

A

Bill

further to amend the Prevention of Electronic Crimes Act, 2016, Pakistan Penal Code, 1860, and the Qanun-e-Shahadat Order, 1984

WHEREAS it is expedient further to amend the Prevention of Electronic Crimes Act, 2016 (Act XL of 2016), Pakistan Penal Code, 1860 (Act XLV of 1860), and the Qanun-e-Shahadat Order, 1984, for the purposes hereinafter appearing;

It is hereby enacted as follows:-

1. **Short title and commencement.**- (1) This Act shall be called the Criminal Laws (Amendment) Act, 202~~2~~.

(2) It shall come into force at once.

2. **Amendment of section 2, Act XL of 2016.**- In the Prevention of Electronic Crimes Act, 2016 (Act XL of 2016), hereinafter referred to as Act XL of 2016, in section 2,-

(i) after paragraph (vi), the following new paragraphs shall be inserted, namely:-

“(vi-a) “Child” means, notwithstanding anything contained in any other law, any person who has not completed the age of eighteen years;

(vi-b) “Child sexual abuse content” shall means the representation, by whatever means, of a child engaged in real or simulated sexually explicit conduct or representation of the sexual parts of a child for primarily sexual purposes;”;

(ii) after paragraph (vii), the following new paragraph shall be inserted, namely:-

“(vii-a) “Complainant” means any person who makes complaints of any offence under this Act. This includes a victim, or an individual having substantial reasons to believe the offence is being committed or likely to be committed and any authority referring the complaint for investigation;”;

(iii) after paragraph (xvii), the following new paragraph shall be inserted, namely:-

“(xvii-a) “Harmful content” means the content that might seriously impair the physical, mental or moral development of minors, including but not limited to the following:-

(a) contents especially containing pornography or depicting extreme and gratuitous scenes of violence; or

- (b) display of brutal and extreme violence which is not justifiable by context; or
 - (c) content emphasise and normalise violence, drug addiction or similar forms of criminal conduct, as well as exploiting credulity of viewers or listeners; and
 - (d) the content as may be determined by the Court of competent jurisdiction;”;
- (iv) after paragraph (xxiv), the following new paragraph shall be inserted, namely:-
- “(xxiv-a) “Non-sexual child abuse” shall means:
- (a) any form of nonsexual physical of a minor by such as kicking, beating, slapping, whipping; pulling of hair; strangling, choking or suffocating; or
 - (b) sharing with minor any content that praises, supports, promotes, advocates for, provides instructions for or encourages participation in non-sexual child abuse, or videos or photos depicting adults endangering children by placing/pointing weapons such as guns, swords, bombs, at/on children;”;
- (v) after paragraph (xxvii), the following new paragraph shall be inserted, namely:-
- “(xxvii-a) “Sexually explicit conduct” means actual or simulated—
- (a) sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex;
 - (b) bestiality;
 - (c) masturbation;
 - (d) sadistic or masochistic abuse; or
 - (e) lascivious exhibition of the anus, genitals, or pubic area of any person;”;
- (vi) after paragraph (xxviii), the following new paragraph shall be inserted, namely:-
- “(xxviii-a) “Sexual abuse of a minor” shall have the same meaning given to —sexual abuse in section 377A of the Pakistan Penal Code, 1860 (Act XLV of 1860);”;

3. **Amendment of section 22, Act XL of 2016.** - In the Act XL of 2016, in section 22,-

- (i) for the words “Child pornography”, wherever occurring, the words “child sexual abuse content”, shall be substituted;
- (ii) for the word "seven" the word “ten”, shall be substituted;
- (iii) after the word “imprisonment”, the words “either description” shall be inserted;
- (iv) after the words “seven years,”, the words “and not less than 5 years” shall be inserted; and
- (v) after the words “five million rupees”, the words “but not less than two hundred thousand rupees”, shall be inserted.

