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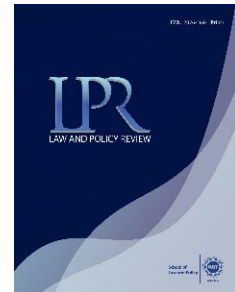
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Legality of Castration in Pakistan and Legal Impediments in Legislation

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Abstract

Castration refers to the penalty against the rapist who has committed the cruel act of crime, for instance, rape. The prevalence of this crime in Pakistan is wearisome. The cases stated in the previous year have been alarmingly high. There are also a number of unreported cases owed to the distrust in the system with higher social pressure as well. Keeping in view the above mentioned circumstances, the government of Pakistan introduced two ordinances in the year 2020. The first ordinance deals with the gist of rape, life incarceration, and punishment of chemical castration. The second amendment deals with the procedural changes including trial of rape cases and investigation. Furthermore, the question whether this change violates the rights that are enshrined in the Constitution of Pakistan or international commitments has been discussed as well. The current study attempted to highlight the Islamic point of view pertaining to the punishment of chemical castration and legal impediment in legislation during the formation of these ordinances.

Keywords: amendments, chemical castration, constitution of Pakistan, fiqh, international treaties, Islamic law, ordinances, rape cases

Introduction

Rape cases are persistent in Pakistani society. Last two eras of the 21st century have witnessed countless reported rape instances. The rise in rape cases is undoubtedly a terrifying development for mankind. Approximately, 11 rape cases are reported in Pakistan per day according to the data shared by several government departments. For instance, the women's foundation, the Human Rights Commission of Pakistan (HRCPP), and provincial welfare advocates. These statistics demonstrate that rape in Pakistan is increasing at an alarming level. Due to this reason, castration as a punishment has been introduced in Pakistan.

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A rather horrible incident occurred in the history of Pakistan, that is, the case of Mukhtaran Bibi who was subjected to a torturous situation in which she was gang raped in the presence of a bygone society. The predicament of weak and fragile women, in Pakistan, was brought to national and international attention through this case. Unfortunately, the weaker evidence and prolonged investigation and trial processes made it feasible for the Supreme Court of Pakistan to acquit the majority of the accused in this case (Khan, [2005](#)). "The Anti-Rape Investigation and Trial Ordinance, 2020" was passed to close some of the legal loopholes that might let criminals avoid facing justice. Only 18% of the 22,000 rape cases that the police received between 2015 and 2020 reached the point of being prosecuted, or 77 perpetrators were caught who were found guilty. The officials of police department stated that there are many loopholes that create hurdles for rape victims regarding the registration of cases. On the other hand, since only half of cases are recorded, the real number of cases from 2015-2020 may be as high as 60,000 (11 Rape Incidents, [2020](#)).

To elucidate this problem, Pakistan needs amendments in the respective crime, that is, rape. Two major changes have occurred recently pertaining to this crime which includes Anti Rape Investigation and Trial Ordinance ([2020](#)) and Criminal Law (Amendment) Ordinance ([2020](#)). In the district of Punjab, a minor girl resident of Kasur was raped and tortured brutally. This cruel and vicious crime initiated upheaval in civil society and people started protesting around the country (Ilyas, [2020](#)). Afterwards, the concerned authorities took immediate action and the perpetrator Imran Ali was arrested. His medical report also proved him as a rapist and a serial killer. Finally, he was given a verdict to be hung at dawn and was finally hanged on October 17, 2018. Moreover, another woman was gang raped at Lahore-Sialkot highway in September 2020 after getting trapped due to petrol shortage. The incident took place in front of the victim's children and is also considered as a shameful incident in the history of Pakistan. Only two persons accused of crime were arrested in October 2020 and Anti-terrorism Court announced death sentence to them in March 2021. The aforementioned incidents may create an impression that Pakistan's criminal justice system acted quickly by punishing the offenders within a few months. These incidents are, however, a small indicator of the growing number of reported rape cases in Pakistan. Through the Anti-Rape Investigation and Trial Ordinance ([2020](#)) and Criminal Law (Amendment) Ordinance ([2020](#)), changes were made to the Pakistan Penal Code (PPC)

and the Code of Criminal Procedure (CCP). The concept of chemical castration has been recently introduced and is considered as an operative tactic to grip the sex wrongdoers in the society. However, in Pakistan chemical castration has raised numerous national and international issues, extending from cruel and unusual punishment to the violation of equal protection (Yasif, [2021](#)).

