

CAPITAL PUNISHMENT IN PAKISTAN: LEGAL EVOLUTION, HUMAN RIGHTS TENSIONS, AND JUDICIAL REFORM CHALLENGES

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Abstract

In Pakistan, the death penalty has been an often debated issue that urges litigation at the crossroad of law, society, and human rights situations. In spite of international pressure on Pakistan to end the death penalty, the country has not dissuaded from implementing an array of capital offenses including terrorism, murder, and blasphemy. This paper examines the historical evolution of capital punishment in Pakistan. It also examines the implications regarding Pakistan's commitment to international human rights standards, as well as challenges to Pakistan's judicial reform. The article stresses the need for transparency, non-discrimination and systemic change in the interrelations between the criminal justice system and the death penalty. Overall, this research will facilitate a continuation of the death penalty debate while calling for balanced approach in the death penalty debate that both seeks to protect justice and respect human rights.

Keywords: challenges, historical context, laws, opportunities, theoretical context

Introduction

Since it was instituted in Pakistan's legal, cultural and religious milieu, the death penalty is a controversial subject (Khan & Bhatti, 2024). Pakistan has one of the highest populations of death row prisoners in the world (Justice Project Pakistan, 2024). One can agree with Ernest van den Haag, a professor of sociology and criminology with a background in law, who states that all arguments against capital punishment were essentially arguments in favour of the death penalty (Buchanan, 2016). While it has been effective in preventing serious crimes, there are conflicting views on whether the death penalty has been a deterrent to violent crime (Amnesty International, 2017; Javed & Kareem, 202). There are also questions about whether or not it is applied equally across society (Amnesty International, 2020). It is difficult to see how the death penalty itself is relevant to these issues (Usman, 2019).

The majority of the legal structure that governs Pakistan's death penalty is actually colonial law and the countries Zia-Ul-Haq added on included blasphemy, drug trafficking and terrorism (FIDH, 2007). As a result, the very vague and elastic nature of these laws leaves them open to misuse, and will have a disproportionately negative effect on religious, ethnic, and other minorities that experience injustice on a systemic basis (Anwar, 2024; Khan, 2024).

Further problems faced by the prosecution include severe procedural violations, such as police torture to extract confession; poor defense counsel representation; excessive time taken to complete cases; and the potential danger of wrongful conviction (Ali et al., 2017).

Research Justification

The imposition of the death penalty through the courts on counts of terrorism, murder and blasphemy has raised troubling questions regarding the fairness, transparency and usefulness of death penalty in Pakistan. Further, the abrogation of the moratorium on the death penalty in Pakistan in 2014 as a response to the Peshawar school massacre prompted even more debate on the question of whether capital punishment is a deterrent to crime and terrorism.

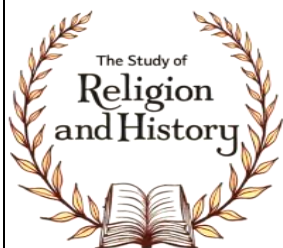
Additionally, within Pakistan the intertwining of religion, politics and law render the discussion around capital punishment both complex and varied, particularly when public opinion even among the victim and offender often supports capital punishment in the face of international calls for abolition. This dissertation would contribute to filling several gaps in the body of literature, as well as help contribute to informed public policy and reforms to adequately align with international human rights standards.

Literature Review

Execution of the death penalty in Pakistan has been extensively examined by scholars in both academic and policy discourses, and to an extent, reflects some of the complexities that the death penalty continues to experience within the broader spectrum of factors related to law, society, and politics (Usman, 2019). Some of the concerns raised by academics in this regard include the history of execution in Pakistan. This started as part of colonial laws but received an impetus during the rule of President Zia-Ul-Haq, who introduced the Hudood Ordinances and criminalized blasphemy and adultery and thereby extended the scope of the death penalty greatly (FIDH, 2007). The debate regarding abolition of the death penalty ended in 2014, in the aftermath of the school shooting in Peshawar (Anwar, 2024).

