

[AS PASSED BY THE SENATE]

A

Bill

to amend the Islamabad Capital Territory Prohibition of Corporal Punishment Act, 2021

WHEREAS it is expedient to amend the Islamabad Capital Territory Prohibition of Corporal Punishment Act, 2021 (XLIX of 2021), for the purposes hereinafter appearing;

It is hereby enacted as follows:-

1. Short title and commencement. (1) This Act may be called the Islamabad Capital Territory Prohibition of Corporal Punishment (Amendment) Act, 2022.

(2) It shall come into force at once.

2. Amendment of Preamble, Act XLIX of 2022.- In the Islamabad Capital Territory Prohibition of Corporal Punishment Act, 2021 (XLIX of 2021), hereinafter referred to as the said Act, in the Preamble, in the second recital,-

(a) before the words "both public and private", wherever occurring, the words "in each case" shall be inserted; and

(b) after the words "foster care", the words and comma "institutions, and" shall be inserted.

3. Amendment of section 2, Act XLIX of 2022.- In the said Act, in section 2,-

(a) in sub-section (1),-

(i) after clause (b), the following new clause (ba) shall be inserted, namely:-

"(ba) "Competent Authority" means any of the committees notified in terms of section 5;

(ii) for clause (c) , the following shall be substituted, namely:-

“(c) **“corporal punishment”** means any punishment in which physical force is used and intended to cause some degree of pain or discomfort, however light it may be, which may involve hitting ("smacking", "slapping",,, "spanking") a child, with the hand or with an implement (a whip, stick, belt, shoe, wooden spoon, etc.) including kicking, shaking or throwing a child, scratching, pinching, biting, pulling hair or boxing ears, forcing a child to stay in uncomfortable positions, burning, scalding or electrocuting a child, causing a child to forcibly ingest any substance, or washing a child's mouth out with soap, along with any punishment involving coercive or threatening conduct, such punishments to include but not be limited to:

(i) "assault" as defined in section 351 of the Pakistan Penal Code (Act, XLX of 1860) hereinafter referred to in this section as "the said Code";

(ii) "hurt" as defined in section 332 of the said Code;

(iii) "criminal force" as defined in section 350 of the said Code; and

(iv) other non-physical forms of punishment which are cruel or which threaten or scare a child;"

(iii) for clause (d) the following shall be substituted, namely:-

“(d) **“educational institution”** means any institution where any kind of education is imparted in a formal or non-formal way on a full time or part time basis, including schools, seminaries, deeni madaris or boarding houses, in each case both public or private, registered or unregistered;" and

(b) in sub-section (2), after the word "defined", the word "'herein" shall be inserted.

4. Amendment of section 3, Act XLIX of 2022.- In the said Act, in section 3,-

- (a) in sub-section (1), the words "or any other humiliating or degrading treatment" shall be omitted;
- (b) for sub-sections (2) and (3), the following shall be substituted, namely:-

"(2) Notwithstanding anything contained in section 89 of the Pakistan Penal Code, 1860 and any other law, rule or regulation for the time being in force, corporal punishment of children is prohibited in all its forms, at the work place, in private and public educational institutions, including formal, non-formal, and religious, in care institutions including foster care institutions and rehabilitation centers, and in any other alternative care settings, in each case both public and private, and in the Juvenile Justice System.

(3) Disciplinary measures concerning the child may only be taken in accordance with the child's dignity, and under no circumstances shall the infliction of any kind of corporal punishment on a child be allowed."

5. Amendment of section 4, Act XLIX of 2022. - In the said Act, in section 4,-

- (a) in sub-section (1), for the word "said" the word "related" shall be substituted and for the words "other enactments", the words "in any other applicable law" shall be substituted;
- (b) in sub-section (2),-
 - (i) for the phrase "The following minor and major penalties shall be in addition to other enactment, who violate the provisions of section 3 of this Act in educational, care institutions, and in

other alternative care setting:-" the phrase "Whoever violates the provisions of section 3 in any educational institution, care institution, work place or in any other similar setting shall also be liable to the following minor and major penalties in addition to those referred to in sub-section (1):", shall be substituted;

(ii) in clause (a),-

(a) in sub-clause (ii), after the semi-colon ";" appearing at the end, the word "and" shall be inserted;

(b) in sub-clause (iii), for the semi-colon and word ";" and" appearing at the end, a full stop "." shall be substituted; and

(c) sub-clause (iv) shall be omitted; and

(c) sub-sections (3) and (4) shall be omitted.

