THE ANTI-RAPE (INVESTIGATION AND TRIAL) ACT, 2021

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SCHEDULES

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THE ANTI-RAPE (INVESTIGATION AND TRIAL) ACT, 2021

ACT NO XXX OF 2021

[1st December, 2021]

An

Act

to ensure expeditious redressal of rape and sexual abuse crimes in respect of women and children through special investigation teams and special Courts providing for efficacious procedures, speedy trial, evidence and 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 Anti-Rape (Investigation and Trial) Act, 2021.

(2) It extends to the whole of Pakistan.

(3) It shall come into force on such date as the Federal Government may appoint.

2. Definitions.— (1) In this Act, unless there is anything repugnant in the subject or context,—

(a) "anti-rape crisis cell" is a cell appointed under section 4 of this Act;

(b) "child" means any male or female, who has not attained the age of eighteen years;

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

(d) "Government" means the Federal Government;

(e) "independent support adviser" means a person appointed, enlisted or recognized as such under section 11 of this Act;

(f) "Schedule" means a Schedule annexed to this Act; and

(g) "scheduled offences" means offences as set out in the Schedules against a "victim" or a "child" as defined in this Act;

(h) "sex offender" means and includes any person convicted under sections 292A, 292B, 292C, 371A, 371B, 375, 375A, 376, 377, 377A, 377B of the Pakistan Penal Code, 1860 (XLV of 1860) or sections 21 and 22 of the Prevention of Electronic Crimes Act, 2016 (Act XL of 2016);

(i) "special committee" means the Committee set up under section 15 of this Act;

(j) "Special Court" means the Court established under section 3 of this Act;

(k) "victim" means a woman or child who has been subjected to scheduled offences;

Explanation.— It is clarified that where the Scheduled offences are committed against persons who do not qualify to be categorized as "victim" or "child" as defined under this Act, the offences shall be tried through procedure, rules of evidence and courts, functioning prior to this Act coming into effect.

(2) All other terms and expressions used but not defined in this Act shall have the same meanings as are assigned thereto them in the Pakistan Penal Code, 1860 (Act XLV of 1860) or in the Code of Criminal Procedure, 1898 (Act V of 1898), or the Qanoon-e-Shahadat Order, 1980 (P.O. No. 10 of 1984).

3. Establishment of Special Courts, etc.— (1) The Federal Government, in consultation with the Chief Justice of the High Court concerned, shall establish as many Special Courts throughout the country, as it may deem necessary, to try the scheduled offences.

(2) The Federal Government, in consultation with the Chief Justice of the High Court concerned, shall appoint any person as a Judge of the Special Court, who is or has been a Sessions Judge or Additional Sessions Judge, or has been an advocate of the High Court for a period of not less than ten years, and is not more than sixty-eight years of age at the time of appointment.

(3) In addition to or in lieu of the establishment of Special Courts under sub-section (1), the Federal Government may, in consultation with the Chief Justice of the High Court concerned, designate, throughout the country, as many Courts of Additional Sessions Judges or such other courts as Special Courts, as it may deem fit;

Provided that where gender based violence (GBV) courts or juvenile courts or child protection courts have already been designated, they shall be deemed to be the Special Courts under this Act:

Provided further that where more than one Special Court is designated or established in one jurisdiction, the concerned Courts of Sessions shall allocate the case.

(4) A Judge of the Special Court shall have the same powers and jurisdiction as are vested in the Court of Sessions under the Code.

(5) A Judge of the Special Court shall be appointed for a period of three years on such terms and conditions as may be determined by the Federal Government.

(6) A Judge of a Special Court shall only be removable before the expiry of his tenure if he is found guilty of misconduct.

(7) The disciplinary proceedings against a Judge of a Special Court shall be conducted in the same manner and under the same legal provisions and rules as prescribed for a District and Sessions Judge.

(8) During his tenure, a Judge of a Special Court may be transferred to another Special Court within the same Province, by the Chief Justice of the High Court concerned, for reasons to be recorded in writing.

(9) The trial of scheduled offences shall ordinarily be conducted in the Special Court within whose territorial jurisdiction the offences are committed.

4. Anti-rape crisis cells.— (1) The secretary, ministry of law and justice, in consultation with the chief secretary of the province or the chief commissioner of the Islamabad Capital Territory (ICT), as the case may be, shall establish or designate as many anti-rape crisis cells throughout the country in relation to offences mentioned in Schedule-II, in such public hospitals with adequate medical facilities, as he may deem fit.

