



## **SENATE SECRETARIAT**

**Report No. 60**

### **REPORT OF THE SENATE STANDING COMMITTEE ON LAW AND JUSTICE**



**MATTER THAT “WHETHER AN AMENDMENT WOULD BE  
REQUIRED IN THE PAKISTAN PENAL CODE FOR PROVISION  
OF PENALTY OF DEATH BY HANGING PUBLICLY IN VIEW OF  
RULE 354 OF THE PRISONS RULES, 1978”**

### **PRESENTED BY**

**Senator Muhammad Javed Abbasi  
Chairman  
Standing Committee on Law and Justice**



## SENATE SECRETARIAT

### REPORT OF THE STANDING COMMITTEE ON LAW AND JUSTICE OF THE MATTER THAT WHETHER AN AMENDMENT WOULD BE REQUIRED IN THE PAKISTAN PENAL CODE FOR PROVISION OF PENALTY OF DEATH BY HANGING PUBLICLY IN VIEW OF RULE 354 OF THE PRISONS RULES, 1978.

I, Chairman of the Standing Committee on Law and Justice, have the honour to present report on the matter that "whether an amendment would be required in the Pakistan Penal Code for provision of penalty of death by hanging publicly in view of rule 354 of the Prisons Rules, 1978". The matter was referred to the Standing Committee for consideration and report.

2. While the matter was under consideration, the Chairman Senate was pleased to refer the following Bill carrying legislative proposal regarding amendment in the Pakistan Penal Code providing 'death by hanging publicly' for the offence of kidnapping or abducting a person under the age of fourteen years (section 364 A), which was yet to be introduced in the Senate, to the Committee for consideration alongwith the matter under consideration of the Committee:-

"The Criminal Laws (Offences related to kidnapping or abducting a child) (Amendment) Bill, 2018" notice given by Senators Abdul Rehman Malik, Muhammad Javed Abbasi, Col. (R) Syed Tahir Hussain Mashhadi, Sardar Fateh Muhammad Muhammad Hassani, Dr. Jehanzeb Jamaldini and Shahi Syed.

2. The composition of the Standing Committee on Law and Justice is as under:-

1.	<b>Senator Muhammad Javed Abbasi</b>	<b>Chairman</b>
2.	Senator Aitzaz Ahsan	Member
3.	Senator Saleem Zia	Member
4.	Senator Farooq Hamid Naek	Member
5.	Senator Syed Muzafar Hussain Shah	Member
6.	Senator Ms. Ayesha Raza Farooq	Member
7.	Senator Nawabzada Saifullah Magsi	Member
8.	Senator Dr. Muhammad Ali Khan Saif	Member
9.	Senator Mrs. Zahida Khan	Member
10.	Senator Syed Asif Saeed Kirmani	Member
11.	Senator Barrister Murtaza Wahab	Member
12.	Minister for Law and Justice	Ex-Officio Member



3. The Committee considered the matter in its meetings held on 25<sup>th</sup> January, 21<sup>st</sup> February, 28<sup>th</sup> February and 8<sup>th</sup> March, 2018, under the Chairmanship of Senator Muhammad Javed Abbasi. Final consideration of the matter was held in the meeting dated 8<sup>th</sup> March, 2018, which was attended by the following members:-

- i. **Senator Muhammad Javed Abbasi**
- ii. Senator Syed Muzafar Hussain Shah
- iii. Senator Barrister Murtaza Wahab
- iv. Senator Saleem Zia

4. The Committee held extensive consultations with all stake holders including the Ministry of Law and Justice, Attorney General for Pakistan, Council of Islamic Ideology, Home Secretary Government of Punjab, Lahore, The Home Secretary, Government of Khyber Pakhtunkhwa, Peshawar, The Home Secretary, Government of Balochistan, Quetta, The Inspectorate General of Prisons, Government of Punjab, Lahore, The Inspectorate General of Prisons, Government of Khyber Pakhtunkhwa, Peshawar, The Inspectorate General of Prisons, Government of Balochistan, Quetta, Vice Chairman, Islamabad Bar Council.

