

# NATIONAL ASSEMBLY SECRETARIAT

## REPORT OF THE STANDING COMMITTEE ON LAW AND JUSTICE ON THE CRIMINAL LAW (AMENDMENT) ORDINANCE, 2020

1, Chairman of the Standing Committee on Law and Justice, have the honour to present this report on the Bill to effectually tackle the pervading instances of rape and sexual abuse in respect of women and children through changes in the substantive law [The Criminal Law (Amendment) Bill, 2021] (Government's Bill) referred to the Committee on 3<sup>rd</sup> February, 2021.

2. The Committee comprises the following:-

1. Mr. Riaz Fatyana	Chairman
2. Mr. Atta Ullah	Member
3. Mr. Lal Chand	Member
4. Mr. Muhammad Farooq Azam Malik	Member
5. Ms. Kishwer Zehra	Member
6. Ms. Maleeka Ali Bokhari	Member
7. Mr. Muhammad Sana Ullah Khan Masti Khel	Member
8. Malik Muhammad Ehsan Ullah Tiwana	Member
9. Agha Hassan Baloch	Member
10. Mr. Junaid Akbar	Member
11. Ms. Shunila Ruth	Member
12. Mr. Mohsin Nawaz Ranjha	Member
13. Rana Sana Ullah Khan	Member
14. Ch. Mehmood Bashir Virk	Member
15. Mr. Usman Ibrahim	Member
16. Khawaja Saad Rafique	Member
17. Syed Hussain Tariq	Member
18. Syed Naveed Qamar	Member
19. Dr. Nafisa Shah	Member
20. Ms. Aliya Kamran	Member
21. Barrister Dr. Muhammad Farogh Naseem Minister for Law and Justice	Ex-officio Member

3. The Committee considered the Bill as introduced in the National Assembly placed at **(Annex-A)**, in its meetings held on 17<sup>th</sup> March 2021, 6<sup>th</sup> May 2021, 3<sup>rd</sup> June 2021, and recommended with majority, that the Bill placed at **(Annex-B)**, may be passed by the National Assembly. However, Dissent Note of Ms. Nafeesa Shah, Syed Naveed Qamar, Syed Hussain Tariq, MNAs is **Annex-C**, whereas Dissent Note of Ms. Aliya Kamran and Usman Ibrahim MNAs is placed as **Annex-D**.

Sd/-  
**TAHIR HUSSAIN**  
Secretary  
Islamabad, the 9<sup>th</sup> June, 2021

Sd/-  
**(RIAZ FATYANA)**  
Chairman

## AS INTRODUCED IN THE NATIONAL ASSEMBLY

AN

ORDINANCE

*to effectually tackle the pervading instances of rape and sexual abuse in respect of women and children through changes in the substantive law;*

AND WHEREAS it is expedient further to amend the Pakistan Penal Code, 1860 (Act XLV of 1860) and the Code of Criminal Procedure, 1898 (Act V of 1898), in the manner hereinafter appearing;

AND WHEREAS the Senate and the National Assembly are not in session and the President is satisfied that circumstances exist which render it necessary to take immediate action;

NOW THEREFORE, in exercise of the powers conferred by clause (1) of Article 89 of the Constitution of the Islamic Republic of Pakistan, 1973 the President is pleased to make and promulgate the following Ordinance:—

1. **Short title and commencement.**—(1) This Ordinance may be called the Criminal Law (Amendment) Ordinance, 2020.

(2) It shall come into force at once.

2. **Amendment of section 375 of Act XLV of 1860.**—In the Pakistan Penal Code, 1860 (Act XLV of 1860), hereinafter referred to as the Penal Code, the existing section 375 shall be substituted as follows:

“375. **Rape.**— A person (A) is said to commit “rape” if A—

- (a) penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of another person (B) or makes B to do so with A or any other person; or
- (b) inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of B or makes B to do so with A or any other person; or
- (c) manipulates any part of the body of B so as to cause penetration into the vagina, urethra, anus or any part of body of B or makes B to do so with A or any other person; or
- (d) applies his mouth to the vagina, anus, urethra or penis of B or makes B to do so with A or any other person, under the circumstances falling under any of the following seven descriptions:

*firstly*, against B's will;

*Secondly*, without B's consent;

*thirdly*, with B's consent, which has been obtained by putting B or any person in whom B is interested, in fear of death or of hurt;

*fourthly*, with B's consent, when A knows that A is not B's husband and that B's consent is given because B believes that

A is another man to whom B is or believes herself to be lawfully married;

- *fifthly*, with B's consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by A personally or through another of any stupefying or unwholesome substance, B is unable to understand the nature and consequences of that to which B gives consent;
- *sixthly*, with or without B's consent, when B is under sixteen years of age;
- *seventhly*, when B is unable to communicate consent.

**Explanation 1.**— For the purposes of this section, "vagina" shall also include *labia majora*.

**Explanation 2.**— Consent means an unequivocal voluntary agreement when B by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act:

Provided that if B who does not physically resist to the act of penetration, it shall not by the reason only of that fact, be regarded as consenting to the sexual activity.

**Explanation 3.**— In this Chapter:—

"person" means a male, female or transgender;

"rape" includes "gang rape".

**Exception.**— A *bonafide* medical procedure or intervention shall not constitute rape.

3. **Insertion of new section 375A of Act XLV of 1860.**—In the Penal Code, after section 375, the following new sections shall be inserted, namely:

**"375A. Gang rape.**—Where a person is raped by one or more persons constituting a group or acting in furtherance of a common intention, each of those persons shall be guilty of the offence of gang rape and shall be punished with death or for imprisonment for the remainder period of natural life or imprisonment for life and fine."

4. **Amendment of section 376 of Act XLV of 1860.**—In the Penal Code, in the existing section 376,