

ORDINANCE NO. XXV OF 2019

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ORDINANCE

further to amend the Pakistan Penal Code

WHEREAS it is expedient further to amend the Pakistan Penal Code (Act XLV of 1860) for the purpose hereinafter appearing;

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

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

1. **Short title and commencement.**—(1) This Ordinance may be called the Pakistan Penal Code (Amendment) Ordinance, 2019.

(2) It shall come into force at once.

2. **Substitution of section 462-O, Act XLV of 1860.**—In the Pakistan Penal Code (Act XLV of 1860), for section 462-O, the following shall be substituted, namely:—

“462-O. Cognizance.—The offences punishable under this Chapter shall be cognizable but the police shall not take cognizance of an offence under this Chapter except where information of such offence is provided to the police in writing by a duly authorized officer (not below Grade 17) of the Government or by an officer of an equivalent grade of a Distribution Licensee, as the case may be.”

STATEMENT OF OBJECTS AND REASONS

Power Sector has been facing the situation whereby the recoveries affected by the distribution companies (DISCOs) from the consumers are insufficient and inadequate to meet the cost of generated electricity. As a result, the GoP has to provide subsidy, especially to those DISCOs where leakage, pilferage and theft is rampant. Primarily, this phenomenon emanates from fragile legal and enforcement structure. Resultantly, the conviction rate of such offences is in fraction.

2. The Criminal Procedure Code, offences are either cognizable by police (which means arrest can be made by police without warrant), or by Court (which means that a complaint has to be filed before the Court, which then decides whether or not to allow the police to investigate and arrest). This amendment was made through Criminal Law (Amendment) Ordinance, 2013 and then promulgated in 2014.

3. The law as it stood through the 2016 Act has an anomaly. Whereas, through an amendment to the Schedule of the Criminal Procedure Code, the offences relating to electricity were made cognizable by the police, but Section 462-O made them cognizable by the Court alone. Since the main act prevails over the schedules, the Courts had held that direct FIRs to the Police by the DISCOs (i.e., without first a complaint to the Court, which is the Session Court in this case), were void, and arrests made by the Police were unlawful.

4. Further, Power Division is of the view that if the police are given unfettered powers to take cognizance, it would simply create another excuse for the police to harass the consumers. There is, thus, an urgent need to rectify the present situation that the Power Division finds itself in. Hence, the enclosed draft amendment makes the offence cognizable by the police, but only if the 'information' in writing is provided by the Police by a Grade 17 officer of the Government or the DISCO.

M. Omar Ayub Khan
Minister for Energy
(Power Division)