

[TO BE INTRODUCED IN THE NATIONAL ASSEMBLY]

A
Bill

to provide for the protection of persons against forced conversion

WHEREAS the Constitution of the Islamic Republic of Pakistan provides for the protection of the right of the citizens to profess and practice their religion;

AND WHEREAS the Constitution provides for protection of the marriage;

AND WHEREAS the Government of Pakistan is obligated to fulfill its commitments under international human rights conventions including the Universal Declaration of Human Rights, the Child Rights Convention, Convention for the Elimination of all Discrimination Against Women, International Convention of Civil and Political Rights and International Convention of the Economic, Cultural and Social Rights;

AND WHEREAS it is expedient to recognize the importance of tolerance, peace, inter-faith harmony and to criminalize forced conversions and provide for protection of victims thereof and provide for matters connected therewith and incidental thereto;

It is hereby enacted as follows:-

1. **Short Title, extent and commencement.**- (1) This Act may be called the Protection of Minorities Act, 2016.
- (2) It extends to the whole of Pakistan.
- (3) It shall come into force at once.

Chapter I – Definitions

2. **Definition.**- (1) In this Act, unless there is anything repugnant in the subject or context,-
 - a) "Abettor" means as defined in Section 108 of the Pakistan Penal Code 1860
 - b) "Accused" means a person facing the charge of forced conversion;
 - c) "Adult" means a person who has attained the age of eighteen years;
 - d) "Aggrieved person" means a person directly or indirectly affected by an offence under this Act;
 - e) "Child" means a person under the age of eighteen years;
 - f) "Child Protection Institute" means a government facility or registered voluntary organization established for the admission, care, protection and rehabilitation of persons, particularly children and women and may include remand houses, shelter homes and borstal institutions;
 - g) "Code" means the Code of Criminal Procedure, 1898 (Act V of 1898);
 - h) "Coercion" means compulsion by physical force or threat of force;
 - i) "Consent" means informed and voluntary consent that is given freely without any coercion, undue influence, fraud or misrepresentation by an adult with full knowledge of the implications of the consent and any alternative.
 - j) "Conversion" or "Convert" means when a person adopts new religious beliefs that differ from the person's previous beliefs;
 - k) "Court" means a court notified by the Federal Government for the purposes of this Act;

- l) "Duress" means a threat of harm, whether physical, psychological or emotional, made to compel a person to do something against his or her will or judgment;
 - m) "Force" means power, violence, or physical, emotional or psychological pressure directed against a person or a thing;
 - n) "Forced Conversion" means forcing a person to adopt another religion under duress, force, coercion or threat including any such duress, force, coercion or threat used against a member of the victim's family, loved one, community or property through different modes which shall include but not be limited to marriage, bonded labour;
 - o) "Forced marriage" means a marriage where one or both parties have not given their consent and is prohibited under Section 498B of the Pakistan Penal Code (Act XLV of 1860).
 - p) "Government" means the Government of Pakistan;
 - q) "Informer" means a person who has credible information that an offence is about to be or is being or has been committed under this Act and who has no interest adverse to the victim or to the accused;
 - r) "Maturity" means attaining the age of eighteen years;
 - s) "Minor" means a person below the age of eighteen years;
 - t) "Notification" means a notification published in the Official Gazette;
 - u) "Prescribed" means prescribed by the rules made under this Act;
 - v) "Service provider" means a government facility or registered voluntary organization established for the protection of victim providing shelter, legal, medical, financial or any other assistance;
 - w) "Threat" means a communicated intent to inflict harm or loss on another person or on another person's property or relative or member of their community, especially one that might diminish a person's freedom to act voluntarily or with lawful consent;
 - x) "Victim" means a person who is subjected to forced conversion as defined under this Act;
- (2) Words and phrases not defined in this Act shall have the same meaning as assigned to them in the Pakistan Penal Code, 1860, (Act V of 1860) and the Code of Criminal Procedure 1898 (Act XLV of 1898).