6. Insertion of new sections 4A, 4B and 4C, Act XL LX of 2022. In the said Act, after section 4, amended as aforesaid, the following new sections 4A, 4B and 4C shall be inserted, namely:-

"4A. Competent Authority.- (1) The Competent Authority to receive complaints, conduct inquiry and fix penalties in terms of sub-section (2) of section 4 shall be:-

(i) in case of a public sector educational institution, a Committee notified by the Ministry of Federal Education and Professional Training;

(ii) in case of a religious seminary or a deeni madrasa, a Committee notified by the Wafaq-ul Madaris; and

- (iii) in all other cases, a Committee notified by the Ministry of Human Rights.

(2) Each Committee shall be notified as aforesaid within thirty days of the enactment of this Act and shall consist of three members of whom at least one member shall be a woman. A Chairperson shall be designated from amongst the Committee members.

4B. Procedure for complaint.- (1) A complaint under this Act may be filed with the Competent Authority in writing by the child on whom corporal punishment is inflicted or the parent of such child or such child's next of kin.

(2) The Competent Authority shall decide the complaint within thirty days of its receipt.

(3) For this purpose, the Competent Authority shall:-

- (a) within three days of receipt of a written complaint, communicate to the accused the charges and statement of allegations leveled against him, the formal written receipt of which shall be given;
- (b) require the accused within seven days from the day the charge is communicated to him to submit a written defense; and
- (c) enquire into the charge and may examine such oral or documentary evidence in support of the charge or in defense of the accused as the Competent Authority may consider necessary and each party shall be entitled to cross-examine the witnesses against him;

Provided that if the accused fails to submit a written defense without reasonable cause, the Competent Authority shall proceed ex-parte.

(4) Subject to the provisions of this Act and any rules made thereunder the Competent Authority shall have power to regulate its own procedure for conducting inquiry and for fixing the place and time of its sitting.

(5) The Competent Authority shall give its decision in writing by recording reasons thereof.

(6) The Competent Authority shall have power of a civil court under the Code of Civil Procedure, 1908 (V of 1908):-

- (a) to summon and enforce attendance of any person and examine him on oath;
- (b) to require the discovery and production of any document;
- (c) to receive evidence on affidavits; and
- (d) to record evidence.

(7) The Competent Authority shall have the power to inquire into the matters of corporal punishment under this Act, to get any party involved medically examined by an authorized doctor, if necessary, and may impose appropriate penalty against the accused within the meaning of sub-section (2) of section 4.

4C. Appeal against the decision of Competent Authority.- (1) Any person aggrieved by a decision of the Competent Authority may, within thirty days of communication thereof, appeal to the Federal Ombudsman holding office under the Office of Wafaqi Mohtasib (Ombudsman) Order, 1983.

(2) The appeal filed under sub-section (1) shall be decided within thirty days.

(3) Any person aggrieved by a decision of the Federal Ombudsman under sub-section (2), may, within thirty days of decision, make a representation to the President of Pakistan who may pass such order thereon as he may deem fit."

7. Substitution of section 5, Act XLIX of 2022.- In the said Act, for sections 5, the following shall be substituted, namely:-

"5. Cognizance of Offence.- In terms of sub-section (1) of section 4, cognizance of an offence under this Act shall be taken by a court of competent jurisdiction on the complaint of a child on whom corporal punishment is inflicted or the parent of such child or such child's next of kin."

8. Substitution of section 6, Act XLIX of 2022.- In the said Act, for section 6, the following shall be substituted, namely:-

"6. Enforcement of the provisions of this Act.- The Ministry of Human Rights shall devise a comprehensive system for the enforcement and monitoring of this Act and develop a Code of Conduct for prohibition of corporal punishment as contemplated by this Act, and shall make efforts to create the requisite deterrence and awareness amongst the stakeholders."

9. Amendment of section 8, Act XLIX of 2022.- In the said Act, in section 8, sub-section (2) shall be omitted.

STATEMENT OF OBJECTS AND REASONS

The Islamabad Capital Territory Prohibition of Corporal Punishment Act, 2021, is aimed at debarring inflicting of corporal punishment on children by declaring it as a crime. In the light of the Constitutional guarantee of inviolability of human dignity, the definition of corporal punishment needs to be revised to bring in more clarity and enhance the scope of corporal punishment as well as the settings that may give rise to it, together with removing some of the vagueness and ambiguities contained therein. Furthermore, a comprehensive mechanism for grievance redressal needs to be provided for effective implementation with a view to upholding the entitlement of all concerned to a fair trial and due process, as also guaranteed by the Constitution of Pakistan.

2. The Bill aims to achieve the abovementioned objectives.

**SENATOR SAADIA ABBASI
MEMBER-IN-CHARGE**