

[AS PASSED BY THE SENATE]

A

Bill

to establish an effective system of protection, relief and rehabilitation of women, children and any vulnerable person against domestic violence.

WHEREAS the Constitution of the Islamic Republic of Pakistan recognizes the fundamental rights of all individuals, their dignity and their right to be treated in accordance with the law;

WHEREAS it is essential to establish a protection system for effective service delivery to women, children and any vulnerable person to create an enabling environment to encourage and facilitate women, children, and any vulnerable persons to freely play their desired role in society, and to provide for ancillary matters;

AND WHEREAS it is expedient to institutionalize measures which provide necessary safeguards preventing and protecting all persons, including women, children, and any vulnerable persons, from domestic violence and for matters connected therewith or incidental thereto;

It is hereby enacted as follows:

**PART I
PRELIMINARY**

1. Short title, extent and commencement. - (1) This Act may be called the Domestic Violence (Prevention and Protection) Bill, 2021.

(2) It extends to the Islamabad Capital Territory.

(3) It shall come into force at once.

2. Definitions. - (1) In this Act, unless there is anything repugnant to the subject or context,-

(i) **"aggrieved person"** means any woman, child, any vulnerable person or any other person who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent;

(ii) **"child"** means any person under the age of eighteen years living in a domestic relationship with the respondent and includes any adopted, step or foster child;

(iii) **"Code"** means the Code of Criminal Procedure, 1898 (Act V of 1898);

- (iv) "**court**" means the court of the first class Magistrate and the judge shall have all the powers under the Code of Criminal Procedure including power to grant protection, award costs, compensation or damages as may be just and proper;
- (v) "**domestic relationship**" means a relationship between persons who live, or have at any point in time lived, together in a household and are either related by consanguinity, marriage, kinship, adoption, or are family members living together or for any other reason are temporarily or permanently residing in one place;
- (vi) "**domestic violence**" has the same meaning as assigned to it in section 3;
- (vii) "**household**" means a household where the aggrieved person lives or at any stage has lived in a domestic relationship either singly or along with the respondent includes such a household whether owned or rented either jointly by the aggrieved person and the respondent or owned and rented by either of them, any such household in respect of which either the aggrieved person or the respondent or both jointly or singly have any right, title, interest or equity and includes such a household which may belong to the joint family of which the respondent is a member, irrespective of the fact whether the respondent or the aggrieved person has right, title, interest in such a shared household;
- (viii) "**Government**" means the Federal Government;
- (ix) "**informer**" means a person who has credible information that an offence is being committed under this Act;
- (x) "**monetary relief**" means a monetary relief which a court may order under section 9;
- (xi) "**notification**" means a notification published in the Gazette of Pakistan;
- (xii) "**prescribed**" means prescribed by the rules made under this Act;
- (xiii) "**Protection Committee**" means a Committee constituted under section 15;
- (xiv) "**Protection Officer**" means an officer designated by the Ministry of Human Rights under section 19;

- (xv) "**Protection Order**" means an order granted in terms of section 8;
- (xvi) "**respondent**" means a person who is, or has been, in a domestic relationship with the aggrieved person and against whom relief has been sought under this Act;
- (xvii) "**residence order**" means an order granted in terms of section 9;
- (xviii) "**service provider**" means any such government facility or registered voluntary organization established for the protection of aggrieved person providing legal, medical, financial or any other assistance. These shall also include shelter homes; and
- (xix) "**vulnerable person**" means a person who is vulnerable due to old age, mental illness, or physical, learning, psychosocial or other disability, or for other special reason.

(2) Words and phrases not defined in this Act shall have the same meaning as assigned to them in the Pakistan Penal Code, 1860, (Act V of 1860) and the Code of Criminal Procedure, 1898 (Act XLV of 1898).

