



Punishment for chemical castration for sexual crimes committed against children in modern legislation (A comparative study)

Asst. Prof. Dr. Haider Kazem Hathout¹

¹ Al-Qadisiyah University – Iraq

Abstract. This work studies the punishment of chemical castration for perpetrators of sexual crimes against children as one of the most heinous crimes against morals and public morals because it constitutes an assault on honor. The victim (the child) is despised for a deviant sexual behavior that was not done on his will. This work also aims to show the provisions of the chemical castration punishment against Perpetrators of the crime from legal perspectives. One of the findings of the study is that the first basis of imposing the penalty of chemical castration on a sexual offender against children would protect children. Also, the crime of sexual abuse against children in Iraqi law and other comparative laws is among the crimes with a black number, where it is not possible to know its percentage. In society as a result of the victim's concealment, it was found that imposing the punishment of chemical castration on perpetrators of sexual crimes against children does not violate human rights, because the concept of human rights is not free in most Arab countries and some foreign countries (according to the knowledge of the humble researcher). Yet, it is placed within the framework of respecting human rights Man to others in the organized life in a society. At the same time, from the perspective of the purposes of Sharia, this effort is a form of progeny preservation, just as Islamic law also protects the soul when someone threatens him, it preserves his life and his right to life. Then the researcher recommends that the Iraqi legislator did not





address this type of punishment (the chemical castration penalty). I call on the legislator to introduce this type of punishment and cause, for example, because it is less expensive and also reduces the number of prisoners in prisons, as it is considered one of the alternative punishments. Also, in most modern laws in some Islamic countries such as Indonesia, Kazakhstan and Pakistan, this type of punishment has been discussed.

Key words: Chemical castration, perpetrators, children.

1. Introduction:

Many types of crimes occur including crimes against humanity that violate human rights and cause many victims to suffer physically and mentally and some even cause losing lives. Sexual offenses against children are a form of violence against children by committing sexual acts or harassment as a form of physical and psychological torture by requiring children to forcibly engage in sexual activity by adult perpetrators.

There is no doubt that the study of the crime of sexual harassment of children is of great importance in all societies, countries and the world, as many children have suffered from this crime, and countries have paid great attention to this phenomenon, both in terms of protecting children or in terms of punishing the perpetrators of this crime.

It is obvious that every research has a problem. In this research, the problem arises in the penalty of chemical castration, which is now considered one of the modern legal penalties. This law is related to chemical castration and comes amid increasing public tension from the increasing problem of sexual violence against children year after year and sexual crimes against children are serious crimes that violate the rights of Human .

The research may aim to understand and analyze the punishment of chemical castration from a legal perspective and to compare some of the recent legislation that it adopts and its importance for sex offenders.

This study is important because it is useful for scientific developments in the field of law, and the results and recommendations of this research enrich libraries on this subject. It also has practical implications for the future of researchers' intellectual contributions and consideration of the punishment of chemical castration in terms of both positive and negative aspects of sex offenders.





The research was based on the comparative analytical method to prove the seriousness of sexual abuse of children and the manifestations of legal protection for it. It also discusses the punishment of sexual castration and the legal adaptation of that punishment.

2. Legal protection from sexual abuse against children

Sexual abuse against children is one of the social phenomena that have clearly appeared on the stage of life in the recent period and constituted a flagrant violation of all conventions calling for the protection of the child and his childhood. The use of children to satisfy the sexual instinct of others is not new. Since along period, adults use it for pleasure in order to satisfy their instincts and whims, as sexual abuse against children constitutes a grave violation of the rights of the child. Yet it is also a global reality in all countries and among all social groups(Qader, 2007).

2.1. The first topic: the crime of sexual abuse against children in law

Sexual abuse is a type of sexual exploitation, which is sexual intercourse between a child and an adult in order to satisfy the adults sexual desires for using force and control. Other terms such as sexual assault and rape are included under the term sexual assault.

