

POLICY BRIEF

Public Hanging is a Violation of Human Dignity and the Constitution of Pakistan

JUSTICE PROJECT PAKISTAN | GROUP DEVELOPMENT PAKISTAN

Key Points:

Public hanging...

- has been held by The Supreme Court and Federal Shariat Court to be a violation of Article 14 of the constitution
- violates Pakistan's international legal obligations
- is not authorised under Pakistan Prison Rules 1978
- does not serve as a deterrent against child sexual abuse
- adversely impacts psycho-social well-being of children

Executive Summary

Public hanging is an inhumane act that must not be sanctioned by the Government of Pakistan. **The Supreme Court as well as the Federal Shariat Court have ruled that the act is a violation of the Constitution of Pakistan, and carrying out the punishment would violate standards set by bodies and treaties that Pakistan is a part of, such as the United Nations and the ICCPR.** Furthermore, there is no empirical evidence to show that public hangings are an effective deterrent to crime or in protecting the psycho-social well-being of children. As such, it is critical that the government of Pakistan follow the law and its international obligations pertaining to public hanging.

The special Parliamentary committee constituted by the KP Provincial Government to consider proposed legislation and recommendations for the protection of children has approved the Khyber-Pakhtunkhwa Child Protection and Welfare (Amendment) Act 2020, which proposes amendments to the Child Protection and Welfare Act 2010¹. One of these amendments is the insertion of a new section in the 2010 Act which pertains to a *“special procedure in case of offences related to children.”*

This new section 54-A states:

“Whenever a person is found by a competent court of law guilty of an offense of rape, unnatural lust punishable under the Code or any other law for the time being in force and the victim is a child then, notwithstanding any other punishment provided by any other law,

a) In case of sentence of death, the proceedings of execution of sentence shall be recorded by audio visual means and such recording may be accessible to the public as prescribed.”

The provision authorises the publicisation and dissemination of executions of those convicted for child sexual abuse. In doing so, it is a violation of the right to human dignity enshrined in Article 14 of the Constitution. Even if perpetrators are not executed in public, the recording and dissemination of their executions effectively renders it a ‘public’ event, which can be witnessed by the public without any control.

The amended Bill will soon be tabled in the Provincial Assembly, after which it will be sent to the provincial cabinet for approval.

The Honourable Supreme Court and Federal Shariat Court have held Public Hanging to be a Violation of Article 14 of the Constitution

The Honourable Supreme Court of Pakistan categorically observed **that public hangings for even the worst of criminals is a violation of the right to human dignity enshrined in Article 14 of the Constitution.**² 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 the fundamental right contained in Article 14.”*³

The Hon’ble Supreme Court also interpreted Section 10 of the Special Courts for Speedy Trials Act, 1992 in this ruling, which is identical to Section 22 of the Anti-Terrorism Act 1997. It was stated that this provision was incompatible with Art 14 of the Constitution of Pakistan.

In its judgment, the Honourable Court also relied on the *“Universal Declaration of Human Rights in Islam,”* a charter produced by leading Muslim Scholars in London in April 1980, to state that public hangings amount to violations of the right to protection of torture enshrined under Islam.

The Federal Shariat Court has stated in *Muhammad Aslam Khaki vs. The State* that “Inviolability of dignity of man is an inalienable right recognised by Article 14 of the Constitution. The accused or prisoner has a valuable right to claim freedom from torture under clause (2) of Article 14 of the Constitution...”⁴

The Court relied upon the inviolable standard of human dignity enshrined in the Quran and stated that:

“the concept of human dignity received legal recognition for the first time when Ayat 70 of Sura 17, Sura Bani Israil was revealed. It declared:---

“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”.

Recording and Dissemination of Executions Would Contravene the Pakistan Prison Rules 1978

Under Rule 364 of the Prison Rules 1978, a maximum of “twelve” “respectable male adults” may be admitted to “witness an execution” either “inside a prison” or into “the gallows enclosure” where the latter is “outside the prison”⁵. The “wali of the victim” may also witness the execution⁶.

This makes it clear that the Prison Rules do not authorise the recording of the execution of death sentences by audio visual means, and the availability of such recordings to the public. The Rules explicitly state that a maximum of twelve male adults may witness the execution inside the prison. An execution recorded and disseminated to the public would be viewed by an unquantifiable number of people. It would certainly contravene the intent of the Prison Rules as envisaged by legislators – by limiting the number of witnesses to an execution, they sought to create a contained sphere, not a public spectacle with mass viewership. The additional stipulation that the execution may only be witnessed by “male adults” delineates cognisance of the detrimental psychosocial effects on children.

