

[TO BE INTRODUCED IN THE NATIONAL ASSEMBLY]

A
BILL

further to amend the Code of Civil Procedure, 1908 and the Code of Criminal Procedure, 1898

WHEREAS it is expedient further to amend the Code of Civil Procedure, 1908 (Act V of 1908) and the Code of Criminal Procedure, 1898 (V of 1898), for the purposes hereinafter appearing;

It is hereby enacted as follows:-

1. Short title, application and commencement.— (1) This Act may be called the Costs of Litigation Act, 2016.

(2) It shall apply to the Islamabad Capital Territory.

(3) It shall come into force on such date as the Federal Government may, by notification in the official Gazette, specify and shall apply to such courts in the Islamabad Capital Territory as the Federal Government may, by notification in the official Gazette, determine in this behalf and different dates may be specified in respect of different courts.

PART-I
CIVIL PROCEEDINGS

2. Amendment of Act V of 1908.— In the Code of Civil Procedure, 1908 (Act V of 1908),—

(I) for section 35, the following shall be substituted, namely:-

"35. Costs.— (1) Subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force,—

(i) a party to any proceedings shall, before the announcement of final order, judgment or decree, file in the prescribed form, details of actual costs of litigation, including but not limited to court fee, stamp fee, fee paid to counsel and all other ancillary or incidental expenses thereto;

- (ii) the Court shall award the actual costs of litigation under clause (i) to the successful party with markup not exceeding the prescribed limit per annum, as notified by the State Bank of Pakistan, at the time of passing the order, judgment or decree;
- (iii) the costs other than those mentioned in clause (i) shall be in the discretion of the Court; and
- (iv) the Court shall have full power to determine out of what property such costs are to be paid and recovered and to give all necessary directions for the purposes aforesaid.

(2) The fact that the Court has no jurisdiction in respect of the proceedings shall be no bar to the exercise of such powers under this section.”;

- (II) for section 35A, the following shall be substituted, namely:-

“35A. Adjournment costs.—If, on the date fixed for hearing in any proceedings, a party to the proceedings or any other person, despite service of notice, fails to appear or comply with any order of the Court or mandatory provision of the Code or any other law for the time being in force, seeks an adjournment for such purpose, the Court shall, for sufficient cause and reasons to be recorded, grant such adjournment on the condition that such party or person shall pay to the other party, costs of adjournment which shall not be less than five thousand Rupees per adjournment or such higher amount as may be prescribed from time to time.”; and

- (III) after section 35A, substituted as aforesaid, the following new sections shall be inserted, namely:-

“35B Special costs.—(1) If in any proceedings, the Court finds that any averment made by any party is false or vexatious to the knowledge of such party, the Court shall award special costs to the opposite party against whom such averment has been made.

(2) The amount of any special costs awarded under sub-section (1) shall be taken into account in

any subsequent suit for damages or compensation in respect of such claim or defence.

35C General provisions as to costs.— The Government shall not be liable to costs under sections 35, 35A and 35B.

Explanation.— In sections 35, 35A and 35B, the expression "proceedings" includes suit, appeal, review, revision, execution or any other proceedings and any matter incidental thereto."

PART-II CRIMINAL PROCEEDINGS

3. Amendment of Act V of 1898.—In the Code of Criminal Procedure, 1898 (Act V of 1898),—

(I) the existing section 200 shall be renumbered as sub-section (1) thereof and,—

(i) in sub-section (1), renumbered as aforesaid, in the proviso, after clause (aa), the following new clause (b) shall be inserted, namely:—

"(b) Where a complainant is a Court or a public servant, the Court or a public servant, as the case may be, shall not be liable to adjournment costs under sub-section (2);";
and

(ii) after sub-section (1), amended as aforesaid, the following new sub-section shall be added, namely:—

(2) Subject to provisions of section 344, if on the date fixed for hearing in any proceedings, a party to a case or any other person, despite service of notice, fails to appear or comply with any order of the Court or mandatory provision of the Code or any other law for the time being in force, seeks an adjournment for such purpose, the Court may, for sufficient cause and reasons to be recorded, grant such adjournment on the condition that such party or person shall pay to

the other party, adjournment costs which shall not be less than ten thousand rupees per adjournment or such higher amount as may be prescribed from time to time.”;

- (II) in section 250, in sub-section (2), for the words “twenty five thousand” the words “one hundred thousand” shall be substituted.”; and
- (III) in section 344, in sub-section (1), after the expression “terms” the commas and words “, including adjournment costs,” shall be inserted.”.

STATEMENT OF OBJECTS AND REASONS

The tendency of filing false and vexatious cases and taking baseless grounds for defense is unfortunately on the increase. This tendency leads to numerous evils, including heavy expenditure incurred by the affected parties, causing them financial loss and mental torture, apart from wasting precious time of the courts. It is, therefore, necessary to empower courts to impose costs to discourage false and frivolous litigation and unnecessary adjournments. It is proposed to make amendments in the Code of Civil Procedure, 1908 for this purpose. Amendments are also being proposed in the Code of Criminal Procedure, 1898 to provide for imposition of adjournment costs in criminal cases.

The Bill is designed to achieve the aforesaid object.

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Minister-in-Charge