Sexual harassment in language: it is offering humiliating and unwanted sexual things, as defined in law is sexual contact with the genitals(Al-Kharsa, 2011). The Iraqi law also defines the crime of sexual harassment in Article (10) third paragraph of the Labor Law of 2015 as a physical or sexual behavior or any behavior based on sex that violates the dignity of women, men and children and is undesirable, unreasonable and insulting to those who receive it. It leads to the rejection of any person or his failure to expressly or implicitly be subject to such conduct in order to make a decision affecting his employment.

- Sexual crime: It is a sexual behavior that is criminalized by the existing legislation in a particular country and punishable by law. The evaluation of sexual behavior varies from one country to another(S. A.-L. Hassan, 2004).
- Child sexual abuse: It can be defined as the use of children to satisfy the sexual desires of adults, adolescents or minors, leaving them with an age gap of more than five years, while most countries around the world consider the age limit to be 18(Farag, 2011).
- The crime of child abuse also has another definition that depicts children and minors, which is sometimes accompanied by some sadism, that is,



not against killing or beating children before, during or after the assault (Al-Kharsa, 2011).

The law defines how sexual abuse of children occurs:

- 1- Seduction and courtship: Since sexual abuse of a child is a deliberate act, its first condition is that the aggressor be alone with the child. The perpetrators of these crimes may use the method of temptation to encourage the child to commit this crime to ensure the silence of the child, as he manipulates the feelings of the child so that he can commit this crime (Souad, 2019).
- 2- Terrorism and Humiliation: Child sexual abuse is a deliberate act, the first and last condition of which is that the offender humiliates the child, and the offender may resort to means to intimidate the child, so the child cannot escape or beat him up or kill him (Slimani, 2017).
- 3- Sexual interaction and addiction: Child sexual harassment, like every other addictive behavior, has a steadily escalating nature. It may begin with fondling or touching the child, but soon turns into deeper sexual practices that leave addictive effects on the child himself (Tunis, 2017).
- 4- Confidentiality: Maintaining the secret is very important for the harasser to avoid the consequences on the one hand and to ensure the continuation and practice of sex with his victim on the other hand. The more the secret is kept secret, the more he can continue his deviant behavior towards the victim. Because the aggressor knows that his behavior is against the law, he does everything in his power to convince (A. H. Ali, 2003).

2.2. The second topic: the penalty for sexual abuse against children:

The difference between Iraqi law and other penal laws that compares between simple sexual assault and aggravated sexual assault is as follows:

First: The penalty for the crime in its simple form:

Article (393/f1) of the Iraqi Penal Code No. 111 of 1969 stipulates that anyone who has intercourse with a female without her consent or a child shall be punished with life or temporary imprisonment. It is noted that the Iraqi legislator considered the crime of sexual assault in its simplified form as a felony and imposed a penalty on its perpetrator. Life or temporary imprisonment, but the maximum penalty was amended to life imprisonment based on Coalition Provisional Authority Order No. (31) Section Three (Ahmed, 1991).

This punishment is imposed whether the crime was committed using force, threat, deception, fraud, fraud, or any other means or influence on the victim,



who lacks will or deprives him of freedom of choice. The Iraqi legislator has given the trial court judge (criminal court) wide discretion in imposing the appropriate punishment for the circumstances of each crime separately (Nabil, 2021).

In the comparative legislation, the Egyptian legislator punished the crime of sexual assault in its simple form with a hard labor penalty according to Article (267) penalties. In the Syrian legislator, it is whoever is forced to have sexual intercourse with violence or threat of hard labor for at least fifteen years according to the first paragraph of the Article (489), and the penalty shall not be less than twenty-one years if the offender has not completed five years of age. Article (489/f2). The Jordanian legislator in Article (292/f1) punished with temporary hard labor for a period of no less than ten years from The reality of committing a sexual crime under duress, threat, deception, or deception. In the French legislator, whoever engages in a sexual crime of whatever nature, whether by violence, coercion, threat, or surprise, is punished with imprisonment for a term of fifteen according to Article (222/23) of the law in force for the year 1992(A. H. Ali, 2003).