Public Hangings Violate Pakistan’s International Legal Obligations

As a member state of the United Nations (UN), the Government of Pakistan is entitled to uphold the human rights standards enshrined under the UN international human rights treaties that it has ratified. This includes the International Covenant on Civil and Political Rights (ICCPR). The Human Rights Committee, the monitoring body of the ICCPR, has stated that public hangings amount to a violation of human dignity under the Covenant.⁷

Similarly, in Resolution 2004/67 the UN Commission on Human Rights urged states to ensure that where capital punishment occurs it shall not be carried out in public or in any degrading manner. During the review of its Initial Report before the UN Human Rights Committee in July 2017 and during the Universal Periodic Review in November 2017, the Government of Pakistan has committed to reducing the scope of its death penalty in order to bring it in conformity with international human rights standards. This includes a statement by the Ministry of Foreign Affairs to the Prime Minister recommending a revision of existing provisions of the Code on Criminal Procedure, 1898 and the Pakistan Penal Code, 1860 pertaining to the death penalty keeping in view the international commitments.

Public Hanging Does Not Serve as a Deterrent Against Child Sexual Abuse

There is no empirical evidence to indicate that the death penalty, particularly public hanging, has a deterrent impact on child sexual abuse.

Journalist Ansar Abbasi recently cited an article by Sabir Shah, in which the latter had discussed how the public hanging of the killer and rapist of a young boy named 'Pappu' in 1981 had "effectively worked" as a deterrent. According to him, "The bodies of the culprits were made to remain hanging till sunset and this stern punishment had served as an effective deterrent as no child was reportedly abducted or raped in the country for the next one decade or so."⁸

This statement is factually flawed and can be dispelled by cases reported in Pakistani newspapers in the 1980s and 1990s, compiled in the archives of the Human Rights Commission of Pakistan. Between 1983 and 1992, there were at least 11 reported cases of rape committed against minors in Pakistan, as young as four years of age. At least four of these cases occurred in Lahore, where the public execution of Pappu's murderer and rapist had taken place.

In 2018, Imran Ali, who was convicted for the rape and murder of six-year-old Zainab Ansari, was executed just months after his conviction. Despite the heavily publicised trial and execution, the death penalty did not serve as a deterrent. According to statistics published by Sahil, there was a 33% increase in reported cases of child sexual abuse in 2018 as compared to the previous year, with a total of 3,832 cases being reported.⁹ In 2019, Sahil reported that there were a total of 1,304 cases of child sexual abuse between January and June alone.

In the one month following Imran Ali's hanging alone, there were at least 3 new cases of sexual violence and abuse towards minors reported.¹⁰

Public Hanging Adversely Impacts Psycho-Social Well-Being of Children

Public hanging adversely impacts the psycho-social well-being of children by immunising them to violence. The children who witness violence such as public hangings are more likely to reproduce it in later years. This is illustrated by the death of a 12-year-old boy in Iran in 2013. The boy was inspired by public executions he had witnessed in his home province of Kermanshah in Western Iran. He and his 8-year-old brother hung a rope over a lamp-post. Thereafter he stood over a cart and tied the noose around his neck as his younger brother pushed the cart away which led to the tragic death.¹¹

Similarly, in Pakistan, a nine-year-old boy in Rahim Yar Khan, Punjab, imitated the execution of Saddam Hussein after watching it on television and hung himself with a nylon rope.¹²

While the debate surrounding the instatement of public hanging for child sex rape is framing it as a child protection measure, it is likely to have an extremely adverse impact on the well-being of Pakistani children who witness it. As public hangings in countries such as Iran are spectacles that are conducted in front of large jeering crowds, the children that view them are likely to perceive them as theatrical performances thereby becoming de-sensitised to the violence. As a result, they are more likely to reproduce such violence in later years.

Inconsistencies between Federal Laws and the proposed amendments to the Provincial Law

There are glaring inconsistencies between the federal law with regard to crime and the proposed amendments in the provincial law. This is stated below as:

Child pornography: The Bill under reference under section 48 proposes rigorous imprisonment which may extend up to 14 years and a fine up to 1 million rupees. While the PPC under section 292C provides for imprisonment of either description for a term which shall not be less than fourteen years and may extend to twenty years and with and fine not less than one million rupees. The maximum punishment under the proposed Bill for the offence is 14 years while the PPC proposes punishment minimum 14 years imprisonment, which may be up to 20 years along with a fine not less than 1 million.