In addition, there is a wealth of academic literature that investigates the issue of criminal justice system errors that lead to wrongful conviction and miscarriage of justice through examining how coercion and lack of proper legal defense leads to unfair trial of death penalty cases in Pakistan (Justice Project Pakistan, 2024). In particular, Amnesty International (2020) highlights that the case of Aftab Bahadur, which saw his execution in 2015 despite evidence of his innocence, has been widely used as an example of the failure of the judicial process. Additionally, the improper application of the country's blasphemy laws, especially those of Section 295-C of the PPC, have been rightly accused of targeting minority religions and those who disagree, causing social unrest due to the violent mobs attacking innocent people (Amnesty International, 2017; Khan & Bhatti, 2024). Issues mentioned above clearly call for reforms in order to increase transparency and accountability.

Finally, the role of civil society and the judiciary in the fight for justice and human rights has been a consistent topic throughout the literature. Landmark court decisions including the Supreme Court's acquittal of Asia Bibi in 2018 is evidence that courts can be an avenue of activism to counter the abuses of the capital punishment laws (Javed & Kareem, 2020). These examples suggest that there are now opportunities for collaboration between state actors, judicial intervention and civil society organizations to tackle and challenge the potential for death penalty in Pakistan (Ali et al., 2017; Khan, 2024). The existing literature has been thorough in their account of the history, law and social implications of the death penalty in Pakistan, as well as responsibility for more research and reform (Buchanan, 2016).



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Historical Context of Death Penalty laws in Pakistan

The history of death penalty in Pakistan is a legacy of colonial rule (FIDH, 2007). The laws related to the death penalty have colonial origins and especially the Indian Penal Code (IPC) of 1860, which has been carried forward into Pakistan as it came into existence in 1947. The death penalty was used for the most serious crimes that resembled English laws in colonial times like murder, treason, and insurrection (Usman, 2019). But the death penalty was extensively utilized during the reign of Gen Zia Ul Haq (1977-1988) (Javed & Kareem, 2020). Zia made the Islamic law part of the country's legal system to Islamize Pakistan and introduced other crimes like blasphemy, adultery, and drug trafficking in the list of capital crimes. These laws came into Pakistan through controversial acts like the Hudood Ordinances (Khan, 2024).

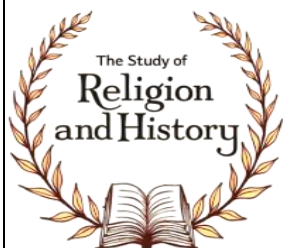
In 2008, there was an imposition of de facto moratorium in Pakistan owing to the international community's pressure and concerns of biasness in the country's legal system (Amnesty International, 2017). Nonetheless, in 2013, Pakistan repealed the de facto moratorium on executions with regard to its National Action Plan aimed at curbing terrorist activities (Anwar, 2024). Since then, there has been a drastic increase in executions in Pakistan (Amnesty International, 2020). Pakistan has become a country which ranks highly in terms of number of death sentences and executions since 2013 (Justice Project Pakistan, 2024).

The death penalty legislation in Pakistan are part of its legal system from its roots in British colonial law to religious law, the Pakistan Penal Code (PPC) of 1860 provides the code underlying capital offenses such as murder, treason, and terrorism while other ordinances have added religiously related offenses such as blasphemy, adultery, and apostasy to capital offenses under the interpretations of Islamic law (Buchanan, 2016). In essence, the Anti-terrorism Act (ATA) of 1997 broadened the use of the death penalty for terrorism, sectarian violence, and sabotage due to the states internal security threats (Ali et al., 2017).

The Control of Narcotic Substance Act (CNSA) also obligates the death penalty for certain drug offenses like trafficking substantial amounts of illicit substances (Khan, M. S., & Bhatti, 2024). While NGOs and social advocacy groups note all these laws target minority and marginalized groups consistently, and protections to allow for adequate fair trials under the law are marginalized or disallowed (Justice Project Pakistan, 2024). Together these laws lay the benchmark of legislation for capital punishment in Pakistan and demonstrate a major need to repair structures of law and accountability which consistently are in questionable in human rights abuses internationally (Amnesty International, 2017). This research article outlines the laws at play when issues of justice and human rights arise in Pakistan.

Theoretical Context of Death Penalty Laws

The death penalty in Pakistan can be viewed through a number of theoretical frameworks: retributive justice, deterrence theory, and human rights violations. Largely based on the notion of “an eye for an eye”, retributive justice features prominently in Pakistan’s death penalty laws, especially with regard to murder and terrorism. In 2014, Pakistan re-assumed the death penalty, chiefly on the justification of deterrence theory, that serious penalties deter criminal behavior (especially terrorism) and that the reinstatement would deter future acts of terrorism. While, critics of retribution point out that it usually begins an endless cycle of violence, and does not adequately address the underlying issues related to crime, such as poverty and systemic inequality.