PART II DOMESTIC VIOLENCE

3. Domestic Violence.- Domestic Violence shall mean all acts of physical, emotional, psychological, sexual and economic abuse committed by a respondent against women, children, vulnerable persons, or any other person with whom the respondent is or has been in a domestic relationship that causes fear, physical or psychological harm to the aggrieved person.

Explanation I. – For the purposes of this section:-

- (a) "physical abuse" means all acts whereby physical harm is inflicted upon the vulnerable persons and includes all offences under chapters XVI, XVI A, XVII, XX, XX A of the Pakistan Penal Code (Act XLV of 1860) hereinafter referred to in this section as PPC.
- (b) "emotional, psychological and verbal abuse", is where the aggrieved individual suffers from a pattern of degrading or humiliating conduct of the respondent and includes but not limited to:-
 - (i) repeated exhibition of obsessive jealousy causing repeated invasion of the victim's privacy, liberty, integrity and security;
 - (ii) insults or ridicule directed at the aggrieved person;

- (iii) threats to cause physical pain to spouse or other members of shared household;
 - (iv) threats of divorce or second marriage on baseless accusation of insanity or infertility;
 - (v) bringing false allegation upon the character of a female member or any member of the shared household;
 - (vi) willful or negligent abandonment of the aggrieved person;
 - (vii) stalking
 - (viii) harassment or
 - (ix) compelling the wife to cohabit with anybody other than the husband
- (c) "sexual abuse" includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of the vulnerable person or any other person;
- (d) "economic abuse" includes intentional deprivation of economic or financial resources or prohibition or restriction to continue access to such resources to which aggrieved person is entitled to under any law or custom for the time being in force.

Explanation II – For the purposes of determining whether any act, omission, commission or conduct of the respondent constitutes "domestic violence" under this section, the overall facts and circumstances of the case shall be taken into consideration.

4. Punishment. – (1) If an offence falling under PPC is committed in a domestic relationship the offences shall be punishable as provided under the PPC.

(2) If the offence committed does not fall under the PPC, the act of domestic violence shall be punishable with simple imprisonment of a maximum period of three years and not less than six months depending on the gravity of the act of domestic violence committed, and a fine of one hundred-thousand Rupees and minimum of twenty-thousand Rupees shall also be paid as compensation to the aggrieved person.

(3) In default of payment of fine, the court may award simple imprisonment of three months.

(4) Whoever aids or abets the commission of an offence of domestic violence shall be punished with the same punishment provided for the offence.

PART III PROTECTION FROM DOMESTIC VIOLENCE

5. Petition to the Court. - (1) An aggrieved person or any other person authorized by the aggrieved person may present a petition to the Court within whose jurisdiction;

- (a) the aggrieved person resides or carries on business; or
- (b) the place where the respondent and aggrieved person last resided together.

(2) The court shall fix the first date of hearing, which shall not exceed seven days from the date of the receipt of the petition by the court.

(3) Upon receipt of the petition, the court shall, with or without issuing an interim order, issue a notice upon the person complained against and call upon him/her to show cause within seven days of receipt of notice as to why a protection order shall not be made against him/her for committing an act of domestic violence as alleged in the petition.

(4) The petition made under sub-section (1) shall be decided within a period of ninety days and any adjournment shall be granted for reasons to be recorded in writing by the Court.

6. Right to reside in a household. - (1) Notwithstanding anything contained in any other law for the time being in force, the aggrieved person, shall have the right to reside in the shared household, whether or not the aggrieved person has any right, title or beneficial interest in the same.

(2) The aggrieved person may choose to reside in the house, or in a shelter home arranged by any service provider.

7. Power to grant interim order. - (1) In any proceeding under this Act, the court may pass such interim order at any time and stage of the petition as it deems just and proper.

(2) If the court is satisfied that a petition *prima facie* discloses that the respondent has committed an act of domestic violence or that there is a likelihood that the respondent may commit an act of domestic violence, it may issue order on the basis of an affidavit of the aggrieved person or any other evidence or material, before the court as provided under sections 8, 9, and 10 against the respondent.