Second: The penalty for the crime in its aggravated form:

Article (393/f2) of the Iraqi Penal Code stipulates that it is considered an aggravating circumstance if the person against whom the crime is committed has not reached the age of eighteen years. She is eighteen years old, i.e. if the victim has not reached legal majority.

The Syrian law has also tightened the penalty so that it reaches hard labor of no less than twenty-one years if the victim has not yet reached fifteen years of age, as in Article (489/F2) penalties. The Lebanese law made the penalty of hard labor of no less than seven years if the assailant did not reach fifteen years of age, as in Article (503/F2)(Shehib, 2021).

The penalty for the crime of sexual assault is tightened in the current French law, reaching up to twenty-year imprisonment if the victim is a minor, as in Article (222/24/2) penalties. Sexual, which is a desire to highlight the extent of the grave effects that the crime leaves on the victim, both physically and psychologically(Nabil, 2021).

The title of the punishment of chemical castration for perpetrators of sexual crimes and the position of recent legislation on it:

Chemical castration in sexual crimes is one of the oldest, most effective, fast and cheap treatments to prevent crime, violence and unwanted births, as there are various reasons for the practice of chemical castration ranging from religious reasons to criminal penalties(A. A. R. Y. Hassan, 2012).



1-3-1-The first topic: the concept of chemical castration punishment for sexual offenders:

There are modern medical methods to prevent a return to sexual crimes, including castration. In the United States of America, surgical castration can be resorted to, which is the removal of the testicles, and this process began there since 1889. This practice has been licensed in Germany since 1969, and it is carried out on prisoners voluntarily. Some of them are at least 25 years old, and Sweden has authorized this since 1993, but castration is not a complete solution.

A eunuch always remains the prey of his own desires, the deviance of many pedophiles does not necessarily pass through the genitals, and surgical castration is both radical and irreversible (Youssef, 2014).

It was stated in the intermediate dictionary issued by the Arabic language dictionary as follows: Castration: Casting and removing his testicles, and that is castrated. Castration: The egg is one of the reproductive organs/they are two testicles. Eunuch: The location of the cut from the eunuch.

3-1-2- The second topic: the position of modern legislation on the punishment of chemical castration

Chemical castration is widely used in several countries, and there are various drugs in this field, such as anti-androgens aimed at reducing testosterone levels and sexual desire (libido). Although chemical castration reduces the risk of return, and represents a very useful supplement to psychotherapy during post-release tracking, it does not. It can respond to a long-term treatment goal.

According to doctors, there is a treatment in the form of drugs and another in the form of injections, but these treatments can indirectly lead to osteoporosis (Ammari, 2020).

As chemical castration is done by injecting chemicals that kill the function of the sperm-producing organs (testes) themselves, this method has become popular today in order to eliminate sexual crime. Many countries have approved the punishment of chemical sexual castration as a punishment for perpetrators of sexual crimes, especially on children, either using drugs or injections, such as:

- 1- South Korea: This country became the first country to implement the penalty of sexual chemical castration in 2011 in the formation of laws and regulations in this country in July.
- 2- England: England implemented the punishment of sexual chemical castration where 25 prisoners were voluntarily given chemical injections



in 2014. The regulation was implemented after World War II, the first case in this country is homosexuality.

