

A
Bill

further to amend the Pakistan Penal Code 1860 and the Code of Criminal Procedure 1898.

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) for the purposes hereinafter appearing;

It is hereby enacted as follows:-

1. Short title and commencement.- (1) This Act may be called the Criminal Law (Amendment) Act, 2013.

(2) It shall come into force at once.

2. Amendment of section 82, Act XLV of 1860. – In the Pakistan Penal Code, 1860 (Act XLV of 1860), hereinafter referred to as “the Penal Code”, in section 82 for the word “seven” the word “twelve” shall be substituted, for the “full stop” at the end a “colon” shall be inserted and thereafter the following proviso shall be added, namely:-

Provide that this shall not be applicable on the cases falling under Anti terrorism Act, 1997 (XXVII of 1997).

3. Omission of section 83, Act XLV of 1860. - In the Penal Code section 83 shall be omitted.

4. Insertion of new sections 292 A, 292 B and 292 C, Act XLV of 1860. - In the Penal Code, after section 292, the following new sections shall be inserted namely:-

“292 A. Exposure to seduction.- Whoever seduces a child by any means whatsoever with an intent to involve him in any sexual activity or exposes him to obscene and sexually explicit material, document, a film, video or a computer generated image or attempts to do the aforementioned action, shall be punished with imprisonment of either description for a term which shall not be less than one year and may extend upto seven years or fine which shall not be less than one hundred thousand rupees and may extend upto five hundred thousand rupees or with both.

292 B. Child Pornography.- (1) Whoever takes, permits to be taken, with or without the consent of the child or with or without the consent of parents or guardians, any photograph, film, video, picture or representation, portrait, or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, of obscene or sexually explicit conduct, where—

- (a) the production of such visual depiction involves the use of a minor boy or girl engaging in obscene or sexually explicit conduct;
- (b) such visual depiction is a digital image, computer image, or computer-generated image that is, or is indistinguishable from, that of a minor engaging in obscene or sexually explicit conduct; or
- (c) such visual depiction has been created, adapted, or modified to appear that an identifiable minor is engaging in obscene or sexually explicit conduct; is said to have committed an offence of child pornography.

(2) The preparation, possession or distribution of any data stored on a computer disk or any other modern gadget, shall also be an offence under this section.

292 C. Punishment for Child Pornography. - Whoever commits an offence of child pornography shall be punished with imprisonment of either description for a term which shall not be less than two years and may extend upto seven years or fine which shall not be less than two hundred thousand rupees and may extend upto seven hundred thousand rupees or with both.”.

5. Insertion of new section 328 A, Act XLV of 1860.- In the Penal Code after section 328, the following new section shall be inserted namely:-

“328 A. Cruelty to a Child. - Whoever willfully assaults, ill-treats, neglects, abandons or does an act of omission or commission, that results in or have potential to harm or injure the child by causing physical or psychological injury to him shall be punished with, imprisonment of either description for a term which shall not be less than one year and may extend upto three years or liable to fine which may not be less than one hundred thousand rupees and may extend upto three hundred thousand rupees or with both.”.

6. Insertion of new section 369 A, Act XLV of 1860. - In the Penal Code after section 369, the following new section shall be added, namely:-

“369 A. Trafficking of human beings.- Whoever involves himself in human trafficking within Pakistan shall be punished with imprisonment for a term which shall not be less than five years and may extend upto seven years or fine which shall not be less than five hundred thousand rupees and may extend upto seven hundred thousand rupees or with both.”.

Explanation:- The word human trafficking, in this section, shall have the same meaning is assigned to it in the Prevention and Control of Human Trafficking Ordinance, 2002(LIX of 2002).