5. Ministry of Law and Justice was asked to analyze various aspects of the matter, accordingly, the ministry briefed the Committee in a comprehensive manner. Salient points of the briefing are as under:-

- (i) There are two ways of interpretation of rule 354. If clause (ii) of rule 354 is taken as explanatory to clause (i) then it would mean that only for cogent reasons given by the convict, the Session Judge who issued the warrant can alter the place of execution in that warrant. Naturally this alteration will be to the extent of execution in another prison instead of the earlier prison.
- (ii) The second interpretation which can be attributed to rule 354 is to read clause (i) and clause (ii) distinctively from each other. In this case clause (i) would mean that the Session Judge on his own and based on circumstances of the case can record in the warrant that the convict may not be hanged in prison but may be hanged at another place specified in the warrant. Clause (ii) would mean that his power of change of place by the Session Judge on his own can also be requested by the convict in which he has to give cogent reasons and the final decision would rest on the Session Judge who issued the warrant.



- (iii) The above is the theoretical legal analysis of rule 354 and the practical application could only be confirmed by the contacting the prison authorities which we did. According to prison authorities, rule 354 has always been applied only on the request of convict for his execution in a prison other than the prison in which he is detained. In the instant meeting, the Inspector General of Prisons and Home Secretaries of all the four Provinces have also been invited.
- (iv) The issue of hanging in public was also scrutinized by the Supreme Court of Pakistan in a *Suo Moto Constitutional Petition No. 9 of 1991* and five Judges bench of Supreme Court passed a Judgment reported as 1994 SCMR 1028. In this Judgment, section 10 of Special Courts for Speedy Trial Act, 1992 came into consideration which dealt with the place of execution of sentence. Section 10 stated that the Government may specify the place of execution of any sentence under the Act of 1992 having regard to the deterrent effect which such execution is likely to have. The Supreme Court analyzed section 10 of the Act of 1992 apropos Article 14 of the Constitution. Article 14 states that dignity of a man and, subject to law, the privacy of home shall be inviolable. The Supreme Court held vide the reported Judgment that in all circumstances the dignity of every man is inviolable and executing in public even the worst criminal appears to violate the dignity of man and constitutes a violation of the fundamental rights contained in Article 14 of the Constitution.
- (v) Taking into consideration the above facts, now the moot point is as to whether legislation should be done for incorporating enabling provision of public hanging in PPC or Prison Rules? The decision of the Supreme Court has made it abundantly clear that amendment cannot be made in subordinate legislation contrary to the decision of the Supreme Court. As far as principal legislation is concerned, the Parliament is supreme and the decision of the Supreme Court can be legislated upon by Parliament but keeping in view Article 8 of the Constitution which states that any law against any of the fundamental rights enshrined in the Constitution shall be void. The Supreme Court in its decision has declared hanging in public violative of Article 14 of the Constitution, therefore, any legislative attempt will be hit by Article 8 of the Constitution even if decision of the Supreme Court is circumvented by the Parliament through legislation.
- (vi) The latest position is that on the issue of hanging in public a meeting of the Senate Standing Committee on Law was held on 21<sup>st</sup> February, 2018 and the Committee directed this Division to examine the Judgment of the Supreme Court cited as 1994



SCMR 1028 as well as rule 364 of the Prison Rules 1978. Rule 364 of the Prison Rules, 1978 is reproduced as below:-

- (vii) A threadbare analysis of rule 364 shows that male adults upto 12 in number are already allowed under the rule to witness the execution. Furthermore, the rule also provides for enabling provision of execution outside the prison. According to CII, the concept of 'group of people'/ 'public' in Islam is termed as "Taifa" which means persons gathered ranging between three (03) to forty (40). Keeping in view the Judgment of the Supreme Court, the number of persons admitted under rule 364 can be enhanced from twelve to forty. This would be practicable and not inconsistent with the Judgment of the Supreme Court because prison is neither a public place nor the presence of persons there would constitute hanging in public although a considerable number i.e. forty members will be able to witness the execution.
- (viii) Since Prison Rules is a Provincial subject, therefore, the Provincial Governments are authorized to amend rule 364 of the Prison Rules. The Senate Standing Committee may like to pass on its recommendations to the Government of Punjab.
- (ix) Amending rule 364 of the Prisons Rules will not amount to any move contrary to the Judgment of the Supreme Court whereas amending section 364A of the Pakistan Penal Code might not stand the test of Judicial scrutiny particularly on the touchstone of Article 14 of the Constitution read with Article 8 thereof.
- (x) Besides it may be added that amongst 40 persons proposed to be included in rule 364 of the prison Rules, 1978, to witness the execution, some prisoners involved in heinous crimes already in jail can also be included to witness hanging. But it must be noted that hanging should not be shown on Media would attract Article 14 of the Constitution as interpreted by the Supreme Court. Further as rightly pointed out by the Law Minister in the meeting hanging whether in jail premises or at public place may not reduce the crime. For that some other concrete legal and administrative measures should be taken in particular by the Provincial Governments which are primarily concerned with the subject.
- (xi) The matter has also been examined vis-à-vis International Conventions to which Pakistan is signatory. The Convention against torture and other cruel, inhumane and degrading treatment or punishment is relevant to the issue in hand. Article 5 of the said Convention reads as below:-