- 3- The United States of America: In 2019, a law was issued to punish child sexual abusers with chemical castration a month before their release, among the nine states in America, California, Florida, Oregon, Texas and Washington that imposed chemical sexual castration on perpetrators who committed sexual crimes based on the act of sexual chemical castration to a judge's decision applicable to the crime, as the drug was approved by the U.S. Food and Drug Administration for use in the treatment of sexual crimes.
- 4- Russia: The country applies chemical sexual castration for perpetrators of sexual violence on children, and the laws regulating the punishment of sexual castration have been agreed upon in the country.
- 5- Argentina: Only in 2010 Mendoza implemented chemical castration penalties, and it was approved by decree by the provincial government, that anyone who commits sexual violence against children is punished with chemical sexual castration (Z. Ali, 2017).
- 6- Australia: In Australia, chemical sexual castration is only applied in a few states, namely Western Australia and Victoria.
- 7- Germany: In 1960, Germany implemented the practice of sexual chemical castration, which was called treatment, not punishment. However, provided that the age of the person concerned exceeds 25 years, the treatment does not lead to negative physical or psychological effects that are disproportionate to the intended goal.
- 8- France: Sex offenders can opt for castration, whether they are imprisoned for a long time and undergo chemical sexual castration.
- 9- Indonesia: In 2016, the mandatory chemical castration sentence began to be implemented, six months before the sexual offender was released from prison, in the framework of the second amendment to Law No. 23 of 2002 on Child Protection, which was amended in Articles 81 and 82 of it, and that "since May 2016, the chemical castration penalty was used, based on a final court decision compelling the convicted person, to take drugs that reduce sexual desire little by little to the point of its permanent disappearance. This ruling was applied to anyone who repeats sexual abuse of children, who have committed crimes against children under the age of 18, and who cause serious injuries, mental disorders or infectious diseases. Thus, Indonesia is the second country after South Korea, the





first Asian country to decide the penalty for chemical castration in 2011(Messahel, 2021).

3. The third topic: the legal adaptation to the legal castration penalty

We find some bad precedents in the application of castration, for example: the legislation relating to forced sterilization adopted by Nazi Germany in 1933, which primarily targeted Germans with mental or physical disabilities.

According to Dr. Romer, a psychiatrist at the Strasbourg Hospital, the main reason that drives a man to rape and the harm to the victim is not only of a physical nature, but it gives the aggressor a sense of absolute power. Despite the treatment of sexual impulses by chemical or surgical castration, the main disorder of the criminal remains. Without treatment, these criminals will return to committing crimes using other non-sexual means, such as torturing their future victims(Khattab, 2021).

In contrast, opinions have emerged in favor of temporary sterilization, and medicine has defined sterilization as: making a man or woman sterile, but through medication, so it is castration, but in a modern way.

Professor Wahba Al-Zuhaili believes that: sterilization, even if it is not accompanied by torture, is forbidden, in view of its consequences. It includes stopping birth. It is prohibited to do it without dispute, except for what was permitted by some jurists in certain cases, including: If there is an imperative necessity such as the transmission of a serious disease by heredity to children and grandchildren, and warding off evil takes precedence over bringing interests, and committing the lesser of two evils(Al-Zuhaili, 1985).

Professor Ahmed Al-Sharbasi stated that it is better when sterilization is required, to follow the timed sterilization method, i.e. sterilization of the good to remove it when necessary. Treat these diseases, and then we can remove the sterilization agent(Al-Sharbasi, 1981).

Professor Masoud Sabri elaborated with regard to chemical castration, matters have their purposes, and we must differentiate between the different cases as follows:

1- If the taking of drugs is to weaken the lust of a person who thinks that lust overpowers him, and this causes him to push him to fornication, harassment, or something else, then there is nothing wrong with using it under the supervision of doctors, so that the doctor determines the appropriate proportion for him.



2 - If the percentage of drug intake may harm a person so that it negatively affects his body and health, then it is not permissible to use it, nor to force people to it, rather it is necessary to search for an alternative.

But if the drugs lead to the stopping of childbearing, then this is not permissible under any circumstances, because as the scholars say: it bears the lesser harm in return for the greater harm, because this means forfeiting a permanent right for the human being, which is the ability to have children and exercising his natural right of satisfying the permissible desire. So he may repent and marry. So it is better to avoid wasting a bigger truth on him for a fixable mistake (Abdel-Azim, 2021).

