

An

Ordinance

to effectually tackle the pervading instances of rape and sexual abuse in respect of women and children through changes in the substantive law;

AND WHEREAS it is expedient further to amend the Pakistan Penal Code, 1860 (Act XLV of 1860) and the Code of Criminal Procedure, 1898 (Act V of 1898), in the manner hereinafter appearing;

AND WHEREAS the Senate and the National Assembly are not in session and the President is satisfied that circumstances exist which render it necessary to take immediate action;

NOW THEREFORE, in exercise of the powers conferred by clause (1) of Article 89 of the Constitution of the Islamic Republic of Pakistan, 1973 the President is pleased to make and promulgate the following Ordinance:-

1. Short title and commencement.—(1) This Ordinance may be called the Criminal Law (Amendment) Ordinance, 2020.

(2) It shall come into force at once.

2. Amendment of section 375 of Act XLV of 1860.—In the Pakistan Penal Code, 1860 (Act XLV of 1860), hereinafter referred to as the Penal Code, the existing section 375 shall be substituted as follows:

“375. Rape.- A person (**A**) is said to commit “rape” if **A**—

(a) penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of another person (**B**) or makes **B** to do so with **A** or any other person; or

(b) inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of **B** or makes **B** to do so with **A** or any other person; or

(c) manipulates any part of the body of **B** so as to cause penetration into the vagina, urethra, anus or any part of body of **B** or makes **B** to do so with **A** or any other person; or

(d) applies his mouth to the vagina, anus, urethra or penis of **B** or makes **B** to do so with **A** or any other person, under the circumstances falling under any of the following seven descriptions:

- *firstly*, against **B**'s will;
- *Secondly*, without **B**'s consent;
- *thirdly*, with **B**'s consent, which has been obtained by putting **B** or any person in whom **B** is interested, in fear of death or of hurt;
- *fourthly*, with **B**'s consent, when **A** knows that **A** is not **B**'s husband and that **B**'s consent is given because **B** believes that **A** is another man to whom **B** is or believes herself to be lawfully married;
- *fifthly*, with **B**'s consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by **A** personally or through another of any stupefying or unwholesome substance, **B** is unable to understand the nature and consequences of that to which **B** gives consent;
- *sixthly*, with or without **B**'s consent, when **B** is under sixteen years of age;
- *seventhly*, when **B** is unable to communicate consent.

Explanation 1.- For the purposes of this section, “vagina” shall also include *labia majora*.

Explanation 2.- Consent means an unequivocal voluntary agreement when **B** by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act:

Provided that if **B** who does not physically resist to the act of penetration, it shall not by the reason only of that fact, be regarded as consenting to the sexual activity.

Explanation 3.- In this Chapter:-

“person” means a male, female or transgender;

“rape” includes “gang rape”.

Exception.- A *bonafide* medical procedure or intervention shall not constitute rape.

3. Insertion of new section 375A of Act XLV of 1860.—In the Penal Code, after section 375, the following new sections shall be inserted, namely:

“375A. Gang rape.—Where a person is raped by one or more persons constituting a group or acting in furtherance of a common intention, each of those persons shall be guilty of the offence of gang rape and shall be punished with death or for imprisonment for the remainder period of natural life or imprisonment for life and fine.”

4. Amendment of section 376 of Act XLV of 1860.—In the Penal Code, in the existing section 376,

(a) in sub-section (1), after the words “twenty-five years” the words “or for imprisonment for the remainder period of his natural life” shall be inserted;

(a) sub-section (2) shall be omitted.

5. Insertion of new section 376B of Act XLV of 1860.—In the Penal Code, after section 376A, the following new sections shall be inserted, namely:

“376B. Exceptional first offenders or repeat offenders.—

Whoever is convicted of an offence under sections 375, 375A and 376 may be subjected to chemical castration through a court order, irrespective of the applicable punishment:-

(i) in exceptional circumstances in respect of the first reported offence of section 375; or

(ii) in case of a repeat convict of an offence under section 375.

Explanation.- “Chemical castration” means a process, duly notified by Rules framed by the Prime Minister, whereby a person is rendered incapable of performing sexual intercourse for any period of his life, as may be determined by the court, through administration of drugs which shall be conducted through a notified medical board.”.

6. Amendment of Schedule II, Act V of 1898.- In the Code of Criminal Procedure, 1898 (Act V of 1898), in Schedule II:-

(i) after sub-heading “of Rape” the following shall be inserted, namely: -

1	2	3	4	5	6	7	8
375A	Gang Rape	May arrest without warrant	None required	Not bailable	Not compoundable	Death or imprisonment for the remainder period of natural life or imprisonment for life and fine.	Court of Sessions

(ii) for the existing entries relating to section 376 in columns 1 to 8, the following shall be substituted, namely: -

1	2	3	4	5	6	7	8
376	Rape	May arrest without warrant	None required	Not bailable	Not compoundable	Death or imprisonment not less than ten years or more than twenty-five years or imprisonment for the remainder period of his natural life and	Court of Sessions

						<p style="text-align: center;">fine.</p>	

DR. ARIF ALVI
PRESIDENT