until the aggrieved person applies for discharge of such order.

(2) If the court on receipt of an application from the aggrieved person or the accused, is satisfied that there is a change in the circumstance requiring alteration, modification or revocation of any order made under this Act, it may, for reasons to be recorded in writing pass such order, as it may deem appropriate.

(3) The residence order shall remain in force until such time it is altered.

(4) Nothing contained in sub-section (1) or sub-section (2) shall prevent an aggrieved person from applying for an order under sections 8, 9 and 10 notwithstanding that an order under these sections has been previously refused, if sufficient cause is made out for the grant of such an order.

(5) Nothing contained in sub-sections (1) and (2) shall prevent an aggrieved person from making a fresh application after the previous order has been discharged.

13. Penalty for Breach of protection order by the accused.- (1) A breach of protection order, or of the interim protection order, by the accused shall be an offence and shall be punished with imprisonment which may extend to one year but shall not be less than six months and with fine which may not be less than one hundred thousand rupees. The court shall order that the amount of fine shall be given to the **aggrieved person**.

(2) A person who is guilty of violation of protection order second or third time or more, he shall be punished with imprisonment which may extend to two years but shall not be less than one year and also be liable to fine which may not be less than two hundred thousand rupees. **The court shall order that the amount of fine shall be given to the aggrieved person.**

(3) Notwithstanding anything contained in the Code the offence under this section shall be cognizable, non-bailable and compoundable.

(4) Any person convicted by a court under sub-section (1) or sub-section (2) may file an

appeal to the court of Session within thirty days of the passing of the order of sentence and the court of sessions shall decide the appeal within sixty days.

14. Protection Committee.- (1) The Provincial Government shall, by notification in the official Gazette constitute a Protection Committee in every Tehsil for the purposes of this Act.

(2) A Protection Committee shall comprise of one Police Officer male or female of the rank of Sub-divisional Police Officer, a female SHO and two **women** councilors **from** the Tehsil Council concerned and the Protection Officer who shall also act as the Secretary of the Protection Committee.

15. Duties and functions of Protection Committee.- The Protection Committee may;

- (a) inform the aggrieved person of her or his rights provided under this Act or any other law for the time being in force and the remedies and the help that may be provided;
- (b) assist the aggrieved person in obtaining any medical treatment necessitated due to the domestic violence;
- (c) if necessary, and with the consent of the aggrieved person, assist the aggrieved person in relocating to a safer place acceptable to the aggrieved person, which may include the house of any relative or family friend or other safe place, if any, established by a service provider;
- (d) assist the aggrieved person in the preparation of and filing of any application or report under this Act, the Code or any other law for the time being in force;
- (e) file an application for a protection order, if so desired by the aggrieved person;
- (f) coordinate with Family Conciliatory Committee in performing its duties; and
- (g) keep official record of the incidents of domestic violence in its area of jurisdiction, whether on the basis of information received or suo moto inquiry, irrespective of whether or not action is taken under this Act. Such record shall include:
 - (i) the first information received about the incident of domestic violence;
 - (ii) the assistance, if any, offered or provided by the Protection Committee to the aggrieved person;
 - (iii) where applicable the reason for not taking action under this Act when an incident was brought to the notice of the Protection Committee;
 - (iv) where applicable, the reason for the aggrieved persons refusal to take assistance from the Protection Committee;

- (v) the names and contact details of the service provider, if any, from whom the aggrieved person sought help;
- (vi) maintenance of the record of applications, protection orders and the service providers operating in the area of jurisdiction; and
- (vii) perform any other duties that may be assigned to the Protection Committee under this Act or the rules made there under.

16. Powers, privileges and immunities of Protection Committee.- (1) Members of the Protection Committee shall be deemed to be public servants within the meaning of section 21 of the Pakistan Penal Code (Act XLV of 1860).

(2) The Protection Committee may file an application for obtaining a protection order under section 8, if so desired by the aggrieved person.

(3) The Protection Committee may procure the assistance of any person or authority; and any person or authority so requested by the Protection Committee, shall be under legal obligation to provide the desired assistance to the Protection Committee.

(4) The Members of the Protection Committee shall attend the meetings of the Committee. The quorum for the meeting of the Committee shall be two-third of its members.

17. Delegation of functions and powers.- The Protection Committee may delegate any of its functions and powers to any of its member or members.

18. Protection Officer.-(1) The Provincial Government shall, by notification in the official Gazette, appoint a gazetted officer to act as Protection Officer, in each Tehsil, for the purposes of this Act.

