

[TO BE INTRODUCED IN THE SENATE]

**A
BILL**

to make provisions for protection against domestic violence

WHEREAS the Constitution recognizes the fundamental rights of all individuals dignity of person;

AND WHEREAS it is expedient to institutionalize measures which prevent and protect women, children and any vulnerable person from domestic violence and for matters connected therewith or incidental thereto;

It is hereby enacted as follows:

1. Short title, extent and commencement.— (1) This Act may be called the Domestic Violence (Prevention and Protection) Act, 2012.

(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 in the subject or context,-

(a) "aggrieved person" means any woman, child or any vulnerable 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;

(b) "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;

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

(d) "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/damages as may be just and proper;

(e) "domestic relationship" means a relationship between persons who live, or have at any point of time lived together in a household when they are related by Consanguinity, marriage, kinship, adoption, or are family members living together;

(f) "domestic violence" has the same meaning as assigned to it in section 4;

- (g) "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 accused and includes such a household whether owned or tenanted either jointly by the aggrieved person and the accused or owned and tenanted by either of them, any such household in respect of which either the aggrieved person or the accused 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 accused is a member, irrespective of whether the accused or the aggrieved person has right, title, interest in such a shared household;
- (h) "monetary relief" means a monetary relief which a court may order under section 11;
- (i) "notification" means a notification published in the Official Gazette;
- (j) "prescribed" means prescribed by the rules made under this Act;
- (k) "Protection Committee" means a Committee constituted under section 15;
- (l) "Protection Officer" means an officer appointed by the Federal Government under section 19;
- (m) "Protection order" means an order granted in terms of section 9;
- (n) "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;
- (o) "residence order" means an order granted in terms of section 9;
- (p) "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;
- (q) "vulnerable person" means a person who is vulnerable due to old age, mental illness or handicap or physical disability or for other special reason.

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

3. Duty of Government to ensure effective implementation of the Act.—

(1) The Federal Government shall ensure that,—

- (a) this Act and the contents thereof receive wide publicity through electronic and print media in Urdu and local languages;
- (b) the government officers, the police and the members of the judicial service are given periodic sensitization and awareness training on the issues addressed by this Act; and
- (c) effective protocols are formulated by the concerned Ministries and Departments dealing with health, education, employment, law and social welfare to address the issue of domestic violence and that the same are periodically revised.

(2) The Federal Government shall ensure that the National Commission on the Status of Women (NCSW) as mandated shall,—

- (a) review from time to time the existing provisions of the law on domestic violence and suggest amendments therein, if any;
- (b) call for specific studies or investigation into specific incidence of domestic violence;
- (c) look into complaints and take *suo moto* notice of matters relating to domestic violence and the non-implementation of the law; and
- (d) participate and advise on the planning process for securing a safe environment free of domestic violence.

4. Domestic Violence.— Domestic Violence includes but is not limited to, all acts of gender based and other physical or psychological abuse committed by an respondent against women, children or other vulnerable persons, with whom the respondent is or has been in a domestic relationship including but not limited to,—

- (a) "abet" has same meaning as defined in Pakistan Penal Code (Act XLV of 1860) hereinafter referred to in this section "as the said Code";
- (a) "assault" as defined in section 351 of the said Code;
- (c) "attempt" as defined in section 511 of the said Code to commit any of the offenses enumerated in this section;
- (d) "criminal force" as defined in section 350 of the said Code;
- (e) "criminal intimidation" as defined in section 503 of the said Code;

- (f) "Emotional, psychological and verbal abuse" means a pattern of degrading or humiliating conduct towards the victim, including but not limited to,—
- (i) repeated exhibition of obsessive possessiveness or jealousy constituting serious invasion of the victim's privacy, liberty, integrity and security;
 - (ii) insults or ridicule;
 - (iii) threat to cause physical pain;
 - (iv) threat of malicious prosecution;
 - (v) blaming a spouse of immorality;
 - (vi) threats of divorce;
 - (vii) baselessly blaming or imputing insanity, or citing bareness of a spouse with the intention to marry again; and
 - (viii) bringing false allegation upon the character of a female member by any member of the shared household;
- (g) "harassment" means engaging in a pattern of conduct that evokes the fear of harm to the victim and includes, but is not limited to,—
- (i) extending threats through any manner whatsoever or making gestures to intimidate the victim;
 - (ii) making obnoxious telephone calls or inducing another person to make such calls to the victim, whether or not conversation ensues; and
 - (iii) sending, delivering or causing the delivery of obnoxious or threatening letters, telegrams, packages, facsimiles or electronic messages.
- (h) "hurt" as defined in sections 332, 333, 335, 337, 337B, 337C, 337E, 337J, 337K, 337M of the said Code;
- (i) "mischief" as defined in section 425 of the said Code against the property of the aggrieved person;
- (j) "physical abuse" means any hurt caused by any act or conduct as defined in Section 4(f) of this Act;