8. Protection orders and residence orders. - (1) The court on being satisfied that *prima facie* domestic violence has taken place or is likely to take place may pass a protection order in favour of the aggrieved person and direct the respondent,—

- (a) not to commit any further act of domestic violence;
- (b) not to have any communication in any form or manner including personal, oral or written, electronic or telephonic or cellular with the aggrieved person, with or without exceptions;
- (c) to stay away from the aggrieved person, with or without exceptions;
- (d) to stay at such distance from the aggrieved person as may, keeping in view the peculiar facts and circumstances of the case, as determined by the Court;
- (e) to wear an ankle or wrist bracelet GPS tracker for any act of grave violence or likely grave violence which may endanger the life, dignity or reputation of the aggrieved person; and
- (f) to move out of the house in case of an act of grave violence if the life, dignity or reputation of the aggrieved person is in danger.

(2) In addition to the order under sub-section (1), or otherwise, the court on being satisfied that domestic violence has taken place may pass an order:-

- (a) restraining the respondent from dispossessing or in any other manner disturbing the possession of the aggrieved person from the household; and
- (b) restraining the respondent or any of his/her relatives from entering the household.

(3) The court may pass any other direction which it may deem reasonable to protect and provide for the safety of the aggrieved person or any child of such aggrieved person.

(4) The court may require from the respondent to execute a bond, with or without sureties, for preventing the commission of domestic violence.

(5) While making an order under sub-sections (1), (2) or (3), the court may also pass an order directing the officer in charge of the nearest police station to give protection to the aggrieved person or to assist the aggrieved person or the person making an application on his or her behalf in the implementation of the order.

(6) While making an order under sub-section (2), the court may impose on the respondent obligations relating to the discharge of rent or other payments, having regards to the financial needs and resources of the parties.

(7) The court may direct the officer in charge of the police station in whose jurisdiction the court has been approached to assist in the implementation of the protection order.

(8) The court may direct the respondent to return to the possession of the aggrieved person any property, valuables or documents to which the aggrieved person is entitled.

(9) The court shall in all cases where it has passed any order under this section, order that a copy of such order, shall be given to the parties to the application, the officer in charge of the police station in the jurisdiction of which the court has been approached as well as to the service provider located within the local limits of the jurisdiction of the court:

9. Monetary relief.- (1) The court may, at any stage of the trial, may pass interim order directing the respondent to pay monetary relief to meet the expenses incurred and losses suffered by the aggrieved person and any child of the aggrieved person as a result of the domestic violence and such relief may include, but is not limited to—

- (a) compensation for suffering as a consequence of economic abuse to be determined by the court;
- (b) loss of earning;
- (c) medical expense;
- (d) the loss caused due to the destruction, damage or removal of any property from the control of the aggrieved person; and
- (e) the maintenance for the aggrieved person as well as children, if any, including an order under or in addition to an order of maintenance under any law for the time being in force.

(2) The respondent shall pay monetary relief granted to the aggrieved person within the period specified in the order made under sub-section (1).

(3) Upon failure on part of the respondent to make payment in terms of the order under sub-section (2), the court may direct an employer or debtor, of the respondent, to directly pay the aggrieved person or to deposit with the court a portion of the wages or salaries or debt due to or accrued to the credit of the respondent, which amount may be adjusted towards the monetary relief payable by the respondent.

10. Custody orders.- Notwithstanding anything in any law for the time being in force, the court may, at any stage of the petition for protection order or for any other relief under this Act, grant temporary custody of an aggrieved person to an appropriate person or authority.

Provided that if the aggrieved person is a child then an appropriate person or service provider shall be determined by the Court as per the Guardians and Wards Act 1890 (VIII of 1890);

Provided that if the aggrieved person is an adult custody shall be granted to a service provider or some other person to any person or service provider in accordance with the will of the aggrieved person.

11. Duration and alteration of interim, protection and residence orders.- (1) The interim order made under section 7, the protection order made under section 08 and the custody order under section 10 shall remain in force until the aggrieved person applies for discharge of such order.

