



No.2(119)/2021-Chair-NCHR
GOVERNMENT OF PAKISTAN
NATIONAL COMMISSION FOR HUMAN RIGHTS
 5th Floor Evacuee Trust Complex, F-5/1,
 Agha Khan Road, Islamabad.



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Islamabad, 16th October, 2023

Subject: **POLICY BRIEF ON THE ISSUE OF HANGING IN PUBLIC OF RAPISTS**

Dear **Mr. A. D Khawaja,** **Salaam**

Ministry of Human Rights
Office of Secretary
Diary No: 2265
Dated: 18-10-23

Ministry of Human Rights
Office of Secretary
Diary No: 2265
Dated: 17-10-23

The National Commission for Human Rights (NCHR) is a statutory body set up under the NCHR Act XVI of 2012. The NCHR Act, 2012 stipulates a broad and overarching mandate for the promotion and protection of human rights, as provided for in Pakistan's Constitution, domestic law and international treaties. Amidst others, the primary functions of the NCHR include investigating into allegations of rights violations and advising the Government on legislative, policy and administrative matters pertaining to the situation of human rights in the country.

- The Senate Standing Committee on Interior in its meeting held on 28th September, 2023 has passed a bill on Hanging in Public of Rapists. The bill was moved by Senator Mushtaq Ahmed. Copy of the bill (enclosed).
- Pakistan has signed and rectified a number of International human rights instruments including the ICCPR and is under obligation to comply with its international commitments. The NCHR has prepared a Policy Brief (copy enclosed) on Public Hanging of Rapists.
- It is requested that NCHR's Policy Brief may kindly be perused.

Yours Sincerely,
Rabiya Javeri Agha
(Rabiya Javeri Agha)
Chairperson (NCHR)

Director General (HR)
By: **Mr. A. D. Khawaja**
Secretary,
Ministry of Human Rights,
Government of Pakistan,
Islamabad.

This is very sensitive and important issue and will be up to the govt. to decide.
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INTRODUCED ON 16.01.2023.
[AS INTRODUCED IN THE SENATE]

A

BILL

*further to amend the Pakistan Penal Code, 1860 and the Code of
Criminal Procedure, 1898*

WHEREAS It is expedient and substantial to bring meaningful and significant amendments in the Pakistan Penal Code, 1860 (XLV of 1860) and the Code of Criminal Procedure 1898 (V of 1898) for the purposes hereinafter appearing;

It is hereby enacted as follows: -

1. Short title and commencement. - (1) This Act may be called the Criminal Laws (Amendment) Act, 2023.

(2) It shall come into force at once.

2. Amendment of section 375, Act XLV of 1860. - In the Pakistan Penal Code, 1860 (XLV of 1860) hereinafter referred to as the Penal Code, in section 375,-

(i) in paragraph (c) for the expression ";or" a full stop "." shall be substituted;

(ii) paragraph (d) shall be omitted; and

(iii) at the end the following Explanation 5, shall be added, namely:-

"Explanation 5. Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape."

3. Amendment of section 375A, Act XLV of 1860. - In the Penal Code, in section 375A, for the expression "or for imprisonment for the remainder period of natural life" the expression "executed through public hanging" shall be substituted.

4. Amendment of section 376, Act XLV of 1860. - In the Penal Code, in section 376, in sub-section (1) after the words "with death" the expression "executed through public hanging" shall be inserted, thereafter the expression "or for imprisonment for the remainder period of his natural life" shall be omitted.

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5. Amendment of schedule II, Act V of 1898.- In the Code of Criminal Procedure 1898 (V of 1898), in schedule II,-

- (i) against section 375A, for the entry in column 7, for the expression "or imprisonment for the remainder period of natural life" the expression "executed through public hanging" shall be substituted; and
- (ii) against section 376, for the entry in column 7, after the word "death" the expression "executed through public hanging" shall be inserted and the expression "or imprisonment for the remainder period of natural life" shall be omitted.