Literature Review

'The activity of submitting human behavior to the supervision of rules,' according to Lon Fuller, is what the law is. According to Hart ([1994](#)), the fundamental element of law consists of broad principles that can direct how legal subjects behave. According to Joseph Raz, the rule of law is a normative ideal that may influence how society behaves (Fuller, [1965](#)). There is a general agreement among jurists that laws prohibiting violence should be a part of any civilized society. Hart stated that this requirement is based on the fragility of human existence.

Criminal law sets guidelines for how those who are subject to it should behave, outlawing actions that are against human values. There is nothing more terrible than to violate someone's bodily safety and autonomy. Rape is one of the most serious type of one-on-one indecent physical and sexual attack. A functioning legal system must establish regulations that effectively penalize any violations of ban on rape and associated offences. Laws against rape are effective and understandable only when they have a deterrent impact. Unfortunately, both the number and severity of rape crimes have exponentially increased in Pakistan (Hart, [1994](#)).

The inability of law to address the cases of brutal pedophilia and gang rape are included under increasing scrutiny. The current study concentrates on the substantive and procedural modifications to Pakistan's rape laws established by two ordinances that the government issued in 2020 (Ashfaq, [2015](#)).

Research Methodology

A qualitative research methodology was used to develop a focused knowledge of the subject at hand. According to Creswell and Poth ([2016](#)), this type of study offers a thorough understanding of legal concerns. The current study's whole body of knowledge was drawn from secondary sources including books, articles, journals, websites, and newspapers. This study focused on Pakistan's system of justice for submitted rape cases and

their punishments. The material under other topics would be used to reach the primary point.

International Human Rights Commitment and Law of Chemical Castration

Pakistan ratified in 2010's International Covenant on Civil and Political Rights, 1966 (ICCPR), as per Article seven, "No one shall be subjected to torture or cruel, inhumane or degrading treatment or punishment", and on the other hand "no one shall be subjected without his free consent to medical or scientific experimentation" (United Nations, [1966](#)).

The applicability of law of castration without the consensus of crook is condemnable as per the Article 7 of ICCPR. This law not only violates the international principles, however, it would also hypothetically infringe the medical ethics as well. Many special reports and UN authorities also emphasize the importance of Article 7 and the need to ensure that any reintegration of wrongdoers would be carried out in accordance with the concepts of human rights. The right to liberty and personal security is guaranteed under Article 9 of the ICCPR as well (Ashfaq, [2015](#)). According to the Universal Declaration of Human Rights (UDHR), a person's security also refers to their freedom from harm to their body, mind, and mental integrity. Pakistan joined the International Covenant on Economic, Social, and Cultural Rights (ICESCR) in 2008. Article 12 of this treaty emphasizes on "the right of everyone to the enjoyment of the highest attainable standard of physical and mental health". The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT), to which Pakistan is a member, prohibits torture and other cruelties, inhumane or degrading treatment or to be free from "torture or cruel, inhuman or degrading treatment, as provided by articles 1, 2, and 16 of the Convention against Torture." (Rösler & Witztum, [2000](#)).

Chemical Castration: Violation of Domestic Law of Pakistan and Islamic Rights

Chemical castration is a demeaning punishment and is prohibited by Article 14 of Pakistan's 1973 Constitution, therefore it is considered as inhumane and harsh. This Article upholds the absolute inviolability of human dignity and outlaws the use of harsh, inhumane, or humiliating methods. The Supreme Court of Pakistan also asserted that "according to Article 14(1), the dignity and self-respect of every individual is inviolable

and this guarantee is not subject to law, however, is an unqualified guarantee.” (The Constitution of the Islamic Republic of Pakistan, 1973). Furthermore, the Federal Shariat Court also declared that the nature of Article 14 is inalienable and the Holy Quran also explained the concept of human dignity in Surah 17's Ayat 70, also known as the Bani Israil. This Surah, that is, Bani Israel states that

And surely WE have conferred dignity on the children of Adam, and WE carry them in the land and in the sea, and WE have given them of the good things, and WE have made them to excel, by a high degree of excellence, most of those whom WE have created.

