

[AS INTRODUCED IN THE SENATE]

A

BILL

further to amend the Pakistan Penal Code, 1860, the Code of Criminal Procedure, 1898 and the Qanoon-e-Shahadat Order, 1984

Whereas it is expedient further to amend the Pakistan Penal Code (XLV of 1860), the Code of Criminal Procedure, 1898 (V of 1898) and the Qanun-e-Shahadat Order, 1984 (X of 1984) for the purposes hereinafter appearing;

It is hereby enacted as follows: -

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

(2) It shall come into force at once.

2. Insertion of new section, Act XLV of 1860.- In the Pakistan Penal Code (XLV of 1860), hereinafter referred to as the Code, after section 218, the following new section shall be inserted, namely: -

"218A. Defective investigation.- Whoever being a public servant, entrusted with the investigation of a case, registered under section 376 of the Code, fails to carry out the investigation properly or diligently or fails to pursue the case in any court of law properly and in breach of his duties, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both."

3. Insertion of new section, Act XLV of 1860.- In the Code, after section 228, the following new section shall be inserted, namely: -

"228A. Disclosure of identity of the victim of Rape.- (1) Whoever prints or publishes the name or any matter which may make known the identity of any person against whom an offence under section 376 is alleged or found to have been committed (hereafter in this section referred to as the victim) shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine.

(2) Nothing in sub-section (1) extends to any printing or publication of the name or any matter which may make known the identity of the victim if such printing or publication is,-

- (a) by or under the order in writing of the officer-in-charge of the police station or the police officer making the investigation into such offence acting in good faith for the purposes of such investigation; or
- (b) by, or with the authorisation in writing of, the victim; or
- (c) where the victim is dead or minor or of unsound mind, by, or with the authorisation in writing of, the next-of-kin of the victim:

Provided that no such authorisation shall be given by the next-of-kin to anybody other than the chairman or the secretary, by whatever name called, of any recognised welfare institution or organisation.

Explanation.- For the purposes of this sub-section, "recognised welfare institution or organisation" means a social welfare institution or organisation recognised in this behalf by the Federal or Provincial Government.

(3) Whoever prints or publishes any matter in relation to any proceeding before a court with respect to an offence referred to in sub-section (1) without the previous permission of such court shall be punished with imprisonment of either description for a term which may extend to two years and shall also be liable to fine.

Explanation.-The printing or publication of the judgment of any High Court or the Supreme Court does not amount to an offence within the meaning of this section."

4. Amendment of section 376, Act XLV of 1860.- In the Code, in Chapter XVI-A, in section 376 after sub-section (2) the following new sub-section and Explanations shall be added namely: -

“(3) Whoever,-

- (a) being a police officer commits rape-
 - (i) within the limits of the police station to which he is appointed; or
 - (ii) in the premises of any station house whether or not situated in the police station to which he is appointed; or
 - (iii) on a woman in his custody or in the custody of a police officer subordinate to him; or
- (b) being a public servant, takes advantage of his official position and commits rape on a woman in his custody as such public servant or in the custody of a public servant subordinate to him; or
- (c) being on the management or on the staff of a jail, remand home or other place of custody established by or under any law for the time being in force or of a women's or children's institution takes advantage of his official position and commits rape on any inmate of such jail, remand home, place or institution; or
- (d) being on the management or on the staff of a hospital, takes advantage of his official position and commits rape on a woman in that hospital; or
- (e) commits rape on a woman knowing her to be pregnant; or
- (f) commits rape on a woman when she is under twelve years of age;

shall be punished with death or imprisonment for life and shall also be liable to fine.

Explanation I.- "women's or children's institution" means an institution, whether called an orphanage or a home for neglected women or children or a widows' home or by any other name, which is established and maintained for the reception and care of women or children.

Explanation II.- "hospital" means the precincts of the hospital and includes the precincts of any institution for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation.”.

5. Insertion of new section, Act V of 1898.- In the Code of Criminal Procedure, 1898 (V of 1898), hereinafter referred to as the said Code after section 53, the following new section shall be inserted, namely: -

“53A. Examination of person accused of rape by medical practitioner. – (1) When a person is arrested on a charge of committing an offence of rape or an attempt to commit rape and there are reasonable grounds for believing that an examination of this person will afford evidence as to the commission of such offence, it shall be lawful for a registered medical practitioner employed in a hospital run by the Government or by a local authority and in the absence of such a practitioner within the radius of sixteen kilometers from the place where the offence has been committed by any other registered medical practitioner, acting at the request of a police officer not below the rank of a sub-inspector, and for any person acting in good faith in his aid and under his direction, to make such an examination of the arrested person and to use such force as is reasonably necessary for that purpose.

