

# Chemical Castration as a Punishment is a Violation of Human Dignity

JUSTICE PROJECT PAKISTAN | GROUP DEVELOPMENT PAKISTAN

## Executive Summary

United Nations Special Rapporteurs on extrajudicial, summary or arbitrary executions, on the sale of children, child prostitution and child pornography, and, on torture and other cruel, inhuman or degrading treatment or punishment have held that “.....the application of chemical castration without the consent of the offender constitutes a violation to article 7 of the ICCPR.”<sup>1</sup>

As a coercive, forced and non-consensual medical intervention, **its imposition without informed consent violates:**

- **the security of a person**, which includes freedom from injury to the body and the mind, or bodily and mental integrity, freedom from torture and ill-treatment, and freedom from violence;
- **the right to health**, which includes the right to control one’s health and body, including reproductive rights, freedom from interference, and the right to be free from torture, non-consensual medical intervention and experimentation.

These rights have been recognized in various international human rights treaties, ratified by Pakistan, and are further guaranteed as Fundamental Rights in Articles 9 and 14 of the Constitution of Pakistan, 1973.

As there is little evidence to suggest that chemical castration deters sexual offending, the haste to introduce chemical castration of rapists is misguided and will do little to reduce incidents of rape in the future. Victim support groups, probation experts and penal reform organizations all point out that sexual violence is not just about sex, but power and control. To treat sex in isolation will not solve the underlying problem.<sup>2</sup>

Furthermore chemical castration is no longer effective after it is discontinued; therefore, the spontaneity for receiving medication is prerequisite to overcoming this limitation<sup>3</sup>. Moreover, as it

<sup>1</sup> Communication to Indonesia dated 21 June 2016 concerning the Presidential decree (Perppu No.1/2016), which modifies the 2002 Law No.23 on Child Protection and provides additional punishments for perpetrators of sexual violence against children such as chemical castration and the death penalty (accessible at:

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<sup>2</sup><https://www.theguardian.com/politics/reality-check-with-polly-curtis/2012/mar/13/prisons-and-probation-criminal-justice>

<sup>3</sup> Lee, Joo Yong, and Kang Su Cho. “Chemical castration for sexual offenders: physicians’ views.” *Journal of Korean medical science* vol. 28,2 (2013): 171-2. doi:10.3346/jkms.2013.28.2.171

loses its effectiveness if not administered regularly and has several side effects (explained below) it makes it harder for the offender to readjust into the society who is likely to reoffend.

Victims rights organizations and experts believe that instead of focusing on a single solution or cure, an effective, concerted government response to tackle incidences of sexual abuse and violence should entail a range of strategies; widespread prevention work, intensive sex offender treatment through rehabilitation programs in prisons, effective criminal justice responses including police and public protection on release and well-resourced victim support services.<sup>4</sup>

Therefore, the introduction of chemical castration, as a punishment, ought not to be sanctioned by the Government of Pakistan.

## Context and Scope of the Problem

The horrific gang-rape of a woman on a major national highway from Lahore to Gujranwala on 10th September 2020 triggered widespread outrage and calls for public executions of the perpetrators of rape. The incident occurred only days after the brutal rape and murder of a five-year-old girl in Karachi, whose body was discovered on 6th September 2020.

Amidst widespread public outcry, Prime Minister Imran Khan, in a television interview aired on Monday 14th September 2020 stated that in his opinion, paedophiles and rapists should be publicly hanged, but that this would have international repercussions for Pakistan, specifically in terms of its GSP Plus status by the European Union. Instead, he suggested that repeat offenders of rape should be '*chemically castrated*' or surgery be performed so they cannot do anything in future."<sup>5</sup> Thereafter multiple government functionaries have come out in support of the Prime Minister and called for awarding of harsher punishments to rapists; new legislation is to be introduced to award harsher punishments and establish a national sex offenders database to keep track of the activities of sex offenders even after they have served their sentence.<sup>6</sup> Moreover, it has been reported in the press that the task of furnishing the draft bill which proposes chemical castration for sex offenders has been delegated and that it will be soon ready for presentation before Parliament.<sup>7</sup>

