

[AS PASSED BY THE SENATE]

A

BILL

to provide for the protection and care of children in the Islamabad Capital Territory

WHEREAS it is expedient to provide for protection and care of children in Islamabad Capital Territory from all forms of physical or mental violence, injury, neglect, maltreatment, exploitation, abuse and matters ancillary thereto;

It is hereby enacted as follows:-

1. Short title; extent and commencement.- (1) This Act may be called the Islamabad Capital Territory Child Protection Act, 2018.

(2) It extends to the whole of the Islamabad Capital Territory.

(3) It shall come into force at once.

2. Definitions.- (1) In this Act, unless the context otherwise requires,-

(a) "alternative care" includes family care, placement in an institution established or regulated by the government or any other arrangement in the best interest of a child, as directed by the Court;

(b) "Board" means the Child Protection Advisory Board established under section 6;

(c) "caregiver" includes government institutions and other organizations including non-governmental organizations, providing necessary age and gender-appropriate services for admission, care, protection and rehabilitation of children in need of care, recognized under this Act or the rules made thereunder;

(d) "child" means a person who has not attained the age of eighteen years;

(e) "child abuse" means physical or mental violence, injury, exploitation, neglect or negligent treatment, maltreatment or sexual abuse;

(f) "child exploitation" includes all types of exploitation prejudicial to the protection and care of a child including exploitation in terrorist activities, medical or scientific experimentation, sports or performing arts etc;

(g) "Child Protection Institution" means the Child Protection Institution established under sub-section (1) of section 10;

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- (h) "Child Protection Officer" means a Child Protection Officer appointed under sub-section (2) of section 10;
- (i) "child care plan" means a plan containing details of the services to be provided to the child, based on a comprehensive assessment of the child and his family under section 14;
- (j) "comprehensive assessment" means an analysis undertaken by a Child Protection Officer under section 13, to determine as to whether a child requires care in accordance with the provisions of this Act;
- (k) "Court" means the Family Court established under the Family Courts Act, 1964 (XXXV of 1964);
- (l) "Government" means the Federal Government;
- (m) "guardian" means a person, other than a biological parent who has parental responsibility for a child, which may include a guardian appointed under the Guardians and Wards Act, 1890 (VIII of 1890);
- (n) "initial assessment" means a preliminary analysis, under section 12, of whether a child requires protection;
- (o) "maltreatment" means cruel treatment meted out to a child resulting from ignorance or wilful neglect;
- (p) "mental violence" means subjecting or exposing a child to scaring, terrorizing and threatening behavior that may result in psychological trauma, including anxiety, chronic depression, or any other treatment which may diminish the sense of identity, dignity and self-respect;
- (q) "neglect" means failure on the part of natural or legal guardian or institution responsible for care of the child, to provide the child with physical, psychological and educational needs;
- (r) "physical violence" includes corporal punishment and all other forms of torture, cruel, inhuman or degrading treatment or punishment;
- (s) "prescribed" means prescribed by rules made under this Act;
- (t) "sexual abuse and exploitation" includes the inducement or coercion of a child to engage in any unlawful sexual activity including use of children in audio or visual images for child pornography, child prostitution, trafficking within and between countries for sexual exploitation and sale of children for sexual purposes;

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- (u) "supervision order" means the lawful supervision of a child by a Child Protection Officer for the purpose of ensuring that the child is protected in accordance with the provisions of this Act; and
- (v) "unattended child" means a child with unknown parentage, orphan, abandoned, neglected and destitute, homeless or not in the legal custody of anyone.

(2) All other words and expressions used but not defined in this Act shall have the same meaning as assigned to them in respective laws for the time being in force.

3. Factors for determining the best interest of a child.- The factors to be taken into account while determining the best interest of a child shall include-

- (a) child protection, care, well-being and safety of a child;
- (b) physical and emotional needs of a child;
- (c) religious and cultural views of a child;
- (d) level of education and educational requirements of a child;
- (e) considering family as a preferred environment for the care and upbringing of a child; and
- (f) effect on a child of delay in making a decision.

4. Restriction on parental custody.- The Court may restrict the exercise of parental custody and control of a child when,-

- (a) a child is at risk of significant harm and is in need of care;
- (b) a child is subject of a child care plan; or
- (c) a child is subject of emergency powers exercised by a Child Protection Officer under this Act.

5. Child in need of care.- A child in need of protection and care shall include a child who-

- (a) has been subjected to or is under serious threat of being subjected to child abuse or child exploitation while in the care of parents, legal guardian or any other person who has custody of the child in any manner; or
- (b) is unattended, victim of an offence, child, domestic and such other workers, found begging, imprisoned with the mother or lives in an immoral environment.

