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THE PUNJAB SENTENCING ACT 2019

(XXXIV of 2019)

CONTENTS

Part I **INTRODUCTION**

- 1. Short title, extent and commencement**
- 2. Definitions**

Part II **GENERAL PROVISIONS ABOUT SENTENCING**

- 3. Scope and application of the Act**
- 4. Purpose of sentencing**
- 5. Determining the sentence**
- 6. Determining the seriousness of an offence**
- 7. Aggravating and mitigating factors**

Part III **SPECIAL PROVISIONS ABOUT SENTENCING**

- 8. Sentences for cases involving violence against or neglect of child under 14 years**
- 9. Sentences for cases involving religious aggravation**
- 10. Sentences for aggravation related to terrorist activities**
- 11. Sentencing under laws designed to protect the public from injury**
- 12. Reduction in sentences for guilty pleas**

Part IV **PROCEDURE**

- 13. Issues to be stated in judgment**
- 14. Procedure to be followed in arriving at sentence**
- 15. Notice to prosecution**

Part V **SENTENCING COUNCIL**

16. **Establishment of Sentencing Council**
17. **Composition of the Council**
18. **Chairperson of the Council**
19. **Term of office**
20. **Appointment of employees of the Council**
21. **Functions of the Council**
22. **Court to consider sentencing guidelines**
23. **Publication of annual reports**

**Part VI
MISCELLANEOUS**

24. **Power to make rules**

**SCHEDULE
(Sentencing Table)**

TEXT

**'THE PUNJAB SENTENCING ACT 2019
(XXXIV of 2019)**

[13th December, 2019]

An
Act

to lay down factors to be considered by courts while passing sentences to improve consistency in sentencing.

It is necessary to lay down the factors to be considered by the courts while passing sentences to improve consistency in sentencing and for the matters connected therewith and incidental thereto.

Be it enacted by Provincial Assembly of the Punjab as follows:

**Part I
INTRODUCTION**

1. Short title, extent and commencement.— (1) This Act may be cited as the Punjab Sentencing Act 2019.

(2) It extends to whole of the Punjab.

(3) It shall come into force on such date as the Government may, by Notification in the official Gazette, appoint.

2. Definitions.— In the Act:

(a) “Act” means the Punjab Sentencing Act 2019;

(b) “aggravating factors” means the factors mentioned in subsection (1) of section 7 of the Act;

(c) “Council” means the Sentencing Council established under section 16 of the Act;

(d) “custodial sentence” means sentence curtailing the liberty of an offender by means of imprisonment;

(e) “Government” means Government of the Punjab;

(f) “mitigating factors” means the factors mentioned in subsection (2) of section 7 of the Act;

(g) “proscribed organization” means an organization proscribed under the Anti-Terrorism Act, 1997 (XXVII of 1997);

(h) “prosecutor” means a public prosecutor appointed under the Punjab Criminal Prosecution Service (Constitution, Functions and Powers) Act, 2006 (III of 2006) but does not include a private prosecutor whether appearing with permission of the public prosecutor or otherwise;

(i) “public order offence” means any offence which may lead to public disorder or a breach of the public peace, nuisance, affray or rioting;

¹This Act was passed by Provincial Assembly of the Punjab on 27 November 2019; assented to by the Governor of the Punjab on 10 December 2019; and, was published in the Punjab Gazette (Extraordinary), dated: 13 December 2019, pp.2637-2643.

- (j) “regulatory offence” means an offence under a provincial law which prescribes the manner of doing a thing, or prohibits the doing of a thing in a manner not approved or prescribed by law;
- (k) “Schedule” means the Schedule appended to the Act;
- (l) “sentence” means the punishment awarded by a judge or a magistrate to a person who has been convicted of a crime;
- (m) “terrorist offence” means an offence under the Anti-Terrorism Act, 1997 (XXVII of 1997); and
- (n) “time range of imprisonment” means the time range of imprisonment that the relevant statute provides for conviction of an offence;

Part II

GENERAL PROVISIONS ABOUT SENTENCING

3. Scope and application of the Act.– (1) The provisions of the Act shall be applicable in cases where a time range of imprisonment is a punishment.

(2) The provisions of the Act shall not be applicable in cases where capital punishment is provided within the range of punishments.

4. Purpose of sentencing.– A court dealing with an offender in respect of his offence shall have regard to the purposes of sentencing being the:

- (a) punishment of offenders;
- (b) reduction of crime including its reduction by deterrence;
- (c) reform and rehabilitation of offenders;
- (d) protection of the public; and
- (e) making of reparation by offenders to persons affected by their offences.

5. Determining the sentence.– In determining a sentence, the court shall take into account:

- (a) the purpose of sentencing as defined in section 4 of the Act; and
- (b) seriousness of an offence under the provisions of the Act.

6. Determining the seriousness of an offence.– In considering the seriousness of any offence, the court shall consider the aggravating and mitigating factors proved during trial.