"Article 5.- No one shall be subjected to torture or to cruel, inhumane or degrading treatment or punishment".

- (xii) In the above reproduced Article 5, the words "inhumane" and "degrading" have been synonymously used in the Constitution in Article 14 and termed as dignity of man which is inviolable. This Article 14 has been interpreted by Court vide 1994 SCMR 1028.

6. Input received from Council of Islamic Ideology is annexed.

7. Home Department, Government of Sindh, did not support public hanging on the grounds that,-

- Relevant rule of the PPR is 354 which does not provide for public hanging.
- Rule 359 (ii) says that police force and prison guard is to be arranged if the "*execution is to take place outside the prison walls for any reason*".
- In this connection Rule 364 of Pakistan Prisons Rules 1978 is also worth considerable which provides for witnessing of the execution by spectators in a limited area. However, here too, public hanging is not provided as an option.
- The proposal of public hanging is not supported as that would further brutalize the society therefore it is suggested that execution be carried out inside prisons where proper arrangements for the gallows and scaffoldings are already provided.

8. Home Department, Government of Punjab, gave input in the following terms:-

- The proposed amendments in Section 364-A of Pakistan Penal Code, 1860 and schedule II, Column 1 of Code of Criminal Procedure, 1898 for provision of death penalty by hanging publicly aims of creating deterrence against committing the offence *ibid.* however, given the psycho-social impacts of the proposed amendments on the society at large in general and its vulnerable segments including children in particular and mandatory national requirement of adherence to various conventions concerning human rights to which Pakistan is a signatory; it is imperative that the term 'death by hanging publicly' must be defined in cautious concise and clear terms.
- Pursuant to the above, Government of the Punjab proposes that the term 'death by hanging publicly' may be defined as execution of a condemned prisoner convicted and sentenced to death for an offence under the Section *ibid.* within





the premises of the jail concerned. In the presence of intimate family members of the victim including the female members. A proviso to this effect may be inserted at the end of the proposed amended section *ibid.* if the proposed amendments are promulgated, necessary corresponding amendment will be introduced by the Provincial Government in Rule 364 of the Pakistan Prison Rule, 1977.

9. Secretary Home, Government of Balochistan, stated that existing mechanism as provided in the Prison Rules is sufficient to deal with public hanging. He also shared apprehension that hanging in public may create law and order situation as it will be difficult to control the charged crowd.

10. Additional Secretary Home, Government of Khyber Pakhtunkhwa, supported the amendment in the Pakistan Penal Code.

11. Vice Chairman, Islamabad Bar Council stated that Prison Rules are sufficient to provide for public hanging. He further proposed that speedy trial and early execution can serve as a deterrence.

12. During the course of meetings, the Committee considered rule 354 read with rule 364 of the Prison Rules 1978 and Judgment of the Supreme Court cited as 1994 SCMR 1028. Rule 354 is reproduced as under:-

Rule 354 "(i)- *Executions shall normally take place at the District Prison of the district in which the prisoner was sentenced, unless the warrant otherwise directs.*

(ii) *If a condemned prisoner requests for change of place of execution for any cogent reason, his petition shall be forwarded to Government through the Inspector General, for orders. If the Government orders change in the place of execution, the warrant shall be returned to the Sessions Judge who issued it for altering the place of execution on the warrant."*