4. **Insertion of new sections, Act XL of 2016.**- In the Act XL of 2016, after section 22, the following new sections shall be inserted, namely:-

“22-A. Online grooming, “solicitation” and “cyber enticement”.- Whoever intentionally creates or takes steps towards creating a relationship of trust with a minor through the use of an information system or device or any other similar means of communication with the intent to facilitate, solicit or commit sexual abuse of a minor or to share, facilitate or solicit sexual content or produce sexual abuse material with a minor, shall be punished with imprisonment of either description for a term which may extend to ten years and not less than five years with fine which may extend to ten million rupees but not less than five hundred thousand rupees.

22-B. Commercial sexual exploitation of children.- Subject to Section 38, whoever is directly or indirectly involved in the use of an information system or other similar means and intends to use, or knows or ought to have known that such information system or other similar means shall be used by others for the purposes of the sexual exploitation of minors, such as child prostitution and child sex tourism, accompanied by payment in money or in kind to the minor or to one or more third parties shall be punished with imprisonment of either description for a term which may extend to ten years but not less than seven years with fine which may extend upto fifteen million rupees and not less than five hundred thousand rupees.

22-C. Exposure to harmful online content. - (1) Subject to Section 38, whoever intentionally causes a minor to be exposed to content through an information system which is sexually explicit including content that depicts sexual or non-sexual abuse of minors that may cause mental distress to the minor, or otherwise harmful to the development of minor shall be punished with 4 imprisonment for a term which may extend to seven years but not less than three years, with fine which may extend to five million and not less than two hundred thousand rupees.

22-D. Use of information system for kidnapping, abduction or trafficking of minor. - Whoever contacts a minor through the use of an information system or any other similar means directly or indirectly of communication with intent to kidnap, abduct or traffic a minor for any purpose, including to commit sexual abuse of a minor or exploitation shall be punished with imprisonment for life or with rigorous imprisonment for a term which may extend to fourteen years and shall not be less than ten years with fine upto ten million rupees and not less than five million rupees.

22-E. Non-commercial exploitation.- Whoever intentionally exploits a minor through the use of an information system or other similar means for personal gratification rather than for financial or economic gain coinciding with obtaining economic benefit, shall be punished with imprisonment of either description for a term which may extend to ten years and shall not be less 5 years with fine which may extent to five million rupees and not less than two million rupees.”.

5. **Insertion of new sections 24-A, Act XL of 2016.-** In the Act XL of 2016, the following new section 24-A shall be inserted, namely:-

“24-A. Cyber bullying.- (1) A person commits the offence of cyber bullying who, with intent to harass, threaten or target another person posts or sends electronic messages, including pictures or videos by using any social platform, including chat rooms, blogs and instant messaging.

(2) A minor through the guardian may apply to the Authority for removal, destruction of or blocking access to such content or communication referred to in sub-section (1) and the Authority, on receipt of such application, shall forthwith pass such orders as deemed reasonable in the circumstances including an order for removal, destruction, preventing transmission of or blocking access to such content and communication, and the relevant Authority may also direct any of its licensees to secure such content and communication including traffic data.

(3) Whoever commits the offence of child cyber bullying as described in sub-section (1), shall be punished with imprisonment of either description for a term which may extend to five years shall not be less 1 years with a fine of up to five hundred thousand rupees and not less than one hundred thousand rupees.”

Provided where the accused is minor and first time offender, then in case the accused is school going / attending any educational institution, the complaint shall be made to the Principal of the concerned school. If the accused is held responsible then the punishment shall be decided by the Principal of the school. While if the accused is minor and out of school and not / attending any educational institution, then the complaint shall lie before Chairman of the concerned Council. If the accused is held responsible then the punishment shall be decided by the Chairman of the concerned Council. The punishment will be limited to social service to the extent of one month and not less than seven days.