## Critique of Chemical Castration as a Solution

### **Empirical Evidence indicates that Chemical Castration has Limited Effectiveness in preventing Recidivism amongst violent sexual offenders**

Statistics show that chemical castration has limited effectiveness in preventing recidivism amongst violent sexual offenders. Researchers have found 11.1% recidivism rate amongst sex-offenders who had been castrated (either chemically or physically) following the offence compared to a 17.5% recidivism rate amongst non-treated offenders.<sup>8</sup>

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<sup>4</sup><https://www.theguardian.com/politics/reality-check-with-polly-curtis/2012/mar/13/prisons-and-probation-criminal-justice>

<sup>5</sup> <https://edition.cnn.com/2020/09/16/asia/imran-khan-chemical-castration-rapists-intl/index.html>

<sup>6</sup> <https://tribune.com.pk/story/2264280/pakistan-to-establish-sex-offenders-database-pti-senator>

<sup>7</sup> <https://www.globalvillagespace.com/govt-ready-to-present-bill-in-parliament-on-castration-of-rapists-pm-imran-khan/>

<sup>8</sup> Friedrich Lösel and Martin Schmucker, "The Effectiveness of Treatment for Sexual Offenders: A Comprehensive Meta-Analysis," *Journal of Experimental Criminology* 1, no. 1 (April 1, 2005): 128, doi:10.1007/s11292-004-6466-7.

This data reaffirms the position that a clear cause-and-effect relationship between testosterone levels and sexual offending remains uncertain.<sup>9</sup> It is a common misconception that sexual crimes are mainly linked to “sex” (and sex drive). As has been proven in relation to violence against women, the main motivation for a man to rape a woman is usually one of power: by abusing a woman in this most intimate way, the damage to the victim is not just physical, and this procures a feeling of absolute power to the rapist. In treating sex drive (both through chemical or surgical castration), the offender’s main dysfunctioning – that of wanting power over other human beings – is left unaddressed. Such offenders have a great propensity to re-offend in other than sexual ways, for example, by torturing future victims<sup>10</sup>.

Frances Crook of the Howard League for Penal Reform explains that, “Sex offending is often not about sex at all, but about violence and domination. The drugs used will not affect those attitudes. Some men may inflict other types of deviant behaviour on victims if they are unable to perform sexually due to the drugs. The physical impact of the drugs can be very powerful, with the effect being similar to a sex change. ‘Feminising’ sex offenders may make it more difficult for these individuals to reintegrate into society, which in turn makes their reoffending more likely.”<sup>11</sup>

Moreover, chemical castration is no longer effective after it is discontinued;<sup>12</sup> it requires a high degree of supervision. Offenders have to keep taking the pills to lower their libido. Nor is it a total cure: paedophiles’ sexual behaviour is governed not only by hormones but also by -fantasies.<sup>13</sup> World Federation of Societies of Biological Psychiatry guidelines suggest that combined psychotherapy and pharmacological therapy is associated with better efficacy compared with either treatment as monotherapy.<sup>14</sup>

A similar proposal, of chemical castration, was made to J. Verma Committee (constituted for law reform after the Delhi gang rape) in India; whilst rejecting the proposal the committee observed that ‘...the effects of chemical castration are temporary therefore repeated monitored doses at regular intervals is a necessary prerequisite.’<sup>15</sup>

### **Mandatory Chemical Castration contravene Pakistan’s International Human Rights Obligations**

As per Article 7 of the *International Covenant on Civil and Political Rights, 1966 (ICCPR)*, which Pakistan ratified in 2010, “No one shall be subjected to torture or to **cruel, inhuman or degrading treatment or punishment**. In particular, **no one shall be subjected without his free consent to medical or scientific experimentation**.”