Chapter II – Role of the Government

- 3. Role of the Government.** (1) Government shall ensure to.-
- a) Issue a notification to all law enforcement agencies, relevant bodies, institutions, committees and commissions to ensure enforcement of this Act.
 - b) give wide publicity to the contents of this Act through electronic and print media in English, Urdu and local languages;
 - c) give periodic sensitization, awareness and training to the Government officers, police personnel and the members of the judicial service on issues addressed by this Act ;
 - d) formulate effective protocols by the concerned Ministries and Departments which may include those relating to minorities, health, education, women, social welfare and labour, to address the issue of forced conversion and that the same are periodically revised;
 - e) support services which shall include but not be limited to shelter, legal aid, medical aid etc., are made available for the support of victim;
 - f) create shelters specifically for victims of forced conversion;
 - g) notify special courts to try cases of forced conversion.

Provided that until such notification are issued, courts of competent jurisdiction shall hear cases falling under this Act; and

h) any other role deemed appropriate for proper implementation of this Act.

(2) The Government may notify a special commission, committee or institution with a primary focus on human rights to oversee and ensure the implementation of this Act.

(3) The Government shall provide additional budget, infrastructure, resources and staff for such commission, Committee or institution notified under sub-section (2).

Chapter III – Age of Conversion

4. **Age of conversion.-** (1) No person shall be deemed to have changed his religion until attaining the age of maturity.

(2) A minor who claims change of his religion before attaining the age of maturity shall not be deemed to have changed his religion and no action shall be taken against him for any such claim or action made by such minor.

(3) Nothing in sub-sections (1) and (2) shall extend to circumstances where the parents or guardian of the minor decide to change the religion of the family.

Chapter IV – Offences and Punishment

5. **Punishment for forced conversion.-** (1) A person who forcefully converts another person in a manner identified in Section 2(o) of this Act shall be liable to imprisonment of either description for a minimum of five years and maximum of life imprisonment and fine to be paid to the victim.

(2) Whoever performs, conducts, directs, brings about or in any way or facilitates a marriage having knowledge that either or both parties are victims of forced conversion shall be liable to imprisonment of either description for minimum three years and fine to be paid to the victim.

Explanation: This shall include a person who has provided the logistical support and any other essential services etc for the marriage ceremony.

(3) A person who is an abettor to a forced conversion shall be liable to imprisonment of either description for a minimum of five years and fine to be paid to the victim.

(4) In a case of forced conversion, the accused, in addition to a charge of forced conversion shall also be liable, where applicable, for offences which may include but not be limited to:

- a) Forced marriage under Section 498-B of the Pakistan Penal Code 1860;
- b) Wrongful Confinement under Chapter XVI of the Pakistan Penal Code 1860;
- c) Rape under Sections 375 and 376 of the Pakistan Penal Code 1860;
- d) Kidnapping, abducting or inducing a woman to compel for marriage under Section 365-B of the Pakistan Penal Code 1860;
- e) Kidnapping or abducting from lawful guardianship under Section 361 of the Pakistan Penal Code 1860;
- f) Kidnapping or abducting a person under the age of fourteen under Section 364-A of the Pakistan Penal Code 1860;
- g) Kidnapping or abducting in order to subject person to grievous hurt, slavery etc. under Section 367 of the Pakistan Penal Code 1860;
- h) Bonded labour under relevant sections of the Bonded Labour System (Abolition) Act 1992; and
- i) Any other law for the time being in force.

Chapter V- Procedures of Complaint

6. **Petition to court.**- (1) A victim, aggrieved person or a person authorized by the victim or an informer may present a petition to the court within whose jurisdiction -

- (i) the aggrieved person or victim resides or carries on business;
- (ii) the accused resides or carries on business;

(2) The court shall fix the first date of hearing, which shall not exceed seven days from the date of the receipt of the petition by the court.

(3) On receipt of such petition, the court shall, with or without issuing an interim order, issue a notice upon the accused calling upon him to show cause within seven days of receipt of notice.

(4) Any such notice shall be issued as per law by all modes at once, namely, through Bailiff, pasting, publication and courier all at once and if notice is served by any one of these modes, the notice shall be deemed to have been served.

(5) A case of forced conversion before the Court shall be disposed off within a period of ninety days and any adjournment given during the hearing of the petition shall be granted for reasons to be recorded in writing by the Court.

