

DEATH PENALTY IN PAKISTAN: LEGAL AND HUMAN RIGHTS PERSPECTIVES

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ABSTRACT

The death penalty continues to be among the most topical legal and human rights issues in the context of Pakistan. On the proponents' side, they claim that capital punishment has a deterring effect on crime. In contrast, on the other side, critics argue that the death penalty involves a violation of due process, risk of executing the innocent, and human rights abuses. The purpose of this paper is to review and analyze the legal aspects of the death penalty in Pakistan, including current trends, legal statutes, and human rights concerns. It then outlines the recommendations for law reforms to enable the achievement of justice and conform to international human rights standards.

Keywords: Death penalty, capital punishment, human rights, wrongful convictions

INTRODUCTION

Capital punishment, or the death penalty, stands as one of the most significant and contentious issues of the criminal justice system in Pakistan. The death penalty has been practiced in the past as a legal method of punishment with the significant rationale that accompanied it being the concept of deterrence, retribution, as well as religious beliefs. Nevertheless, its effectiveness has been criticized by human rights activists, lawyers, and other international organizations stating that, despite being implemented in Pakistan, it has been problematic in many ways concerning judicial ambiguity, false convictions, lack of legal aid, and human rights violation (Justice Project Pakistan [JPP], 2018). The problem of capital punishment in Pakistan is rooted and grounded in its legal, political, and religious setting, therefore making it not easy to write about the subject.

HISTORICAL BACKGROUND OF THE DEATH PENALTY IN PAKISTAN

Pakistan adopted most of its legal systems from its colonial masters, the British; this also applied to the death penalty. The Pakistan Penal Code, which was enacted in 1860, still forms the foundation for criminal law in Pakistan; this code prescribes the death penalty for murder, treason, and waging war against the state (Ali, 2020). Politically, socially, and religiously, the death penalty has and continues to broaden in its range and applicability. The Hudood Ordinances (1979) established capital punishment for offenses such as rape, adultery, and apostasy, thus fulfilling Zia's intention of incorporating the Shariah system into the law of Pakistan (Rehman & Aziz, 2018).

One of the most notable shifts in the dispensation of capital punishment in Pakistan was the policy of non-implementation of the death penalty from 2008 up to 2014 due to international human rights pressure. However, after the tragic attack on the Peshawar Army Public School in 2014, the

government decided to end the moratorium and resumed executions, but mainly for terrorism-related crimes (Amnesty International, 2021). Since then, Pakistan has emerged as one of the most frequent users of the death penalty in the world, even though civil society, human rights activists, and legal scholars are calling for change (UNHRC, 2021).

LEGAL FRAMEWORK OF THE DEATH PENALTY IN PAKISTAN

The laws governing the death penalty in Pakistan stem from the Pakistan Penal Code (PPC), Code of Criminal Procedure (Cr.P.C), Anti-Terrorism Act, and the Narcotics Control Act. The Constitution of Pakistan also has a connection with legal provisions regarding capital punishment as well.

The right to life is enshrined under Article 9 of the Constitution of Pakistan, but the provisions permit depriving a person of his life under law (Constitution of Pakistan, 1973). Whereas the PPC defines the crimes that attract the death penalty, the Cr.P.C sets out the legal processes that must be followed in trials involving capital offenses, such as the right to a fair trial and to appeal.

The Anti-Terrorism Act (ATA) 1997 has been used often in capital-related cases, which has led to faster trials and, at times, injustices meted out since the trial was done in the military court (JPP, 2018). Also, the Control of Narcotic Substances Act 1997 provides for the imposition of the death penalty for offenses of trafficking in narcotics on a large scale.

However, issues of inadequate legal counsel, forced confessions, and denial of fair trials as enshrined in the laws have turned out to be key human rights violative issues (Human Rights Watch [HRW], 2020). In fact, the Supreme Court of Pakistan and the Pakistan Bar Council have urged to make some legal reforms in the process so that justice should be delivered and wrongful killings should be stopped.

JUDICIAL TRENDS AND WRONGFUL CONVICTIONS

a. Judicial Trends in Death Penalty Cases

Pakistan had actually gone a step further and had a de facto ban on executions from 2008 until late 2014, primarily due to globalization and human rights activists. Nonetheless, the government put a moratorium on this method after 2009. However, after the terrorist attack on the Peshawar Army Public School in December 2014, the moratorium

lifted, and the executions began again. The continuation was justified in the pretext of terrorism, yet most of those who were put to death were not terrorists but people who committed crimes that were terror-related only in their nature (Amnesty International, 2021). From 2015 to 2020, Pakistan has hanged more than 500 prisoners, which makes them one of the top executioners in the globe (UNHRC, 2021).