6. Establishment of Child Protection Advisory Board.- As soon as may be after the commencement of this Act, but not later than three months, the Government shall establish an Advisory Board to be known as the Islamabad Capital Territory Child Protection Advisory Board.

7. Composition of the Board.- (1) The Board shall consist of the following, namely:-

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| i. | Minister-in-Charge | Patron |
| ii. | Secretary of the Division to which subject of child protection stands allocated. | Chairperson |
| iii. | Secretary or his nominee not below the rank of BPS-20 of the Division to which subject of development and rehabilitation of children stands allocated. | Ex-officio Member |
| iv. | Secretary, Law and Justice Division or his nominee not below the rank of BPS-20 Secretary | Ex-officio Member |
| v. | Secretary, Interior Division or his nominee not below the ranks of BPS-20 | Ex-officio Member |
| vi. | Inspector General of Police, Islamabad or his nominee not below the rank of SSP. | Ex-officio Member |
| vii. | A representative from National Commission on the Status of Women. | Ex-officio Member |
| viii. | A representative from National Commission on Human Rights. | Ex-officio Member |
| ix. | Mayor, Metropolitan Corporation, ICT. | Ex-officio Member |
| x. | One Member of National Assembly, elected from the Islamabad Capital Territory, to be nominated by the Prime Minister. | Members |
| xi. | A total of four persons from the following categories: | Members |
| | (a) one person from a non-governmental organization; | |
| | (b) one expert of sociology, psychology or related social sciences; | |
| | (c) one member of Islamabad High Court Bar Association; and | |
| | (d) one person representing minorities. | |
| xii. | Director General appointed under section 9. | Secretary/Members |

(2) The members mentioned under clause (xi) of sub-section (1) shall be appointed by the Minister-in-charge from among persons having experience in the affairs of children and at least two of them shall be women. Each member shall be appointed for a term of three years, extendable once for another similar term.

(3) The allowances payable and terms and conditions as applicable to members, other than ex-officio members, shall be such as may be prescribed;

(4) Five members, including two ex-officio members, shall constitute quorum for meeting of the Board.

(5) Subject to quorum, decision taken by majority of the members present and voting shall be construed as decision of the Board.

(6) The Board shall hold at least two meetings in a calendar year.

However, the Chairperson may call additional meetings, if and when required.

8. Functions and powers of the Board.- (1) Subject to the provisions of this Act, the Board shall exercise such powers and take such measures as may be necessary for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, the Board shall-

- (a) advise the Government on matters relating to policy, legislation and implementation of rights of child to protection and care contained in domestic laws and international obligations;
- (b) ensure effective coordination and implementation of child protection and care mechanism;
- (c) maintain a child protection and care management information system and sponsor research to generate information, analysis and studies on child protection and care issues in Pakistan;
- (d) recognize, regulate and inspect all caregiver organizations as to whether these are functioning in accordance with the provisions of this Act and the rules made there under; and
- (e) submit annual report to the Government at the end of each financial year.

(3) The Board shall perform such other functions and exercise such other powers as may be necessary for carrying out the purposes of this Act and to implement the policy directives issued by the Government from time to time for protection and care of children.

(4) The Board may constitute such committees as it deems necessary and delegate any of its powers and functions or assign duties in connection to its powers and functions as it may deem necessary for giving effect to the provisions of this Act.

9. Functions and appointment of Director General.- (1) Subject to the general control and superintendence of the Board, the Director General shall perform such functions and duties and exercise such power as may be necessary for carrying out the purposes of this Act.

(2) The Prime Minister, or a person authorized by him in this behalf, shall appoint a Director General for carrying out the purposes of this Act on the terms and conditions as may be prescribed.

(3) The Director General shall perform supervisory functions of the Child Protection Institutions in the prescribed manner.

(4) The Director General shall cause to prepare an annual report at the end of each financial year.

10. Establishment of Child Protection Institutions.- (1) The Minister-in-charge shall establish one or more Child Protection Institutions, as soon as may be practicable, after the commencement of this Act.

(2) There shall be appointed an incharge of each Child Protection Institution and as many Child Protection Officers and support staff as required to carry out the purposes of this Act, under such terms and conditions as may be prescribed.

11. Functions of Child Protection Institutions.- A Child Protection Institution shall perform the following functions, namely:-

- (a) receive reports of children who are in need of protection and care;
- (b) assess or based on reports whether a child requires care under the provisions of this Act;
- (c) require services from the relevant department or institution for protection and care of a child;
- (d) maintain record of case management reports of a child in need of care;
- (e) collect, maintain and update child protection and care case management data provided by Child Protection Officers;
- (f) maintain and update data on child abusers and persons convicted of offences against children; and
- (g) perform any other act ancillary to protection and care of child under this Act.