Chairman of the Council of Islamic Ideology already overruled the recommendations of chemical castration since it is considered to be against the injunction of Islam. Article 9 of the Constitution of Pakistan 1973, states that “no person shall be deprived of life or liberty, save in accordance with law”. The Supreme Court of Pakistan also affirmed the right to life which includes, “right to the highest attainable standard of physical and mental health”. Similarly, Article 12 of the (ICESCR) ensures “right to control one’s health and body including reproductive freedom and the right to be free from interference, such as the right to be free from torture, non-consensual medical treatment and experimentation” (Saleh & Berlin, [2003](#)).

From the perspective of fiqh, many studies revealed that Islam does not debate on the use of chemical castration as a punishment. The sanctions of chemical castration are far less severe than Islamic criminal law's lawful restrictions. Melina Ratnasari, according to her investigations, stated that the government should strictly regulate the punishment of chemical castration because the imposition of this penalty would establish a deterrent influence on society. Moreover, no evidence is available in the Quran and Sunnah pertaining to the penalty of castration as well.

Some Islamic scholars claim that, in accordance with a Hadith, Muslims never challenged the Prophet Muhammad to a duel without bringing a wife. We asked the Prophet, "Shouldn't we just castrate?" As a result, the Prophet forbade us from doing such and gave us permission to marry women with cloth dowries for a set period of time. "O believers, do not forbid the good that Allah does not like those who exceed the limits," he continued to read to us. Islam did not recognize the term "castration law," as "ijtihad," therefore people were afraid to enact these regulations. The punishment of

castration was basically carried out to deter the violators. According to the Hadith mentioned above, chemical castration is prohibited since it eliminates or removes the testicles of men. Castration is categorically prohibited in Islam, since the Prophet (SAW) made it clear that anybody who advocates it does not belong to His people. Islam forbids castration by any methods including medication, injection, and surgery, since its practice would result in the reproduction of fewer children and a reduction in the population as well. Therefore, due to this reason, many (Fuqaha) Islamic scholars forbid human castration. The restriction on castration demonstrates the immorality (Haram) of castrating the human beings. There are two steps of castration. The first step involves injecting a substance and removing the testosterone, which makes the person ineligible. The second purpose of injection is to insert the estrogen hormone which causes castrated men to resemble women physically. Islam forbids men from resembling the women. If an act is not forbidden and is not a major sin that has a punishment in this life or the next, Allah and the Prophet would not curse the person who committed it. In addition to damning them, the Prophet (SAW) also commanded their removal.

Amendments in Pakistan Regarding Rape Laws

Criminal Law (Amendment) Ordinance, 2020

Section 375 of Pakistan Penal Code (PPC) that deals with the definition of rape has been amended as Criminal Law Ordinance 2020 which brought about some significant changes. These changes reveal the existing certainty of the altered conducts in which wrongdoing of rape can be committed. A section has been introduced called 375A that only addresses the crime of gang rape. The most recent addition states, "Where a person is raped by one or more persons constituting a group or acting in furtherance of a common intention, each of those persons shall be guilty of the offence of gang rape and shall be punished with death or for imprisonment for the remainder period of natural life or imprisonment for life and fine". Previously, according to section 376 of PPC that defines the punishment of rape crime that given a death punishment or a sentence of 10 to 25 years in jail, whichever comes first? Since, this clause has been changed, the sentence can now be as long as the offender's natural life.

Another section has been introduced by this ordinance which says "whoever is convicted of an offence under sections 375, 375A, and 376,

may be subjected to chemical castration through a Court order, regardless of the applicable punishment," states section 376B of the (PPC). Under extraordinary conditions in relation to the first documented violation of section 375; in the event of a repeat offender who violated section (Criminal Law (Amendment), [2020](#)).

Certain rules have been framed by the Prime Minister that are duly notified; now it is the responsibility of the Court to resolve that individual who has been rendered incompetent to perform sexual intercourse for any period of his life, by giving drugs which shall be accompanied through a notified medical board. Having said that, this ordinance provides a broadened definition of rape crime by envisioning changed conducts in which the said crime can be committed. Certain punishments and penalties have been introduced for the crime of rape, however, gang rape required a special provision. That is why, life in prison has been omitted of this sentence since it may last the whole of the convicted person's natural life. The most important part of this new amendment is that there is no requirement of the rapist's consent to perform the castration process. It is the discretion of the Court now to decide when and where this method would be applied in accordance with section 376B.