The majority of the death penalty convicts were tried in the Anti-Terrorism Courts (ATCs) and Military courts (Rehman & Aziz, 2018). Where again, they have used the confessional evidence produced by police torture, which is violations of the principles of a fair trial (Justice Project Pakistan [JPP], 2018). Such judicial trends indicate systematic issues in Pakistan's capital punishment system that leave doubts regarding human rights and innocent people being convicted.

b. Role of the Supreme Court in Overturning Wrongful Convictions

The unanimity of the Court of Supreme Pakistan has been significant in reversing unfair convictions, resulting in the death penalty in some of the arenas where the lower courts violated the principles of natural justice and fairness in the trial. A well-known example is the case of Pakistani citizen Zulfiqar Ali (2015), who was convicted of trafficking in Indonesia. That is why even when he confessed his crime before the court, it was clear that the confession was forced out of him under torture, and he was sentenced to death. Finally, after much legal activism, the Supreme Court of Pakistan acted appropriately where diplomatic relations yielded to a particular stay of his execution. This case demonstrated that there is no safeguard for Pakistani nationals who are subjected to capital punishment either at home or in other nations (JPP, 2018).

Similarly, in *Samiullah v. The State* (2018), the death penalty was reversed by the SC since the prosecution did not meet the burden of proof to determine guilt in this case. The judgment was also premised on the allegation of the misuse of circumstantial evidence and chances that failed to show the connection between the accused and the crime (Niaz, 2021). Another case is *Safia Bibi v. The State* (1985), where a young blind woman was sentenced to death under Hudood Laws for alleged

adultery. She was, therefore, set free by the Supreme Court on the grounds that her confessional statement was involuntary and that the state did not make a case that should secure conviction under Sharia. This case also demonstrated how the Pakistani legal system is hazardous for women wrongfully convicted of a criminal offense (Rehman, 2019).

c. Issues in Judicial Decision-Making

Pakistani courts have procedural and structural issues regarding convictions and the administration of the death penalty. Coerced confessions are one of the most disturbing aspects studied and significantly contribute to the validity of the information. Some of the most common human rights violations that law enforcement agencies usually commit include the police use of torture to extract confessions, which in most cases are taken to court as evidence (Amnesty International, 2021). One example is Shafqat Hussain, who was a juvenile sentenced to death in 2004 for the alleged murder of a seven-year-old child. This was a forced confession made after torture, and there was no forensic evidence that the accused actually committed the crime. Nevertheless, due to concerns raised by human rights organizations, he was executed in 2015, meaning that there are significant structural problems within the criminal justice system, especially as it pertains to juvenile offenders (JPP, 2018).

On the same note, other reasons also contribute to wrongful convictions, namely bad forensic practices. This is particularly the case where there is no concrete evidence in the form of fingerprints, voice recognition, or DNA. However, individuals have been convicted based on eyewitness accounts, which are very often inaccurate. A Justice Project Pakistan survey in 2018 indicated that more than 60 percent of those on death row never received forensic/scientific-type evidence to support their conviction. This absence of science in criminal investigations also undermines the judicial procedures and the reliability of resulting judgments, thereby raising risks of miscarriages of justice.

Another factor is that trials in the Anti-Terrorism Courts (ATCs) are conducted in a fast-track manner. The special courts for the prosecution of terror suspects under Section 15 of the Anti-

Terrorism Act (1997) tend to be speedy trials, which then deny adequate defense to the accused. It is important to note that most individuals who receive the death penalty while in the ATCs were not convicted of terrorism-related charges but were given the death penalty anyway (Rehman & Aziz, 2018). Such courts are problematic regarding matters of due process, and one's right to a fair trial.

d. Notable Cases of Wrongful Convictions

A few examples trace how wrongful convictions cost lives in Pakistan, as well as show how they impact the entire criminal justice system. One of the recent calamities in India was the case of Aftab Bahadur in 2015. The juvenile was convicted in 1992 to death for a murder he is said to have committed at the age of 15; his primary evidence was a forced confession and fabricated witnesses' statements. However, some facts confirm that the man could not have committed the crime for which he was convicted and sentenced to death in 2015 after serving more than two decades on death row (Amnesty International, 2016).