12. Initial assessment.- (1) Whenever a Child Protection Officer receives a report that a child is in need of protection and care, he shall carry out, as soon as possible, an initial assessment as prescribed to determine whether the child requires care in accordance with the provisions of this Act.

(2) During initial assessment, the Child Protection Officer may request that the child and his parents, legal guardian or any other person responsible for the care of the child, if any, attend at such premises as may be specified by the Child Protection Officer, as may be prescribed.

13. Comprehensive assessment.- (1) Where initial assessment conducted in accordance with section 12, or emergency powers exercised by a child Protection officer under section 18, indicate that the child requires care, the child Protection officer shall undertake a comprehensive assessment of the child and his family environment, as may be Prescribed.

(2) The comprehensive assessment shall be completed within thirty days of the completion of the initial assessment or exercise of emergency powers.

(3) No comprehensive assessment shall be considered complete unless the child Protection officer has met with and heard views of the child where the child is of sufficient age and level of maturity.

14. Child care plan.- (1) On completion of the comprehensive assessment if a child is found in need of care, the child Protection Officer shall develop a child care plan, as may be prescribed.

(2) If a Child Protection Officer exercises emergency powers under section 18, the Child Protection Officer shall develop an interim child care plan.

(3) The interim child care plan shall include a formal referral to an appropriate form of emergency alternative care.

15. Consent of the parents or guardian.- Subject to section 16, the Child Protection Officer shall seek the consent of the parent, legal guardian or current carer of the child, if any, on the action to be taken and the services to be offered to the child. Such consent, under child care plan, shall be recorded in writing in the form of an agreement, as may be prescribed.

16. Care and placement of a child.- Notwithstanding the provision of section 15, where the child care plan specifies that the child will be at risk of significant harm, abuse or exploitation if he remains in care of his parent, legal guardian or other current carer, if any, an application shall be made immediately to the Court for the care and placement of the child in an appropriate form of alternative care.

17. Application to the Court and its procedure.- (1) Subject to the provisions of the Guardians and Wards Act, 1890 (VIII of 1890), any application to the Court for care and placement of a child or to implement child care plan under this Act shall be made by the Child Protection Officer.

- (2) Before making any order the Court shall-
- (a) order parents, legal guardian or current carer, if any, of the child to make representations to the Court;
 - (b) consider the reports of and take evidence from the child Protection Officer and any other relevant parties to the proceedings;
 - (c) consider the Child Care Plan which must be filed as part of the application; and
 - (d) seek views of the child where the child is of sufficient age and level of maturity.

(3) Upon the application under sub-section (1), the Court may make such order as it deems necessary to ensure that the child is provided with appropriate care or alternative care services, as the case may be:

Provided that the Court shall specify the length of time for which the care and placement order is applicable.

18. Emergency power.- (1) Where Child Protection Officer has reasonable cause to believe that a child is in need of care within the meaning of section 5, he may take the unattended child into care or remove the child from the custody of his parents, legal guardian or other current carer as the case may be.

(2) Where care of an unattended child or removal of a child takes place under sub-section (1), the Child Protection Officer shall immediately inform parents, legal guardian or current carer, if any, of the child for reasons of taking the child into care and further steps to be taken.

(3) When an unattended child has been taken into care or a child has been removed from the custody of his parents, guardian or any other person for care in accordance with sub-section (1), the Child Protection Officer shall,-

- (a) place the child immediately with a caregiver for interim care;
- (b) apply to the Court within twenty-four hours for a formal Emergency Protection order.

(4) Pending the determination of an application for an Emergency Protection Order, the Court shall not return a child to his home prior to the completion of an initial assessment by the Child Protection Officer.

(5) Notwithstanding anything contained in sub-section (1) to (4), a child shall not be removed from his family, for a period exceeding three days, except through an interim order of the Court under exceptional circumstances to be recorded in writing.

19. Provisions in respect of a child who leaves an alternative care.- (1) If any child leaves an alternative care provided under the provisions of this Act without permission of the caregiver, the person designated to provide such care shall immediately report the matter to the local police and the Child Protection Officer.

(2) No child shall be returned to the same alternate care for placement without,-

- (a) an investigation by the Child Protection Officer to determine the reasons for such leaving;
- (b) interviewing the child by the Child Protection Officer in the absence of any carer or staff from the said alternative care; and
- (c) the Court being satisfied that it is in the best interests of the child to send him to the same or any other alternative care.

