

[AS INTRODUCED IN THE SENATE]

A

BILL

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 (XLV of 1860) and the Code of Criminal Procedure, 1898 (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) (Protection of Rights of Transgender Persons) Act, 2017.

(2) It shall come into force at once.

2. Amendment of Act XLV of 1860.- In the Pakistan Penal Code, 1860 (XLV of 1860), after Chapter XVI-A, the following new Chapter XVI-B shall be inserted:-

**"CHAPTER XVI-B
OFFENCES AGAINST TRANSGENDER PERSON**

377-A. In this Chapter "**Transgender Person**" means a person who is:-

- (i) Intersex (Khunsa) with mixture of male and female genital features or congenital ambiguities; or
- (ii) Eunuch assigned male at birth, but undergoes genital excision or castration; or
- (iii) a Transgender Man, Transgender Woman, Khawaja Sira or any person whose gender identity and/or gender expression differs from the social norms and cultural expectations based on the sex they were assigned at the time of their birth.

377-B. Kidnapping, abducting or inducing Transgender Person to seduce him or her to illicit intercourse, etc.- Whoever kidnaps or abducts any Transgender with intent that he or she may be compelled, or knowing it to be likely that he or she will be compelled, or forced, or seduced to illicit intercourse, or knowing it to be likely that he or she will be forced or seduced to illicit intercourse or whoever by means of criminal intimidation as defined in the Code, or of abuse of authority or any other method of compulsion, induces any Transgender Person to go from any place with intent that he or she may be, or knowing that it is likely that he or she will be, forced or seduced to illicit intercourse with another person, shall be punished with imprisonment for life, and shall also be liable to fine.

377-C. Assault or criminal force to a Transgender Person with intent to outrage his or her modesty.- Whoever assaults or uses criminal force to any Transgender Person, intending to outrage or knowing it to be likely that he will thereby outrage her or him modesty, shall be punished with imprisonment of either description for a term which may extend to two years or with fine, or with both.

377-D. Assault or use of criminal force to Transgender Person and stripping the victim of his or her clothes.- Whoever assaults or uses criminal force to any Transgender Person and strips him or her of his or her clothes and in that condition, exposes her to the public view, shall be punished with death or with imprisonment for life, and shall also be liable to fine.

377-E. Procuration of Transgender Person.-Whoever by any means whatsoever, induces any Transgender Person under the age of eighteen years to go from any place or to do any act with intent that such person may be, or knowing that it is likely that such person will be, forced or seduced to illicit intercourse or unnatural offence with another person shall be punished with imprisonment which may extend to ten years and shall also be liable to fine.

377-F. Importation of Transgender Person from foreign country.- Whoever imports into Pakistan from any country outside Pakistan any Transgender person under the age of twenty-one years with intent that he or she may be, or knowing it to be likely that he or she will be, forced or seduced to illicit intercourse or unnatural offence with another person, shall be punished with imprisonment which may extend

to ten years and shall also be liable to fine.

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377-G. Kidnapping or abducting a Transgender person for unnatural lust.- Whoever kidnaps, or abducts any Transgender person in order that such person may be subjected, or may be so disposed of as to be put in danger of being subjected, to the unnatural lust of any person, or knowing it to be likely that such person will be so subjected or disposed of, shall be punished with death or rigorous imprisonment for a term which may extend to twenty five years, and shall also be liable to fine.

377-H. Selling a Transgender person for purposes of prostitution, etc.- Whoever sells, lets to hire, or otherwise disposes of any Transgender person with intent that such a person shall at any time be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such person shall at any time be employed or used for any such, purpose, shall be punished with imprisonment which may extend to twenty-five years, and shall also be liable to fine.

377-J. Buying Transgender person for purposes of prostitution, etc.- Whoever buys, hires or otherwise obtains possession of any Transgender person with intent that such person shall at any time be employed or used for the purpose of prostitution or illicit intercourse or unnatural offence with any person or for any unlawful and immoral purpose, or knowing it to be likely that such person will at any time be employed or used for any such purpose, shall be punished with imprisonment which may extend to twenty-five years, and shall also be liable to fine.

377-K. Enticing or taking away or detaining a Transgender person with criminal intent.- Whoever takes or entices away any Transgender person with intent that he or she may have illicit intercourse or unnatural offence with any person, or conceals or detains with that intent any Transgender person, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

377-L. Word, gesture or act intended to insult the modesty of a Transgender Person.- Whoever, intending to insult the modesty of any Transgender person, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such Transgender person, or intrudes upon the privacy of such Transgender person, shall be punished

with simple imprisonment for a term which may extend to one year, or with fine, or with both.

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377-M. Rape of a Transgender Person. – Any unlawful and forced sexual intercourse or any other sexual penetration into any orifice of a Transgender person under circumstances falling under any of the following descriptions:-

- (i) against the person's will;
- (ii) without victim's consent;
- (iii) with victim's consent, when the consent has been obtained by putting the victim in fear of death or of hurt; and
- (iv) with or without consent when the person is under sixteen years of age or below.