(2) If the court on receipt of an application at any stage from the aggrieved person or the respondent is satisfied that there is a change in the circumstance requiring alteration, modification or recalling of any order made under this Act, it may, for reasons to be recorded in writing pass such order, as it may deem appropriate.

(3) The residence order shall remain in force till altered by the court.

(4) Nothing contained in sub-sections (1) and (2) shall prevent an aggrieved person from making a fresh application after the previous order has been discharged.

12. Penalty for breach of an interim or protection order by the respondent. - (1) A breach of protection order, or of the interim order or of the residence order, or of a custody order by the respondent shall be an offence and shall be punishable with imprisonment of one year and with fine of one hundred thousand Rupees which shall be paid to the aggrieved person.

(2) Notwithstanding anything contained in the Code, the offence under this section shall be cognizable, bailable and compoundable.

13. Appeal. - (1) Any person aggrieved by order of the court under Section 12 may file an appeal to the court of Sessions within thirty days of the passing of the order of sentence and the Court of Sessions shall decide the appeal within sixty days.

(2) Any person aggrieved by the final decision of the Court may, within ten days of the final Judgment or order of the Court prefer an appeal to the Court of Sessions.

14. Procedure. - (1) All proceedings under this Act shall be governed by the Code.

(2) Notwithstanding anything contained in sub-section (1) the Court may, for reasons to be recorded, dispense with any provision of the Code and follow such procedure as it may deem fit in the circumstances of the case.

PART IV PROTECTION COMMITTEE AND PROTECTION OFFICER

15. Protection Committee. - (1) The Ministry of Human Rights shall, by notification in the official Gazette, constitute a Protection Committee for the purposes of this Act within three months of the passage of the Act.

(2) A Protection Committee shall comprise of a representative of the Family Protection Shelter, a representative of the National Commission on the Status of Women, a medical doctor or psychologist or psycho-social worker, a law officer, and a police officer not below the rank of Inspector, preferably female, as may be prescribed by the rules and the Protection Officer who shall also act as the Secretary of the Protection Committee.

(3) One half of the total members of the Protection Committee shall constitute the quorum.

16. Duties and functions of Protection Committee. - The Protection Committee may:-

- (a) inform the aggrieved person of his/ her rights provided under this Act or any other law for the time being in force and the remedies and the help that may be provided;
- (b) assist the aggrieved person in obtaining any medical treatment necessitated due to the domestic violence;
- (c) if necessary, and with the consent of the aggrieved person, assist the aggrieved person in relocating to a safer place acceptable to the aggrieved person, which may include the house of any relative or family friend or other safe place;
- (d) assist the aggrieved person, by assigning the Protection Officer, in the preparation of and filing of any petition or report under this Act, the Code or any other law for the time being in force;
- (e) keep official record of the incidents of domestic violence in its area of jurisdiction;
- (f) maintain record of the names and contact details of the service provider from whom the aggrieved person may seek further help and assistance including shelter;
- (g) Perform such other duties that may be assigned to the Protection Committee under this Act or the rules made there under.

17. Powers, privileges and immunities of Protection Committee. - (1) The members of the Protection Committee shall be deemed to be public servant within the meaning of Section 21 of the Pakistan Penal Code (Act XLV of 1860).

(2) The Protection Committee shall be housed in Shaheed Benazir Bhutto Centre for Women under Ministry of Human Rights.

(3) The Ministry of Human Rights shall provide a Secretariat, under the Shaheed Benazir Bhutto Centre for Women, as well as necessary staff supported by a budget required for the establishment and functioning of the Secretariat.

18. Delegation of functions and powers. - The Protection Committee may delegate any of its functions and powers to any of its member or members.

19. Protection Officer. - (1) The Ministry of Human Rights shall, by notification in the official Gazette, designate a team of Protection Officers, one male and one female for the purposes of this Act. Protection Officers are to be appointed in the prescribed manner within one month of the framing of the rules pursuant to Section 24 of this Act.