20. Care of girl child.- Under no circumstances a girl-child shall be taken into care or remain under the care of a male child protection officer or a male caregiver.

21. Seek and Find Order.- Where a child is the subject of a Care and Placement Order under the provisions of this Act, and the child cannot be found, the Child Protection Officer may make an application to the Court for the production of the child before the Court.

22. Interim orders.- (1) In any proceedings to be determined by the Court under this Act, the Court may make an interim order with respect to the child concerned.

(2) Where the Court makes an interim order, it may give such directions, if any, as to the services or placement that the child shall receive, pending final disposal of the application.

23. Appeal.- Any party to the proceedings may prefer an appeal against an order, including an interim order, passed by the Court, within a period of thirty days before the District Judge.

24. Review.- Where a court order is in force, any party may apply to the Court for review of the order within a period of fifteen days of passing of such order.

25. Registration of an unattended child.- (1) Every unattended child shall be registered in accordance with the provisions of the National Database and Registration Authority Ordinance, 2000 (VIII of 2000), or any other law for the time being in force.

(2) For the purposes of registration, every Child protection Institution and caregiver established or recognized under this Act shall be registered with the National Database and Registration Authority, or any other relevant authority for the time being in force.

(3) The In-charge of a Child protection Institution or caregiver shall, for purposes of registration as provided in sub-sections (1) and (2), designate a guardian for the child. The name, computerized National Identity card Number and designation with specimen signature of the guardian shall be sent to National Database and Registration Authority, or any other relevant authority and the same guardian shall be considered as head for issuance of child registration certificate to unattended child.

(4) The guardian designated under sub-section (3) shall submit all record, duly attested, held by child protection Institution or caregiver to National Database and Registration Authority, or any other relevant authority, when the child was first registered with the same.

26. Child Protection and Care Fund.- (1) The Government shall, as soon as may be after the commencement of this Act, by notification in the Official Gazette, establish a child protection and care Fund for the purposes of this Act.

(2) There shall also be credited to the Child protection and Care Fund such other sums as may be received by way of donation, contribution, assistance or otherwise from any individual, body corporate, financial institution and other organizations.

(3) The Child Protection and Care Fund shall be utilized for the child protection and care of un-attended child in such manners as may be prescribed.

27. Reports to be treated as confidential.- Any report of the Child Protection Officer shall be treated as confidential. However, the report shall be made available to the child, his parents, legal guardian or other carer, if any.

28. Prohibition of publication of names, etc., of child involved in any proceeding under this Act.- (1) No report of a child made under the provisions of this Act shall be disclosed in media which leads to the identification of the child, nor shall any picture of such child be published, save that, for reasons to be recorded in writing, the Court may permit such disclosure, if in opinion of the Court such disclosure is in the best interests of the child.

(2) Any person who contravenes the provisions of sub-section (1) shall be punishable by the Court with fine which may extend to fifty thousand rupees.

29. Officers appointed under this Act to be public servants.- The Child Protection Officers and other officers appointed in accordance with the relevant provisions of this Act shall be deemed to be public servants within the meaning of section 21 of the Pakistan Penal Code, 1860 (Act No. XLV of 1860).

30. Power to make rules.- The Minister-in-charge may, by notification in the official Gazette, make rules for carrying out the purposes of this Act.

31. Act to override other laws.- The provisions of this Act shall have overriding effect notwithstanding anything contained in any other law for the time being in force.

STATEMENT OF OBJECTS AND REASONS

Article 35 of the Constitution of Islamic Republic of Pakistan provides that the State shall protect the child. Article 25 (3) also empowers the State to make special provisions for protection of children. Furthermore, Pakistan is also signatory to the UN Convention on the Rights of Child and is under obligation to take special measures for the protection and care of children. The subject of "Minors" has been devolved upon the Provinces under the Constitution (Eighteenth Amendment) Act, 2010. The Provinces have their respective child protections laws whereas Islamabad Capital territory requires separate legislation for the protection of children.

2. The Islamabad Capital Territory Child Protection Bill, 2017 provides for the protection and care of children from violence, abuse, exploitation and neglect in compliance with Constitutional provisions and international obligations of the Islamic Republic of Pakistan.

3. The incumbent Government is committed to performing its constitutional as well as international obligations of the Islamic Republic of Pakistan towards the protection and care of children. Therefore, the Islamabad Capital Territory Child Protection Bill, 2017 has been drafted in compliance with Constitutional provisions and the policy of the Government to protect children from violence, abuse, exploitation and neglect. The safeguards provided under this Bill will go a long way to protect children in the Islamabad Capital Territory.

4. The Bill seeks to achieve the aforesaid purpose.