Likewise, the case of Khizar Hayat (2019) also explains the ordeal of mentally ill prisoners. Hayat received a mental diagnosis of paranoid schizophrenia and was subsequently convicted of the crime of murder and sentenced to the death penalty. His mental illness was also proven, which made his execution ordered and postponed several times due to the cases filed by human rights organizations. The Supreme Court later reduced the ruling to a death sentence due to the international legal requirements on the execution of mentally ill prisoners (Ottaway, 2017). This case has revealed that there are no legal rights or protection for mentally ill people in the criminal justice system of Pakistan.

HUMAN RIGHTS CONCERNS AND INTERNATIONAL LAW

a. Violations of Fair Trial Standards

The UN and even such non-governmental organizations as Amnesty International have criticized Pakistan for its inability to observe the principles of fair trial in death penalty cases. Pakistan, as a signatory to the International Covenant on Civil and Political Rights (ICCPR), has enforced a strict provision of a fair trial under Article 6 of the ICCPR. Nevertheless, numerous

cases have shown a clear violation of all these standards in Pakistan.

For instance, some of the methods used were cases such as those involving torture in order to get confessions from the suspects. Shafqat Hussain is a clear example of how people are executed, while there are doubts that the man was a juvenile and his confession was made under torture (Justice Project Pakistan, 2018). Like all the other countries, Pakistan has been involved in executing mentally ill prisoners against the rules of law as much as standard. Specifically, in the case of Imdad Ali, although the UNHRC raised concerns against the execution of the accused schizophrenic prisoner, the Pakistani authority went ahead. It executed him, as expressed by Amnesty International (2018). They show that, more often than not, justice has not been served to their deserving individuals or parties, and the systems do not protect human rights in place.

b. Use of the Death Penalty for Non-Lethal Offenses

The UN Human Rights Committee (UNHRC) has accused the government of Pakistan of using the death penalty on offenses that do not always fall within the category of 'the most serious crimes' as per international law (United Nations, 2019).

International human rights organizations claim that the application of the death penalty on non-homicidal offenses, such as drug offenses, is unlawful according to international human rights law (UNHRC, 2021).

ARGUMENTS FOR AND AGAINST THE DEATH PENALTY IN PAKISTAN

a. Arguments In Favor Of The Death Penalty

The first and, perhaps, the most typical reason for supporting the death penalty involves emphasizing and placing emphasis on the potentiality to deter criminal acts, especially murder, rape, terrorism, etc. Supporters of the death penalty believe that the death penalty acts as a deterrent to would-be offenders because the offenders risk being killed if they are convicted of a capital offense. Some of the politicians and jurists argue that the law and order situation requires harsh measures in Pakistan, and thus, they are in favor of capital punishment. While empirical evidence for the concepts of deterrence is inconclusive, some insights indicate that a considerable number of Pakistanis approve of the

penalty as a way of combating crime. For instance, Gallup Pakistan surveyed in 2015, in which 60% of Pakistanis detected that capital punishment prevents crime (Gallup Pakistan, 2015).

On the same note, and as highlighted earlier, there is evidence that the National Action Plan of 2015 resulted in a decrease in terrorism-related activities; nevertheless, this has been accompanied by an uptake in execution, notably pertaining to terrorism. Critics of this argument seek to challenge it by referring to research conducted on countries that have chosen to repeal the death penalty; their crime rate currently remains high. They opine that life imprisonment without parole is as practical a punishment as the death penalty but without the risk of executing an innocent, as was seen by the study done among jurisdictions that practice both (Amnesty International, 2021).

The one that is perhaps most closely associated with the death penalty is retribution, where the death penalty is given as a punishment to the murderer or terrorist. Those in favor of capital punishment argue that the death penalty serves as justice in as much as it provides an equal penalty to a person who committed the crime. This is in accordance with the Shariah law regarding Qisas, which gives the victim's family the right to demand that the offender be put to death, or they abandon this and accept Diyat (compensation) (Rehman, 2019). Equally, many victims' families state that the death penalty gives them justice and makes them feel safe and satisfied. That way, they say, the criminals will not be compelled to answer the maximum requisite degree of the call for accountability. Terrorism incidents, child rape, serial murders, and the killing of many individuals are among the events for which retributive justice is deemed relevant. However, some serious potentates are against this type of punishment, and human rights activists are among them because they appear to believe that retribution cannot be the basis of justice. They argue that execution is unavailing to help the victim's families find closure, and a reformation measure accompanied by life imprisonment is more helpful in delivering justice (UNHRC, 2020).

