

SENATE OF PAKISTAN



REPORT OF THE SENATE STANDING COMMITTEE ON INTERIOR

ON

[THE CRIMINAL LAWS (AMENDMENT), BILL, 2023]
[Amendments in Sections 375, 375A, 376 of PPC and Schedule-II of Cr.P.C]
PRIVATE MEMBER BILL
INTRODUCED BY
SENATOR MUSHTAQ AHMED KHAN
ON 16TH JANUARY, 2023

PRESENTED BY

SENATOR MOHSIN AZIZ
CHAIRMAN SSC ON INTERIOR



SENATE SECRETARIAT

SUBJECT: REPORT OF THE SENATE STANDING COMMITTEE ON INTERIOR ON THE CRIMINAL LAWS (AMENDMENT), BILL, 2023.

I, Senator Mohsin Aziz, Chairman Senate Standing Committee on Interior, have the honor to present report of the Committee on a Bill further to amend the Pakistan Penal Code, 1860 and the Code of Criminal Procedure, 1898, [The Criminal Laws (Amendment), Bill, 2023], introduced by Senator Mushtaq Ahmed Khan on 16th January, 2023. [Amendment in sections 375, 375A, 376 of PPC and subsequent amendment in Schedule-II of Cr.P.C].

2. The composition of the Committee is as under: -

Senator Mohsin Aziz	Chairman
Senator Syed Yousuf Raza Gillani	Member
Senator Azam Nazeer Tarar	Member
Senator Samina Mumtaz Zehri	Member
Senator Sherry Rehman	Member
Senator Saifullah Abro	Member
Senator Faisal Saleem Rehman	Member
Senator Shahadat Awan	Member
Senator Faisal Subzwari	Member
Senator Fawzia Arshad	Member
Senator Danesh Kumra	Member
Senator Dilawar Khan	Member
Senator Kamil Ali Agha	Member
<u>Minister for Interior</u>	<u>Ex-Officio Member</u>

3. The Committee finally considered the Bill in its meeting held on 28th September.

2023. The meeting was attended by the following Members:

1. Senator Mohsin Aziz	Chairman
2. Senator Saifullah Abro	Member
3. Senator Shahadat Awan	Member
4. Senator Kamil Ali Agha	Member
5. Senator Danesh Kumar	Member
6. Senator Fawzia Arshad	Member
7. Senator Samina Mumtaz Zehri	Member
8. Senator Sherry Rehman	Member
9. Senator Dilawar Khan	Member
10. Senator Mushtaq Ahmed Khan	Mover

4. The Mover briefed the Committee about the objects and reasons of the Bill. He was of the view that the current definition of rape needs to be revisited in order to bring it in conformity with the Shariah Law. He further stated that some amendments have also been proposed in order to create more deterrence in rape cases. He was of the view that the execution of death sentence in rape cases should be done through public hanging so that no one can dare to commit such a heinous offence which is actually committed against one person but in fact it is a crime against the society so no leniency should be shown to the rapists.

5. According to the brief submitted by the Ministry of Interior through their File No.2/11/2023-Law, the point of view of various stakeholders is reproduced hereunder:

Foreign Affairs: "Pakistan is a State party to International Covenant on Civil and Political Rights (ICCPR) has invariably raised concerns about imposition of death penalty led by MoHR. The Government continue to internally review colonial era laws and narrow scope of capital punishment. Furthermore, draft bill needs careful examination from above aspects, keeping in view, response from MoHR and M/O Law and Justice."



ICT:

“endorsed the draft Bill”

Law and Justice:

“Provision of public hanging are already provided in Rule 364 of the Prison Rule, 1978. In Rule 364, amendment may be made by the federal Government in terms of section 59 of the Prison Act, 1894 by substituting the words “up to maximum of twelve” with the words “from twelve to forty” as the concept of group of people/public in Islam is termed as ‘Taifa’ which means persons gathered ranging between 3 to 40. MOI can legislate to the extent of ICT as prisons are a provincial subject and then the Committee may forward recommendations to the provincial governments for implementation.”

Human Rights:

“Opposed as existing provisions of PPC pertaining to punishment for rape offences are sufficient for administration of justice.”

Commerce:

“Opposed as Pakistan has to implement 27 UN Conventions including Human Rights, labour rights, climate change and good governance. EUs guidelines to death penalty have strong and unequivocal opposition to the death penalty in all times and in all circumstances.”

Ministry of Interior: “The Government of Pakistan strives to uphold the universal principles of human rights. These principles are enshrined under International Human Rights Treaties that the Government of Pakistan has ratified and committed to. Regarding public hanging, it is worth mentioning that there is an ongoing global trend towards the substitution of death penalty with the life imprisonment. Pakistan also ratified the International Human Rights instruments such as ICCPR which prohibit cruel, inhuman and degrading punishments. The Ministry do not support the proposed amendments.”