(2) The registered medical practitioner conducting such examination shall, without delay, examine such person and prepare a report of his examination giving the following particulars, namely: -

- (a) the name and address of the accused and of the person by whom he was brought;
- (b) the age of the accused;

- (c) marks of injury, if any, on the person of the accused;
- (d) the description of material taken from the person of the accused for DNA profiling; and
- (e) other material particulars in reasonable detail.

(3) The report shall state precisely the reasons for each conclusion arrived at.

(4) The exact time of commencement and completion of the examination shall also be noted in the report.

(5) The registered medical practitioner shall, without delay, forward the report to the investigating officer, who shall forward it to the Magistrate through Public Prosecutor referred to in section 173 as part of the report referred to in that section.”.

6. Insertion of new section, Act V of 1898.- In the said Code, after section 164, the following new section shall be inserted, namely:-

“164A. Medical examination of the victim of rape. – (1) Where, during the stage when an offence of committing rape or attempt to commit rape is under investigation, it is proposed to get the person of the woman with whom rape is alleged or attempted to have been committed or attempted, examined by a medical expert, such examination shall be conducted by a registered medical practitioner employed in a hospital run by the Government or a local authority and in the absence of a such a practitioner, by any other registered medical practitioner, with the consent of such woman or of a person competent to give such consent on her behalf and such woman shall be sent to such registered medical practitioner within twenty-four hours from the time of receiving the information relating to the commission of such offence.

(2) The registered medical practitioner, to whom such woman is sent shall, without delay, examine her and prepare a report of his examination giving the following particulars, namely: -

- (a) the name and address of the woman and of the person by whom she was brought;
- (b) the age of the woman;
- (c) the description of material taken from the person of the woman for DNA profiling;
- (d) marks of injury, if any, on the person of the woman;
- (e) general mental condition of the woman; and
- (f) other material particulars in reasonable detail.

(3) The report shall state precisely the reasons for each conclusion arrived at.

(4) The report shall specifically record that the consent of the woman or of the person competent to give such consent on her behalf to such examination had been obtained.

(5) The exact time of commencement and completion of the examination shall also be noted in the report.

(6) The registered medical practitioner shall, without delay forward the report to the investigation officer who shall forward it to the Magistrate through Public Prosecutor referred to in section 173 as part of the report referred to in that section.

(7) Nothing in this section shall be construed as rendering lawful any examination without the consent of the woman or of any person competent to give such consent on her behalf."

- (ii) after section 228 in column 1 and entries relating thereto in columns 2 to 8, the following shall be inserted, namely: -

1	2	3	4	5	6	7	8
228A	Disclosure of identity of the victim of Rape	Ditto	Warrant	Ditto	Ditto	Imprisonment of either description for 3 years and fine.	Magistrate of the first class.

- (iii) after the existing entries relating to section 376 in columns 2 to 8, the following shall be added, namely: -

1	2	3	4	5	6	7	8
	Custodial Rape, etc.	Ditto	Ditto	Ditto	Ditto	Death or imprisonment for life and fine.	Ditto

10. Amendment of Article 21, Order X OF 1984.- In the Qanun-e-Shahadat Order (X OF 1984), hereinafter referred to as the said Order, in Article 21, illustration (j) shall be omitted.

11. Insertion of new Article, Order X OF 1984.- In the said Order, after Article 114, the following new Article shall be inserted, namely: -

“114A. Presumption as to absence of consent in certain prosecutions for rape.- In a prosecution for rape under sub-section (3) of section 376 of the Pakistan Penal Code (XLV of 1860) where sexual intercourse by the accused is proved and the question is whether it was without the consent of the woman alleged to have been raped and she states in her evidence before the Court that she did not consent, the Court shall presume that she did not consent.”.

12. Amendment of Article 151, Order X OF 1984.- In the said Order, the in Article 151, clause (4) shall be omitted.

STATEMENT OF OBJECTS AND REASONS

Rape is a heinous crime; an act of violence that ruins the lives of victims. In Pakistan, rape cases are reported and registered, however, the conviction rates of the accused are abysmally low. According to reply to Senate Starred Question No.62, asked in the House on 11th December 2013, in the last five years for instance, of the 103 reported rape cases registered in the Islamabad Capital Territory none of the culprits or accused have been convicted or brought to justice. This prevents the law from being a necessary deterrent against this criminal offence. This bill aims to address lacunas in the existing laws in order to improve conviction rates, and bring the culprits within the ambit of the law. Pakistan Penal and Criminal Codes and other existing laws must be strengthened in order to achieve the following objectives:

- (a) that the law is implemented in letter and spirit;
- (b) that the victims' of this heinous crime are provided justice;
and
- (c) that the criminals responsible for this offence are duly convicted.

SENATOR SYEDA SUGHRA IMAM
Member-in-charge