

[AS PASSED BY THE SENATE]

A
BILL

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

WHEREAS it is expedient further to amend the Pakistan Penal Code, 1860 (XLV of 1860), Code of Criminal Procedure 1898 (V of 1898) and 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 Criminal Laws (Amendment) Act, 2024.
(2) It shall come into force at once.
2. **Amendment of section 84, Act XLV of 1860.** - In the Pakistan Penal Code (XLV of 1860), hereinafter referred to as the Penal Code, in section 84,-
 - (i) in the marginal note, for the expression "of unsound mind", the expression "with mental disorder" shall be substituted; and
 - (ii) for the expression "unsoundness of mind", the expression "mental disorder" shall be substituted.
3. **Amendment of section 89, Act XLV of 1860.** - In the Penal Code, in section 89,-
 - (i) in the marginal note, for the expression "insane person", the expression "person with fully mental challenges", shall be substituted; and
 - (ii) in the first paragraph, for the expression "unsound mind", the expression "mental disorder" shall be substituted.
4. **Amendment of section 90, Act XLV of 1860.** - In the Penal Code, in section 90,-
 - (i) in the second paragraph, in the marginal note, for the expression "insane person", the expression "person with fully mental challenges" shall be substituted; and
 - (ii) for the expression "unsoundness of mind", the expression "mental disorder" shall be substituted.
5. **Amendment of section 98, Act XLV of 1860.** - In the Penal Code, in section 98,-
 - (i) in the marginal note, for the expression "of unsound mind", the expression "mental disorder" shall be substituted; and
 - (ii) the first paragraph, for the expression "unsoundness of mind", the expression "mental disorder" shall be substituted.

6. Amendment of section 108, Act XLV of 1860. - In the Penal Code, in section 108, in explanation (3),

- (i) in illustration (a), for the expression "lunatic", the expression "person with fully mental challenges" shall be substituted; and
- (ii) in illustration (c), for the expression, "the unsoundness of his mind", the expression "his mental disorder" shall be substituted.

7. Amendment of section 306, Act XLV of 1860. - In the Penal Code, in section 306, in paragraph (a), for the expression "insane", the expression "a person with fully mental challenges" shall be substituted.

8. Amendment of section 308, Act XLV of 1860. - In the Penal Code, in section 308, in sub-section (1),-

- (i) in the first proviso, for the expression "insane", the expression "person with fully mental challenges" shall be substituted; and
- (ii) in the second proviso, for the expression "insane", the expression "person with fully mental challenges" shall be substituted.

9. Amendment of section 310, Act XLV of 1860. - In the Penal Code, in section 310, for sub-section (2), the following shall be substituted, namely:

"(2) Where a wali is a minor or a person with mental disorder, the wali of such minor or person with mental disorder wali may compound the right of qisas on behalf of such minor or person with mental disorder wali."

10. Amendment of section 313, Act XLV of 1860. - In the Penal Code, in section 313, in sub-section (2), for paragraph (b), the following shall be substituted, namely:

"(b) has no wali other than a minor or a person with mental disorder or one of the wali is a minor or a person with mental disorder, the father or if he is not alive the parental grandfather of such wali shall have the right of qisas on his behalf:

Provided that, if the minor or person with mental disorder wali has no father or parental grandfather, how high-so-ever, alive and no guardian has been appointed by the Court, the Government shall have the right of qisas on his behalf. "

11. Amendment of section 337M, Act XLV of 1860. - In the Penal Code, in section 337M, in paragraph (a), for the expression "insane", the expression "a person with fully mental challenges" shall be substituted.

12. Amendment of section 337O, Act XLV of 1860. - In the Penal Code, in section 337O, in paragraph (a), for the expression "insane", the expression "a person with fully mental challenges" shall be substituted.

13. Amendment of section 361, Act XLV of 1860. - In the Penal Code, in section 361, in first paragraph, for the expression "person of unsound mind", occurring twice the expression "person with fully mental challenges" shall be

14. **Amendment of section 376A, Act XLV of 1860.** - In the Penal Code, in section 376A, in sub-section (2), in paragraph (d), for the expression "of **unsound mind**", the expression "**person with fully mental challenges**" shall be substituted.