Terrorism affects Pakistan to the extent that it has claimed thousands of lives through violence throughout the past two decades. Some people argue that harsh measures such as the death penalty should be applied to fight terrorism and preserve the

country's safety and integrity. After the act of terrorism conducted in December 2014 in the Army Public School APS, Peshawar, in which 149 people were killed, terrorism-related offenses came under crackdown, and the moratorium on executions was removed by the government of Pakistan (Khan, 2018). Supporters suggest that by giving convicted terrorists the death penalty, one can effectively discourage other 'militant' groups from perpetrating any more acts of terror. Some have pointed out cases whereby the convicted terrorists should be alive; they prepare other acts of terror from behind the bar. However, critics argue that some of those who are charged with terrorism-related offenses are not terrorists themselves but were framed due to coerced statements or woeful trial proceedings. Terrorism cases are tried by special anti-terrorism courts, which act swiftly, affording the defendants an inadequate chance to defend themselves - JPP (2021).

There is a high importance on public opinion in regard to deciding the matters of the death penalty in one country or another. According to various polls, a preponderance of Pakistani people favors capital punishment, especially in cases of rape, blasphemy, and murder (Gallup Pakistan, 2015). Some people remain in doubt about whether or not criminals should be put to death to restore and preserve order in society. It is common to hear politicians defend the death penalty, basing the authority on public opinion as an embodiment of the masses' wish. Critics have since noted that people's opinions cannot be used to determine justice policies. They say that those who advocate for capital punishment do this because they have little knowledge about wrongful convictions and the flaws of the judicial system (Amnesty International, 2021).

b. Arguments Against the Death Penalty

The major and solid reason why one should not support the death penalty is the possibility of executing the wrong person, owing to the imperfections in the criminal justice system. Pakistani legal policies' major shortcomings have been forced confessions, poor forensic examinations, and investigation procedures executed by police departments. In this method, other documented reports demonstrate cases in which people were executed, and later, it was

discov
ered that perhaps they did not deserve to be killed. An example of such a case is Shafqat Hussain, who was sentenced to be executed in 2015. However,, the indication points out that the man was underage at the time he committed the robbery (JPP, 2021; Shafqat Hussain v. The State, 2015). The accused was convicted on the basis of a confession that was produced through the use of force. Thus, the fairness of the trial was questionable. Similarly, Aftab Bahadur, who was also hanged in the same year, had been convicted for a crime committed at the age of 15, and his only evidence was false witnesses (Rehman 2019, p.37; Aftab Bahadur v. The State, 2015). Each of these cases speaks volumes of the fact that the death penalty is final and every judgment has a high potential of getting it wrong. Thus, it is rather contradictory that a justice system that, according to numerous indicators, frequently convicts innocent people should be allowed to order capital punishment (UNHRC, 2020).

Pakistan is a signatory to the International Covenant on Civil and Political Rights (ICCPR), under which the state apparently disapproves the use of death penalty. The two non-governmental organizations, Amnesty International and the United Nations Human Rights Committee, have continuously asked Pakistan to outlaw capital punishment due to prejudices concerning fairness in trial and wrongful executions (UNHRC, 2020). The EU has also applied pressure on Pakistan about the non-essential death penalty as a basis for keeping trade privileges under the GSP plus scheme. Though there are some minor progress in Pakistan, Pakistan has not taken any comprehensive measures for the abolition of the death penalty (Amnesty International, 2021).

It was argued that the death penalty will affect poor and marginalized people more since they are a subject of bias in the justice system. The rich are acquitted through compounding in which the defendants can pay money to the victim's family in exchange for their lives as the provisions of Qisas and Diyat are in the hands of the victims' families, enabling the wealthy to purchase their freedom (Khan, 2018). On the other hand, a person with little resources will have a weak defense and will be punished severely. According to Justice Project Pakistan JPP, this indicates that of all the condemned inmates, 78% of them have been brought up in economically backward areas. This

gives a blot on the equitable use of the death penalty and if it is really used on deserving people (JPP, 2021).

