

“Chemical Castration: Justice for Victims or Justice for the Rapist”

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Abstract:

The hysterical Delhi gang rape of 2012 and subsequent death of the victim resulting in widespread outrage throughout India had led to calls for chemical castration as a punishment for rapists. This was primarily agreed by various political and civil society groups and reportedly the central Government too pre-pensed the same which they thought would curb the rising rates of rape throughout the nation. Unfortunately, this method of punishment had been clearly disapproved by the law makers to have made this as a penal provision as an alternative for the penal laws existing.

Chemical castration is an alternative punishment for the rapists and would undoubtedly if implemented would mark a reduction in the rising rates of rapes in the country. This suggestive measure would definitely do justice to the victims who have been brutally raped. The incorporation of chemical castration as an alternative punishment was proposed by the Justice Verma Committee after the 2012 Delhi Gang rape. Woefully, the wrong doers' rights were given more priorities than that of the sufferers and survivors leading to the rejection of the proposal. In comparison with other nations, chemical castration is one of the effective measures taken to punish the wrongdoers. This raises a question, as to why India should not adopt the same.

Keywords: Rapists, Alternative Punishment, Chemical Castration, Justice,

I. Introduction:

In a dynamic country like India, crime rates are growing limitlessly, especially the heinous crimes like that of rape. The impact of Rape is frivolous where it should deliberately be considered. In India, when statistics is analyzed for every girl child given birth to, two among them is being raped. The increased rape stories in the country are proving the lack of concern towards the women and children of this country. The case will continue its investigation and looking for evidences over a long period of time and finally nothing really happens, it might take years to solve a case or come to a conclusion.

If girls of dominance are being raped in our country, instead of support and care that she deserves as a rape survivor, she is being criticized and is looked as the one who instigated the

rapists to rape her. In a similar situation if a child is raped, how does the society vindicate? The most disturbing reality is that many of the sexual abuse cases takes place inside the homes especially done by the people who are known to the victim and are brushed under the carpet ruthlessly. Unfortunately our legal system does not provide satisfactory or reasonable methods to reduce the crime rates. The Judiciary is overburdened with this sexual abuse cases and it finds difficult to resolve. Ironically, we have one among the best laws in the world, and in this very country we have judges asking the rape victims to marry the rapist or the perpetrator. This is how our system finds a solution.

This cruel, terrific and horrifying crime can definitely be a great justification for the courts and the law makers to implement chemical castration as an additional punishment especially for child rapists. The existing laws are not sturdy enough to compensate the enormity of the crime. As there are no stringent provisions regarding these barbaric crimes, “barbaric crimes should definitely attract barbaric forms of punishment”. This article does not claim that chemical castration is a barbaric kind of punishment but it is a reasonable punishment for such barbaric crimes. At the rate at which such rape cases are taking places, such steps are to be definitely taken. Indian Penal policy has been reformatory and not retributive due to which once the appeal for chemical castration has been dismissed. This sort of penal method is not examined thoroughly and the perks of such methods are not being utilized and implemented in the right way as this method is opposed and highlighted as an obstructive one.

The calls for chemical castration began soon after the occurrence of Delhi Gang Rape case in 2012. When the 2012 Delhi gang rape was on high voltage, there held discussions and opinions of administering chemical castration as a punishment for sexual offenders. There were supporting opinions from the National Commission for women. They opined that the sexual offenders may be chemically castrated where “they can stay alive with a vital part of their body dead”. Castration is being looked into as a retributive kind of punishment by the law makers of the country. Chemical castration is a process wherein it reduces the sex drive or sexual urge of people when it is administered medically. The process of chemical castration “reduces the production and effects of testosterone thus diminishing the compulsive sexual fantasy. Formerly insistent and commanding urges can be voluntarily controlled”¹.

II. Will punishment like these stop or avoid rape?

It is clearly of an opinion that this method of punishment will be an apt way of reducing and avoiding the libido or the rapist which in turn causes the stoppage of such activities. It is proven that drugs used to chemically castrate the perpetrators do not harm them but only reduce the sexual urge, which will prevent them from commission of such atrocious crimes. The first reported chemical castration to reduce the sexual behavior occurred in the year 1944. The drug

¹ American Journal of Criminal Law, 1990

diethylstilbestrol was used in this process and it reduced the level of testosterone in the human body. Medroxyprogesterone acetate and cyproterone acetate have been used throughout the United States and Canada and some European countries to reduce the sexual fantasies and sexual impulses among the sexual offenders.

Testosterone is the major hormone that is associated with libido and other sexual activities. Several studies have reported that the violent sexual offenders always have a high level of androgens. Nevertheless, many comprehensive theories on sexual offending have incorporated the facts of hormonal factors and undoubtedly surgical and chemical castration reduces the sexual interest and sexual performances which ultimately brings a reduction in the sexual offences like that of rape and child rape.

