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Doi: 10.31703/ijlss.2022(I-II).04

Link: [https://doi.org/10.70540/ijlss.2022\(I-II\).04](https://doi.org/10.70540/ijlss.2022(I-II).04)



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Right to Life and death Penalty in Pakistan “Balancing Justice and Human Rights”



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Abstract: *In Pakistani context, the intersection of the right to life and the imposition of death penalty initiate a complex debate on justice and human rights. Advocates of the death penalty argue that it serves as a crucial deterrent, dissuading individuals from committing egregious crimes and contributing to public safety. They contend that in cases of extreme offences, capital punishment represents a proportional response, providing a sense of closure and justice to victims and their families.*

The legal framework surrounding the death penalty in Pakistan is often cited by supporters as a safeguard against potential abuses. They underline the importance of due process and the right to a fair trial, asserting that the system is designed to minimize the risk of unlawful convictions. This perspective underscores the death penalty when administered judiciously, upholds the principles of justice.

In contrast, opponents of death penalty in Pakistan argue that it infringes upon the universal right to life, enshrined in Holy book of Quran, 1973 Constitution of Pakistan and in International Human Rights conventions and agreements. They claim that capital punishment is inherently irreparable and raises ethical concerns about the state’s power to take life. Critics also highlight the potentials of systemic flaws within the legal system, leading to miscarriages of justice and the execution of innocent people.

Dealing with this debate, the Pakistani legal system faces the challenge of balancing the demand for justice and the protection of human right to life. This requires a thoughtful examination of the cultural, ethical and legal dimensions. Lastly, this abstract seeks to contribute to the ongoing dialogue, emphasizing the transformative potential of steering away from capital punishment and embracing a human rights-centric approach to justice.

Keywords: Capital Punishment , Human Rights , Death penalty laws , Right to life , Legal system in Pakistan , Judicial system in Pakistan

Introduction

“But whoever kills a believer intentionally – their reward will be Hell, where they will stay indefinitely. Allah will be displeased with them, condemn them, and will prepare for them a tremendous punishment”²

The phrase ‘capital punishment’ is derived from the Latin word “capitalis” from ‘caput’ (head) which means “o the head punishment”³. Capital punishment involves the state government deciding to terminate someone’s life as a punishment for a serious crime they have committed. The types of crimes that lead to capital punishment for an offender depends on the penal code of each country but crimes like murder,

¹ Advocate, District Bar Association, Dera Ismail Khan, KP, Pakistan.

² Al-Quran, Chp 4, Verse 93

³ Journal of Law and Social Policy, Volume 3, September 2021

Citation: Khan, Tayyaba Anam. 2022. "Right to Life and death Penalty in Pakistan “Balancing Justice and Human Rights”." *Indus Journal of Law and Social Sciences* I (II):30-36. doi: 10.31703/ijlss.2022(I-II).04.

terrorism and treason are generally categorized as crimes of capital nature throughout the global spectrum of criminal justice.

Death penalty is legal penalty in Pakistan. Despite the constitutional guarantee of fundamental rights,⁴ including the right to life⁵, the court retains the authority to impose a death sentence. However, the 1973 Constitution of state contains the preamble which declares that Pakistan ought to follow and be operated by Islamic laws and teachings. The state religion is Islam⁶, no law can be made against the injunctions of Islam and any such law shall be declared null and void under articles 227 and 203-D of the Constitution of Pakistan 1973. Islam while recognizing the right to life also recommends death penalty⁷ as a mode of punishment for various crimes.

The Scope of the Study

Research Objective

The aim of this research is to acquire a thorough of the existing limitations, scope and primary arguments concerning the death penalty

Research Problem

The research problem in this study is to elucidate that the death penalty is solely a matter of justice and does not constitute a **violation of the** fundamental right to life.

Limitation of the Research

This research centers on the prevalence of the death penalty in Pakistan in general.

Research Methods and Materials

The study adopts a qualitative research approach, primarily relying on secondary data sources such as country reports, judicial decisions, commentaries, academic writings and electronic databases.

Historical Context

The origin of capital punishment in Pakistan can be traced to the British colonial era, introduced through the Indian Penal Code (IPC) 1860. Following Pakistan's independence in 1947, the country maintained the death penalty as a method of criminal punishment⁸.

Legal Context

Fifty-five countries retain and implement the death penalty⁹ throughout the globe. In Pakistan it is mainly regulated by the Pakistan Penal Code (PPC) 1860, The Anti-Terrorism Act 1997 and The Hadood Ordinance 1979. Certain drug trafficking offences¹⁰ under the Control of Narcotic Substances Act 1997 and the offence of high treason¹¹ according to 1973 constitution of Islamic Republic of Pakistan are also punishable by death.

