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BILL

to provide for protection against harassment of students in educational institutions

WHEREAS it is expedient to provide for protection against harassment of students in educational institutions and for prevention and penalizing the abuse of authority in the educational institutions;

WHEREAS it is expedient to provide the law for defining, preventing, penalizing and checking the abuse of authority by the pedagogue, the administrative staff and other employees of the educational institutions in the Islamabad Capital Territory.

It is hereby enacted as follows:-

1. Short title, extent and commencement.- (1) This Act may be called the Protection against Harassment of Students in Educational Institutions Act, 2020.

(2) It shall extend to the Islamabad Capital Territory.

(3) It shall come into force at once.

2. Definitions.-In this Act, unless the context otherwise requires, the following expressions shall have the meanings hereby respectively assigned to them, that is to say,-

(a) **"Abuse of Authority"** means the misuse of power in educational institutions by someone in a position of authority who can use the leverage; to oppress students in an inferior position or to induce them to commit a wrongful act. It includes bullying, harassment, sexual and gender based violence, physical assault, by the people in position of authority;

(b) **"Administrative staff"** means the non-teaching staff of the educational institutions;

(c) **"Bullying"** includes repeated, persistent and aggressive behavior intended to cause fear, distress, or harm to another person's body, emotions, self-esteem or reputation;

(d) **"Code of Conduct"** means the Code of Conduct as mentioned in the Schedule to this Act;

- (e) **"Competent Authority"** means the authority as may be designated by the management for the purposes of this Act;
- (f) **"Educational Institutions"** includes schools, colleges, universities, seminaries, madrassas, tuition centers, vocational and technical training centers and all other institutions established for imparting any kind of education and training;
- (g) **"Employee"** means a regular or contractual employee whether employed on deputation, monthly, weekly, daily or hourly basis, and includes an intern or an apprentice;
- (h) **"Government"** means the Federal Government;
- (i) **"Harassment"** means any unwelcome sexual advance, request for sexual favors or other verbal or written communication or physical conduct of a sexual nature or sexually demeaning attitudes causing interference with the performance of the student or creating an intimidating, hostile or offensive study environment, or the attempt to punish the complainant for refusal to comply to such a request or is made a condition for passing exams or scoring in class tests;
- (j) **"Inquiry Committee"** means the committee constituted under this Act for investigating the offences defined under the Protection against Harassment of Students in Educational Institutions Act, 2020;
- (k) **"Management"** means a person or body of persons responsible for the management of the affairs of an educational institution and includes an employer;
- (l) **"Ombudsman"** shall have the same definition as provided under section 2 of the Protection against Harassment of Women at Workplace Act, 2010;
- (m) **"Pedagogue"** all the teaching staff and the employees employed for the purpose of teaching, training or imparting any kind of knowledge or education in the educational institutions;
- (n) **"Person"** includes both male and female;

- (o) **"Physical Assault"** shall have the same definition as the definition of assault provided under Pakistan Penal Code, 1860;
- (p) **"Sexual and Gender Based Violence"** includes any physical, verbal or psychological violence against a person because of gender or sex;
- (q) **"Student"** includes any person enrolled, registered or studying in education institution; and
- (r) **"Victim"** means a person against whom an offence is committed;

3. Complaint.- The complaint may be lodged within seven days of the commission of the offense;

- (a) The complaint shall be in writing.
- (b) There shall be a summary of the nature and details of the acts or omissions alleged to be acts of bullying, harassment, violence, misconduct or abuse of the authority.
- (c) It shall have the full name and contact address of the complainant; the name and position held by the person about whom the complaint is made, and the date or dates of the alleged bullying, harassment, violence, misconduct or abuse of authority.
- (d) It shall have the list of the witnesses, if any.
- (e) It shall state the evidence, the victim is relying on.
- (f) It shall be signed and verified by the complainant.
- (g) It shall be made to the Deputy Commissioner, in case of offenses committed in Schools, Colleges, Seminaries, Madrassas, Tuition Centers, Vocational and Technical Training Centers and all other institutions established for imparting any kind of education and training.
- (h) It shall be made to chairperson of the Higher Education Commission in case of the offenses committed against a student of the universities or institutions duly accredited by the Higher Education Commission.
- (i) A complaint shall be disposed of within 30 days.