Indian legal system follows a rehabilitative method of punishment so that the wrong doer will not engage in the same offence again. In the present scenario, in a country like India where every two hours a girl is being raped the traditional penal methods like that of imprisonment and psychological therapy mainly used as behavioral therapy will not be effective anymore. The imposition of chemical castration as an alternative can be justified merely by pointing out the sexual offences against children. This gives the judge a space to impose such penal methods and punishments. The spine chilling rape of an 8 year old girl in at Kathua created a rampage in the entire country. The Kashmiri girl was kidnapped drugged and gang raped continuously for 8 days. The Indian system does not impose any stringent provisions to reduce this kind of brutality until recent times which had been debated and hence death penalty has been proposed and declared which still did not bring about any change as there were rapes just after the verdict to rage against the same to go against the laws made as it was not as strictly controlled.

In United States of America, the punishment of chemical castration has taken place in the year 1996 for child molestation cases. As soon as this method was a success it was quickly taken up and followed by Florida, Georgia, Iowa, Montana, and Texas. However, here castration for second offenders was mandatory. Even in the United Kingdom, castration was also a method imposed. Other countries that have legalized chemical castration on sexual offenders are Israel, Argentina, South Korea and Russia. The administration of the drug has proven to be effective and those who have undergone chemical castration have never show any signs of committing the offence once again. Hence, it is to be noted that when other developed countries have legally approved and implemented this method has been incorporated in their penal provisions keeping in mind the perks of this punishment and how it could benefit the society by reducing the same.

III. Violation of Right to life or Violation of human Rights.

The Indian Constitution has built its fundamental rights by providing equality to every person residing in India. On the same hand, prevailing medical ethics and human rights are contemplating that fundamental freedoms, human dignity and respect are to be given

significance over the former. It is been campaigned that chemical castration is an inhumane mode of punishment. This treatment does not provide for an opportunity to the wrongdoer to reflect on his consent and thus contradicting his human rights. Professor John Stinneford has argued that chemical castration is a cruel and unusual punishment because it exerts control over the mind of sex offenders to render them incapable of sexual desire and subject them to physical change caused by the human hormones used.²

When human rights of the wrongdoer is given so much value who is harming the life of an innocent, there definitely arises a question as to whether the rights of the victim are equally given importance. Therefore, do the rights of the wrong doer have an upper hand over the rights of the sufferer that is destruction of one's life? If it is claimed that there is a violation of human rights of the wrongdoer, then the status, the dignity, the reputation, the standing in the society, the future and especially the most valuable life of the victim is being clearly exploited.

Rape survivors face major barriers to attain justice especially in India. The victim is always stigmatized by the society as if she had instigated the perpetrator to rape her. It is very common that the girls who survive such crimes are often being humiliated in the police station itself who are supposed to maintain law and order.

According to Indian Penal Code, section 376 it provides for punishment for rape that is life imprisonment and for rarest of rare cases it is death penalty. There is an alternative for this kind of punishment where the tenure can be reduced and the treatment is not as cruel when convicted. On the other hand, when a girl is raped and dead there is no such alternative as that of the above. Hence, the reason for not adopting such a method claiming that it violates human rights is unreasonable.

IV. Reformation of Criminal Justice System – A necessary one:

The low conviction for rape where some figures show only 27 percent convictions is also why rapists are not that scared and victims are reluctant to go to court for justice. The police reforms have been waiting to be implemented since the 1980s. For a better investigation method, the police in India need a better investigation method find the right guy, ways to preserve evidence. We don't have a proper witness protection programme, or the best prosecutors. Though the victim lawyer is allowed to present their case, they have to provide relief to their client.

Rape exists because of a patriarchal and a misogynistic culture that condones it, whether tactically or explicitly only because of widespread lawlessness for this kind s of crimes that encourages it. Unfortunately, there appears to be a little political will for any of these measures,

² Stinneford, John f. (20 July2006). "Incapacitation through maiming: Chemical castration, the Eighth Amendment, and the denial of human dignity."

which is where the media and the increasingly powerful voice of the public and spirited citizens in the country will have to take centre stage.

“Men are raised in our society to think that we are men because we demand, we take, we win, and we conquer”.

Men are not born biologically violent but the society makes them so. These crimes are the ways of subjugating women and an attempt to establish their superiority through violence. Men have not been able accept that they need to respect women. The communities along with the law makers and implementers have to work together during this stage by imposing adequate penal measures and also involve security at vulnerable places and at critical hours.

V. Conclusion:

A crime should be treated as a crime and not as a mistake especially in these atrocious situations. So when there is a remedy available without harming the life of the criminals in these cases which was a primary concern for the disapproval of this method of punishment, whereas in comparison with the current punishments like life imprisonment and the suggestive method of the punishment that is chemical castration if compared, the former mode of punishment does not guarantee that the offenders will not reoffend. Whereas it is proven that the wrongdoer undergoing chemical castration will not reoffend. Hence this could a big advantage to secure the society and act as a deterrent for those culprits having an intention of doing the same mistake.

This article suggests that when such developed countries utilized such scientific method which is an effective measure among their penal provisions, it is of high recommendation that India should also adopt such strict laws and other adequate methods to prevent the crimes that in spite of reducing are multiplying with time.