Provided further, where is minor accused is a second time offender of cyber bullying, then the complaint shall lie before Magistrate of first Class and punishment to the minor guilty of cyber bullying for the second time shall be imprisonment to the extent of 1 month and not less than 7 days and / or with fine to the extent of Rs.100,000/= and not less than Rs.50,000/=.

6. **Amendment of Section 30, Act XL of 2016.**- In the Act XL of 2016, for section 30, the following shall be substituted namely:-

“30. Power and Procedure to investigate. - (1) In addition to the Federal Investigation Agency, the Police shall be authorized to take cognizance of the offences under this Act. In that case the Police shall be bound to refer the matter relating offence` under the Prevention of Electronic Crimes Act, 2016 (Act XL of 2016), immediately to Federal Investigation Agency, for technical opinion and investigation as per its mandate and rules.

Provided that the Federal or Provincial Government, as the case may be, constitute one or more joint investigation teams comprising of an authorized officer of the investigation agency and any other law enforcement agency for investigation of an offence under this Act and any other law for the time being in force.

(2) An investigating officer under this Act shall be an officer or Police Officer not below the rank of Inspector of Police or equivalent or, if the Federal Government or the Provincial Government, as the case may, deems necessary constitute a Joint Investigation Team to be headed by an Investigating Officer not below the rank of (BS-18) and other officers of Joint Investigation Team may include equivalent rank from other agencies, as the case may be. The Joint Investigation Team shall comprise five members and for the meeting purposes the quorum shall consists of three members.

(3) The investigating officer to the Joint Investigation Team, as case may be, shall complete the investigation in respect of cases triable by the court within forty five working days.

(4) The Court shall, on taking cognizance of a case under this Act, proceed with the trial on weekly basis and shall decide the case within three months, failing which the matter shall be brought to the notice of the Chief Justice of the High Court concerned for appropriate directions, keeping in view the facts and circumstances of the case.”.

7. **Insertion of new section 30-A, Act XL of 2016.**- In the Act XL of 2016, after section 30, the following new sections shall be inserted, namely:-

“30-A. Remand.- (1) Where a person is detained for investigation, the investigating Officer, within twenty-four hours of the arrest, excluding the time necessary for the journey from the place of arrest to the Court, shall produce the accused before the Court, and may apply for remand of the accused to police custody, or custody of any other

investigating agency joined in the investigation for which the maximum period allowed must not be more than fourteen days at one time.

Provided that, where an accused cannot within twenty-four hours be produced before the Court, a temporary order for police custody or custody of any other investigating agency joined in the investigation not exceeding twenty-four hours may be obtained from the nearest Magistrate for the purpose of producing the accused before the Court within that period.

(2) No expansion of the time of the remand of the accused in police custody or custody of any other investigating agency joined in the investigation shall be allowed, unless it can be shown by the investigating Officer, to the satisfaction of the Court that further evidence may be available and the Court is satisfied that no bodily harm has been or will be caused to the accused: Provided that the total period of such remand shall not, in any case exceed thirty days.

(3) The Court shall be deemed to be a Magistrate for purposes of sub-section.”.

“30-B. Victim and witness protection.--- (1) A victim and witness protection system shall be established by the Federal and Provincial governments of Pakistan through rules to with features including the following: -

- (i) special security arrangements for witnesses and victims;
- (ii) concealment of identity;
- (iii) distance recording of testimonies through video-conferencing, audio-video links and by the use of modern devices;
- (iv) re-location of victims and witnesses;
- (v) provision of reasonable financial assistance;
- (vi) compensation to legal heirs of protected victims and witnesses;
- (vii) safe-houses, dar-ul-amans etc.;
- (viii) such other measures as may be necessary and ancillary.

(2) Till such time the rules envisaged in sub-section (1) are prescribed, the witness protection system and benefits prescribed under the Witness Protection, Security and Benefit Act, 2017 (Act XXI of 2017) shall be applicable to both victims and witnesses under this Act, mutatis mutandis.”