Exposure to seduction: The Bill under reference under section 50 proposes the punishment for Exposure to Seduction as up to 10 year with a fine which may be up to two million. Section 292A of the PPC provides punishment for imprisonment up to seven years but not less than seven years or fine with maybe not less than 100,000 but may be up to 500,000 rupees. The punishment provided under the PPC and the proposed Bill clearly provides different sets of punishment as mentioned above.

Child Trafficking: Section 52 of the proposed amendment proposes imprisonment for life (until death) or 25 years which shall not be less than 14 years along with fine up to 5 million. The Prevention of Trafficking in Person Act,

2018 covers both internal (within Pakistan) and external (outside Pakistan) trafficking in Person. There are special provisions for trafficking of women and children. Section 3 of the Act provides punishment for the offence of Trafficking as imprisonment which may extend up to 10 years and shall not be less than two years or with fine up to one million rupees or both. So, there is a clear discrepancy between the two laws as for the punishment for the same offence.

Sexual Abuse: Under section 53 of the proposed amendment, the offence shall be punished with imprisonment for a term which may extend to fourteen years and shall also be liable to fine which may extend up to five million rupees. Section 377 B of the PPC provides punishment for sexual abuse which shall not be less than fourteen years and may be up to twenty year and with fine which shall not be less than one million rupees. The two laws, one federal and the other provincial, clearly provide different punishments for the same offence.

Conflict Between the Jurisdictions of Child Protection Courts and Model Courts

The Bill proposes to amend Section 54 of the KP Child Protection and Welfare Act, 2010 by adding subsection (4) which proposes that trial for offences under sections 41, 48, 50, 52 and 53 shall be conducted by the Model Courts (court of crimes). This creates an exception to Section 15 which requires the trial of cases by the Child Protection Court if a child is involved as a victim.

This provision has the potential to undermine the best interest of the child, vis a vis the role of the Child Protection Courts established by the Peshawar High Court. The National Judicial Policy Making Committee (NJPMC), headed by the Chief Justice of Pakistan, has already decided to establish child courts throughout Pakistan. A preliminary assessment of the child court performance piloted in Peshawar, Abbottabad and Mardan show highly encouraging results that should be capitalised upon and upscaled, not hampered.

The Proposed amendments may create situations where a child victim or a witness of child sexual abuse will have to appear before the Model Court, where adult hardened criminals appear and which lack a structure which is sensitised towards children, as well as child sensitive procedures which would serve the best interests of children. Such a framework is tantamount to secondary victimization and completely contradicts the latest government and cabinet efforts in Khyber Pakhtunkhwa to promote and protect children's rights and reinforce justice for children.



Justice Project Pakistan is a non-profit organization based in Lahore that represents the most vulnerable Pakistani prisoners facing the harshest punishments, at home and abroad. JPP investigates, litigates, educates, and advocates on their behalf.

Reach out to us: For general queries, email info@jpp.org.pk
For advocacy-related queries, email advocacy@jpp.org.pk
For press queries, email communications@jpp.org.pk



Group Development Pakistan (GD Pakistan) is a Pakistani non-profit organization registered under Society's Act 1860. GD Pakistan believes in a democratic and humanistic society in which the most important stakeholders-children-are acknowledged, respected and protected from violence, abuse and discrimination. GD Pakistan follows a holistic, child focused and human rights-based approach.

References:

- ¹ <https://tribune.com.pk/story/2160316/1-k-p-body-okays-death-sentence-child-abusers/>
- ² 1994 SCMR 1028
- ³ Ibid
- ⁴ P L D 2010 Federal Shariat Court 1
- ⁵ Pakistan Prison Rules 1978, Rule 364
- ⁶ Ibid
- ⁷ 'Concluding Observations, Nigeria', UN Doc. CCPR/C/79/Add. 16, para. 16.^[1]_{SEP}
- ⁸ <https://www.thenews.com.pk/print/272228-senate-body-sets-the-stage-for-public-hanging-of-zainab-s-killer>
- ⁹ <https://www.dawn.com/news/1473645>
- ¹⁰ <https://www.samaa.tv/urdu/pakistan/2018/11/1324722/> and <https://www.bbc.com/urdu/pakistan-46019930>
- ¹¹ <https://www.rferl.org/a/iran-hanging-rights-un/25131488.html>
- ¹² https://www.bbc.com/urdu/pakistan/story/2007/01/070101_hanging_play_ns.shtml