**PECA and children**

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Part - I

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In today’s world, children face new unconventional challenges posed by the rise of digital technology. This exposes children to digital risks such as cyberbullying and sexual abuse, which were not comprehensively covered by the legal system of Pakistan even though Pakistan ratified the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (OPSC) back in July 2011.

About 45 per cent of Pakistan’s population is under the age of 18, as per the latest Unicef report. Additionally, a report by the NGO, Sahil, reveals that from January to June 2023, a total of 2,227 cases of child sexual abuse and 53 cases of child pornography were reportedacross Pakistan.

The legal system must recognize the vulnerability of child survivors/victims as well as the witnesses and provide protective procedures to recognize their special needs. Therefore, it is essential to ensure that our children are provided adequate protection mechanisms in cases of online gender-based violence (GBV).

Recently, the Prevention of Electronic Crimes Act 2016 (PECA) was amended through the Criminal Laws (Amendment) Act 2023 (2023 Amendment) with the aim to extend comprehensive protection against online violence to children. The 2023 amendment was published in the gazette of Pakistan on July 24, 2023.

The 2023 amendment is the latest federal law governing sexual violence in Pakistan. Earlier, the Anti-Rape (Investigation and Trial) Act and the Criminal Law (Amendment) Act 2021 (which re-defined the definition of rape in the Pakistan Penal Code (PPC) were enacted. Additionally, four separate rules were notified under the Anti-Rape Act 2021 including the Anti-Rape Crises Cell and Medico-Legal Rules, Trial Procedure Rules, Investigation Rules 2022 and the Sex Offenders Register Rules 2023. It is strongly recommended that when the rules are being drafted under PECA’s 2023 amendment, the pre-existing legal framework is integrated within them with strong linkages to provide a well-coordinated response by the criminal justice system (CJS) actors.

The linkages are crucial. This is because a victim/survivor may have gone through online and physical abuse at the same time. For example, if a perpetrator is abusing the victim/survivor and also recording the abuse through electronic means, he/she is not only committing a crime under PECA and its 2023 amendment but also a physical form of sexual violence under the Anti-Rape Act 2021. It can become difficult for the CJS actors to understand how to proceed and which protective, investigation and trial mechanisms to adopt.

Therefore, while providing an analysis on the 2023 amendment, I will also outline the pre-existing mechanisms stipulated under the Anti-Rape Act 2021 and the rules framed within it.

It is important to understand the comprehensive applicability of PECA to outline its significance. PECA is applicable to the whole of Pakistan, every citizen of Pakistan wherever s/he may be and also to every other person for the time being in Pakistan. It also applies to any act committed outside Pakistan by any person, if the act constitutes an offence under PECA and affects a person, property, information system or data located in Pakistan, as per Section 1 of PECA 2016.

In the 2023 amendment, under Section 2(via), ‘child’ has been defined as “a person below the age of eighteen years.” This is a good addition as it is in line with Article 1 of the UN Convention on the Rights of the Child (UNCRC).

Additionally, the definition of a ‘complainant’ has been inserted through Section 2 (via) of the 2023 amendment as “any person who makes complaints of any offence… and includes a victim, or an individual having substantial reasons to believe the offence is being committed or likely to be committed and any authority referring the complaints for investigation.” This will increase the reporting of the GBV crimes against children to ensure that the perpetrators are held accountable.

Moreover, serious offences against children have been defined for the protection of children from online GBV. This includes ‘child sexual abuse content’ and ‘sexually explicit conduct’, defined under Section 2 (vib) and (xxviia). New sections 22A (online grooming, solicitation and cyber enticement), 22B (commercial sexual exploitation of children) 22C (use of information system for kidnapping, abduction or trafficking of minors) and 24A (cyberbullying) have also been inserted through the 2023 Amendment.

Importantly, Section 30 titled ‘power and procedure to investigate’ has been amended. In addition to the Federal Investigation Agency (FIA), the police have also been authorized to take cognizance under PECA. In that case, the police are bound to refer the matter relating to the offence under PECA immediately to the FIA, for ‘technial opinion and investigation’.

The federal and provincial governments may also constitute a joint investigation team (JIT). The JIT will include five members headed by an investigating officer not below the rank of BS-18, as per Section 30 (2) of the 2023 amendment. Moreover, the investigating officer or the JIT has been mandated to complete the investigation within forty-five working days, as per Section 30 (3) of the 2023 amendment.

However, under Section 9 of the Anti-Rape Act 2021, Special Sexual Offences Investigation Units (SSOIUs) were mandated to achieve the objective of establishing special investigation teams in sexual violence crimes. According to Section 9 (3) of the Anti-Rape Act 2021, the offences over which SSOIUs have jurisdiction to investigate are divided into two categories. The offences in Schedule I include (but are not limited to): 292-B (child pornography), 292-C (punishment for child pornography). These two sections were omitted from the PPC by the 2023 amendment. Therefore, the JIT under the 2023 amendment must be linked with SSIOUs under the Anti-Rape Act 2021 through a coordination mechanism.

To be continued

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