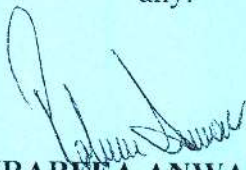
Rule 364.- *"Respectful male adults upto maximum of twelve, may be admitted with the sanction of the Superintendent, to witness an execution either inside a prison, or into the gallows enclosure when the gallows is outside the prison; provided that the Superintendent may in his discretion refuse admission altogether or to any particular individual. Spectators are to be kept at a distance and a sufficient strength of the guard should be drawn up close at hand, ready, prepared to suppress any disturbance or frustrate any attempt at rescue.*




*The wali of the victim, if so desires, shall be allowed to witness the execution."*

13. The Committee was of the considered view that,-

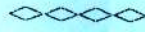
- (i) Prisons Rules provide the legal backing for provision of hanging in public.
- (ii) The Judgment of the Supreme Court is not an impediment in providing punishment of death by hanging publicly in heinous and gruesome crime of rape and murder of daughters of the nation.
- (iii) Rights of culprits cannot be interpreted in isolation as same will have to be interpreted vis-à-vis the rights of victims.
- (iv) The Provinces, if deem necessary, may introduce amendments in the Prisons Rules to address administrative issue in the execution of hanging in public, if any.

  
(RABEEA ANWAR)  
J.S / Secretary Committee

  
( SENATOR MUHAMMAD JAVED ABBASI)  
Chairman



حکومت پاکستان  
اسلامی نظریاتی کونسل



اسلام آباد، مورخہ ۱۵/فروری ۲۰۱۸ء

نمبر: ایف-۱ (۱۹۱) / ۲۰۱۸ء۔ آر۔ سی آئی آئی / 299

عنوان: سرعام سزائے موت / پھانسی۔۔۔ کونسل کی رائے

بجوالہ سینٹ سیکرٹریٹ، حکومت پاکستان، اسلام آباد مسد اسد ۱۸ (۱) / ۲۰۱۵-سی-۱ (۶۵)۔

مورخہ ۲۵/فروری، ۲۰۱۸ء

اسلامی نظریاتی کونسل نے اپنے اجلاس نمبر ۲۱۰ بتاریخ ۸/فروری، ۲۰۱۸ء میں درج بالا موضوع پر غور و خوض کیا اور اپنی رائے مرتب کی جو حسب ذیل ہے:-

”شریعت اسلامیہ میں سزائے موت کا مقصد زجر، عبرت اور انداد حیرانم (deterrence) ہے حد زمانہ کے بارے میں تو قرآن مجید میں اس بات کی صراحت ہے کہ سزائے موت کرتے وقت لوگوں کی ایک جماعت (طائفہ) موجود ہونی چاہیے طائفہ کے اس لفظ کی تشریح فقہاء اور مفسرین نے تین سے چالیس تک انداز کی کی ہے۔ جبکہ ذاکوؤں کے بارے میں یہ صراحت کی گئی ہے کہ ان کو سولی پر لٹکایا جائے جو عموماً سرعام ہوتی ہے، دیگر سزائوں کے بارے میں اتنا کہا گیا ہے کہ سزائے موت کے ذریعے مجرم اور دیگر لوگوں کو عبرت حاصل ہونی چاہیے۔ مفسرین اور فقہاء اسلام نے تصریح کی ہے کہ یہ مقصد جس طرح مشاہدہ، یعنی لوگوں کی موجودگی میں سزائے موت کے ذریعے حاصل ہوتا ہے اسی طرح خبر کے ذریعے بھی حاصل ہو سکتا ہے، آج کے دور میں اس کی صورت یہ ہے کہ میڈیا کے ذریعے سزائے موت کی تشہیر کی جائے۔

جہاں تک تعزیرات پاکستان کی دفعہ ۳۶۴-اے میں ”سرعام پھانسی“ کے الفاظ پر حاکم ترمیم کا تعلق ہے تو اس کی ضرورت نہیں اس لیے کہ موجودہ قوانین جیسا کہ جیلوں کے قواعد ۱۹۷۸ء کا قاعدہ ۳۶۴ اور سپیشل کورٹس برائے سپیڈی ٹرائل ایکٹ ۱۹۹۲ء کی دفعہ ۱۰ کے مطابق سرعام سزا دینے کی گنجائش موجود ہے اس لیے اگر حکومت اور عدالت کسی مجرم کو سرعام سزا دینا



چاہتی ہے تو دے سکتی ہے بشرطیکہ حبرم اور محبرم کی نوعیت سرعام  
سزا کے نفاذ کے محتضی ہوں۔