Procedural Changes

Investigation and trial are the most important stages in the offence of a crime. The "Anti-Rape and Trial Ordinance, 2020", presented numerous alterations regarding the trial and investigation of crimes related to rape, special Courts and special appointment of judges. These special Courts not only hear the cases of rape, however, they also conduct the trial in the respective Courts as well. According to this ordinance, the Prime Minister has the authority to make up an anti-rape crisis cell. The purpose of these cells is to provide assistance in terms of medical and forensic examination of victims of rape. Despite this facilitation, legal aid and justice authority also provide legal assistance to the rape victims. This cell also safeguards that police should register FIRs without any interruption. Moreover, senior police officers designated for the investigation of rape crimes and Joint Investigation Team (JIT) may also prove helpful. Furthermore, according to this ordinance the trial of rape should be recorded for the sake of security and protection and witnesses and victims may participate through video connection. The trial must be finished quickly and without any delays, and

the decision must be made in 4 months. An appeal from a special Court may be heard by the High Court (Anti-Rape Investigation and Trial, [2020](#)).

Critical Analysis of Castration as a Punishment and Legal Impediments in Legislation

Chemical castration is a procedure which involves the infusion of anti-testosterone into a man's body, which lowers the level of the hormone testosterone and inadvertently interferes with a man's desire to mate. The recent implementation of chemical castration as a punishment for rape has drawn attention to human rights' campaigners. The essence of this condemnation revealed that the said process of castration infringes the fundamental rights of constitution and also violates the international law commitment. The abovementioned Articles of Constitution also "guarantee that the dignity of man shall be inviolable". Many critics said that this law also violates the international principles that ensure the dignity of man (Hart, [1994](#)). The antagonists of chemical castration state that this punishment violates not only the national law of Pakistan but also the international law on "cruel, inhuman, and degrading punishment". They stated that this punishment disgraces the dignity of man. There are many adjacent effects of this punishment which includes, "depression, diabetes mellitus, and pulmonary embolism." That is why, many opponents oppose this law of chemical castration since it is very painful and causes extreme suffering of criminals. Lastly, the exponents of the alteration may demonstrate that a large number of nations including the United States, Australia, Russia, the United Kingdom, Denmark, South Korea, and Indonesia use chemical castration to varied degrees. Though, opinions on the legality and effectiveness of the approach may differ, research has shown that consistent use of the procedure reduces recidivism in rape delinquents (Stinneford, [2006](#)).

Many MNAs including Ms Bokhari said that even in the extraordinary cases of rape, a suspected rapist gets free due to several loopholes in the criminal justice system, for instance, out of Court settlement with the victim's family. Hamid khan, a prominent lawyer, also pointed out that chemical castration is an unconstitutional, cruel, and unusual practice and it is an irreversible damage for the offender. He further elaborates that in Pakistan, laws related to rape do exist and government should ensure the strict implementation of these existing laws.

Several human rights advocates and groups have stated since sexual fierceness is about more than simply sex because it also involves control and power, addressing sex alone will not resolve the root problem. Additionally, if the chemical castration process is stopped midway through, it loses effectiveness and has a variety of negative side effects. Experts are of the opinion that regulations, preventive measures, and strict sex offender's treatment through reintegration programs are required in order to effectively combat the horrible crime of rape. In light of the new regulations, the Pakistani government should not permit the use of chemical castration as a punishment (Bhatti, [2021](#)).

Conclusion

The punishment of castration is a punitive measure to counter the increasing number of rape incidents. Numerous amendments were introduced to the rape laws by the Criminal Law Amendment Ordinance, 2020 and Anti-Rape Investigation and Trial Ordinance, 2020. The definition of rape offence has been appropriately adjusted to take it into account with current veracity. The addition of life in prison for the remainder of the offender's natural life is a significant adjustment that strengthens the potential penalties. It is significant to note that the treatment of chemical castration for the offender has been introduced and would be used at the Court's discretion and in accordance with the Prime Minister's guidelines. Comprehensive improvements have also been made to the investigation and trial phases pertaining to the rape cases, with the goal of providing possible assistance to rape victims. In Pakistan, legislation is enough to tackle the criminals who have committed heinous crimes, it is now the responsibility of state to improve criminal justice system which includes judiciary, police, and prosecution. On the other hand, government should also initiate up-to-date systematic methods to deal with these criminals. Implementation of laws is the most important aspect to reduce the crime rate instead of legislating new laws. There is a need of operative rehabilitation centers and rehabilitation programs for offenders to help them reintegrate into society and reduce recidivism rates.

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