

**ACTS
SUPPLEMENT No. 4**

17th August, 2007.

ACTS SUPPLEMENT
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Act 8 *Penal Code (Amendment) Act* 2007

THE PENAL CODE (AMENDMENT) ACT, 2007.

ARRANGEMENT OF SECTIONS.

Section

1. Abolition of corporal punishment.
2. Section 129 of the Penal Code Act replaced.
3. Amendment of section 286 of the principal Act.
4. Repeal of section 288.
5. Amendment of section 319 of principal Act.
6. Transitional provision.

THE PENAL CODE (AMENDMENT) ACT, 2007. An Act to amend the Penal Code Act.

Date of Assent: 20th July, 2007.

Date of commencement: 17th August, 2007.

Be it enacted by Parliament as follows:

1. Abolition of corporal punishment.
 - (1) Corporal punishment is abolished and accordingly, all references to corporal punishment in the Penal Code Act in this Act referred to as the principal Act, are repealed.
 - (2) Without prejudice to the general effect of subsection (1) of this section, section 125, subsection (2) of section 129 and section 205 of the Penal Code Act, are amended by the repeal of the words “with or without corporal punishment”.

The principal Act is amended by substituting for section 129 the following new sections— “Defilement of persons under eighteen years of age.

129. (1) Any person who performs a sexual act with another person who is below the age of eighteen years, commits a felony known as defilement and is on conviction liable to life imprisonment.

(2) Any person who attempts to perform a sexual act with another person who is below the age of eighteen years commits an offence and is on conviction, liable to imprisonment not exceeding eighteen years.

(3) Any person who performs a sexual act with another person who is below the age of eighteen years in any of the circumstances specified in subsection (4) commits a felony called aggravated defilement and is, on conviction by the High Court, liable to suffer death.

(4) The circumstances referred to in subsection (3) are as follows—

(a) where the person against whom the offence is committed is below the age of fourteen years;

(b) where the offender is infected with the Human Immunodeficiency Virus (HIV);

(c) where the offender is a parent or guardian of or a person in authority over, the person against whom the offence is committed;

(d) where the victim of the offence is a person with a disability; or

(e) where the offender is a serial offender.

(5) Any person who attempts to perform a sexual act with another person below the age of eighteen years in any of the circumstances specified in subsection (4), commits an offence and is liable on conviction, to imprisonment for life.

(6) Where a person is charged with the offence under this section that person shall undergo a medical examination as to his or her Human Immuno Deficiency Virus (HIV) Status.

(7) In this section—

“disability” means a substantial functional limitation of daily life activities caused by physical, mental or sensory impairment and environment barriers resulting in limited participation;

“serial offender” means a person who has a previous conviction for the offence of defilement or aggravated defilement;

“sexual act” means—

(a) penetration of the vagina, mouth or anus, however slight, of any person by a sexual organ;

(b) the unlawful use of any object or organ by a person on another person’s sexual organ;

“sexual organ” means a vagina or a penis.

Child to child sex.

129A. (1) Where the offender in the case of any offence under section 129 is a child under the age of twelve years, the matter shall be dealt with as required by Part V of the Children Act.

(2) Where an offence under section 129 is committed by a male child and a female child upon each other when each is not below the age of twelve years of age, each of the offenders shall be dealt as required by Part X of the Children Act.

Payment of compensation to victims of defilement.

129B. (1) Where a person is convicted of defilement or aggravated defilement under section 129, the court may, in addition to any sentence imposed on the offender, order that the victim of the offence be paid compensation by the offender for any physical, sexual and psychological harm caused to the victim by the offence.

(2) The amount of compensation shall be determined by the

court and the court shall take into account the extent of harm suffered by the victim of the offence, the degree of force used by the offender and medical and other expenses incurred by the victim as a result of the offence”.

3. Amendment of section 286 of the principal Act.

The principal Act, is amended in section 286 by substituting for subsections (2) and (3) the following—

“(2) Notwithstanding subsection (1) (b), where at the time of or immediately before or immediately after the time of the robbery, an offender is in possession of a deadly weapon, or causes death or grievous harm to any person, the offender or any other person jointly concerned in committing the robbery shall, on conviction by the High Court, be liable to suffer death.

(3) In subsection (2) “deadly weapon” includes—

- (a) (i) an instrument made or adapted for shooting, stabbing or cutting, and any imitation of such an instrument;
- (ii) any substance,

which when used for offensive purposes is capable of causing death or grievous harm or is capable of inducing fear in a person that it is likely to cause death or grievous bodily harm; and

- (b) any substance intended to render the victim of the offence unconscious.”

4. Repeal of section 288.

The principal Act is amended by repealing section 288.

5. Amendment of section 319 of principal Act.

Section 319 of the principal Act is amended by substituting for subsection (3) the following new subsection—

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(3) In subsection (2) “deadly weapon” includes—

(a) (i) an instrument made or adapted for shooting, stabbing or cutting, and any imitation of such an instrument;

(ii) any substance,

which when used for offensive purposes is capable of causing death or grievous harm or is capable of inducing fear in a person that it is likely to cause death or grievous bodily harm; and

(b) any substance intended to render the victim of the offence unconscious.”

6. Transitional provision.

Where at the commencement of this Act any proceedings are pending before the High Court for the prosecution of the offence of defilement under section 129 of the Penal Code Act, any such proceedings shall be transferred to the appropriate court presided over by a Chief Magistrate if the hearing of the case in the trial has not commenced.