377-N. Punishment of Rape of a Transgender Person.— Whoever commits an offence under section 377-M shall be punished with death or imprisonment of either description for a term which shall not be less than ten years or more than twenty five years and shall also be liable to fine.

377-O. Denial of Transgender Person's Right to Admission in Educational Institution.- Whoever denies a Transgender person admission in an educational institution or employment subject to fulfillment of prescribed requirements on the basis of gender identity and/or expression or status shall be punishable with imprisonment of either description for a term which may extend to two years but shall not be less than six months or with fine which may extend to three hundred thousand rupees.

377-P. Unlawful and forced Eviction of a Transgender Person from any place.- Whoever, forces or causes a Transgender Person to leave his or her house-hold, village or other place of residence shall be punishable with imprisonment of either description for a term which may extend to two years but shall not be less than six months or with fine which may extend to one hundred thousand rupees.

377-Q. Depriving Transgender Person from inheriting property.- Whoever by deceitful or illegal means deprives any Transgender person from inheriting any movable or immovable property at the time of opening of succession shall be punished with imprisonment for either description for a term which may extend to ten years but shall

not be less than five years or with a fine of one million rupees or with both.”

3. Amendment of Schedule II, Act V of 1898.- In the Code of Criminal Procedure, 1898 (V of 1898), in Schedule II, after section 377 and corresponding entries relating thereto in columns 2 to 8, the following new section and entries relating thereto shall be inserted, namely:-

1	2	3	4	5	6	7	8
377-B	Kidnapping, abducting or inducing Transgender Person to seduce him or her to illicit intercourse, etc.	May arrest without warrant	warrant	Non bailable	Non compoundable	Imprisonment for life and fine	Court of Sessions or Magistrate of the first class
377-C	Assault or criminal force to a Transgender Person with intent to outrage his or her modesty.	Shall not arrest without warrant	Ditto	Bailable	Compoundable	Imprisonment for two years and fine	Magistrate of the first class
377-D	Assault or use of criminal force to Transgender Person and stripping the victim of his or her clothes.	May arrest without warrant	Ditto	Non bailable	Non compoundable	Death, imprisonment for life and fine	Court of Sessions
377-E	Procuration of Transgender Person.	Ditto	Ditto	Ditto	Ditto	Imprisonment which may extend to ten years and fine	Ditto
377-F	Importation of Transgender Person from foreign country.	Ditto	Ditto	Ditto	Ditto	Ditto	Ditto
377-G	Kidnapping or abducting a Transgender person for unnatural lust.	Ditto	Ditto	Ditto	Ditto	Imprisonment upto twenty five years and fine	Ditto

377-H	Selling a Transgender person for purposes of prostitution, etc.	Ditto	Ditto	Ditto	Ditto	Ditto	Ditto
377-J	Buying Transgender person for purposes of prostitution, etc.	Ditto	Ditto	Ditto	Ditto	Ditto	Ditto
377-K	Enticing or taking away or detaining a Transgender person with criminal intent.	Ditto	Ditto	Ditto	Ditto	Imprisonment upto seven years and fine	Ditto
377-L	Word, gesture or act intended to insult the modesty of a Transgender Person.	Shall not arrest without warrant	Ditto	Bailable	Compoundable	imprisonment which may extended to one year and fine	Magistrate of the first class
377-N	Rape of a transgender person	May arrest without a warrant	Ditto	Non bailable	Non Compoundable	Death or imprisonment upto twenty five years and fine	Court of Sessions
377-O	Denial of Transgender person's Right to Admission in Educational Institution	Shall not arrest without a warrant	Ditto	Bailable	Non Compoundable	Imprisonment upto two years and fine	Court of Sessions or Magistrate of the first class
377-P	Unlawful and forced Eviction of a Transgender Person from any place	Ditto	Ditto	Ditto	Compoundable	Ditto	Ditto
377-Q	Depriving Transgender Person from inheriting property	May arrest without warrant	Ditto	Non bailable	Compoundable	Imprisonment upto ten years	Court of Sessions

STATEMENT OF OBJECTS AND REASONS

The rights of Transgender Persons are an integral part of human rights and need to be safeguarded at par with other citizens and residents of the country.

This Bill seeks to achieve the above objective in consideration with the Constitutional provisions and the international commitments of the Government of Pakistan.

The Constitution of Pakistan explicitly provides *inter alia* the fundamental rights to life or liberty (Article 9), equality of citizen, (Article 25) and inviolability of dignity (Article 14), safeguard to educational institutions in respect of education (Article 22), protection of property (Article 24), safeguard against discrimination in service (Article 27), etc.

The Transgender Persons constitute one of the most marginalized and disadvantaged communities in the country. They face problems ranging from social exclusion to discrimination, lack of protection in their family, community and the society. The Supreme Court of Pakistan passed a ruling in 2009 stating that no Pakistani law provide room to disenfranchise "eunuchs" from their fundamental rights.

Despite the constitutional guarantees stated hereinabove, the discrimination and atrocities against Transgender Persons are rampant.

The Bill seeks to provide protection to the Transgender Persons against violation of their fundamental rights.

SENATOR RUBINA KHALID
Member-in-Charge