Provided that the Court may take cognizance of any complaint or First Information Reports registered with the police.

Chapter VI - Rescue, Custody and Special Procedures in Cases of Forced Conversion

7. **Rescue and recovery of victim.**- A police officer or a person given such authority under the law upon receiving information of a case of forced conversion may, after investigation take into custody the victim and produce him/her before the Court within twenty-four hours of taking the person into such custody.

8. **Warrant to search.**- (1) If it appears to a Court from information received on oath or solemn affirmation laid by any person who, in the opinion of the Court, is acting in the interest of the victim that there is reasonable cause to suspect that an offense of forced conversion has been or is being committed or unless immediate steps be taken will be committed, the Court may make orders to any police officer or a person authorized under the law to search for such alleged victim and if it is found that the person is a victim or intended victim of forced conversion, to remove him/her and deal with in accordance with the provisions of the Act and Rules.

(2) The officer executing the warrant may be accompanied by the person laying the information, and may also, if the Court by whom the warrant is issued so directs, be accompanied by the police or any person so authorized by the law, Court or both.

(3) The Court issuing a warrant under this Section may, in its discretion by the same warrant direct that any person accused of an offence under this Act be apprehended and brought before it.

9. **Temporary custody.**- (1) Where a victim or an accused is taken into custody in accordance with Section 8 or 9, such victim shall immediately be produced before the Court and if immediate production of the victim or accused before the Court is not possible due to any reason, the victim shall immediately be taken to the nearest shelter home of a service provider or a child protection institute; and the accused shall be immediately taken to the nearest police station within the jurisdiction of the Court till her or his production before the Court within the stipulated time.

(2) In cases of alleged forced conversion through marriage of a child, the court shall:

- a) make certain whether the victim is a child;
- b) upon being satisfied that the victim is a child, place the child in custody of parents or guardian of the child, unless the Court has reason to believe that this may not be in the best interests of the child;
- c) provide in writing, reasons for not placing the child in the custody of his or her parents or guardians;
- d) ensure temporary custody in a child protection institute during pendency of the trial if the child is not being placed in the custody of parents or guardians; and
- e) ensure that the custody of the child shall not be given to the alleged spouse, his or her family or any person connected therewith.

(3) In cases of alleged forced conversion through marriage of an adult, the victim shall be given temporary custody in a shelter home of a service provider during the pendency of the trial, unless such victim provides a cogent reason to the contrary.

(4) While providing temporary custody as per sub-section 2 and 3, the court may use its discretion in the interest of security, to withhold the information of the location of where the victim is residing from any person with the exception of necessary official personnel.

(5) Any person who discloses the location of where the victim is residing in contravention of the orders of the court shall be liable to penalties as contempt of court as under the Contempt of Court Act 1976 (Act No. LXIV OF 1976) and any other penalties deem fit by the Court.

(6) The victim in temporary custody identified in sub-sections (2) and (3) may be allowed to meet her or his parents, guardians, husband, intended bridegroom or in laws only upon her or his voluntary written consent.

Provided that any such meeting shall be supervised by a police officer or a senior employee of the service provider or child protection institution or any other person authorized by the court.

Provided further that any such meeting may be given police protection at the discretion of the court.

10. Allowing time for true decision of any person.- (1) In cases of alleged forced conversion of an adult, the court shall allow the alleged victim twenty one (21) days for an independent decision regarding conversion to a new religion before initiating a case of forced conversion under this Act.

(2) During this time period, he or she may be provided the opportunity to study comparative religions if he or she desires.

(3) Provisions of temporary custody identified in Section 9 of this Act shall apply during this time period.

(4) Upon completion of the time period, the alleged victim shall record a statement before the court stating whether he or she has converted his or her religion with own consent and will.

(5) Upon the request and consent of an adult victim to the Court, the provisions of sub-section (1) may be by-passed and a case of forced conversion may be initiated immediately.

