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Forced Gynecological Examination in Afghanistan

Research Report

Forced Gynecological Examination in Afghanistan

Report Summary

This research is second in a series of studies by AIHRC on women's rights.

In total, 129 women from 13 provinces of Afghanistan have filled the questionnaire of this research. These women are those who have passed the forced gynecological examination in the last three years, since the Penal Code came into effect. Among these women, 62 were married (48.1% of all respondents), 34 were single (26.4%), 12 were engaged (9.3%), 14 were widowed (10.9%), and seven of them were divorced (5.4%)

In addition, out of all 129 respondents, 78 of them (60.5%) were in prisons, nine (7%) were in police custody, and 42 others (32.6%) were in the safe shelters.

Legal Mechanisms

The findings of this study show that forced gynecological examinations, i.e. virginity examinations and examinations performed to prove the crimes of rape, adultery (Zena) and sodomy are against women's human dignity, violating the women's human rights. Exercising these kinds of examinations is against the provisions of international conventions and documents, such as the UN Charter, Universal Declaration of Human Rights, International Covenant on Civil and Political Rights, and the Convention against Torture. Given the nature of such tests, they are derogatory and disparaging acts and against human dignity of women. Under Articles 7 and 24 of the Constitution of Afghanistan and paragraph 5 of Article 13 of the Law on the Elimination of Violence against Women, as well as Articles 6-10 of the Law on the Prevention of Torture, any act which violates human dignity, is strictly prohibited.

Accusations

According to the respondents of this research, women have been arrested on various charges and then sent to health facilities for forensic medical testing. Likewise, 60 respondents (46.5%) were accused of zena, 31 (24%) accused of escaping home, 23 (17.8%) accused of murder, 6 (4.7%) accused of being raped, 3 (2.3%) accused of theft, 3 (2.3%) accused of trafficking, 2 (1.6%) accused of giving wrong information, and one person (0.8%) accused of escaping home and sodomy have been arrested and sent to health facilities for forensic medical examinations by Police and National Security Detective Units.

Forced Gynecological Examination

Findings of this research show that despite Article 640 of the Penal Code that restricts virginity tests to the consent of the woman being tested, these tests continue to be exercised for proving crimes of rape, Zena, or sodomy. According to present research, 92.3% of virginity tests (119 out of 129 respondents) were conducted without an official sentence of the Court or woman's consent.

According to the respondents of this research, out of all 129 women who had been introduced to health facilities for forensic testing, only one of the women confirmed that her referral for forensic examination was based on Court's sentence, and nine others stated that they had voluntarily agreed to undergo the tests. These women confirmed that the reason they volunteered was to get rid of the allegations against them.

Sixty-four out of 129 respondents (49.6%) admitted that they were introduced to health facilities or forensics by the Police for gynecological examination, 32 (24.8%) by the Attorney General's Office, 5 (3.9%) by the safe shelters, and 4 (3.1%) by National Security. Only one respondent (0.8%) admitted that the Court sentenced her to undergo gynecological testing. Besides that, 14 respondents (10.9%) did not answer the question of by which institution they were introduced for forensics examinations.

The Purpose of These Examinations

Findings of this research show that out of 129 respondents who have been introduced for gynecological testing, 44 of them (34.1%) were tested to prove the presence or absence of sperm in their genital organs, 31 (24.0%) were tested for virginity, 29 (22.5%) were tested for proving recent sexual intercourse, 6 (4.7%) were tested to prove the crime of rape, and 19 respondents (14.7%) did not answer the question related to the gynecological examinations.

Gender of Doctors Conducting the Examination

According to this research, 100 respondents (77.5%) have said that female doctors conducted the tests; however, four respondents (3.1%) have said that male doctors conducted the tests on them which is against the provisions of paragraph two of Article 49 in the Criminal Procedure Code. Twenty-five of the respondents (19.4%) did not answer the question related to gender of doctors who conducted the tests.

The Psychological Consequences of Forced Gynecological Examinations

The respondents of this research referred to various negative consequences of forced gynecological examination. Some of these consequences are listed below:

Out of all 129 respondents, 26 of them (20.2%) said that they felt extreme hatred towards those who introduced them to forensics for gynecological examination, 22 of them (17.1%) said they felt hatred towards the doctor who conducted the test, and six of them (4.7%) said they hated their family for it. On the other hand, 24 respondents (18.6%) expressed feelings of deep sorrow and pain saying that those tests tortured them. Moreover, ten respondents (7.8%) said that they were isolated after the test, and four respondents (3.1%) admitted that they thought of suicide after the test. Finally, 12

respondents (9.3%) confirmed that they have had all the aforementioned feelings. The remaining 25 respondents (19.4%) did not answer the question on psychological consequences of forced gynecological examination.

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