⁴ The Constitution of Islamic Republic of Pakistan (1973), pt 2, chp 1, article 8 to 28

⁵ The Constitution of Islamic Republic of Pakistan (1973), pt 2, chp1, article 9

⁶ The Constitution of the Islamic Republic of Pakistan (1973), pt 1, article 2

⁷ Al-Quran, chp 6, verse 151

⁸ www.wikipedia.com

⁹ Al-Jazeera – Map: Which countries still have the death penalty?, By Hanna Duggal and Marium Ali, 16 May 2023

¹⁰ Control of Narcotic Substances Act, 1997, Section 6,7 and 8

¹¹ Constitution of Islamic Republic of Pakistan, 1973, pt 1, article 6

Pakistan and Capital Punishment

Death Penalty is the valid mode of punishment in Pakistan for different offences. These offences include murder, high treason, rape and many others. The execution of former Prime Minister Zulfikar Ali Bhutto by hanging in 1979 underscores the frequency with which death sentences are imposed by Pakistani courts.

List of Offences Punishable by Death

At the time of Pakistan’s independence in 1947, only two crimes (murder and treason) were punishable by death but today there are almost 29 crimes that are punishable by death. The list as follows :

Table 1

NATURE OF THE CRIME	OFFENCE	RELEVANT LAW
STRIPPING A WOMAN IN PUBLIC	1) Stripping of women in public	Sec: 354-A, PPC 1860
KIDNAPPING FOR UNNATURAL LUST	2) Kidnapping for unnatural lust	Sec: 367-A, PPC 1860
RAPE	3) Punishment for rape and gang rape	Sec: 376, PPC 1860
NARCOTICS	4) Punishment for contravention of Sec 6,7 and 8 of Control of Narcotic Substances Act 1997	Sec: 9, Control of Narcotic Substances Act 1997
KIDNAPPING	5) Kidnapping or abducting a child under the age of 14	Sec: 364-A, PPC 1860
	6) Kidnapping or abducting a person for extorting property or valuable security or to compel any person to comply with any other demand	Sec: 365-A, PPC 1860
MUTINY	7) Successful mutiny	Sec: 132, PPC 1860
	8) Mutiny and insubordination	Sec: 31, The Pakistan Army Act 1952
	9) Any person takes part in mutiny or incites any person to take part in mutiny	Sec: 36-A and Sec: 36-B, The Pakistan Navy Ordinance 1961
	10) Failure to suppress mutiny	Sec: 37, The Pakistan Navy Ordinance 1961
	11) Mutiny	Sec: 37, The Pakistan Navy Ordinance 1961

NATURE OF THE CRIME	OFFENCE	RELEVANT LAW
HIJACKING	12) Airplane Hijacking	Sec: 37, The Pakistan Air Force Act 1953
	13) Harboursing Hijacking	Sec: 402-B, PPC 1860 Sec: 402-C, PPC 1860
	14) Waging, attempting to wage war or abetting waging of war against Pakistan	Sec: 121, PPC 1860
WAGING AND ABETTING WAR		
ZINA	15) Zina liable to hadd	Sec: 5 of Offence of Zina (Enforcement Of Hudood) Ordinance 1979 Sec: 396, PPC1860
HARAABAH AND DACOITY WITH MURDER	16) Dacoity resulting in murder	
	17) Punishment of Haraabah constituting murder	Sec: 17(4) of The Offences Against Property (Enforcement Of Hudood) Ordinance 1979 Sec: 2, The High Treason (Punishment) Act 1973
HIGH TREASON	18) Punishment for the offence of high treason	And Article: 6, The Constitution Of The Islamic Republic Of Pakistan 1973
OFFENCES IN CONNECTION TO ADVERSARIES	19) Offences in relation to the enemy and punishable with death	Sec: 24, The Pakistan Army Act 1952
	20) Offences in relation to the enemy and punishable with death	Sec: 34, The Pakistan Air Force Act 1953
MISCONDUCT IN ACTION AND ASSISTANCE TO ENEMY	21) Misconduct in action by persons in command	Sec: 29, The Pakistan Navy Ordinance 1961
	22) Misconduct in action by other officers and men	Sec: 30, The Pakistan Navy Ordinance 1961
	23) Obstruction of operation	Sec: 31, The Pakistan Navy Ordinance 1961
	24) Corresponding with, supplying or serving with the enemy	Sec: 32, The Pakistan Navy Ordinance 1961
DISCLOSURE OF PAROLE OR WATCHWORD	25) Disclosure of parole or watchword	Sec: 26, The Pakistan Army Act 1952
HOMICIDE	26) Causing death of a person other than the person whose death was intended	Sec: 301, PPC 1860
	27) Qatl-i-amd	Sec: 302, PPC 1860