(2) The anti-rape crisis cells shall be headed by the concerned commissioner or deputy commissioner of the area, as deemed fit by the secretary, ministry of law and justice, in consultation with the chief secretary of the province, or the chief commissioner ICT, as the case may be, and shall also comprise the medical superintendent of the public hospital designated under subsection (1), preferably one independent support adviser, a police officer as deemed fit by the secretary, ministry of law and justice, in consultation with the chief secretary of the province, or the chief commissioner ICT, as the case may be:

Provided that at least one member of the anti-rape crisis cell shall preferably be a woman.

5. Power, duties and functions etc. of the Anti-Rape Crisis Cell.— (1) As soon as an anti-rape crisis cell receives information from any source, on its own accord or upon application by any person, orally or in writing, of an offence mentioned in Schedule-II, it shall without any delay ensure the following, namely:—

(a) conduct of a medico-legal examination without any delay;

(b) securing, collection and gathering of such evidence as may be expedient;

(c) conduct of a forensic analysis or examination;

(d) registration of an first information report (FIR) by the police; and

(e) performing of any other action as may be necessary.

(2) The actions mentioned in sub-section (1) may be taken without any preferred order, however, all the said actions are required to be taken up expeditiously.

(3) As soon as an officer-in-charge of a police station receives any information with regard to the commission of an offence mentioned in Schedule-II, he shall, without any delay, transmit such information to the anti-rape crisis cell.

(4) The secretary, of the ministry of law and justice, in consultation with chief secretary of the province or the chief commissioner ICT, as the case may be from time to time, upon recommendations of the special committee, issue guidelines for the anti-rape crisis cells to efficaciously carry out their powers, duties and functions.

6. Legal assistance.— (1) The legal aid and justice authority established under the Legal Aid and Justice Authority Act, 2020 (Act XVI of 2020) shall provide legal assistance to victim of scheduled offences. In addition, the Fund established under this Act shall also be utilized for legal assistance under this Act.

(2) In addition to the legal assistance under sub-section (1), the special committee shall in consultation with the ministry of human rights, approve panels of advocates and volunteers in each district or, if necessary, in any tehsil, for the provision of legal, financial or other assistance either on pro bona or on fee basis, for which the Fund under this Act and under the Legal Aid and Justice Authority Act, 2020 (Act XVI of 2020) shall be utilized.

7. Prosecutor general and special prosecutors.— (1) The ministry of law and justice may designate or appoint a prosecutor general and special prosecutors in a manner as may he prescribed by rules notified by the ministry of law and justice.

(2) The prosecutor general and special prosecutors shall prosecute the scheduled offences.

8. Victim and witness protection.— (1) In addition to the existing laws, a victim and witness protection system may be established as prescribed in the rules notified by the ministry of law and justice and shall, with a view to carrying out the purposes of this Act and without generality of the aforesaid, include the following, namely:—

(i) special security arrangements for witnesses and victims;

(ii) concealment of identity;

(iii) distance recording of testimonies through video-conferencing, audio-video links and by the use of modem devices;

(iv) re-location of victims and witnesses;

(v) provision of reasonable financial assistance;

(vi) compensation to legal heirs of protected victims and witnesses;

(vii) safe-houses, dar-ul-amans, etc.;

(viii) such other measures as may be necessary and ancillary.

(2) Till such time the rules envisaged in sub-section (1) are prescribed, provincial or ICT witness protection laws as the case may be, shall be applicable to both victims and witnesses under this Act, *mutatis mutandis*.

9. Investigation in respect of scheduled offences.— (l) For the purposes of investigation under this Act, special sexual offences investigation units (SSOIUs) shall be established in every district by the provincial governments and for the purposes of the Islamabad Capital Territory by the Federal Government.

(2) The SSOIU shall comprise police officers who have received training on investigation in relation to sexual offences and preferably one member of the unit shall be a female police officer.

(3) The investigation in respect of offences mentioned under this Act shall be carried out as follows:—

(i) for offences mentioned in Schedule-I, by the SSOIU; and

(ii) for offences mentioned in Schedule-II, by SSOIU under the supervision of a police officer not below the rank of BPS-17.

(4) In case the complainant in relation to an offence under Schedule-II expresses dissatisfaction which is based on reasonable grounds, the investigation shall be transferred to the district head of investigation of the police.

(5) The officers of the SSOIUs shall ordinarily be from the area in which the occurrence of the offence has taken place:

Provided that in exceptional circumstances and where the dictates of fair, accurate and technical investigation warrant otherwise, officers from areas other than the area of occurrence, may be deputed in the SSOIUs.

(6) Upon completion of investigation, the SSOIU shall, through the prosecutor general or special prosecutors, submit the final report under section 173 of the Code before the Special Court.