4. Joint complainants.- Where a complaint is signed by two or more persons jointly, they may nominate one of them to be the correspondent for the purposes of this Act.

5. Constitution of Inquiry Committee and proceedings.- (1) On receipt of the complaint or complaints, the Deputy Commissioner shall constitute an inquiry committee.

- (a) Where the offence is committed in schools, colleges, seminaries, madrassas, tuition centers, vocational and technical training centers and all other institutions established for imparting any kind of education and training, the inquiry committee shall consist of five members of which two shall be women.
 - (i) Additional Deputy Commissioner shall be the member and Chairperson.
 - (ii) Two of the members shall be the gazetted educational officers of not less than grade 17.
 - (iii) Two of the members shall be gazetted administrative officers of not less than grade 17.
 - (iv) The Proceedings of the inquiry committee shall be the judicial proceedings.
- (b) Where the offence is committed against a student of the universities or institutions duly accredited by the Higher Education Commission, the chairperson of the Higher Education Commission shall constitute an inquiry committee;
 - (i) The inquiry committee shall consist of five members, including the chairperson.
 - (ii) The Executive Director of HEC shall be the member and Chairperson of the committee.
 - (iii) Two of the members shall be the female professors, not having any interest in the university in which the offense is committed.
 - (iv) Two of the members shall be male professors, not having any interest in the university in which the offense is committed.
 - (v) The proceedings of the inquiry committee shall be the judicial proceedings.

6. Procedure for holding inquiry.— (1) The Inquiry Committee, within three days of receipt of a written complaint, shall—

- (a) communicate to the accused the charges and statement of allegations leveled against him;
- (b) require the accused to submit a written defence within seven days from the date the charge is communicated to him and on his failure to do so without reasonable cause, the Committee shall proceed ex-parte; and
- (c) enquire into the charge and may examine such oral or documentary evidence in support of the charge or in defense of the accused as the Committee may consider necessary and each party shall be entitled to cross-examine the witnesses.

(2) Subject to the provisions of this Act and any rules made thereunder, the Inquiry Committee shall have the power to regulate its own procedure for conducting inquiry and for fixing the place and time of its sitting.

(3) The following provisions inter alia shall be followed by the Committee in relation to inquiry:

- (a) The statements and other evidence acquired in the inquiry process shall be considered as confidential;
- (b) An expert, if considered necessary, may be nominated to provide advice and assistance to each party or the Committee;
- (c) Both parties, the complainant and the accused, shall have the right to be represented or accompanied by a Collective Bargaining Agent, a friend or a colleague;
- (d) The inquiry Committee shall ensure that the accused or management of educational institution shall in no case create any hostile environment for the complainant so as to pressurize him/ her from freely pursuing the complaint; and
- (e) The Inquiry Committee shall give its findings in writing by recording reasons thereof.

(4) The Inquiry Committee shall submit its findings and recommendations to the competent authority within thirty days of filing of the complaint. If the inquiry committee finds the accused to be guilty it shall recommend to the competent authority for imposing one or more of the following penalties:

(i) Minor Penalties:

- (a) Censure;
- (b) Withholding, for a specific period, promotion or increment;
- (c) Stoppage, for a specific period, at an efficiency bar in the time scale, otherwise than for unfitness to cross such bar; and
- (d) Recovery of the compensation payable to the complainant from pay or any other source of the accused;

(ii) Major penalties:

- (a) Reduction to a lower post or time-scale, or to a lower stage in a time-scale;
- (b) Compulsory retirement;
- (c) Removal from service;
- (d) Dismissal from service; and
- (e) Fine. A part of fine may be used as compensation for complainant.