7. Aggravating and mitigating factors.– (1) In sentencing or otherwise dealing with an offender, the court shall take into account the following aggravating factors to the extent that they are applicable in the case:

- (a) that the offence involved actual or threatened violence or the actual or threatened use of a weapon;
- (b) that the offence involved unlawful entry into, or unlawful presence in, a dwelling place;
- (c) that the offence was committed while the offender was on bail or still subject to a sentence;
- (d) the extent of any loss, damage, or harm resulting from the offence;

- (e) marked cruelty in the commission of the offence;
- (f) that the offender was abusing a position of trust or authority in relation to the victim;
- (g) that the victim was a police officer, a prosecutor or a judge acting in the course of his or her duty;
- (h) that the victim was particularly vulnerable because of his or her age or health or because of any other factor known to the offender;
- (i) that the offender committed the offence partly or wholly because of hostility towards a group of persons who have an enduring common characteristic such as race, color, nationality, religion, gender identity, sexual orientation, age, or disability:
 - (i) the hostility is because of the common characteristic; and
 - (ii) the offender believed that the victim has that characteristic;
- (j) the nature and extent of any connection between the offence and the offender's:
 - (i) participation in a proscribed organization; and
 - (ii) involvement in any other form of organized criminal association;
- (k) premeditation on the part of the offender and, if so, the level of premeditation involved;
- (l) the number, seriousness, date, relevance, and nature of any previous convictions of the offender and of any convictions for which the offender is being sentenced or otherwise dealt with at the same time; and
- (m) any failure by the offender personally (or failure by the offender's lawyer arising out of the offender's instructions to, or failure or refusal to co-operate with, his or her lawyer) to comply with a procedural requirement that, in the opinion of the court, has done either or both of the following:
 - (i) caused a delay in the disposition of the proceedings; and
 - (ii) had an adverse effect on a victim or witness.

(2) In sentencing or otherwise dealing with an offender, the court shall take into account the following mitigating factors to the extent that they are applicable in the case:

- (a) the age of the offender;
- (b) whether and when the offender pleaded guilty;
- (c) the conduct of the victim;
- (d) that there was a limited involvement of the offender in the offence;
- (e) that the offender has, or had at the time the offence was committed, diminished intellectual capacity or understanding;
- (f) any remorse shown by the offender;

- (g) any actions taken by the offender to undo the loss or injury caused by him;
 - (h) that the offender has taken steps during the proceedings (other than steps to comply with procedural requirements) to shorten the proceedings or reduce their cost:
 - (i) any adverse effects on the offender of a delay in the disposition of the proceedings caused by a failure by the prosecutor/law enforcement agencies and any other agency associated with the trial, to comply with a procedural requirement; and
 - (j) any evidence of the previous good character of the offender.
- (3) Nothing in subsection (1) or subsection (2) shall:
- (a) prevent the court from taking into account any other aggravating or mitigating factor that the court may think fit; or
 - (b) imply that a factor referred to in the aforementioned subsections shall be given greater weight than any other factor that the court may have taken into account.
- (4) The court shall take into account the mutual exclusivity of the mitigating and aggravating factors and only in special circumstances, to be explicitly mentioned in the judgment, may treat them concurrently.

Part III SPECIAL PROVISIONS ABOUT SENTENCING

8. Sentences for cases involving violence against or neglect of child under 14 years.– (1) This section shall apply if the court is sentencing or otherwise dealing with an offender in a case involving serious violence against a child under the age of fourteen years in the following circumstances:

- (a) the defenselessness of the victim;
 - (b) in relation to any harm resulting from the offence, any serious or long-term physical or psychological effect on the victim;
 - (c) the magnitude of the breach of any relationship of trust between the victim and the offender;
 - (d) threats by the offender to prevent the victim reporting the offence; and
 - (e) deliberate concealment of the offending from authorities.
- (2) The court shall treat the facts provided in subsection (1) as aggravating factors.

9. Sentences for cases involving religious aggravation.– (1) This section shall apply where a court is determining the sentence of an offence pertaining to any of the provisions envisaged under any law relating to death, serious injury, criminal damage, public order offences and harassment in the circumstances where the offender has demonstrated continued hostility towards the victim because of his religious beliefs or the religious denomination to which the victim belongs.

- (2) If the offence was religiously aggravated, the court shall:
- (a) treat that fact as an aggravating factor; and
 - (b) state in the judgment that the offence was so aggravated.

10. Sentences for aggravation related to terrorist activities.– (1) This section shall apply where the court is determining the sentence of a terrorist offence, and the offender demonstrated hostility towards the victim or intended victim immediately before or after the commission of the offence because of his or her:

- (a) religious beliefs;
- (b) political ideology; and
- (c) cultural outlook.

(2) The court shall treat the facts provided in subsection (1) as aggravating factors.

11. Sentencing under laws designed to protect the public from injury.– (1) This section shall apply where the court is determining the sentence of a regulatory offence committed in any of the following circumstances:

- (a) a serious injury was caused to one or more persons as a consequence of the offense;
- (b) the offender had been warned to take remedial action but had omitted to do so; and
- (c) the offender had taken action to thwart a law enforcement agency from inspecting or otherwise dealing with the offence in accordance with law.

(2) The court shall treat the facts provided in subsection (1) as aggravating factors.