(2) The Protection Officer shall possess such qualifications and experience as may be prescribed.

(3) The terms and conditions of service of the Protection Officer shall be such as may be prescribed.

19. Duties of Protection Officer.- It shall be the duty of the Protection Officer;

- (a) to make a domestic incident report to the Protection Committee, in such form and in such manner as may be prescribed, upon receipt of a complaint of domestic violence and forward copies thereof to the Protection Committee within the local limits of whose jurisdiction domestic violence is alleged to have been committed and to the service providers in the that area;

- (b) to make an application in such form and in such manner as may be prescribed to the court, if the aggrieved person so desires, claiming relief for issuance of a protection order;
- (c) to ensure that the aggrieved person is provided legal aid;
- (d) to maintain a list of all service providers providing legal aid or counseling, shelter homes and medical facilities in a local area within the jurisdiction of the court;
- (e) to make available a safe place of residence, if the aggrieved person so requires and forward a copy of his report of having lodged the aggrieved person a shelter home to the Protection Committee;
- (f) to get the aggrieved person medically examined, if she has sustained bodily injuries and forward a copy of the medical report to the Protection Committee having jurisdiction in the area where the domestic violence is alleged to have been taken place;
- (g) to ensure that the order for monetary relief under section 10 is complied with and executed in accordance with the procedure prescribed; and
- (h) to perform such other duties as may be prescribed.

20. Assistance of service provider. – (1) In any proceeding under this Act, the court may secure the services of a service provider.

(2) Service provider shall have all the privileges and immunities enjoyed by the Protection Committee.

21. Powers of service provider.– A service provider shall have the power to—

- (a) record the domestic incident in a prescribed form if the aggrieved person so desires, and forward a copy thereof to the Protection Officer having jurisdiction in the area where the domestic violence took place;
- (b) get the **aggrieved person** medically examined and forward a copy of the medical report to the Protection Officer within the local limits of which the domestic violence took place;
- (c) ensure that the **aggrieved person** is provided shelter in a safe place of residence, if she so requires and forward a report of the lodging of the **aggrieved person** in a safe place of residence to the Protection Committee within the local limits of the place where the domestic violence took place; and
- (d) provide the **aggrieved person** with any aid or assistance he may so require.

22. Procedure.- Save as otherwise provided in this Act, all proceedings specially under sections 8,9 and 10 and an offence under section 16 shall be governed by the Code.

23. Protection of actions taken in good faith.- No suit, prosecution or other legal proceedings shall lie against any Protection Committee, Protection Officer or service provider for anything which is in good faith done or purported to be done under this Act.

24. Act not in derogation of any other law.- The provisions of this Act shall be in addition to, and not in derogation of, any other law for the time being in force.

25. Penalty for filing a false complaint.- Whoever gives an application to the court containing information about the commission of domestic violence which he knows or has reason to believe to be false, shall be punished with simple imprisonment for a term which may extend to six months or with fine which may extend to fifty thousand rupees or with both.

26. Revision.- Chapter XXXII of the Code shall apply to an order passed under sections 8, 9 and 10.

27. Power to make rules.- (1) The Federal Government may by notification in the Official Gazette make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing provisions, such rules may provide for all or any of the following matters, namely;

(a) the form in which an application by the aggrieved person under sub-section(1)of section 5 seeking relief under this Act, may be made and the particulars which such application shall contain under sub-section (2) of that section; and

(b) the form in which an affidavit may be filed by the aggrieved person under sub-section (2) of section 11.

(3) Notwithstanding anything contained in sub-sections (1) and (2), the Provincial Government may make rules for the appointment and functioning of the Protection Committees and Protection Officers.

(4) The rules made under this Act shall be laid, as soon as may be after they are made, before the Parliament.

28. Removal of difficulties.- If any difficulty arises in giving effect to any provision of this Act, the Federal Government may make an order not inconsistent with the provisions of this Act to remove the difficulty.

STATEMENT OF OBJECTS AND REASONS

The issue of **domestic violence** has been a source of public concern for a number of years. Being in the private domain, the gravity of violence in the domestic sphere is compounded. In cognizance of the stress and unbearable suffering of the aggrieved person, it is necessary to criminalize the act. Through this Bill, domestic violence is brought into the public domain and responds to the National Policy **for Development and Empowerment of Women** of adopting zero tolerance for violence against women and “introducing positive legislation on domestic violence”.

Ms. Yasmeen Rehman
Minister-in-charge