15. **Amendment of section 464, Act XLV of 1860.** - In the Penal Code, in section 464, in third paragraph, for the expression "**unsoundness of mind**", the expression "**mental disorder**" shall be substituted.

16. **Amendment of section 491, Act XLV of 1860.** - In the Penal Code, in section 491, for the expression "**unsoundness of mind**", the expression "**mental disorder**" shall be substituted.

17. **Amendment of section 198, Act V of 1898.** - In the Code of Criminal Procedure, 1898 (V of 1898), hereinafter referred to as the Criminal Code, in section 198, in the first proviso, for the expression "**an idiot or lunatic**", the expression "**suffering from mental disorder**", shall be substituted.

18. **Amendment of section 199, Act V of 1898.** - In the Criminal Code, in section 199, in first proviso, for the expression "**an idiot or lunatic**", the expression "**suffering from mental disorder**", shall be substituted.

19. **Amendment of section 199A, Act V of 1898.** - In the Criminal Code, in section 199A, for the expression "**a lunatic**", the expression "**suffering from mental disorder**" shall be substituted and for the word "**lunatic**", the expression "**person with fully mental challenges**" shall be substituted.

20. **Amendment of section 345, Act V of 1898.** - In the Criminal Code, in section 345, in sub-section (4), for the expression "**an idiot or lunatic**", the expression "**suffering from mental disorder**", shall be substituted.

21. **Substitution of section 464, Act V of 1898.** - In the Criminal Code, for section 464, the following shall be substituted, namely:-

"464. Procedure in case of accused being person with mental disorder.-(1) When a Magistrate holding an inquiry or a trial has reason to believe that the accused is suffering from mental disorder and consequently incapable of making his defence, the Magistrate shall inquire into the fact of such disorder, and shall cause such person to be examined by the Civil Surgeon of the district or such other medical officer as the Provincial Government directs, and thereupon shall examine such Surgeon or other officer as a witness, and shall reduce the examination to writing.

(2) Pending such examination and inquiry, the Magistrate may deal with the accused in accordance with the provisions of section 466.

(3) If such Magistrate is of opinion that the accused is suffering from mental health challenges and consequently incapable of making his defence, he shall record a finding to that effect and shall postpone further proceedings in the case."

22. **Substitution of section 465, Act V of 1898.** - In the Criminal Code, for section 465, the following shall be substituted, namely:-

"465. Procedure in case of person with mental disorder sent for trial before Court of Session or High Court.- (1) If any person before a Court of Session or a High Court appears to the Court at his trial in mental disorder and consequently incapable of making his defence, the Court shall, in the first instance, try the fact of such disorder and incapacity, and if the Court is satisfied of the fact, it shall record a finding to that effect and shall postpone further proceedings in the case.

(2) The trial of the fact of the mental disorder and incapacity of the accused shall be deemed to be part of his trial before the Court."

23. **Substitution of section 466, Act V of 1898.** - In the Criminal Code, in section 466, for the marginal note and sub-section (I), the following shall be substituted, namely:-

"466. Release of person with mental disorder pending investigation or trial.- (1) Whenever an accused is found to be a person with mental disorder and incapable of making his defence, the Magistrate or Court, as the case may be, whether the case is one in which bail may be taken or not, may release him on sufficient security being given that he shall be properly taken care of and shall be prevented from doing injury to himself or to any other person, and for his appearance when required before the Magistrate or Court or such officer as the Magistrate or Court appoints in this behalf.

Custody of person with mental disorder. (2) If the case is one in which, in the opinion of the Magistrate or Court, bail should not be taken, or if sufficient security is not given, the Magistrate or Court, as the case may be, shall order the accused with mental disorder to be detained in safe custody in such place and manner as he or it may think fit, and shall report the action taken to the Provincial Government:

Provided that no order for the detention of the accused with mental disorder in a mental asylum shall be made otherwise than in accordance with such rules as the Provincial Government may have made under the Mental Health Ordinance, 2001 (VIII of 2001) or its own mental health related laws."

24. **Amendment of section 468, Act V of 1898.** - In the Criminal Code, in section 468, in sub-section (2), for the expression "of unsound mind", the expression "suffering from mental disorder", shall be substituted.