- (k) "stalking" includes, but is not limited to,—
 - (i) following, pursuing or accosting the aggrieved person against his or her wishes; and
 - (ii) watching or loitering outside or near the building or place where the-aggrieved person resides or works or visits frequently.
- (l) "sexual abuse" includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of the aggrieved person which may include,—
 - (i) compelling the wife to cohabit with anybody other than the husband;
 - (ii) any kind of sexual abuse including sexual harassment of a member of the family.
- (m) "trespass" means entry into aggrieved person's residence either temporary or permanent without his or her consent, and includes workplace or frequently other place where the parties do not share the same residence;
- (n) willful or negligent abandonment of the aggrieved person;
- (o) "wrongful confinement" as defined in section 340 of the said Code; and
- (p) "economic abuse" includes deprivation of economic or financial resources or prohibition or restriction to continue access to such resources which the aggrieved person is ordinarily entitled to.

5. Petition to the Court.— (1) An aggrieved person or any other person authorized by the aggrieved person in this behalf may present a petition to the Court within whose jurisdiction:

- (i) the aggrieved resides or carries on business; and
- (ii) the last place where the accused and aggrieved 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) After receipt of petition from an aggrieved party, the court shall, with or without issuing an interim order, issue a notice upon the person complained against calling upon him to show cause within seven days of receipt of notice as to why a protection order shall not be made against him for committing an act or acts of domestic violence as alleged in the petition.

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

6. Counseling.— (1) The court, at any stage of the proceedings under this Act, may direct the accused and/or aggrieved to undergo mandatory counseling with an appropriate service provider.

(2) Where the court has issued any direction under sub-section (1), it shall fix the next date of hearing of the case within a period not exceeding thirty days.

7. Right to reside in a household.— (1) Notwithstanding anything contained in any other law for the time being in force, the aggrieved person shall not be evicted from the household without consent, whether or not he or she has any right, title or beneficial interest in the same.

(2) The aggrieved person shall not be evicted from the household or any part of it by the accused save in accordance with law.

8. 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 prescribed under sections 10, 11 and 12 against the respondent.

9. Passing of protection orders and residence orders.— (1) The court on being satisfied that domestic violence has *prima facie* taken place may pass a protection order in favour of the aggrieved person and prohibit the respondent from,—

- (a) committing any act of domestic violence;
- (b) aiding or abetting in the commission of acts of domestic violence;

- (c) entering the place of employment of the aggrieved person or, if the aggrieved person is a child, his or her educational institution or any other place frequented by the aggrieved person;
- (d) attempting to communicate in any form, whatsoever with the aggrieved person, including personal, oral or written, electronic or telephonic or mobile phone contact;
- (e) causing violence to the dependants, other relatives or any person who gives the aggrieved person assistance against domestic violence; and
- (f) committing any other act as specified in the protection order;

(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 a residence order to—

- (a) restrain the respondent from dispossessing or in any other manner disturbing the possession of the aggrieved person from the household;
- (b) restrain the respondent or any of his relatives from entering the household; and
- (c) direct the respondent to secure alternative accommodation for the aggrieved person or if the circumstances so require to pay rent for the same.

(3) The court may impose any additional conditions or pass any other direction which it may deem reasonably necessary 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 accused 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:

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

- (a) compensation to the aggrieved 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 her children, if any, including an order under or in addition to an order of maintenance under family laws.

(2) The accused shall pay monetary relief to the person aggrieved within the period specified in the order made in terms of sub-section (1) and in accordance with terms thereof.

(3) The court may, upon failure on part of the respondent to make payment in terms of the order under sub-section (2) 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 accused, which amount may be adjusted towards the monetary relief payable by the accused.

11. Custody orders.— 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 who is;

- (a) a child to a person under the Guardians and Wards Acts 1890 (VIII of 1890); and
- (b) an adult to a service provider or some other person in accordance with the will of the aggrieved:

Provided that in any case where a complaint of sexual abuse of a child has been made and the court is prima facie satisfied that such allegation is true, the court shall grant custody of the aggrieved child to the non-accused parent or guardian or the person making an application on his or her behalf and no order for arrangements for visitation by the respondent shall be made.

12. Duration and alteration of interim, protection and residence orders.— (1) The interim order made under section 9 and the protection order made 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 accused 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 until such time it is altered.

(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.

13. Penalty for breach of an interim or protection order by the accused.—

(1) A breach of protection order, or of the interim protection order, by the accused shall be an offence and shall be punished with imprisonment which shall not be less than six months and with fine which may not be less than one hundred thousand rupees. The court shall order that the amount of fine shall be paid to the aggrieved person.