(5) In case of the sexual abuse or violence, the inquiry committee shall also forward the complaint to the police or court of competent jurisdiction for initiation of the criminal proceedings against the accused under the relevant laws.

7. Enforcement of the penalty.- (1) The Competent Authority shall impose the penalty recommended by Inquiry Committee under Section 6(4) within one week of the receipt of the findings and recommendations of the Inquiry Committee.

(2) The Deputy Commissioner or the chairperson of the Higher Education Commission, as the case may be, shall ensure implementation of the recommendations of the inquiry committee or Appellate Authority.

8. Medical treatment of the Complainant.-- In case the complainant is in trauma, the educational institution shall arrange on its own expense for psycho-social counseling or medical treatment.

9. Powers of the Inquiry Committee.-- (1) The Inquiry Committee shall have the power—

- (a) to summon and enforce attendance of any person and examine him on oath;
- (b) to require the discovery and production of any document;
- (c) to receive evidence on affidavits; and
- (d) to record evidence.

(2) The Inquiry Committee shall have the power to inquire into the offences described under this Act, to get the complainant or the accused medically examined by an authorized doctor, if necessary, and may recommend appropriate penalty against the accused within the meaning of this Act.

(3) The Inquiry Committee may recommend to the competent authority for appropriate action against the complainant if allegations leveled against the accused found to be false and made with *mala fide* intentions.

(4) The Inquiry Committee may decide and direct to keep the proceedings, findings and recommendations confidential.

10. Appeal against minor and major penalties.— (1) A person aggrieved of decision of the Competent Authority on whom minor or major penalty is imposed may, within thirty days of written communication of decision, prefer an appeal to Ombudsman appointed under Protection against Harassment of Women at the Workplace Act, 2010.

(2) A complainant aggrieved of the decision of the Competent Authority may, prefer an appeal, within thirty days of the decision, to the Ombudsman.

(3) The Appellate Authority may, on consideration of the appeal and any other relevant material, confirm, set aside, vary or modify within thirty days the decision in respect of which such appeal is made. It shall communicate the decision to both the parties and competent authority.

11. Responsibility of the management of the Educational Institutions.—(1) It shall be the responsibility of the management to ensure implementation of this Act.

(2) The management shall display the Code of Conduct in Urdu as well as in language understood by majority of the students, pedagogue, administrative staff and other employees at conspicuous places in the educational institution within six months of the commencement of this Act.

(3) On failure of the management to comply with the provisions of this section any person may file a petition to the Deputy Commissioner or Chairperson of Higher Education Commission, as the case may be, and on having been found guilty the management shall be liable to fine which may extend to five hundred thousand rupees but shall not be less than fifty thousand rupees.

12. Provisions of the Act in addition to and 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.

13. Power to make rules.—The Federal Government may make rules to carry out the purposes of this Act.

THE SCHEDULE

CODE OF CONDUCT FOR PROTECTION AGAINST HARASSMENT OF STUDENTS IN THE EDUCATIONAL INSTITUTIONS

It is expedient to make the Code of Conduct in the educational institutions to provide protection and safety to students against harassment. It is hereby provided as under:

- (i) The Code provides a guideline for behavior of all employees, including management, and the owners of an educational institution to ensure a study environment free of harassment and intimidation;
- (ii) "Harassment" means any unwelcome sexual advance, request for sexual favors or other verbal or written communication or physical conduct of a sexual nature, or sexually demeaning attitudes, causing interference with study performance or creating an intimidating, hostile or offensive study environment, or the attempt to punish the complainant for refusal to comply to such a request or is made a condition for passing exam or scoring in class test including any interaction or situation that is linked to official work or official activity outside the educational institution. This is unacceptable behavior in the educational institution.

