

## ACT No. I OF 2005

*An Act further to amend the Pakistan Penal Code, 1860, and the Code of Criminal procedure, 1898*

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), for the purposes hereinafter appearing;

It is hereby enacted as follows:—

**1. Short title and commencement.**—(1) This Act may be called the Criminal Law (Amendment) Act, 2004.

(2) It shall come into force at once.

**2. Amendment of section 299, Act XLV of 1860.**—In the Pakistan Penal Code, 1860 (Act XLV of 1860), hereinafter referred to as the Penal Code, in section 299, after clause (i), the following new clause shall be inserted, namely:—

"(ii) "offence committed in the name or on the pretext of honour" means an offence committed in the name or on the pretext of *karo kari sivah kari* or similar other customs or practices;"

**3. Amendment of section 302, Act XLV of 1860.**—In the Penal Code, in section 302, in clause (c), for the full stop at the end, a colon shall be substituted and thereafter the following proviso shall be added, namely:—

"Provided that nothing in this clause shall apply to the offence of *qatl-i-amd* if committed in the name or on the pretext of honour and the same shall fall within the ambit of clause (a) or clause (b), as the case may be."

**4. Amendment of section 305, Act XLV of 1860.**—In the Penal Code, in section 305, in clause (a), after the word "law" the words "but shall not include the accused or the convict in case of *qatl-i-amd* if committed in the name or on the pretext of honour" shall be added.

**5. Amendment of section 308, Act XLV of 1860.**—In the Penal Code, in section 308,—

(a) in sub-section (1), for the words "fourteen years" occurring twice the words "twenty-five years" shall be substituted; and

(b) in sub-section (2), for the words "fourteen years" the words "twenty-five years" shall be substituted.

**6. Amendment of section 310, Act XLV of 1860.**—In the Penal Code, in section 310, in sub-section (1), for the proviso the following shall be substituted, namely:—

"Provided that a female shall not be given in marriage or otherwise in badal-i-sulh."

**7. Insertion of new section, Act XLV of 1860.**-In the Penal Code, after section 310, the following new section shall be inserted, namely:-

**"310A. Punishment for giving a female in marriage or otherwise in badal-i-sulh.**-Whoever gives a female in marriage or otherwise in badal-i-sulh shall be punished with rigorous imprisonment which may extend to ten years but shall not be less than three years."

**8. Amendment of section 311, Act XLV of 1860.**-In the Penal Code, in section 311,-

- (i) for the words "keeping in view" the word "if" shall be substituted and after the brackets and words "(Fasad-fil-Arz)", the words "is attracted" shall be inserted;
- (ii) the words "in its discretion" shall be omitted;
- (iii) after the word "with" the words "death or imprisonment for life or" shall be inserted;
- (iv) for the full stop at the end a colon shall be substituted and thereafter the following proviso shall be inserted, namely:-

"Provided that if the offence has been committed in the name or on the pretext of honour, the imprisonment shall not be less than ten years"; and

- (v) in the Explanation, after the word "community" occurring at the end the comma and words "" or if the offence has been committed in the name or on the pretext of honour" shall be added.

**9. Amendment of section 316, Act XLV of 1860.**-In the Penal Code, in section 316, for the words "fourteen years" the words "twenty-five years" shall be substituted.

**10. Amendment of section 324, Act XLV of 1860.**-In the Penal Code, in section 324, after the words "ten years" the words "but shall not be less than five years if the offence has been committed in the name or on the pretext of honour" shall be inserted.

**11. Amendment of section 337N, Act XLV of 1860.**-In the Penal Code, in section 337N, in sub-section (2),-

- (a) after the word "criminal" occurring at the end, the words "or the offence has been committed by him in the name or on the pretext of honour" shall be added; and

- (b) for the full stop at the end a colon shall be substituted and thereafter the following proviso shall be inserted, namely:-

"Provided that the ta' zir shall not be less than one-third of the maximum imprisonment provided for the hurt caused if the offender is a previous convict, habitual, hardened, desperate or dangerous criminal or if the offence has been committed by him in the name or on the pretext of honour." .

**12. Amendment of section 338E, Act XLV of 1860.**-In the Penal Code, in section 338E, in sub-section (1), in the proviso, for the full stop at the end a colon shall be substituted and thereafter the following proviso shall be inserted, namely:-

"Provided further that where an offence under this Chapter has been committed in the name or on the pretext of honour, such offence may be waived or compounded subject to such conditions as the Court may deem fit to impose with the consent of the parties having regard to the facts and circumstances of the case." .