مزید برآں ملک کا موجودہ عدالتی نظام اصلاح طلب ہے، سنگین حبرائیم کے  
لیے فوری اور سریع الانصاف عدالتوں کے قیام کی اشد ضرورت ہے تاکہ  
متاثرین کی جلد از جلد دادرسی کا اہتمام ہو سکے، سزا کی یقینیت ایسا پہلو ہے کہ جس  
سے حبرائیم میں کی آنے کا امکان ہے۔“

۲۔ درج بالا رائے کونسل کے آئندہ اجلاس (مجوزہ تاریخ یکم مارچ ۲۰۱۸ء) میں برائے توثیق  
پیش کی جائے گی۔ توثیق کے ضمن میں کسی بھی ترامیم / اضافہ یا اصلاح سے بعد ازاں مطلع کر دیا  
جائے گا۔

۳۔ مسر اسد مذاحمبزا محترائی کی منظوری سے جاری کیا جا رہا ہے۔  
والسلام مع الاحرام

خیر بخش  
Shaher  
(ڈاکٹر علامہ شکیل شاہین)  
سینئر ریسرچ آفیسر

محترمہ ربیعہ انور،  
جائزہ سیکرٹری / سیکرٹری قائم کمیٹی،  
سینٹ سیکرٹریٹ،  
حکومت پاکستان،  
اسلام آباد



## Bill

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

WHEREAS, It is expedient further to amend the Pakistan Penal Code, 1860 (XLV of 1860), and the Code of Criminal Procedure Code, 1898 (V of 1898), for the purposes hereinafter appearing.

It is hereby enacted as follows:-

1. **Short title, application and comment:-** (1) This act may be called the Criminal Law (Amendment) (offences related to kidnapping or abducting achild) Act, 2018.

(2) It shall come into force at once.


2. **Amendment of Section 364A, Act XLV of 1860.-** in the Pakistan Penal Code, 1860 (XLV of 1860), in section 364A, after the word "death" the words "by hanging publicly" shall be inserted.

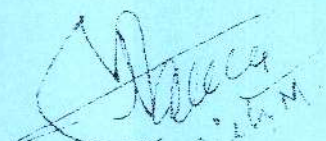
3. **Amendment of Schedule-II, Act V of 1898.-** In the Code of Criminal Procedure, 1898 (V of 1898), in Schedule-II, in column 1, against section 364A, for the entry in column 7, after the word "Death" the words "by hanging publicly" shall be inserted.



## STATEMENT OF OBJECTS AND REASONS


People are most likely to be dissuaded from committing a crime if the punishment is swift, certain and severe. The purpose is that fear of punishment could prevent others from committing similar crime. It is expedient to amend the Pakistan Penal Code to make offender dreadful for others offenders who commit the offences related to kidnapping or abducting a child under the age of fourteen years.

  
SENATOR ABDUL REHMAN MALIK

  
Senator Ijaz-ul-Haq  
P.S. 1000

  
Senator Ijaz-ul-Haq

  
Senator Ijaz-ul-Haq

  
Senator Ijaz-ul-Haq

Dr. Ishaq Ali  
Samadani

  
Senator Ijaz-ul-Haq

3739  
22/1/18  
3:40/



# Comparative of section 364A of the Pakistan Penal Code, 1860

Existing Provision	Proposed Provision
<p><b>"364A. Kidnapping or abducting a person under the age of fourteen years.-</b> Whoever kidnaps or abducts any person under the age of fourteen, in order that such person may be murdered or subjected to grievous hurt, or slavery, or to the lust of any person or may be so disposed of as to be put in danger of being murdered or subjected to grievous hurt, or slavery, or to the lust of any person shall be punished with <b>death</b> or with [imprisonment for life] or with rigorous imprisonment for a term which may extend to fourteen years and shall not be less than seven years.</p>	<p><b>"364A. Kidnapping or abducting a person under the age of fourteen years.-</b> Whoever kidnaps or abducts any person under the age of fourteen, in order that such person may be murdered or subjected to grievous hurt, or slavery, or to the lust of any person or may be so disposed of as to be put in danger of being murdered or subjected to grievous hurt, or slavery, or to the lust of any person shall be punished with death <b>by hanging publicly</b> or with [imprisonment for life] or with rigorous imprisonment for a term which may extend to fourteen years and shall not be less than seven years.</p>