(2) The Secretariat of the Protection Committee shall provide support to the Protection Officer in exercising its functions.

(3) The Protection Officers shall not be a part of the investigation process but shall assist the aggrieved person in accordance with provisions of the Act.

20. Duties of Protection Officer. - It shall be the duty of the Protection Officer;

- (a) to file an application for obtaining a protection order under section 9, if so desired by the aggrieved person.
- (b) to make a domestic incident report to the Protection Committee, in such form and in such manner as may be prescribed, upon receipt of a complaint of domestic violence and forward copies thereof to the National Commission for the Status of Women;
- (c) to make an application in such form and in such manner as may be prescribed to the court, if the aggrieved person so desires, claiming relief for issuance of a protection order;
- (d) to ensure that the aggrieved person is provided legal aid;
- (e) to maintain a list of all service providers providing legal aid or counseling, shelter homes and medical facilities in a local area within the jurisdiction of the court;
- (f) to make available a safe place of residence, if the aggrieved person so requires and forward a copy of his report of having lodged the aggrieved person in a shelter home to the Protection Committee;
- (g) to get the aggrieved person medically examined, if the person has sustained bodily injuries and forward a copy of the medical report to the Protection Committee;

- (h) to ensure that the order for monetary relief under section 10 is complied with and executed in accordance with the procedure prescribed; and
- (i) to perform such other duties as may be assigned to him.

21. Service Providers. - (1) In any proceeding under this Act, the court or the Protection Committee may engage the services of a service provider.

(2) Service provider shall have all the privileges and immunities enjoyed by the Protection Committee.

- (3) A service provider shall have the power to;-
 - (a) record the domestic incident in a prescribed form if the aggrieved person so desires, and forward a copy thereof to the Protection Officer having jurisdiction in the area where the domestic violence took place;
 - (b) get the aggrieved person medically examined and forward a copy of the medical report to the Protection Officer within the local limits of which the domestic violence took place;
 - (c) ensure that the aggrieved person is provided shelter in a safe place of residence, if he or she so requires and forward a report of the lodging of the aggrieved person in a safe place of residence to the Protection Committee within the local limits of the place where the domestic violence took place; and
 - (d) provide the aggrieved person with any aid or assistance if he or she may so require.

22. Protection of actions taken in good faith. - No suit, prosecution or other legal proceedings shall lie against any Protection Committee, Protection Officer or service provider for anything which is done in good faith or purported to be done under this Act.

PART V MISCELLANEOUS

23. Act not in derogation of any other law. - The provisions of this Act shall be in addition to, and not in derogation of, any other law for the time being in force.

24. Power to make Rules.- The Federal Government may make Rules for carrying out the purposes of this Act, such Rules shall be notified in the Official Gazette.

25. Removal of Difficulties.- If any difficulty arises in implementation of the provisions of this Act, the Federal Government may, on recommendation of the Minister of Human Rights or otherwise, give appropriate directions to remove such difficulty. Such directions shall be Notified.

STATEMENT OF OBJECTS AND REASONS

The Constitution of Pakistan, through the Fundamental Rights enshrined in it, mandates the state of Pakistan to protect its citizens from unlawful deprivation of life and liberty and holds inviolable the dignity of every person. It also declares all citizens to be equal before the law and prohibits any discrimination based on sex. These rights to life, dignity and non-discrimination are violated through acts of domestic violence, which are systematic and widespread and occur regardless of age or socio-economic status. Besides, under UN HR Conventions ratified by the Government of Pakistan particularly Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) states are obligated to take legislative measures for protection of women in domestic life. Through this Act a legal an institutional framework has been proposed for the territorial jurisdiction of Islamabad Capital Territory so that individuals who become victims of domestic violence are provided legal protection and relief and the perpetrators of this offence are punished. Such legislation has been made at all provincial levels.

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