**PECA and children**

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Part - II

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The court has also been tasked with responsibilities under the 2023 amendment. Under Section 44 and 2 (ix) of PECA 2016, designated courts for electronic crimes were notified in consultation with the chief justices of ICT and each province.

As per Section 30 (4) of the 2023 amendment, the court on taking cognizance of a case shall “…proceed with the trial on weekly basis and shall decide the case within three months, failing which the matter shall be brought, to the notice of the Chief Justice of the High Court concerned for appropriate directions, keeping in view the facts and circumstances of the case.”

Comparatively, under Sections 3 and 16 of the Anti-Rape Act 2021, Special Courts have been notified and mandated to decide the case “preferably within four months”. Therefore, separate courts exist under both laws and there is also a contradiction in the trial period times under both laws.

Additionally, Section 30B has been inserted by the 2023 amendment to add victim and witness protection to the existing law. Section 30B states that “a victim and witness protection system shall be established by the federal and provincial governments of Pakistan through rules with features…”. The victim and witness protection methods include special security arrangements for witnesses and victims, concealment of identity, distance recording of testimonies through video-conferencing and audio video links and by the use of modern devices, re-location of victims and witnesses, provision of reasonable financial assistance, compensation to legal heirs of protected victims and witnesses, safe-houses, dar-ul-amans etc and such other measures as maybe necessary and ancillary. Victim and witness protection mechanisms are also stipulated under Section 8 of the Anti-Rape Act 2021.

Recently, in Muhammad Shahzad Khaliq v the State (Criminal Appeal No.151/2020), the Islamabad High Court (IHC) issued survivor-centric guidelines in cases of child abuse material. These include guidance to protect victims/survivors, such as they should not be called to the court, if the evidence is based upon video, IT Data, mobile data, information system etc and confirmed by the Forensic Science Agency through their report. Child abuse material shall not be displayed in the court and the trial court shall pass an order for elimination of all such data, images or videos. It is necessary that these specific guidelines are also incorporated within the victim and witness protection system in the 2023 amendment (or its rules when framed) to protect the children.

Section 30B has been inserted by the amendment to mandate in-camera trials in offences against minors. ‘In camera’ is a Latin phrase that directly translates to ‘in chambers’. It is used to signify that proceedings of a legal case are conducted in private, before a judge, and are not open to the press or the public. Similarly, Section 12 of the Anti-Rape Act 2021 also mandates an in-camera trial.

Further, Article 164 of the Qanun-e-Shahadat, concerning the “production of evidence that has become available because of modern devices or information system” has been substituted by the 2023 amendment. It states: “Depending on the nature of case and circumstances, the court may, if deems appropriate, allow to be produced any evidence or witnesses recorded by the court through the modern devices or techniques including video call, Viber, Skype, imo, WhatsApp, Facebook Messenger, LINE caller and video conference, etc.” This is a good addition to ensure evidence collected through the modern devices or techniques may be produced in the court of law.

Lastly, Sections 292B and 292C (child pornography and its punishment) of PPC 1860 have been omitted. These were inserted into the PPC through the Criminal Law (Amendment) Act, 2016. Unfortunately, when laws are repealed and new amendments are made, it becomes challenging to implement them as the CJS actors remain unaware of these changes.

Therefore, implementation and awareness of the 2023 amendment is essential. National and sub-national human rights institutions (NHRIs) such as the Sindh Human Rights Commission (SHRC) must play their role. Recently, the SHRC conducted trainings for 45 recently appointed civil judges and judicial magistrates and law police inspectors under Section 4(vi)(viii) and (ix) of the Sindh Protection of Human Rights Act 2011 on the latest laws regarding human rights including the PECA 2016 and the 2021 and 2023 Amendments. Efforts like these are valued and appreciated.

Under Section 6 of the Anti-Rape Act 2021, the legal aid and justice authority (LAJA) established under LAJA Act 2020 has been mandated to provide legal assistance to the victims/survivors. This linkage is missing from the 2023 amendment. Further, Linkages with Section 4 and 5 (Anti-Rape Crises Cells), Section 7 (Special Prosecutors), 11 (Independent Support Advisors), 20 (Fund) under the Anti-Rape Act 2021 are also missing from the 2023 Amendment.

Lastly, under Section 30 of the Anti-Rape Act 2021, the Ministry of Law and Justice (MOLJ) can amend the schedule through notification in the official Gazette. It is recommended that the offences defined and introduced to PECA 2016 through the 2023 amendment are also included in the Schedule. This will ensure a linkage between PECA and its 2023 Amendment and the Anti-Rape Act 2021.

Concluded

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