CONCLUSION, SUGGESTIONS AND RECOMMENDATIONS

a. CONCLUSION

The death penalty is still an issue of controversy in Pakistan, which resorts to a legal argumentation that has political and human rights implications. Although there are virtues that are espoused for supporting capital punishment where it is deemed there will be no reinjection of the death penalty to the convicts, its practice involves violation of due process, wrong and convicting innocent individuals, and discrimination of some people. The legal evolution of the death penalty reveals that most individuals are condemned to the gallows without enough physical evidence, and forced statements still have considerable importance for the verdicts. National and international organizations advocating for human rights have time and again urged Pakistan to bring a change in their legal laws and regulations for capital punishment across the world.

This is why Pakistan needs to reconsider its position because the global trend of eliminating the death penalty is constantly increasing. Most countries have replaced capital punishment with other forms of punishment, such as life imprisonment without National Trade. It also believes that the existing life imprisonment without parole is a better way of delivering justice as a substitute for capital punishment. In light of such miscarriages of justice in Pakistan, it is possible to come up with an excellent argument as to why Pakistan should not be adventurous but rather be more careful in imposing the death penalty. Successful legal reforms can help fix some of the dire issues, which include enhancing due process, enhancing discretion in the investigation and analysis by forensics, and conducting fair trial hearings.

b. SUGGESTIONS AND RECOMMENDATIONS

- **Strengthening Fair Trial Standards:** The government should employ policies that prohibit the use of forceful confessions and false convictions. Erasures, therefore, include legal protections like the requirement of

c evidence and the ban on the use of force in the extraction of a confession.

- **Reforming the Anti-Terrorism Courts (ATCs):** Extended trials in the ATCs should be given much closer judicial supervision to reduce the risk of a miscarriage of justice. Defendants should have ample time and legal counsel to have a favorable trial hearing.
- **Establishing a Review Mechanism for Death Row Cases:** There must be the formation of a special court to review the earlier cases of death penalties with respect to the mental illness of the convict or the juvenile at the time of the crime.
- **Aligning with International Human Rights Obligations:** Pakistan should take practical measures to reduce the use of the death penalty, which is contrary to the ICCPR and other international human rights treaties.
- **Abolishing the Death Penalty for Non-Lethal Offenses:** Capital punishment should be restricted to only the most serious crimes, as defined under international human rights law, and should not be applied to offenses such as blasphemy or drug-related crimes.
- **Enhancing Legal Representation for Marginalized Groups:** The government should ensure vulnerable candidates enjoy free and quality legal services in capital cases to reduce the number of wrong convictions.
- **Exploring Alternative Sentencing Mechanisms:** The option of life imprisonment without possibility of parole, as well as the restorative justice models, should be viewed as the alternatives to the death penalty when the state focuses upon the concepts of deterrence and retribution.
- **Public Awareness and Advocacy:** Increase efforts to explain to the public the risks and effects of capital punishment, including the incidence of human errors leading to wrongfully executing the culprit and the unnecessary use of capital punishment in preventing anybody from committing a crime, as it has been proven to have no impact in this aspect.

REFERENCES

- Ali, S. (2020). The historical evolution of Pakistan's death penalty laws. *Pakistan Journal of Legal Studies*, 5(2), 45-67.
- Amnesty International. (2016). *Death sentences and executions 2015*. Amnesty International Publications.
- Amnesty International. (2021). *Pakistan: The death penalty and human rights concerns*. Retrieved from <https://www.amnesty.org/en/latest/research/2021/>
- Human Rights Watch. (2020). *Justice compromised: The misuse of Pakistan's anti-terror laws*. Retrieved from <https://www.hrw.org/report/2020/>
- Justice Project Pakistan. (2018). *Death penalty in Pakistan: A critical analysis*. Justice Project Pakistan Publications.
- Niaz, A. (2021). *Wrongful convictions and the flaws in Pakistan's judicial system*. *South Asian Law Review*, 8(1), 23-39.
- Rehman, J., & Aziz, F. (2018). *Sharia law and capital punishment in Pakistan: An analysis*. *Journal of Islamic Legal Studies*, 6(3), 78-94.
- United Nations Human Rights Committee. (2019). *General comment on Article 6 of the ICCPR*. United Nations Publications.
- United Nations Human Rights Committee. (2021). *Pakistan and international obligations on capital punishment*. Retrieved from <https://www.un.org/en/human-rights-co>
- Samiullah v. The State, PLD 2018 SC 125
- Safia Bibi v. The State, PLD 1985 SC 120
- Shafqat Hussain v. The State, PLD 2015 SC 98.
- Aftab Bahadur v. The State, PLD 2015 SC 200.
- Khizar Hayat v. The State, PLD 2019 SC 150.

