



## women's action forum نواتين محاذ عمل

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Khawateen Mahaz-e-Amal (WAF) strongly condemns the **two Ordinances promulgated by the President of Pakistan on the 16<sup>th</sup> of December to deal with the crime of rape in the country**. The Constitution (1973) envisages the use of this Presidential power only in such circumstances as severe emergencies arising when Parliament is not in session. **In the presence of four previous laws pertaining to rape, WAF perceives no such emergency that would warrant Ordinances from the ruling PTI government. These Ordinances severely undermine the Legislatures, Provincial Autonomy/18<sup>th</sup> Constitutional Amendment, and Democracy.**

In addition, the Ordinances do not consider the time needed for making rules and appointments, and setting up of institutions given that the life of an Ordinance is 120 days. **The Anti Rape (Investigation and Trial) Ordinance 2020** provides for the institutional and procedural framework for the implementation of the amended rape law. This Ordinance *“will come into force on such date as Federal Government may appoint”* whereas the other **Criminal law (Amendment) Ordinance 2020**, will come into *“immediate application.”* The obvious implication is that the law as amended will be applied by the flawed and failed old procedures and policing and prosecution systems whose stark limitations and shortcomings have been exposed in the tragic Motorway gang rape case and myriad regularly occurring heinous sexual abuse crimes.

The conflicting substantive and procedural issues in these Ordinances, include, but are not limited to, the following: too many new bureaucratic layers; vesting extraordinary discretionary power in the President and Prime Minister; vague terminology in the appointment of Special Judges, establishment of Special Courts and terms like judges' *“misconduct”*; girls' age of majority: 18 in one Ordinance vs. 16 in the other; definitions of *“victims” (sic)*: inclusion of TGI persons in one, but exclusion in the other. A substantive omission in these 2020 Ordinances is the common practice of *“compromise settlements”* (or *“forgiveness”*), usually under duress. Appreciating the inclusion of girls, boys and TGI persons in the new *“gender-neutral”* definition of Rape, WAF believes it requires public feminist debate and further technical inputs.

Another substantive flaw in the 2020 Ordinances is the insertion of the punishment of **chemical castration**, in addition to the existing provision for **capital punishment** (already inserted in the 2016 Act). In previous drafts of these Ordinances, the convicted rapist's *“consent” (sic)* was required, and it was to be a temporary measure applicable only to repeat offenders – but in the promulgated 2020 Ordinances, the sentencing and quantum of penalty has now been left to the discretion of the presiding Judge – not just for repeat, but also for first-time offenders. Notwithstanding the fact that WAF is against the punishment of chemical castration that results in physical mutilation, the Ordinance is unclear about whether chemical castration will be imposed in addition to the punishments prescribed in the law or will it be a substitute of that punishment? If the latter, constitutional rights and ethical considerations aside, castration will prove to be wholly impractical, and impossible to enforce repeatedly. The rapist will go free and unrestricted, and will rape again.

Finally, these *emergency* Ordinances are unnecessary. The majority of proposed procedural matters are administrative, which could and should have been addressed simply through federal/provincial government departmental orders. In fact, if the existing exhaustive Anti-Rape law [Criminal (Amendment) (Offences Relating to Rape) Act, 2016] were to be implemented, there would be no need for a new law at all. For instance, fast-track judicial

mechanisms (3 months); provision of DNA testing; protecting the survivor's privacy, dignity; *etc.* already exist in the 2016 Act, together with the inclusion of custodial rape (absent in the 2020 Ordinances). Likewise, special courts to deal with gender-based violence have already been notified across the country and a model GBV court in Lahore High Court has been functioning for the past few years. The 2020 clause regarding witness protection is redundant, in view of the Witness Protection Act (2017 and provincial laws).

WAF questions the urgency and justification of these Ordinances and believes that they are **no more than a public relations exercise to appease public outrage on the rising incidence of sexual violence**. It calls upon all the treasury and opposition legislators to strongly protest this subversion of democracy and the trichotomy of power established under the Constitution. **WAF rejects these Ordinances and recommends that amendments and procedures be taken to Parliament for due discussion and legislation and that reforms of the police, prosecution and judicial system be given priority. The latter require administrative and policy decisions backed by resources which don't require laws but sincere intent and political will.** [ends-764]