

~~TO BE~~ INTRODUCED IN THE SENATE]

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BILL

*Further to amend the Pakistan Penal Code, 1860 and the Code of Criminal
Procedure, 1898*

WHEREAS Article 14 of the Constitution of the Islamic Republic of Pakistan guarantees the inviolability of human dignity, which dignity does not cease upon the death of a person;

WHEREAS the detention of a dead body as leverage for the recovery of money constitutes a grave violation of human dignity and causes immense psychological harm to bereaved families;

AND WHEREAS Islam and other religions prevailing in Pakistan require timely burial of the deceased without unnecessary delay;

It is hereby enacted as follows:—

1. Short title, extent and commencement. — (1) This Act may be called the Criminal Laws (Amendment) Act, 2026.

(2) It shall come into force at once.

2. Insertion of new section 338-CA in Chapter XVI of Act XLV of 1860.— In the Pakistan Penal Code, 1860 (Act XLV of 1860), hereinafter referred to as the said Code, in Chapter XVI (Of Offences Affecting the Human Body), after Section 338-C, the following new Section shall be inserted, namely:—

“338-CA. Wrongful Detention of Dead Body.—

(1) Whoever, being in charge of or employed at any hospital, clinic, nursing home, or any other medical or healthcare institution, whether public or private, wrongfully detains, withholds, or refuses to release the dead body of a deceased person to their legal heirs, next of kin, or authorized representative on the grounds of recovery of any outstanding dues, fees, charges, debt, or any other financial claim, shall be guilty of an offence under this Code, and shall be liable to—

- a) Imprisonment for a term which may extend to two years, or fine which may extend to five lac rupees or both and;
- b) On second or subsequent offence, or detention exceeding twenty four hours: Imprisonment for a term which may extend to three years, or fine which may extend to ten lac rupees or both.

Explanation I. — For the purposes of this section, a dead body shall be deemed to be ‘wrongfully detained’ if it is not released within two hours of a request being made by a legal heir, next of kin, or authorized representative who has produced reasonable proof of identity and relationship, unless such detention is authorized under sub-section (2).

Explanation II. – A request for release may be oral or in writing. In case of dispute, the burden of proving that no request was made shall lie on the person claiming that no request was received, namely the hospital, clinic, or institution.

Explanation III. – For the purposes of this section, 'authorized representative' means a person holding a written authorization signed by at least one legal heir or next of kin of the deceased, accompanied by a copy of such heir's or kin's Computerized National Identity Card (CNIC), or in the absence of such written authorization, any person whom the hospital or institution has reasonable grounds to believe is a legal heir or next of kin based on available documentation or credible statement.

(2) Nothing in sub-section (1) shall apply to the detention of a dead body:—

(a) by order of a Magistrate having jurisdiction, for purposes of medico legal autopsy or criminal investigation, for such period as the Magistrate may specify; or

(b) by an Investigating Officer not below the rank of Sub-Inspector, for purposes reasonably required for investigation of a cognizable offence, provided that such detention shall not exceed twenty-four hours without the prior approval of a Magistrate; or

(c) as required under any other law for the time being in force.

Explanation IV. – The burden of proving that detention falls within the exceptions under this sub-section shall lie on the person claiming such exception.

(3) Nothing in this section shall be construed to extinguish or affect any civil claim or right of a hospital or institution to recover outstanding dues, fees, charges, or debt from the estate of the deceased or the legal heirs thereof through appropriate civil proceedings, including a suit for recovery before a court of competent jurisdiction.

3. Amendment to the Second Schedule of the Code of Criminal Procedure, 1898 — Insertion of entry for Section 338-CA.— In the Code of Criminal Procedure, 1898 (Act V of 1898), hereinafter referred to as the said Code, in the Second Schedule (Tabular Statement of Offences), in the portion relating to Chapter XVI of the Pakistan Penal Code, 1860, after the entry relating to Section 338-C, the following new entry shall be inserted, namely:—

338-CA	Wrongful detention of dead body	May arrest without warrant.	Summons or warrant as the court may deem fit, having regard to the gravity of the offence and the duration of detention	Not bailable.	Compoundable by legal heirs or next of kin of the deceased with the accused, with permission of the Court.	(a) Imprisonment for a term which may extend to two years, or fine which may extend to five lac rupees or both and: (b) On second or subsequent offence, or detention exceeding twenty four hours: Imprisonment for a term which may extend to three years, or fine which may extend to ten lac rupees or both.	Court of Session and Magistrate of First Class.
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STATEMENT OF OBJECTS AND REASONS

It has been reported widely across Pakistan that hospitals particularly private hospitals and clinics have resorted to the unconscionable practice of detaining the dead bodies of deceased patients until their families settle outstanding medical bills. This practice causes immense psychological harm to grieving families and denies the deceased a timely burial, which is a fundamental religious obligation in Islam as well as in other religions. The Constitution of Pakistan, in Article 14, guarantees the inviolability of human dignity. This guarantee does not cease upon death. The practice of using a deceased's remains as collateral for financial recovery constitutes a fundamental violation of this guarantee. According to reports, most of the times, private hospitals demand Rs2 million to Rs4 million at the time of admission of a critical patient or in case of a complicated surgery. In case of the death of a patient, even if the bill exceeds Rs100,000, hospitals do not hand over the body to the family and ask them to arrange the amount first. There are a number of incidences in which hospitals demanded half a million rupees to hand over the body. When the family managed to arrange the amount after a few days, they asked for an additional Rs100,000 for keeping the body in the mortuary. In addition to that, Islam has consistently held that the sanctity of the human body, both alive and dead, must be maintained, and this includes condemning practices that violate the dignity of the deceased, such as withholding a body over unpaid medical fees.

The Bill is designed to achieve the aforesaid object.

SENATOR SAMINA MUMTAZ ZEHRİ
Member-in-Charge