STATEMENT OF OBJECTS AND REASONS

The Anti-Rape (Investigation and Trial) Act, 2021, established special courts and the use of modern devices during investigation and trial in rape cases. Through the said Act, the definition of Rape has been revisited and some amendments have been made to deter the rapists in the contemporary circumstances. There is no denying the fact that rape being a heinous crime needs stringent laws to avert the wrong doers. To create an existential deterrence and bring the definition of rape in accordance to the Islamic Sharia, the death sentence is proposed to be executed through public hanging and keeping in mind the fragile economics and criminal justice system the imprisonment for the remainder period of life is omitted.

2. This Bill has been developed to achieve the aforesaid objectives.

**SENATOR MUSHTAQ AHMED
MEMBER-IN-CHARGE**

HANGING IN PUBLIC OF RAPISTS

Senate Standing Committee on Interior passed an amended bill on 28-09-2023 for the public hanging of rapists. The bill, proposed by Senator Mushtaq Ahmed of Jamaat-i-Islami, aims to amend sections 375, 375A, and 376 of the Pakistan Penal Code (PPC and Schedule II of the Criminal Procedure Code (CrCP (copy enclosed). Once the Senate Committee submits its recommendations, they will be presented in the Senate for approval. Should the Senate endorse these recommendations, the bill will then proceed to the National Assembly. Upon successful passage in the National Assembly, the bill will be formally enacted as the Act of Parliament. The following objects and reasons have been given by the mover of the bill.

The Anti-Rape (Investigation and Trial) Act, 2021, established special courts and the use of modern devices during investigation and trial in rape cases. Through the said Act, the definition of Rape has been revisited and some amendments has been made to deter the rapists in the contemporary circumstances. There is no denying the fact that rape being a heinous crime needs stringent laws to avert the wrong doers. To create an existential deterrence and bring the definition of rape in accordance to the Islamic Sharia, the death sentence is proposed to be executed through public hanging and keeping in mind the fragile economics and criminal justice system the imprisonment for the remainder period of life is omitted.

2. The bill proposes the imposition of the death penalty, specifically through public hanging, for individuals convicted of rape. The rationale behind this severe punishment is justified by concerns over the perceived weaknesses in both the economic and criminal justice systems. The statement of objects and reasons of the passed bill further states that hanging of the rapists in public will create deterrence against this heinous crime in the society.

3. National Commission on Human Rights in this regard submits the following submissions in the backdrop of the social, legal and international implications for the country, if this law gets enacted and promulgated:

- I. Public hanging is an inhumane act that must not be sanctioned by the Government of Pakistan.
- II. Public hanging has consistently drawn attention from various national and international organizations dedicated to safeguarding and protecting human rights in Pakistan.
- III. There is no empirical evidence to indicate that the death penalty, particularly public hanging, has a deterrent impact on crime. Countries which have

executed in public have seen steady increases in both crime rates, as well as their use of the death penalty, such as Iran and Saudi Arabia.