Explanation: There are three significant manifestations of harassment in the educational environment:

(a) Abuse of authority

It is defined in the section 2 clause (a).

(b) Creating a hostile environment

Any unwelcome sexual advance, request for sexual favors or other verbal or physical conduct of a sexual nature, which interferes with an individual's study performance or creates an intimidating, hostile, abusive or offensive study environment. The typical "hostile environment" in general, requires finding of a pattern of offensive conduct, however, in cases where the harassment is particularly severe, such as in cases involving physical contact, a single offensive incident will constitute a violation.

(c) Retaliation

- (i) The refusal to grant a sexual favor can result in retaliation, which may include limiting the options for future promotions or training, distorting the evaluation reports, generating gossip against the student or other ways of limiting access to his/her rights. Such behavior is also a part of the harassment.
- (iii) An informal approach to resolve a complaint of harassment may be through mediation between the parties involved and by providing advice and counseling on a strictly confidential basis;
- (iv) A complainant or a staff member designated by the complainant for the purpose may report an incident of harassment informally to his/her supervisor, or a member of the Inquiry Committee, in which case the supervisor or the Committee member may address the issue at his/her discretion in the spirit of this Code. The request may be made orally or in writing;
- (v) If the case is taken up for investigation at an informal level, a senior manager from the office or the head office will conduct the investigation in a confidential manner. The alleged accused will be approached with the intention of resolving the matter in a confidential manner;
- (vi) If the incident or the case reported does constitute harassment of a higher degree and the officer or a member reviewing the case feels that it needs to be pursued formally for a disciplinary action, with the consent of the complainant, the case can be taken as a formal complaint;

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- (vii) A complainant does not necessarily have to take a complaint of harassment through the informal channel. He/she may launch a formal complaint at any time;
- (viii) The complainant may make formal complaint through his/her incharge, supervisor, or guardian, as the case may be, or directly to the Deputy Commissioner or the Chairperson of the Higher Education Commission, as the case may be. Upon receipt of the complaint the said authority is obligated to initiate the process of investigation.;
- (ix) Assistance in the inquiry procedure can be sought from any member of the organization who should be contacted to assist in such a case;
- (x) The management shall do its best to temporarily make adjustments so that the accused and the complainant do not have to interact during the investigation period. This would include temporarily changing the class/section, in case both have to be in same class, or taking away any extra charge over and above their assignment which may give the accused excessive powers over the complainant's study or progress conditions. The management can also decide to send the accused on leave or suspend the accused in accordance with the applicable procedures for dealing with the cases of misconduct, if required;
- (xi) Retaliation from either party should be strictly monitored. During the process of the investigation work, evaluation, daily duties, reporting structure and any parallel inquiries initiated should be strictly monitored to avoid any retaliation from either side;
- (xii) The harassment usually occurs when the victim is alone with the accused; therefore, it is usually difficult to produce evidence. It is strongly recommended that the student should report an offensive behavior immediately to someone he/she trust, even if the student do not wish to make a formal complaint at the time. Although not reporting immediately shall not affect the merits of the case; and
- (xiii) The Code lays down the minimum standards of behavior regarding protection of students from harassment in educational institutions, etc. but will not affect any better arrangement that an educational institution may have developed nor will it bar the grant of any other kind of alternate protection.
- (xiv) In addition to the above, the management of the institution may adopt any code of conduct not in derogation or inconsistent with the Act and this Code of Conduct.

STATEMENT OF OBJECTS AND REASONS

Seeking education in a dignified manner is the fundamental right of every citizen however, the acts of harassment of the students in educational institution are raising manifold. There is no law available, at the moment, to curb the issue of bullying, harassment, violence and abuse of authority against the students in the educational institutions.

This bill seeks to ensure provision of education in safe environment in educational institutions and penalizing the culprits defaming the noble profession of education.

SENATOR MUHAMMAD JAVED ABBASI
Member-in-Charge