7. Insertion of new sections 377 A and 377 B, Act XLV of 1860. - In the Penal Code after section 377, the following new sections shall be added, namely:-

“377 A. Sexual Abuse. - Whoever employs, uses, forces, persuades, induces, entices, or coerces any person to engage in, or assist any other person to engage in fondling, stroking, caressing, exhibitionism, voyeurism or any obscene or sexually explicit conduct or simulation of such conduct either independently or in conjunction with other acts, with or without the consent, is said to commit the offence of sexual abuse.

377 B. Punishment. - Whoever commits the offence of sexual abuse shall be punished with imprisonment of either description for a term which may extend to life imprisonment and liable to fine which shall not be less than five hundred thousand rupees or with both.”.

8. Amendment of Schedule II, Act V of 1898. - In the Code of Criminal Procedure, 1898 (Act V of 1898), in Schedule II,-

(a) after the entries relating to section 292, the following shall be added, namely:-

1	2	3	4	5	6	7	8
"292 A	Exposure to seduction	May arrest without warrant	Warrant	Not bailable	Not compoundable	Imprisonment of either description for a term which shall not be less than 1 year and may extend to 7 years or with fine which may not be less than Rs. 100,000 and may extend to Rs. 500,000, or with both	Court of Sessions
292 C	Punishment for child pornography	Ditto	Ditto	Ditto	Ditto	Imprisonment which may extend to seven years and with fine which may extend to five hundred thousand rupees	Ditto.”;

(b) after the entries relating to section 328, the following shall be added, namely:-

1	2	3	4	5	6	7	8
"328 A	Cruelty to a Child	May arrest without warrant	Warrant	Bailable	Compoundable	Imprisonment which may extend to three years or with fine which may extend to fifty thousand rupees or with both	Magistrate of the first class.”;

(c) after the entries relating to section 369, the following shall be added, namely:-

1	2	3	4	5	6	7	8
"369 A	Trafficking of human beings	May arrest without warrant	Warrant	Not bailable	Not compoundable	Imprisonment for a term which shall neither be less than 5 years nor more than 7 years and liable to fine which shall not be less than Rs. 500,000 and may extend to 700,000 or with both.	Court of Sessions.”;

(d) after the entries relating to Section 377, the following shall be inserted, namely:-

1	2	3	4	5	6	7	8
"377 B	Punishment	May arrest without warrant	Warrant	Not bailable	Not compoundable	Imprisonment for life and with fine which may not be less than Rs. 500,000 or with both.	Court of Sessions.”.

STATEMENT OF OBJECTS AND REASONS

Pakistan ratified the United Nations' Convention on the Rights of the Child (UN CRC) in 1990, and is under obligation to implement its provisions by harmonizing national policies, legislations, programmes, plans of action with it and report progress to the UN Committee on the Rights of the Child, Geneva after every five years. To undertake this task, existing laws are required to be harmonized with the UN CRC to effectively initiate requisite actions for meeting the standards set forth under the UN CRC.

2. The provisions provided in our criminal law statutes fail to cover number of very serious offence against the person of a child like; child pornography, exposure to seduction, sexual abuse, cruelty to a child and trafficking in human beings within Pakistan. The amendments in the Pakistan Penal Code and Code of Criminal Procedure have been proposed while keeping in mind the international obligations and domestic realities. The Criminal Law (Amendment) Bill 2013 is therefore proposed to be promulgated as an effort to harmonize our laws with the provisions of the UN CRC.

3. The salient features of the proposed Act are:-

- (a) The minimum age of criminal responsibility has been raised from 7 years to 12 years, except terrorism cases.
- (b) It provides for the protection of children from corporal punishment.
- (c) The act of exposing children to obscene and sexually explicit material has been criminalised with punishment.
- (d) It criminalises child pornography and proposes punishments.
- (e) It provides for punishments for internal trafficking of human beings.

4. The safeguards provided in this act will go a long way in protection of all children. This Act not only complies with the constitutional provisions but also fulfils our obligations under different international conventions in general and the UN CRC in particular.

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(.....)
Minister for Law, Justice,
Parliamentary Affairs & Human Rights