The application of chemical castration without the consent of the offender constitutes a violation of article 7 of the ICCPR as highlighted by UN experts, Special Rapporteurs on extrajudicial, summary or arbitrary executions, on the sale of children, child prostitution and child pornography, and, on torture

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<sup>9</sup> Kingston DA, Seto MC, Ahmed AG, Fedoroff P, Firestone P, Bradford JM. The role of central and peripheral hormones in sexual and violent recidivism in sex offenders. *J Am Acad Psychiatry Law*. 2012;40:476–485

<sup>10</sup> <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=19755&lang=en>

<sup>11</sup> <https://www.google.com/url?q=https://www.theguardian.com/politics/reality-check-with-polly-curtis/2012/mar/13/prisons-and-probation-criminal-justice&sa=D&ust=1601283640903000&usg=AFQjCNEk0wmXis4tqhXDtOvHPaxqrbjw>

<sup>12</sup> Lee, Joo Yong, and Kang Su Cho. “Chemical castration for sexual offenders: physicians’ views.” *Journal of Korean medical science* vol. 28,2 (2013): 171-2. doi:10.3346/jkms.2013.28.2.171

<sup>13</sup> <https://www.theguardian.com/politics/reality-check-with-polly-curtis/2012/mar/13/prisons-and-probation-criminal-justice>

<sup>14</sup> Thibaut F, De La Barra F, Gordon H, Cosyns P, Bradford JM. The World Federation of Societies of Biological Psychiatry (WFSBP) guidelines for the biological treatment of paraphilias. *World J Biol Psychiatry*. 2010;11:604–655

<sup>15</sup> Report of the J Verma Committee on amendments to criminal law.

and other cruel, inhuman or degrading treatment or punishment.<sup>16</sup> It was further noted<sup>17</sup> that the Standards of Care for the Treatment of Adult Sex Offenders recall that it is fundamental to ensure that any rehabilitation of offenders is undertaken in accordance with human rights principles. In particular, Principle 2 underlines that sexual offender treatment must be an elective process and Principle 4 that it must be a humane treatment.<sup>18</sup>

The imposition of mandatory chemical castration as a punishment, in addition to being violative of Article 7 of the ICCPR, would potentially violate medical ethics.

Article 9 of the ICCPR further guarantees that everyone has “the right to liberty and security of person”. Here, too, the language has been heavily drawn from that used in Article 3 of the UDHR. In its General Comment No. 35 (2014) on Article 9, the Human Rights Committee noted that “*security of person concerns freedom from injury to the body and the mind, or bodily and mental integrity*”. It was further confirmed that “*the right to personal security protects interests in bodily and mental integrity that are also protected by article 7.*”

Any form of coercive medical treatment, even where mandated by law, would infringe upon the right to health and be violative of Pakistan’s obligations under Article 12 of the *International Covenant on Economic, Social and Cultural Rights (ICESCR)*, which Pakistan ratified in 2008. As per Article 12, State Parties to the Covenant recognize “*the right of everyone to the enjoyment of the highest attainable standard of physical and mental health*”. In its General Comment No. 14 (2000) on Article 12, the Committee on Economic, Social and Cultural Rights noted, “*The right to health ... include the 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.*”<sup>19</sup>

Pakistan is also party to the the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) which it ratified on 23 June 2010. The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has noted that the punishment of chemical castration has the potential to violate the rights to be free from “*torture or cruel, inhuman or degrading treatment, as provided by articles 1, 2 and 16 of the Convention against Torture.*”<sup>20</sup>

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<sup>16</sup> Communication to Indonesia dated 21 June 2016 concerning the Presidential decree (Perppu No.1/2016), which modifies the 2002 Law No.23 on Child Protection and provides additional punishments for perpetrators of sexual violence against children such as chemical castration and the death penalty (accessible at:

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<sup>17</sup> Relying upon thematic report on the demand for the sexual exploitation of children of the Special Rapporteur on the sale of children, child prostitution and child pornography (A/HRC/31/58, para.72)

<sup>18</sup> Relying upon thematic report on the demand for the sexual exploitation of children of the Special Rapporteur on the sale of children, child prostitution and child pornography (A/HRC/31/58, para.72)

<sup>19</sup> E/C.12/2000/4, t Paragraph 8

<sup>20</sup> A/HRC/34/54/Add.3 at Paragraph 176

## **Mandatory Chemical Castration is contrary to Pakistan’s Domestic Law and Islamic Rights**

### ***Chemical Castration is a cruel, inhuman and degrading punishment and an infringement of the dignity of man declared inviolable under Article 14 of the Constitution of Pakistan, 1973***

Article 14 of the Constitution, by declaring the dignity of man absolutely inviolable, prohibits the imposition of a cruel, inhuman or degrading punishment.

As noted by the Honourable Supreme Court, “According to [Article 14(1)] the dignity and self-respect of every man has become inviolable and this guarantee is not subject to law but is an unqualified guarantee.”<sup>21</sup>

Moreover, the Federal Shariat Court<sup>22</sup> while confirming the inalienable nature of Article 14, has relied upon the inviolable standard of human dignity enshrined in the Quran “...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". Additionally, suggestions of chemical castration have already been overruled for being contrary to Islamic injunctions by the chairman of the Council of Islamic Ideology.<sup>23</sup>

### ***Chemical Castration, being a mandatory non-consensual medical intervention, violates Article 9 of the Constitution of Pakistan, 1973***

The forcible injection of medication in a non-consenting person’s body represents a substantial interference with that person’s liberty.<sup>24</sup> This has prompted Courts from across the globe to hold that the mandatory application of chemical castration, as a medical intervention to be applied to a mentally healthy adult, should only be executed with the free and informed consent of the person concerned.<sup>25</sup> In the absence thereof, the intervention violates the right of the individual to physical and mental integrity.

This right stands specifically guaranteed within the ambit of “security of person”, as provided in Article 9 of our Constitution. The Supreme Court of Pakistan has held that the right to life, enshrined within Article 9 of the Constitution includes the “right to the highest attainable standard of physical and mental health...”.<sup>26</sup> To the extent that the language adopted is identical to that used in Article 12 of the ICESCR, it would naturally also subsume “*the 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*”.

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<sup>21</sup> 1994 SCMR 1028

<sup>22</sup> *Muhammad Aslam Khaki vs. The State* (PLD 2010 FSC 1)

<sup>23</sup> <https://www.dawn.com/news/1581352>

<sup>24</sup> *Washington v Harper* (494 U.S. 210 (1990))

<sup>25</sup> Judgment of Moldovan Constitutional Court No. 18 of 04.07.2013.

<sup>26</sup> In 2020 SCMR 1 at Paragraph 26

## Policy Recommendations

- **IMPROVE** the existing criminal justice system; police, judiciary, prisons, prosecution, probation and parole.
- **DEVELOP** forensic science in Pakistan; equip the local police with the resources and training necessary for systematic processing of a crime scene including proper identification and collection of evidence especially in cases of sexual abuse and assault.
- **ENSURE** implementation of existing laws as opposed to introducing new legislation. Tougher sentencing policies or harsher punishments for crimes have had almost no evident impact on crime rates; the certainty of being caught is a vastly more powerful deterrent than a draconian punishment.
- **INTRODUCE** effective rehabilitation and reintegration programs for offenders to enable them to reintegrate into the society and reduce recidivism rates.
- **ENHANCE** mental health treatment available to prisoners especially offenders of sexual crimes. Sex offense counseling is pertinent to reduce recidivism rates. It is the process by which offenders learn special strategies for stopping abusive behavior and taking responsibility for harm done.



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.  
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