In 2018, Kazakhstan decided to start implementing a penalty for mandatory chemical castration, for anyone who sexually harasses minors, as part of legislative reforms to combat this rampant phenomenon. Since January 1, 2018, chemical castration has been used, based on a court decision that will force the convicted and convicted person definitely, to take drugs that reduce sexual desire little by little, to the point of fading away completely. This provision was applied to those over the age of 18 who committed crimes against children (Efiyanti & Widjaja, 2021).

In 2020, Pakistan has made the mandatory standard of punishment is to start implementing a sentence that requires mandatory chemical castration, not voluntary, for anyone who sexually molests minors under twelve years of age in relation to the victim standard. Also chemical castration was used, based on a court decision, forcing the offender against the sentence obligated to take drugs that reduce sexual desire little by little to the point of its permanent disappearance. This ruling was applied to those over the age of 18 who had committed crimes against children under 12 years old.

In my opinion, chemical castration should be adopted for criminals who pose a great criminal danger under strict judicial and medical supervision, because in my opinion this constitutes a state of necessity. Chemical castration was necessitated by the necessity to prevent a serious danger to the soul and honor of people. Also chemical castration can remove its effects by stopping the use of drugs that suppress sex hormones, so it is similar to temporary sterilization.

4. Conclusion

The issue of sexual abuse of children has become a social and moral epidemic and a global phenomenon that has exceeded all borders and spread rapidly in various countries of the world. Also all human societies have



suffered from it in all its categories. Therefore, it was necessary to put in place strict laws to protect children from sexual crimes that threaten their future. So the following conclusions are reached:

- 1- The crime of sexual abuse against children in Iraqi law and other comparative laws is among the crimes with a black number, as it is not possible to know its percentage in society as a result of the victim's concealment.
- 2- The penalties resulting from sexual crimes, which are approved by law, were set for a great purpose, which is to bring interests and repel evils, and this aim is for the purposes of Islamic Sharia.
- 3- The imposition of the punishment of castration on a sexual offender against children from a human rights perspective does not violate human rights. Rather, it is based on the concept of human rights, which is not free, but is placed within the framework of respect for the human rights of others in the organized life of society, the nation and the state.

Recommendations: Through the previous results, the researcher recommends the following r:

- 1- We see that there are many practices of violence and sexual crimes against children in the world that continue and in abundance, and many of them have not been discovered as a result of lack of awareness or loss of public interest towards individuals or children or out of fear of shame.
- 2- This work emphasizes the importance of the therapeutic role of the perpetrators of sexual crimes by activating awareness and guidance programs to define the punishment of chemical castration and its effects and psychological treatment of abused children. So, they do not turn into criminals when they grow up against the same age standard as the victim children.
- 3- We call on the Iraqi and Arab legislators to succeed in confronting the crime of sexual abuse against children by conducting a survey of sexual abuse, in order to provide a basis. This basis should allow more knowledge of the features of the phenomenon and its true causes, understanding it to a greater degree, revealing its privacy, and drawing effective methods to confront and prevent it. As well as determining a penalty commensurate with this crime.
- 4- We recommend the Arab legislature and some foreign legislation to introduce the punishment of chemical castration because it is less costly and also to reduce the number of prisoners in prisons. It is considered one of the alternative punishments, as well as the most modern foreign





laws and some laws of Islamic countries such as Indonesia, Kazakhstan and Pakistan have dealt with this type of punishment.

- 5- We call on the legislator in some modern foreign laws to specify the doctor who is competent to carry out the punishment of chemical castration on the perpetrators of the crime, to set regulations for appointing doctors who apply chemical castration and to define standards for doctors who can implement this punishment.