“30-C. In-camera trial.--- (1) The trial of offences against minors shall be conducted incamera: Provided that the Court, if it thinks fit, on its own or on an application made by either of parties, allow any particular person to have access to court proceedings, or be or remain in the Court.

(2) Notwithstanding anything contained in any other law for the time being in force, where any proceedings are held under subsection (1), the Court may adopt appropriate measures, including holding of the trial through video-link or usage of screens, for the protection of the victims and the witnesses.

(3) Where any proceedings are held under subsection (1), it shall not be lawful for any person to publish or broadcast any matter or information in relation to any such proceedings, except with the permission of the Court.”

“31-A. Investigation into the child sexual content referred to Pakistan Telecommunication Authority.- The NR3C, Federal Investigation Agency shall acquire the information of the child sexual abuse content referred for blocking / removal to Pakistan Telecommunication Authority and the organizations having data in this regard, for investigation prior to their removal and blocking by said Authority, whether the direct complaint against the said material has been made or not.”.

8. **Amendment of section 42, Act XL of 2016.-** In the Act XL of 2016, in section 42, after the words, “to any foreign government”, the words “including the government of Azad Jammu & Kashmir”, shall be inserted.

9. **Substitution of section 43, Act XL of 2016.-** In the Act XL of 2016, for section 43, the following shall be substituted, namely:-

“43. Offences to be compoundable and non-cognizable.- (1) All offences under the Act, except the offences under sections 10, 21, 21-A, 21-B, 21-C, 21-D, 21-E, 21-F and abatement thereof, shall be non-cognizable, bailable and compoundable.

Provided that offences under section 17 shall be cognizable by the investigation agency on a written complaint by the Authority.

10. **Insertion of new sections 45-A, Act XL of 2016.-** In the Act XL of 2016, after section 45, the following new section shall be inserted, namely:-

“45-A. Support mechanism for the victims.- (1) The Government shall develop mechanism for the support of victims in collaboration with other agencies and civil society organizations.”

11. **Insertion of new sections 43-A, Act XL of 2016.-** In the Act XL of 2016, after section 43, the following new section shall be inserted, namely:-

“43-A. Complaint against cybercrimes against children.- Complaint against the offences under sections 10, 21, 21-A, 21-B, 21-C, 21-D, 21-E, 21-F and abatement thereof may be lodged with concerned authorities by the complainant as defined under Section 2(vii-A).”.

12. **Amendment of Article 164, Qanun-e-Shahadat Order, 1984.-** In the Qanun-e-Shahadat Order, 1984, for Article 164, the following shall be substituted, namely:-

“164. Production of evidence that has become available because of modern devices or information system, etc.- Depending on the nature of case and circumstances, the Court may, if deem appropriate, allow to be produced any evidence of witness(s) recorded by the Court through the modern devices or techniques including video call, viber, Skype, Imo, Whatsapp, facebook messenger , line caller and video conference, etc.”.

13. **Omission of section 292-B and 292-C, Act XLV of 1860.**-In the Pakistan Penal Code, 1860 (Act XLV of 1860), the sections 292-B and 292-C shall be omitted.

STATEMENT OF OBJECTS AND REASONS

Taking cognizance of the rise in the cases of sexual exploitation and cybercrimes against children in light of the constitutional and international commitments of the Government of Pakistan in terms of ratification of the United Nations Convention on the Rights of the Child (UNCRC); the Optional Protocol to the CRC on the sale of children, child prostitution, and the child pornography (OPSC); UN Convention against Transnational Organized Crimes; the Protocol to prevent, suppress and punish trafficking in persons, especially women and children, the amendments in the Prevention of Electronic Crimes Act, 2016 (Act XL of 2016), Pakistan Penal Code, 1860 (Act XLV of 1860), and the Qanun-e-Shahadat Order, 1986, have been proposed for prevention of sexual exploitation and cybercrimes against children.

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