12. Reduction in sentences for guilty pleas.– (1) In determining what sentence to pass on an offender who has pleaded guilty to an offence in proceedings before the court, the court shall take into account:

- (a) the stage in the proceedings at which the offender indicated his intention to plead guilty, and if such plea is made at the outset or substantially saves the time of the court, the court shall reduce by one fourth the custodial period calculated for the offence on the basis of section 7 of the Act; and
- (b) the circumstances in which the above indication was given if such circumstances render the possibility of sufficing the purposes of sentencing.

(2) Nothing in this section shall bind a court to pass a lower sentence in which sentencing factor pertaining to marked cruelty is proved against the offender.

Part IV PROCEDURE

13. Issues to be stated in judgment.– (1) A judgment shall indicate whether a custodial sentence or other sentence is the most appropriate and shall include reasons for the same.

(2) Where the court imposes a custodial sentence it shall indicate the mitigating factors in existence if it imposes a sentence in Zone A or B and aggravating factors if it imposes a sentence in Zone C or D contained in the Schedule.

14. Procedure to be followed in arriving at sentence.– (1) A sentencing court shall assess the following before deciding the sentence:

- (a) whether there is a statutory minimum sentence or mandatory sentence that must be imposed in case of a guilty verdict;
- (b) whether there is a sentencing guideline on the subject and its recommendations;
- (c) the aggravating and mitigating factors involved;
- (d) the impact of the crime on the victim or potential victim; and
- (e) the sentences of other accused in the case if already convicted and sentenced.

(2) The Court, before imposing the sentence, shall consider the medical and educational reports of the offender.

15. Notice to prosecution.– Where a court proposes to impose a fine only in an offence where a sentence of imprisonment of more than twelve months or fine may be imposed by law, the court shall provide an opportunity to the prosecutor or prosecuting agency to address the court on sentencing.

Part V SENTENCING COUNCIL

16. Establishment of Sentencing Council.– As soon as may be, the Government shall establish a Sentencing Council which shall perform its functions under the Act.

17. Composition of the Council.– (1) The Council shall consist of such number of members, including the Chairperson, as may be specified by the Government but such number shall not be less than five or more than seven.

(2) A member shall be a person who is known for his integrity, expertise, experience and eminence in law, social policy and/or criminal justice.

(3) The Government may appoint members of the Council from serving or retired civil servants, prosecutors, judges, lawyers and criminal justice practitioners on such remuneration and allowances as the Government may determine.

18. Chairperson of the Council.– (1) The Government shall appoint one of the members as the Chairperson of the Council, and no member shall be appointed Chairperson for more than two consecutive terms.

(2) The Government shall appoint a chief executive officer of the Council who shall be responsible for the day to day administration of the affairs of the Council and shall act subject to the regulations made by the Council.

19. Term of office.– Each member shall be appointed for a term not exceeding three years from the day of his appointment as a member.

20. Appointment of employees of the Council.– The Government may, from time to time, employ persons to be employees of the Council, who shall be paid such remuneration and allowances and shall hold their employment on such terms and conditions as may be determined by the Government.

21. Functions of the Council.– The Council shall perform the following functions:

- (a) develop and issue sentencing guidelines which are in consonance with the provisions of the Act;
- (b) monitor and assess the impact of sentencing provisions and guidelines on Sentencing practice;
- (c) consider the impact of policy and legislative proposals relating to sentencing, when requested by the Government;
- (d) promote awareness amongst the public regarding the realities of sentencing and publishing information regarding sentencing practice in Magistrates' and Sessions court.
- (e) consider the impact of sentencing decisions on victims; and
- (f) play a greater part in promoting understanding of, and increasing public confidence in, sentencing and the criminal justice system.

22. Court to consider sentencing guidelines.– (1) Every court shall have regard to any relevant sentencing guideline while sentencing an offender.

(2) Where a court imposes a sentence of a different kind or outside the range indicated in a council guideline it shall state its reason for doing so.

23. Publication of annual reports.– At the conclusion of each calendar year, the Council shall publish an annual report regarding the performance of its functions during the year.

Part VI MISCELLANEOUS

24. Power to make rules.– The Government may make rules for carrying out the purposes of the Act.

**SCHEDULE
(Sentencing Table)**

Sentencing Zones					
Sr. No.	Range of Punishment	Zone A	Zone B	Zone C	Zone D
1.	up to six months	Less than one and a half months	More than one and half – three months	More than three months – four and half months	More than four and half months – six months
2.	up to one year	Less than three months	More than three – six months	More than six months – nine months	More than nine months – twelve months
3.	up to three years	Less than six months	More than six months – one year	More than one year – two years	More than two years – three years
4.	up to seven years	Less than two years	More than two years – three years and six months	More than three years and six months – five years and six months	More than five years and six months – seven years
5.	up to ten years	Less than two years and six months	More than two years and six months – five years	More than five years – seven years and six months	More than seven years and six months – ten years
6.	up to fourteen years	Less than three years and six months	More than three years and six months – seven years	More than seven years – ten years and six months	More than ten years and six months – fourteen years
7.	up to twenty five years	Less than ten years	Ten – fifteen years	More than fifteen years – twenty years	More than twenty years – twenty five years