6. Senators Sherry Rehman and Shahadat Awan vehemently opposed public hanging of the rapists as it will create further barbarianism in the society. Senator Sherry Rehman was of the view that such public hangings were done in dark ages of humanity. She endorsed that there is no second opinion that rape is a heinous offence in any form but public hanging cannot be supported in any manner as there is no recent precedent of such executions in civilized societies. She was of the view that there is already provision of life imprisonment for remainder period of life and death sentence so it is not understandable that what would be achieved by way of execution through public hanging. She insisted that it will not cause any deterrence and we should focus on the elimination of causes of such crimes.

7. The Mover stated that there was never dark age in Islamic world. He argued that if in civilized world the executions are not made through public hanging then we must also keep in mind that in civilized world the ratio of such offences is almost none. Moreover, public hanging does not strictly mean that the convicts should be hanged in D-Chowk or any other such like place rather it can be done inside the jail premises in presence of a particular segment of society or the video clips of hanging process could be aired in social and electronic media so that deterrence can be created in the minds of wrong doers.

8. Senator Shahadat Awan enlightened the Committee that there are some decisions of Superior courts for example 1994 SCMR 1028 and PLD 2019 Lahore 330 wherein it was decided that public hanging will be violation of Article 14 of the Constitution as well as Prison Rules.

9. Senator Samina Mumtaz Zehri was of the view that that rape is a serious crime and no one is safe in the society. She supported the public hanging to create deterrence. She was of the view that Human Rights organizations will make a hue and cry on public hanging but they never raise voice for the human rights of the victims. She stated that at-least one example should be set. She was of the view that there are many incidents which remain unreported but if we give



exemplary punishments to the criminals then such people will also be encouraged to come forward to report the incidents.

10. Senator Dilawar Khan was of the view that execution of sentence in Saudi Arabia in open public is the main reason that the ratio of crimes in Saudi Arabia is very low. He strongly supported the suggestion of public hanging.

11. Senator Kamil Ali Agha supported the idea of public hanging as it is very much in conformity with the Shariah to create deterrence in the society.

12. Senator Saifullah Abro was of the view that we should also work for the mitigation of this crime in the society and its trial should be made speedily and on merits. He referred that the people of elite class who indulged themselves in such like activities in their bungalows on daily basis should also be punished. He supported the amendment proposed by the Mover but he stressed that the causes of such offences need also to be addressed.

13. Special Secretary Ministry of Interior and draftsman of the Ministry of Law and Justice opposed the Bill as Pakistan is signatory to many International Treaties of Human Rights which does not warrant such methods of execution.

14. The Chairman suggested that the contents of the Bill are very sensitive so the Bill should be considered clause by clause. The members agreed the suggestion of clause-by-clause consideration.

15. Clause 2 of the Bill was put to the vote of the Committee. Three votes in favour and three votes against it. Senators Kamli Ali Agha, Dilawar Khan and Samina Mumtaz Zehri supported whereas Senators Saifullah Abro, Shahadat Awan and Sherry Rehman opposed. Due to equality of votes, the Chairman voted in favour of the amendment so clause 2 was recommended by the Committee with majority of vote.

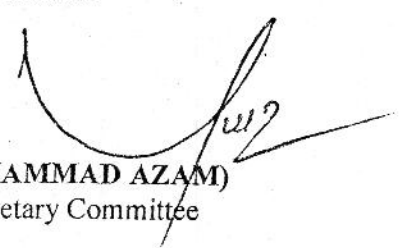
16. Explanation 5 proposed by the Mover in clause 2 of the Bill was withdrawn by the Mover.

17. Clause 3 of the Bill was put to the vote of the Committee which was recommended by the Committee by four votes in favour and two votes against it. Senators Saifullah Abro, Kamli Ali Agha, Dilawar Khan and Samina Mumtaz Zehri supported whereas Senators Shahadat Awan and Sherry Rehman opposed. So, clause 3 was recommended by the Committee with majority of vote.

18. Clause 4 of the Bill was put to the vote of the Committee which was recommended by the Committee by four votes in favour and two votes against it. Senators Saifullah Abro, Kamli Ali Agha, Dilawar Khan and Samina Mumtaz Zehri supported whereas Senators Shahadat Awan and Sherry Rehman opposed. So, clause 3 was recommended by the Committee with majority of vote.

19. Clause 5 of the Bill was put to the vote of the Committee which was recommended by the Committee by four votes in favour and two votes against it. Senators Saifullah Abro, Kamli Ali Agha, Dilawar Khan and Samina Mumtaz Zehri supported whereas Senators Shahadat Awan and Sherry Rehman opposed. So, clause 3 was recommended by the Committee with majority of vote.

20. Thereafter, the Bill was put to the vote of the Committee which was unanimously recommended by the Committee with the recommendation that **the Bill as reported by the Committee may be passed by the Senate**. The Bill as introduced in the Senate is at Annexure-A and the Bill as reported by the Committee is at Annexure-B. The Committee also gave approval of presentation of report of the Committee to the House. Hence, this report is presented to the House.


(MUHAMMAD AZAM)
Secretary Committee


(SENATOR MOHSIN AZIZ)
Chairman Committee

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.

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

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

[AS REPORTED BY THE COMMITTEE]

A

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