

[AS PASSED BY THE MAJLIS-E-SHOORA (PARLIAMENT)]

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, 2023

(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:-

"(vi-a) "Child" means a person below the age of eighteen years;"

(vi-b) "Child sexual abuse content" 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:-

"(vii-a) "Complainant" means any person who makes complaints of any offence under this Act and 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 (xxvii), the following new paragraph shall be inserted:-

"(xxvii-a) "Sexually explicit conduct" means actual or simulated sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex; or

(a) bestiality; or

(b) masturbation; or

(c) sadistic or masochistic abuse; or

(d) lascivious exhibition of the anus, genitals, or pubic area of any person;" and

(iv) after paragraph (xxviii), the following new paragraph shall be inserted:-

"(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, for the expression "seven years or, with fine which may extend to five million rupees or with both", the expression "fourteen years and may extend up to twenty years and with fine which shall not be less than one million rupees", shall be substituted.

4. Insertion of new sections 22A, 22B and 22C, Act XL of 2016.- In 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 8, whoever is directly or indirectly involved in the use of an information system or other similar means for the purposes of the sexual exploitation of minors including child prostitution and child sex tourism by payment in money or in kind to the minor or any other person shall be punished with imprisonment of either description for a term which shall not be less than fourteen years and may extend up to twenty years and with fine which shall not be less than one million rupees.

22-C. 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 to commit sexual abuse of a minor or exploitation shall be punished with imprisonment of either description for a term which shall not be less than fourteen years and may extend up to twenty years and with fine which shall not be less than one million rupees."

5. Insertion of new section 24-A, Act XL of 2016.- In the Act XL of 2016, after section 23, the following new section 24-A, shall be inserted:-

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

(2) A minor through his guardian may apply to the Authority for removal, destruction of, or blocking access to such content or communication referred to in sub-section (1).

(3) The Authority, on receipt of application under sub-section (2), shall forthwith pass such orders as deemed appropriate in the circumstances including an order for removal, destruction, preventing transmission of or blocking access to such content and communication.

(4) The Authority shall, before passing an order under sub-section (3), seek report from investigation agency whether or not such content is required for investigation or prosecution purposes.

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

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 or 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 in-camera:

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 sub-section (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 sub-section (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. Amendment of section 43, Act XL of 2016.- In the Act XL of 2016, in section 43, in sub-section (2), after the number "22", the numbers "22A, 22B, 22C" shall be inserted."

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.