- IV. Academics have substantiated the notion that public executions lead to heightened brutality within society. Such punitive measures are viewed as tools that serve to perpetuate both the authority and the fear instilled by the State.
- V. Public hangings can adversely impact the mental well-being of children in society. Those exposed to such executions may be inclined to emulate such behavior later in life, contributing to an escalation of brutality within the community.
- VI. Public hangings contravene Pakistan's international obligations. As a member of the United Nations, the government of Pakistan is obligated to adhere to international human rights standards outlined in the treaties it has ratified. This includes the International Covenant on Civil and Political Rights (ICCPR). The Human Rights Committee, the overseeing body of the ICCPR, has explicitly asserted that public hangings constitute a violation of human dignity according to the provisions of the Covenant. The Human Rights Committee is scheduled to formulate its List of Issues for the review of Pakistan's compliance with the ICCPR on October 27, 2023. Pakistan is slated to undergo the Committee's review in either July or October 2024.
- VII. Pakistan benefits from the European Union's Generalized Scheme of Preferences Plus (GSP+), granting it zero-tariff, duty-free access to EU markets contingent upon the endorsement and enforcement of fundamental human rights treaties. The European Union rigorously monitors Pakistan's adherence to its UN Treaty Body obligations, specifically scrutinizing its utilization of the death penalty. Passing the bill advocating for public hangings would convey an extremely adverse message to the European Union at this critical moment. Such a move would directly jeopardize Pakistan's prospects of successfully retaining and re-applying for the GSP+, especially considering its imminent expiration.
- VIII. When it comes to capital punishment for sex crimes in particular, victims become far less likely to report offences when they are committed by a perpetrator who is close or known to them, which is more often than not the case.
- IX. Imran Ali, convicted for the rape and murder of six-year-old Zainab Ansari in Kasur, faced execution in 2018, shortly after his highly publicized trial. Despite the attention garnered by the case, the death penalty did not act as a deterrent. Sahil's (NGO on child rights) statistics revealed a noteworthy 33% increase in reported cases of child sexual abuse in 2018, totaling 3,832 cases

compared to the previous year. Moving into 2019, Sahil reported 1,304 cases of child sexual abuse between January and June alone. The overall reported cases of child abuse across the country increased from 2,486 in 2019 to 2,960 in 2020, marking a 4% rise.

- X. At a sociological level, the proposed bill aims to deter the crime of rape by advocating for the public hanging of perpetrators. However, contemporary research and global trends emphasize a shift toward reformation and rehabilitation for offenders, yielding positive outcomes. Modern research and perspectives challenge the efficacy of severe punishments, as they may inadvertently elevate the condemned to hero status, with public sympathy directed not toward the crime but the perceived brutality of the execution. In light of evolving attitudes, a new approach has emerged, one rooted in the idea that justice should prioritize rehabilitation over vengeance. This perspective recognizes that even the most heinous criminals are not devoid of their share of "human nature." Consequently, the focus has transitioned from punishing the body to the soul of the offender.
- XI. Beyond its social ramifications, the bill may introduce significant legal implications into the criminal justice system of the country. In this context, referencing the judgments of the Honorable Supreme Court of Pakistan and the Federal Shariat Court is particularly relevant.
- XII. In a landmark judgment reported as 1994, SCMR 1028, the Honorable Supreme Court of Pakistan, in a five-member bench, under the leadership of Chief Justice Naseem Hassan Shah, asserted that public hangings, even for the most heinous criminals, violate the right to human dignity as enshrined in Article 14. According to the Court:

"According to this provision the dignity and self respect of man has become inviolable and this guarantee is not subject to law but is an unqualified guarantee. Accordingly, in all circumstances, the dignity of every man is inviolable and execution in public, even the worst criminal, appears to violate the dignity of man and constitutes, therefore a violation of fundamental rights contained in Article 14."
- XIII. In its judgment, the Supreme Court also drew upon the "Universal Declaration of Human Rights in Islam," a charter produced by prominent Muslim scholars in London in April 1980. The Court cited this document to highlight that public hangings constitute a violation of the right to protection from torture, as enshrined in Islam.
- XIV. Likewise, the Honourable Federal Shariat Court in a case, titled Muhammad Aslam Khaki vs the State, declared " inviolability of dignity of man is an

inalienable right recognized by article 14 of the Constitution." The accused or prisoner possesses a significant right to assert freedom from torture, as stipulated in Clause 2 of Article 14 of the Constitution. The court, grounding its decision on the unassailable standard of human dignity enshrined in the Quran, emphatically stated that;

Concept of human dignity received legal recognition for the first time when Ayat 70 of Surah Bani Israil was revealed, "and surely we have conferred dignity on the children of Adam."

XV. Similarly, the existing Pakistan Prison Rules 1978 rules do not allow hangings in public. As per jail rules, only twelve persons may witness execution of a convict including his wali or guardian.

The NCHR is of the view that an urgent and comprehensive campaign is imperative to revisit this legislation.