References

- [1] Abdel-Azim, K. (2021). Technological progress and its impact on display crimes, a comparative study between Islamic law and criminal legislation. Alexandria: Al-Wafa Law Library.
- [2] Ahmed, H. E.-D. M. (1991). Explanation of the Penal Code, Special Section, Crimes of Assault on Persons, Part Two (2 ed.): Dar Al-Nahda Al-Arabiya,.
- [3] Al-Kharsa, H. R. (2011). The Phenomenon of Child Sexual Harassment (1 ed.): Jar Al-Hayat Library.
- [4] Al-Sharbasi, A. (1981). They Ask You about Religion and Life, Part One. Beirut: Dar Al-Jeel.
- [5] Al-Zuhaili, W. (1985). Islamic Jurisprudence and Its Evidence, Part Three (2 ed.). Damascus: Dar Al-Fikr.
- [6] Ali, A. H. (2003). Criminal Protection of Honor in Positive Law and Islamic Law: Wael Publishing House.
- [7] Ali, Z. (2017). Metode Penelitian Hukum, Jakarta: Sinar Grafika, 2009. Andasasmita, Komar, Notaris III Hukum Harta Perkawinan dan Waris Menurut Kitab Undang-Undang Hukum Perdata.
- [8] Ammari, O. (2020). The Crime of Sexual Harassment, A Comparative Study between Islamic Jurisprudence and the Algerian Penal Code No. 15-29. Al-Bahet Journal for Academic Studies, 7.
- [9] Efiyanti, M., & Widjaja, G. (2021). The Implementation of Chemical Castration Sanctions against Convicts of Child Sexual Crimes in Indonesia by Doctors. Journal of Legal, Ethical and Regulatory Issues, 24, 1-15.
- [10] Farag, H. A. H. (2011). Sexual Harassment and Show Crimes (1 ed.): Al-Wataha'q House.
- [11] Hassan, A. A. R. Y. (2012). Modern Scientific Evidence in Criminal Proof. (Master). Middle East University, Faculty of Law.
- [12] Hassan, S. A.-L. (2004). Criminal Protection of Presentation in Islamic



- Jurisprudence and Positive Law. Cairo: Dar Al-Nahda Al-Arabiya.
- [13] Khattab, T. Y. S. (2021). Translations of the International Legislative Jurisdiction in the Field of Crime, Comparative Study. (PhD Unpublished). Ain Shams University, Faculty of Law.
- [14] Messahel, M. A. K. (2021). The new Pakistani law faces opposition from senior imams. Al-Masry Al-Youm newspaper.
- [15] Nabil, L. (2021). Protection of a minor victim of sexual abuse between the reality of the text and the prospects for activation, , No. 74, Economic and Social Sciences. Journal of Law and Business, 74.
- [16] Qader, F. G. A. (2007). Criminal Protection for Children, a research study, the National Council for Services and Social Development. the Specialized National Journal.
- [17] Shehib, M. (2021). Protection of the Physical Entity of the Child's Body, Historical Stations, Legal Consultations and Dispute Resolution. Journal of Research and Legal Studies(18).
- [18] Slimani, J. (2017). Modern International Models for the Protection of Children from Sexual Abuse and Exploitation, Studies on Violence and Child Sexual Abuse. Faculty of Humanities and Social Sciences: Mouloud Mammeri University, Tizi Ouzou,.
- [19] Souad, M. (2019). Types of sexual and non-sexual crimes against children, a legal psychological study. Journal of Human Sciences and Society, 8(2).
- [20] Tunis, S. M. B. (2017). Child Sexual Abuse, Causes, Factors and Effects, Studies on Violence and Child Sexual Abuse. Faculty of Humanities and Social Sciences: Mouloud Mammeri University/Tizi Ouzou.
- [21] Youssef, A. Y. A.-S. (2014). Criminal Protection of Children from Sexual Exploitation. (PhD Unpublished). Mansoura University. New University House, Faculty of Law,.