11. Special measures may be adopted. - (1) Special measures may be put in place in cases of forced conversion during the investigation and trial of the matter at the discretion of the court. These special measures may include but not be limited to:-

- (i) Holding the trial in a different and secure location with the approval of the court;

- (ii) Withholding the location of where the victim is residing from any person with the exception of necessary official personnel;
 - (iii) Taking the victim's statement and evidence in a secure location approved by the court;
 - (iii) Providing police protection during transport of the victim to and from court;
 - (iv) Passing an order or injunction to prohibit removal of the victim from jurisdiction of the court or police station;
 - (v) to conduct an in camera trial or any other necessary order as per the circumstances;
 - (vii) Initiate immediate and fast tracked divorce proceedings upon the consent of the victim of forced conversion through marriage if the accused is found guilty.
- (2)** The Court shall take appropriate measures to provide adequate security to the prosecution witnesses, investigating officers, prosecutors, the victim, her or his family and the Judges during the pendency of investigation and trial, and if necessary, post the trial.

12. Presence of persons in cases involving a child.- (1) No person shall be allowed to present in a Court involving a case of a child with the exception of those identified in the Act hereunder:

- (i) the members and officers of the Court;
- (ii) the parties to the case before the Court and other persons directly concerned in the case including the police officers; and
- (iii) such other persons as the Court specially authorizes to be present.

13. Withdrawal of persons from Courts.-If at any stage during the course of a trial of a case or proceeding, a Court considers it expedient in the best interest of the victim to direct any person, including the parent, guardian or the victim's spouse, supporters etc to withdraw, the Court, may give such direction and thereupon such persons shall withdraw. If any person refuses to withdraw, the Court may take steps to remove him or her and hold him or her in contempt of court as under the Contempt of Court Act 1976 (Act No. LXIV OF 1976).

14. Withdrawal of persons from court during examination.- (1) If at any stage during the course of a trial of a case, when the victim is examined, any court trying the case or holding the proceeding may direct such persons as it thinks fit, not being parties to the case or proceeding their legal advisors and the officers concerned with the case or proceeding, to withdraw. Such persons shall then withdraw. If any person refuses to withdraw, the Court may take steps to remove him and hold him in contempt of court as under the Contempt of Court Act 1976 (Act No. LXIV OF 1976).

(2) The Court may use its discretion and allow the examination of the victim to be conducted in camera, through video link, in a secure location approved by the court or with the use of screens or employ any other such means if necessary in the best interests of the victim.

15. Prohibition on Publication of names, addresses, etc., of children and persons of unsound mind involved in cases or proceedings. No report in any newspaper, magazine, news sheet or any mode of social media of any case or proceeding in any Court in which a child or a person of unsound mind is involved, shall disclose the name, address or school or include any particulars calculated to lead directly or indirectly to the identification of any such child or person of unsound mind, nor shall any picture be published as being or including a picture of any such child or person of unsound mind in their best interests.

Provided that for reasons to be recorded in writing, the Court trying the case or holding the

proceeding may permit the disclosure of the name or any other approved information relating to the case or proceedings, if in its opinion such disclosure is in the interest of the welfare of the child or person of unsound mind and is not likely to have an adverse effect.

16. Offences to be cognizable, non-bailable and non-compoundable.- An offence punishable under this Act shall be cognizable, non-bailable and non-compoundable.

17. Rules of procedure.- Save as otherwise provided in this Act, all proceedings taken and offences committed under the provisions of this Act, shall be governed by the Code of Criminal Procedure 1898

18. Presumption of good faith.- No suit, prosecution or other legal proceedings shall lie against public servant, informer, service provider or child protection institute for anything which is done in good faith or purported to be done under this Act.

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

20. Power to make rules.- Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

21. Removal of Difficulties. If any difficulty arises in giving effect to any provision of this Act, Government may make an order not inconsistent with the provisions of this Act to remove the said difficulty.

STATEMENT OF OBJECTS AND REASONS

Government of Pakistan is obligated to fulfill its commitments under international human rights conventions including the Universal Declaration of Human Rights. The Constitution of Islamic Republic of Pakistan 1973 provides and protects the right of all persons to choose and practice their own religion and the freedom of choice of marriage. Forced conversion is an abhorrent & violent offence. It is an issue that has become prevalent across Pakistan and must be eliminated. It is necessary to criminalize forced conversions and provide for protection those who are victims of this abhorrent practice. The Bill aims to meet above said objectives.

Sd/-

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