(2) A person who is guilty of violation of protection order second or third time or more, shall be punished with imprisonment which shall not be less than two years and also be liable to fine which may not be less than two hundred thousand-rupees. The court shall order that the amount of fine shall be paid to the aggrieved person.

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

14. Appeal.— Any person convicted by a court under sub-section (1) or sub-section (2) 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.

15. Protection Committee.— (1) The Federal Government shall, by notification in the official Gazette, constitute a Protection Committee for the purposes of this Act.

(2) A Protection Committee comprises a medical doctor, a psychologist/psycho-social worker and an official appointed the court, a female police officer not below the rank of Sub-Inspector and two women members from civil society and the Protection Officer who shall also act as the Secretary of the Protection Committee.

16. Duties and functions of Protection Committee.— The Protection Committee may;

- (a) inform the aggrieved person of her or his 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 or if any, established by a service provider;
- (d) assist the aggrieved person 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;
- (f) keep official record of the incidents of domestic violence in its area of jurisdiction, whether on the basis of information received or *suo moto* inquiry, irrespective of whether or not action is taken under this Act. Such record shall include,—
 - (i) the first information received about the incident of domestic violence;

- (ii) the assistance, if any, offered or provided by the Protection Committee to the aggrieved person;
- (iii) where applicable the reason for not taking action under this Act when an incident was brought to the notice of the Protection Committee;
- (iv) where applicable, the reason for the aggrieved persons refusal to take assistance from the Protection Committee;
- (v) the names and contact details of the service provider, if any, from whom the aggrieved person sought help;
- (vi) maintenance of the record of applications, protection orders and the service providers operating in the area of jurisdiction; and
- (vii) perform any 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) Members of the Protection Committee shall be deemed to be public servants within the meaning of section 21 of the Pakistan Penal Code (Act XLV of 1860).

(2) The Protection Committee may file an application for obtaining a protection order under section 9, if so desired by the aggrieved person.

(3) The Protection Committee may procure the assistance of any person or authority; and any person or authority so requested by the Protection Committee, shall be under legal obligation to provide the desired assistance to the Protection Committee.

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 Federal Government shall, by notification in the official Gazette, appoint a gazette officer to act as Protection Officer, for the purposes of this Act.

(2) The Protection Officer shall possess such qualifications and experience as may be prescribed under the rules.

20. Duties of Protection Officer.— It shall be the duty of the Protection Officer,—

- (a) 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 Protection Committee within the local limits of whose jurisdiction domestic violence is alleged to have been committed and to the service providers in the that area;

- (b) 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;
- (c) to ensure that the aggrieved person is provided legal aid;
- (d) 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;
- (e) 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;
- (f) to get the aggrieved person medically examined, if she has sustained bodily injuries and forward a copy of the medical report to the Protection Committee having jurisdiction in the area where the domestic violence is alleged to have been taken place;
- (g) to ensure that the order for monetary relief under section 10 is complied with and executed in accordance with the procedure prescribed; and
- (h) to perform such other duties as may be prescribed.

21. Assistance of service provider.— (1) In any proceeding under this Act, the court may secure the services of a service provider.

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

22. Powers of service provider.— 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 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 he/she may so require.

23. Procedure.— Save as otherwise provided in this Act, all proceedings specially under sections 9,10, 11 and 12 and an offence under section 14 shall be governed by the Code.

24. 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.

25. 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.

26. Revision.— Chapter XXXII of the Code shall apply to an order passed under sections 9, 10, 11 and 12.

27. Power to make rules.— (1)The Federal Government may by notification in the Official Gazette make rules for carrying out the purposes of this Act.

(2) The Federal Government may make rules for the appointment and functioning of the Protection Committees and Protection Officers.

(3) The Rules made under this Act shall be laid within six months of the enactment of this Act.

28. Removal of difficulties.— If any difficulty arises in giving effect to any provision of this Act, the Federal Government may make an order not inconsistent with the provisions of this Act to remove the said difficulty.

STATEMENT OF OBJECTS AND REASONS

The issue of domestic violence has been a source of public concern for a number of years. Being in the private domain, the gravity of violence in the domestic sphere is compounded. In cognizance of the stress and unbearable suffering of the aggrieved person, it is necessary to criminalize the act. Through this Bill, domestic violence is brought into the public domain and responds to the National Policy for development and empowerment of women and Convention for the elimination of all forms of discrimination against women of adopting zero tolerance for violence against women and "introducing positive legislation on domestic violence".

Senator Mrs. Nilofar Bakhtiar
Member-in-Charge