**13. Amendment in Chapter XIV, Act V of 1898.**-In the Code, of Criminal Procedure, 1898 (Act V of 1898), hereinafter referred to as the Code, after section 156, the following new sections shall be inserted, namely:-

**"156A. Investigation of offence under section 295C, Pakistan Penal Code.**-Notwithstanding anything contained in this Code, no police officer below the rank of a Superintendent of Police shall investigate the offence against any person alleged to have been committed by him under section 295C of the Pakistan Penal Code, 1860 (Act XLV of 1860).

**156B. Investigation against a woman accused of the offence of zina.**- Notwithstanding anything contained in this Code, where a person is accused of offence of zina under the Offence of Zina (Enforcement of Huddood) Ordinance, 1979 (VII of 1979), n~ police officer below the rank of a Superintendent of Police shall investigate such offence nor shall such accused be arrested without permission of the court.

*Explanation.*- In this section 'zina' does not include 'zina-bil-jabr' ."

**14. Amendment of section 345, Act V of 1898.**-In the Code, in section 345,-

- (a) in sub-section (2), in the table,-

- (i) against the entry relating to *Oatl-i-amd* in the first column, in the third column, after the word "victim" at the end, the comma and words", other than the accused or the convict if the offence has been committed by him in the name or on the pretext of *karo kari. sivah kari* or similar other customs or practices" shall be added; and
  - (ii) against the entry relating to *Oatl-i-shibh-i-amd* in the first column, in the third column, for the word "ditto" the words "By the heirs of the victim" shall be substituted; and
- (b) after sub-section (2), the following new sub-section shall be inserted, namely :-

"(2a) Where an offence under Chapter XVI of the Pakistan Penal Code, 1860 (Act XLV of 1860), has been committed in the name or on the pretext of *karo, kari, sivah, kari* or similar other customs -or practices, such offence may be waived or compounded subject to such conditions as the Court may deem fit to impose with the consent of the parties having regard to the facts and circumstances of the case."

**15. Amendment of section 401, Act V of 1898.**-In the Code, in section 401, in sub-section (1), for the full stop at the end a colon shall be substituted and thereafter the following proviso shall be inserted, namely:-

"Provided that the Provincial Government shall have no power to suspend or remit any sentence awarded to an offender under Chapter XVI of the Pakistan Penal Code if an offence has been committed by him in the name or on the pretext of *karo kari. sivah kari* or similar other customs or practices."

**16. Amendment of Schedule II, Act V of 1898.**-10 the Code, in schedule 11,-

- (a) against the entry in column 1 relating to section 308, in column 7, for the words "fourteen years" the words "twenty-five years" shall be substituted;

- (b) after section 308, in column 1 and the entries relating thereto in columns 2 to 8, the following new section and the entries relating thereto shall be inserted, namely:-

“310A	Giving female marriage otherwise in <i>badl-i-sulh</i>	a in or in	–	–	–	Not compoundable	Rigorous imprisonment upto ten years, but shall not be less than three years.	Court of Session
			- do-	- do-	-do-			

- (c) against the entry in column 1 relating to section 311, in column 6, for the existing entry the words "Compoundable" shall be substituted;
- (d) against the entry in column 1 relating to section 311, in column 7, for the words "imprisonment of either description for ten to fourteen years" the words and comma "death or imprisonment for life or imprisonment of either description up to fourteen years but shall not be less than ten years if the offence has been committed in the name or on the pretext of *karo*, *kari*, *sivah*, *Kari* or similar other customs or practices" shall be substituted;
- (e) against the entry in column 1 relating to section 324, in column 7, after the words "ten years" the words "but shall not be less than five years if the offence has been committed in the name or on the pretext of *karo*, *kari*, *sivah*, *kari* or similar other customs or practices" shall be inserted; and
- (f) against the entry in column 1 relating to section 337N, in column 7, after the word "caused" at the end, the words and commas "but ta'zir. shall not be less than one-third of the maximum imprisonment provided for the offence where the offender is a previous convict, habitual or hardened, desperate or dangerous criminal or if the offence has been committed by him in the name or on the pretext of *karo*, *kari*, *siyah*, *kari* or similar other customs or practices" shall be added.

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SHAHIQ A. KHAN,  
Secretary.