10. Connected offences not in the Schedules.— The investigation officer or the joint investigation team (JIT), as the case may be, under section 9, may also take cognizance of offences, not listed in the schedules, committed in connection with the scheduled offences, as if those offences were scheduled offence.

11. Independent support advisers.— (1) If so determined by the anti-rape crisis cell, an independent support adviser shall accompany the victim during Court proceedings, in order to

reduce the risk of duress, victimization of any nature, or any adversity afflicted or likely to be afflicted upon the victim.

(2) The special committee, in consultation with the ministry of human rights, shall prepare a list of independent support advisers at district or tehsil levels.

(3) For the purposes of sub-section (2), the special committee shall, in consultation with the ministry of human rights, enlist a civil society or a non-governmental organization, whose members or nominees may act as independent support advisers.

(4) An independent support adviser shall be a person having skills to deal with victims of scheduled offences, who may be a psychologist, or a doctor, or a lawyer, or a para-legal, or a lady-health worker, or a social worker, or a person who is a member or nominee of a civil society or a non-governmental organization enlisted under sub-section (3).

12. In-camera trial.— (1) The trial of scheduled offences shall be conducted in-camera:

Provided that the Court, if it thinks fit, on its own or on an application made by either of parties, allow any particular person to have access to court proceedings, or remain in the Court.

(2) Notwithstanding anything contained in any other law for the time being in force, where any proceedings are held under sub-section (1), the Court may adopt appropriate measures, including holding of the trial through video-link or usage of screens, for the protection of the victims and the witnesses.

(3) Where any proceedings are held under sub-section (1), it shall not be lawful for any person to publish or broadcast any matter or information in relation to any such proceedings, except with the permission of the Court.

13. Evidence and guidelines.— (1) The two-finger virginity testing, for the purposes of medico-legal examination of a victim relating to scheduled offences, shall be strictly prohibited and no probative value shall be attached thereto.

(2) In respect of any scheduled offence, any evidence to show that the victim is generally of immoral character, shall be inadmissible:

Provided that the right of an accused to a fair trial shall not be prejudiced.

(3) The testimonies and evidence of victims, accused and witnesses in Court shall be video-recorded, preserved and reduced in writing.

14. Statement under section 164 of the Code.— (1) Notwithstanding anything contained in any other law for the time being in force, as soon as practicable, a statement of the victim shall be recorded under section 164 of the Code only once.

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Explanation:— The statement under this sub-section shall be video-recorded, preserved and reduced in writing.

(2) An opportunity of cross examining the victim shall be given to the counsel for the accused and not the accused himself, or the Court may itself put questions to the victim or any questions framed by the accused may be given to the presiding officer of the Court who may put such questions, as found appropriate by him, to the victim.

15. Special Committee.— (1) The ministry of law and justice shall appoint a special committee comprising such members and in such numbers as it may deem fit on pro bono or honorary basis.

(2) Chief secretaries and the finance secretaries of the provincial governments and the ICT shall assist the special committee to ensure reasonable funding for the performance of duties under this Act. The special committee will set standards, key performance indicators and conduct performance measurement.

(3) The special committee shall take all steps, including reaching out to any Federal or provincial ministry, division, department, office, agency or authority, for the purposes of effectual compliance of this Act.

(4) The special committee may comprise individuals from any Federal or Provincial ministry, division, department, authority or office, or from members of the legal or medical profession, legislators, retired judges, serving or retired public servants, civil society or non-governmental organizations, as deemed fit by the ministry of law and justice.

(5) For the purposes of effective compliance and proper working of this Act, the special committee, from time to time, may seek information or require the performance of actions, by officers of the Federal or provincial ministries, divisions, departments, offices agencies or authorities.

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(6) If any person refuses or fails to comply with the directions issued by the special committee under this section, the special committee may refer the matter to the appropriate authority for taking disciplinary action against the person who disregards the directions.

16. Trial.—(1) The Court upon taking cognizance of a case, under this Act shall decide the case expeditiously, preferably within four months.

(2) A Special Court shall not grant more than two adjournments during the trial of a case, out of which one adjournment shall be upon payment of costs by the person seeking adjournment. Where the defense counsel does not appear after two consecutive adjournments, the Court may appoint another defense counsel with at least seven years standing in criminal matters for the defense of the accused from the panel of advocates maintained by the special committee.

(3) If, in the course of a trial, the Court is of the opinion that any of the offences which the accused is alleged to have committed is not a scheduled offence, the Court shall record such opinion and try the accused only for such offences, which are scheduled offences.