25. **Substitution of section 469, Act V of 1898.** - In the Criminal Code, for section 469, the following shall be substituted, namely:-

"469. When accused appears to have been a person with fully mental challenges.- When the accused appears to be a mentally stable person at the time of inquiry or trial, and the Magistrate or Court is satisfied from the evidence given before him or it that there is reason to believe that the accused committed an act which, if he had been mentally stable, would have been an offence, and that he was, at the time when the act was committed, due to mental disorder, incapable of knowing the nature of the act or that it was wrong or contrary to law, the Magistrate or Court shall proceed with the case."

26. Amendment of section 470, Act V of 1898. - In the Criminal Code, in section 470,-

- (i) in the marginal note, for the expression "**lunacy**", the expression "**mental disorder**" shall be substituted; and (ii) for the expression "**unsoundness of mind**", the expression "**mental disorder**" shall be substituted.

27. Amendment of section 471, Act V of 1898. - In the Criminal Code, in section 471, in sub-section (1), in the proviso, for the expression "**lunatic asylum**", the expression "**mental asylum**" shall be substituted.

28. Amendment of section 473, Act V of 1898. - In the Criminal Code, in section 473,-

- (i) in the marginal note, for the expression "**lunatic prisoner**", the expression "**prisoner with fully mental challenges**" shall be substituted; and
- (ii) for the expression, "**lunatic asylum**" the expression "**mental asylum**" shall be substituted.

29. Amendment of section 474, Act V of 1898. - In the Criminal Code, in section 474,-

- (i). in the marginal note, for the expression "**lunatic**", the expression "**person with fully mental challenges**" shall be substituted; and
- (ii) in sub-section (1), for the expression, "**lunatic asylum**" the expression "**mental asylum**" shall be substituted.

30. Amendment of section 475, Act V of 1898. - In the Criminal Code, in section 475,-

- (i) in the marginal note, for the expression "**lunatic**", the expression "**person with fully mental challenges**" shall be substituted; and
- (ii) in sub-section (2), for the expression, "**of unsound mind**" the expression "**in mental disorder**" shall be substituted.

31. Amendment of schedule II, Act V of 1898. - In the Criminal Code, in schedule II, in entries related to section 491, in column 2, for the expression "**unsoundness of mind**", the expression "**mental disorder**" shall be substituted.

32. Amendment of article 2, Order X of 1984. - In the Qanun-e-Shahadat, 1984 (X of 1984), hereinafter referred to as the Qanun-e-Shahadat, in article 2, in clause (3), in explanation, in illustrations, for the expression "**unsoundness of mind**", the expression "**mental disorder**" shall be substituted.

33. Amendment of article 59, Order X of 1984. - In the Qanun-e-Shahadat, in article 59, in illustrations, in clause (b), in the first paragraph, for the expression "**unsoundness of mind**", the expression "**mental disorder**", and subsequently, in the second paragraph, for the expression "**unsoundness of mind**", occurring twice, the expression "**mental disorder**" shall be substituted.

34. Amendment of article 121, Order X of 1984. - In the Qanun-e-Shahadat, in article 121, in illustrations, in clause (a), for the expression "unsoundness of mind", the expression "mental disorder" shall be substituted.

STATEMENT OF OBJECTS AND REASONS

The evolving medical science and contemporary human rights trends have sensitized the society regarding stigmatized labels for mentally sick persons such as "unsound mind", "lunatic" and "insane"; leaving such people at mercy of society, so that they may deal with them, in whatever manner, they want. Such titles give general public an opportunity to humiliate, mock or even ridicule this unfortunate segment of our society, which further deteriorate their state of mind. Thus, there is a need to provide comprehensive and inclusive definitions in various laws for persons with mental disorder, so that the population may learn about mental health issues in a better way and help to make this world a better place for these people. Moreover, these terms have been declared outdated by the World Health Organization (WHO) through its latest edition of International Classification of Diseases (ICD).

2. The said matter was extensively discussed by the Honourable Supreme Court in *SafiaBano v Home Department* PLD 2021 SC488, and afterwards, while announcing their judgment, the Court directed the Federal and Provincial Governments to replace these words with suitable medical terms such as "mental illness" and "mental disorder" in all relevant laws, rules and regulations of Pakistan. Hence, this amendment has been brought to serve the afore-cited purpose.

3. This Bill is aimed to achieve the above-said objective.

SENATOR FAWZIA ARSHAD
MEMBER IN CHARGE