NATURE OF THE CRIME	OFFENCE	RELEVANT LAW
TERRORISM	28) Punishment for acts of terrorism	Sec: 7(a), The Anti-Terrorism Act 1997
BLASPHEMY	29) Use of derogatory remarks etc. in respect of the Holy Prophet (SAWW)	Sec: 295(c), PPC 1860

Cumulative Data on Individuals Presently Awaiting Execution

Currently, there are 6,039 prisoners on death row in Pakistan and AJK. Distribution is as follows ¹²

Table 2

PROVINCE / STATE	NUMBER OF PRISONERS
1) PUNJAB	2400
2) SINDH	526
3) KHYBER PAKHTUN KHWA	2326
4) BALOCHISTAN	396
5) AJK	391

Islam and Death Penalty

“Do not take the life, which Allah has made sacred, except in the way of justice and in the law”¹³

Islam’s perspective on the death penalty is rooted in its legal and ethical framework. In Islamic jurisprudence, capital punishment is considered permissible mode of punishment and is seen as a deterrent to heinous acts. Conversely, the Quran and Hadith provide guidance on the principles of justice, ensuring fair trials and emphasizing the importance of mercy. They delineate the concept of qisas, or retribution, stating,

“O you who have believed, prescribed for you is legal retribution for those murdered”¹⁴

This implies a measure of reciprocity in justice. However, the same verse continues,

“But whoever overlooks from his brother anything, and then there should be a suitable follow-up and payment to him with good conduct”¹⁵

This underlines the importance of forgiveness and reconciliation.

Khatim-un-Nabiyeen, Prophet Muhammad (PBUH), also emphasis on ensuring fair trials and avoiding wrongful conventions. The Prophet (PBUH) is reported to have said

“Avoid applying legal punishments as much as possible, and if there is any way out, let a person go, for it is better for a judge to make a mistake in forgiving than to make a mistake in punishing”¹⁶

This discussion showcase the delicate balance in Islam between justice, mercy and the need for a fair legal system in considering the death penalty.

¹² Statistics updated on 5th October 2023, Justice Project Pakistan (JPP) – Death Penalty Database. (people on death row in Pakistan page 3)

¹³ Al-Quran, chp 6, verse 151

¹⁴ Al-Quran, chp 2, verse 178

¹⁵ Al-Quran, chp 2, verse 178

¹⁶ Jami-at-Tirmidhi, chp 18 (The Book On Legal Punishments [Al-Hudud]), Baab (Wasiyat ke Ehkaam O Masaail), Hadith Number 1424.

Surrogate Sanctions

“The extreme penalty of death need not be inflicted except in gravest cases of extreme culpability Life imprisonment is the rule and death sentence is an exception.”¹⁷

Justice Sayed Zahid Hussain

Within the legal framework of Pakistan, alternative punishments to capital penalty encompass a range of options aimed at achieving justice while avoiding the extreme measure of taking a person’s life. Life imprisonment stands as a prominent alternative, allowing for the potential rehabilitation and reintegration of the convicted individual into society. Financial penalties, in the form of fines, serve as another avenue, providing a punitive measure without resorting to the irreversible consequence of the death penalty. Additionally, the concept of Ta’zir grants the judiciary the discretion to impose alternative penalties based on the unique circumstances of each case. This flexibility underscores a commitment to a nuanced approach to justice, taking into account the gravity of the offence, mitigating factors, and the potential for rehabilitation.

These alternative punishments within the Pakistani legal system reflect a delicate balance between upholding the severity of the law and acknowledging principles of fairness, mercy and the potential for redemption.

Sacredness of Human Life

The sanctity of human life stands as a foundational principle within both legal frameworks and Islamic teachings, emphasizing the inherent value and dignity of every individual.

The sacredness of human life is an inherent consequence of the dignity bestowed by Allah upon humanity. Humans have been uniquely created, with a distinct favor from God compared to His other creations.¹⁸ It is stated that;

“Indeed, We have honored the children of Adam, carried them on land and sea, granted them good and lawful provisions, and privileged them for above many of Our creatures”¹⁹

In Islam, humankind is granted an elevated and esteemed status. As per the guidance within the Holy Book, the sanctity of a person’s life is acknowledged, permitting the taking of life only through due legal processes, such as death sentence for murder, mischief in land, or in the context of a just and defensive war referred to as a jihad.