(4) A Special Court may also try offences, not listed in the schedules, committed in connection with the scheduled offences, as if those offences were scheduled offences.

Explanation.— It is clarified that sub-section (4) shall also be applicable where the provisions of the Anti-Terrorism Act, 1997 (Act XXVII of 1997) are invoked or invokable in respect of offences under this Act.

17. Compensation to the victim.— On conclusion of the trial, the Court may order the convict to pay compensation to the victim, in addition to the penalty of fine, if any.

18. Appeal.— (1) Any person aggrieved by the final judgment of a Special Court may file an appeal to a High Court in whose jurisdiction the Special Court tendering the impugned judgment, is situated.

(2) Copies of the judgment of the Special Court shall be supplied to the accused and the prosecution, free of cost, on the day the judgment is pronounced, whereafter the record of the trial shall be transmitted to the concerned High Court within three days of the decision.

(3) An appeal under sub-section (1) may be preferred within thirty days of the final judgment by the Special Court.

(4) An appeal preferred under sub-section (1) shall be decided by a division bench of the High Court, as soon as practicable, preferably within six months from its institution.

(5) While hearing an appeal, the High Court shall not grant more than two consecutive adjournments.

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(6) Pending appeal, the High Court shall not release a person convicted by the trial court.

19. Rules.— (1) The ministry of law and justice may prescribe rules, upon the recommendations of the special committee, for the purposes of carrying out the purposes of this Act.

(2) Without prejudice to the generality of the foregoing powers, such rules may provide guidelines,—

(i) for the purposes of medico-legal examination of the victims;

(ii) in respect of the investigation and prosecution of scheduled offences; including the collection and gathering of evidence;

(iii) in relation to the rehabilitation of the victim, offender, suspect or a member of the society;

(iv) pertaining to gender and children sensitization and training of all relevant stakeholders, including Judges, police-officers, prosecutors, medico-legal officers and staff and other duty officers or personnel, both at the time of induction and subsequently; and

(v) for providing special trial court rooms; or special moms or facilities for the victims, especially children, near the trial court moms, for a conducive environment.

(3) The special committee, in formulating its recommendations under sub-section (1), may consult any ministry, division, office, department, agency or authority in the Federal or provincial government and shall take into account modern techniques and devices, as it may consider appropriate.

20. Fund.—(1) The Prime Minister shall establish a Fund to carry out the purposes of this Act.

(2) The purposes of the Fund shall include the meeting of any expenses—

(a) towards the establishment of Special Courts; or

(b) with regard to the exercise of any other power, duty or function mentioned in this Act; or

(c) in respect of anything which is ancillary or sundry for the purposes of this Act.

(3) The Fund shall consist of the following sources, namely:—

(a) grants from the Federal Government and provincial governments;

(b) aid and assistance from local, national and international agencies;

(c) contributions from statutory bodies, corporations, private organizations and individuals; and

(d) income and earnings from moveable and immoveable properties acquired or leased by the Fund.

(4) The amount credited to the Fund shall not lapse by the end of a financial year and shall be available for utilization at any time.

21. Preventive action by police.— If any police officer receives information in relation to the commission or threat of commission of a scheduled offence, he shall immediately

interpose, act and take such action as may be necessary including and not limited to the exercising of powers under the Code, in particular sections 149 and 151 thereof, to prevent the commission of such offences, notwithstanding that the offence reported has been committed in an area not within the jurisdiction of such police officer.

22. False Investigation or complaint.—(1) Whoever, being a public servant, entrusted to investigate scheduled offences, fails to carry out the investigation properly or diligently or causes the conductor false investigation or fails to pursue the case in any court of law properly and in breach of duties, shall be guilty of an offence punishable with imprisonment of either description which may extend to three years and with fine.

(2) Whoever gives to any public servant any information in relation to scheduled offences which he knows or believes to be false, intending thereby to cause, or knowing it to be likely that he will thereby cause, such public servant—

(a) to do or omit anything which such public servant ought not to do or omit if the true state of facts respecting which such information is given were known by him; or

(b) to use the lawful power of such public servant to the injury or annoyance of any person;

shall be punished with imprisonment of either description for a term which may extend to three years and with fine.

23. Jurisdiction and transfer of cases, etc.— (1) The scheduled offences shall be exclusively triable by the Special Court.

(2) Subject to sub-section (3), upon commencement of this Act, the trial of scheduled offences pending in any court shall stand transferred to the Special Court having jurisdiction under this Act and such Court shall proceed with the case from the stage at which it was pending immediately before such transfer and it shall not be bound to recall or re-hear any witness who has given evidence and may act on the evidence and procedures already recorded and complied with, respectively.

(3) Each time when a new offence is inserted into any of the Schedules to this Act, sub-section (2) shall come into operation, *mutatis mutandis*, from the date of such insertion.

24. Register of sex offenders.— (1) The National Data-Base and Registration Authority (NADRA) shall prepare a register of sex offenders.

Explanation.— "sex offender" means a person convicted of a scheduled offence.

(2) Notwithstanding the aforesaid, the ministry of law and justice may prescribe rules, upon the recommendations of the special committee, for the release of such data of the register

of sex offenders to any person, agency, authority, court of law or segment of the society in public interest and safety.

(3) The special committee may require the NADRA to prepare different categories of sex offenders in the register under this section.

(4) For the purposes of this section, the special committee may require the NADRA, the National Police Bureau and the forensic science laboratories, to prepare different categories of sex offenders in the register.

25. Public reporting mechanism.— The ministry of law and justice. upon recommendations of the special committee, frame rules for establishing a reporting mechanism for receiving information from the public about suspicious persons or those suspected to have committed the scheduled offences.

26. Non-disclosure of identity of victims, etc.— (1) No person shall disclose or reveal the identity of any victim or victim's family in respect of the scheduled offences, without prior written permission of the victim or victim's guardian where the victim is a minor or the victim's family, as the case may be.

(2) Any person contravening the provisions of sub-section (1) shall be guilty of an offence punishable in the same manner and to the same extent as provided under section 376A of the Pakistan Penal Code, 1860 (Act XLV of 1860).

27. Act not to derogate from other law.—In respect of offences mentioned in Schedule-I, the provisions of this Act shall be in addition to and not in derogation of any other law for the time being in force.

28. Overriding effect.— In respect of offences mentioned in Schedule-II, the provisions of this Act shall have effect notwithstanding anything inconsistent contained in any other law for the time being in force.

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29. Application of Code.— The provisions of the Code, to the extent not inconsistent with anything contained in this Act, shall apply *mutatis mutandis*.

30. Amendment in the Schedule.— The ministry of law and justice may, by notification in the official Gazette, amend the Schedules under this Act so as to include or exclude any offence or explanation.

31. Removal of difficulties.— Where any difficulty arises in giving effect to any of the provisions of this Act, the President may, by notification in the official Gazette, make such order, not inconsistent with the provisions of this Act, as may appear to be necessary for the purpose of removing the difficulty.

SCHEDULE-I

1. Offences under sections 34, 292A, 292B, 292C, 354, 365, 365A, 368, 369, 369A, 498B, 498C, 511 of the Pakistan Penal Code, 1860 (Act XLV of 1860).

2. Offences mentioned in Chapters V and V-A of the Pakistan Penal Code, 1860 (Act XLV of 1860).

3. Offences under sections 21 and 22 of the Prevention of Electronic Crimes Act, 2016 (Act XL of 2016).

4. Offences under the Anti-Terrorism Act, 1997 (Act XXVII of 1997) which are committed along with the offences in this Schedule

Explanation.— It is clarified that offences under sections 34, 365, 365A, 368, 369, 369A, 498A, 498C and 511 of the Pakistan Penal Code, 1860 (Act XLV of 1860) and offences mentioned in items Nos. 2 and 4, above, shall only be cognizable and triable as offences falling under this Schedule, if they are connected with offences under sections 292A, 292B, 292C and 354 of the Pakistan Penal Code, 1860 (Act XLV of 1860) and offences mentioned in item No.3 above.

SCHEDULE-II

1. Offences under sections 34, 336A, 336B, 354A, 364, 364A, 365B,366A, 366B, 367A, 371A, 371B, 375, 375A, 376, 377, 377A, 377B, 511 of the Pakistan Penal Code, 1860 (Act XLV of 1860).

2. Offences mentioned in Chapters V, V-A and XVI of the Pakistan Penal Code, 1860 (Act XLV of 1860).

3. Offences under the Anti-Terrorism Act, 1997 (Act XXVII of 1997) which are committed along with the offences in this Schedule.

Explanation.— It is clarified that offences under sections 34, 364, 364A and 511 of the Pakistan Penal Code, 1860 (Act XLV of 1860) and offences mentioned in items Nos. 2 and 3, above, shall only be cognizable and triable as offences falling under this Schedule, if they are connected with offences under sections 336A, 336B, 354A, 365B, 366A, 366B, 367A, 371A, 371B, 375, 375A, 376, 377, 377A and 377B of the Pakistan Penal Code, 1860 (Act XLV of 1860).