“Those who do not invoke any other god besides Allah, nor take a human life – made sacred by ALLAH – except with legal right, nor commit fornication. And whoever does any of this will face the penalty”²⁰

“That is why we ordained for the Children of Israel that whoever takes a life – unless as a punishment for murder or mischief in the land – It will be as if they killed all of humanity and whoever saves a life it will be as if they saved all of humanity.”²¹

The Islamic faith strictly prohibits the unwarranted killing of any individual, irrespective of their religious affiliation or moral standings. The sanctity of life also holds a paramount position in Pakistani law,

“No person shall be deprived of life or liberty saves in accordance with law.”²²

This constitutional provision reflects a deep respect for the sanctity of life within the legal framework. In practical terms, this principle is evident in notable case laws. In the case of *Asiya Bibi vs. The State*²³, the Supreme Court of Pakistan emphasized the sanctity of life by acquitting Asiya Bibi, a Christian woman

¹⁷ Muhammad Sharif vs The State (2009 PLD 709)

¹⁸ Sanctity of life, published in Dawn, 14 jul,2017

¹⁹ Al-Quran, chp 17, verse 70

²⁰ Al-Quran, chp 25, verse 68

²¹ Al-Quran, chp 5, verse 32

²² Constitution of Islamic Republic of Pakistan, pt 2, article 9

²³ Criminal Appeal No. 39-L of 2015, In appellate jurisdiction of Supreme Court of Pakistan (date of hearing 8.10.2018)

accused of blasphemy²⁴, due to insufficient evidence. Additionally, in the case of *Zulfiqar Ali vs. The State*²⁵, The Chief Court of Sindh commuted the death sentence into life imprisonment, showcasing the judiciary’s consideration for the sanctity of life and the potential for rehabilitation.

These cases emphasize the judiciary’s role in ensuring justice while respecting the inherent value of every individual’s life.

Addressing Judicial Flaws Safeguarding Human Rights through Transparent and Accountable Legal System

The presence of judicial flaws within a state’s legal system poses a significant challenge to the protection of human rights. An exemplary instance is the tragic case of two brothers, “Ghulam Qadir and Ghulam Sarwar”, who faced a miscarriage of justice when they were wrongfully executed on lower court orders. The brothers were convicted of murder and tragically executed by the state before the resolution of their appeal.²⁶

These flaws may manifest as errors in judgment, biased decision-making or procedural irregularities.

“Both the Trial Court and High Court disregarded important aspects of the case and ignored the basic tenet of criminal law, which is to establish the guilt of the accused beyond a reasonable doubt”²⁷

Justice Qazi Faez Isa

Overcoming these challenges requires a multi-faceted approach. Firstly, enhancing judicial independence and impartiality is crucial. Implementing transparent and accountable mechanisms for judicial appointments, promotions and disciplinary actions can contribute to minimizing undue influence. Additionally, promoting legal literacy and awareness within public can empower individuals to assert their rights and hold the judiciary accountable. Strengthening oversight mechanisms, such as independent judicial review bodies can serve as a check on judicial misconduct. Moreover, investing in continuous training for judges and legal professionals on human rights principles ensures an evolving understanding of international standards. By fostering a culture of accountability, transparency and ongoing education, a state can work towards mitigating judicial flaws and upholding the protection of human rights within its legal system.

Conclusion

In conclusion, this research has delved into the intricate balance between justice and human rights within the legal landscape of Pakistan. The examination of cases and principles has underscored the inherent tensions and complexities inherent in striking this delicate equilibrium.

As societies grapple with the pursuit of justice, it is imperative to ensure that legal systems prioritize and protect fundamental human rights. Striking this balance demands a commitment to transparent and fair legal processes, continuous education on human rights principles, and robust oversight mechanisms. The quest for justice should not undermine the very rights it aims to protect. Instead, it should embody a harmonious approach that upholds the rule of law while safeguarding the dignity, freedom and sanctity of every individual.

As we navigate these nuanced challenges, a steadfast dedication to the principles of justice and human rights is indispensable for fostering societies built on fairness, equity and the enduring protection of fundamental liberties.

‘Fiat Justitia, Ruat Caelum’

(Let justice be done though the heavens fall)

²⁴ Sec: 295-C, PPC 1860

²⁵ Criminal Jail Appeal No. D -112 of 2013, In the High Court of Sindh, Bench at Sukkur (date of announcement 20.02.2020)

²⁶ Editorial, ‘Wrongfully Hanged’, Dawn, Karachi 24 October 2016.

²⁷ *Ali Sher vs. The State* (2015 SCMR 142)