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Deterrence theory maintains that punitive sanctions, such as capital punishment, can deter individuals and others from participating in the same crime; it has justified Pakistan's use of capital punishment for crimes related to terrorism in particular. However, the available evidence is not yet decisive. From a human rights standpoint, the death penalty is gaining increasing recognition as a violation of the basic right to life and protection from cruel, inhuman or degrading treatment, which has incited calls to abolish the death penalty altogether.

Nonetheless, evidence from a mass of empirical research shows that the death penalty does not threaten as much - some studies finding the death penalty does little to deter further crime from happening, especially murder. International human rights law increasingly interprets the death penalty as a violation of the right to life and the freedom from cruel, inhuman, and degrading treatment. According to international human rights organizations, the death penalty must be scrapped as it is applied not just arbitrarily but also autocratically against the marginalized sections. The laws surrounding the death penalty in Pakistan are evaluated in the heart of research paper. The analysis will be done regarding normative theory. What's more, the verdicts of the death penalty will also be assessed concerning reasonable punishment which must be the same as illicit acts.

Laws Regarding Death Penalty in Pakistan

1. Constitutional Framework: Article 9 of the Constitution of Pakistan, 1973 – Guarantees the right to life and liberty, stating that no person shall be deprived of life or liberty except in accordance with law. Death penalty is therefore constitutional if awarded through due process of law. *Article 45* – Grants the President power to grant pardon, reprieve, respite, or remission of sentence.

2. Primary Statutory Laws Providing Death Penalty: Pakistan Penal Code (PPC, 1860) prescribes death penalty for several offences, including:

- i. *Section 302* – Qatl-i-Amd (Intentional murder)
- ii. *Section 364-A* – Kidnapping for ransom
- iii. *Section 376-A* – Rape resulting in death
- iv. *Section 295-C* – Blasphemy (Use of derogatory remarks against Prophet Muhammad PBUH)
- v. *Section 121* – Waging war against Pakistan
- vi. *Section 396* – Dacoity with murder
- vii. *Section 194* – Giving or fabricating false evidence leading to execution of an innocent person

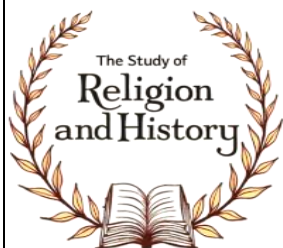
3. Anti-Terrorism Act, 1997: Provides death penalty for terrorist acts resulting in death. Special Anti-Terrorism Courts (ATCs) conduct speedy trials. Includes offences involving attacks on state institutions and security forces.

4. Control of Narcotic Substances Act, 1997: Previously provided death penalty for certain drug trafficking offences (though courts have shown reluctance in recent years).

5. Pakistan Army Act, 1952: Provides death penalty in military courts for espionage, mutiny, and terrorism-related offences (especially after constitutional amendments allowing military trials for civilians in terrorism cases).

6. Islamic Law (Qisas and Diyat): Under Chapter XVI of the PPC:

- i. Murder laws are influenced by Islamic principles of Qisas (retaliation) and Diyat (compensation).



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ii. Legal heirs (Waris) of the victim may:

- Demand Qisas (death penalty),
- Accept Diyat (blood money),
- Forgive the offender.

iii. Court approval is required even if compromise occurs.

➤ **Method of Execution:** Death penalty is carried out by hanging under the Pakistan Prison Rules. Execution takes place inside jail premises after issuance of a “black warrant.”

➤ **Procedural Safeguards:** Trial must follow Criminal Procedure Code (CrPC).

i. Mandatory right of appeal:

- Appeal to High Court.
- Appeal to Supreme Court of Pakistan.

ii. Mercy petition may be filed before the President under Article 45.

iii. Confirmation of death sentence by High Court is mandatory.

➤ **Suspension and Restoration:**

i. Pakistan imposed a moratorium on executions in 2008.

ii. After the Army Public School attack, the moratorium was lifted in 2014, initially for terrorism cases and later for all capital offences.

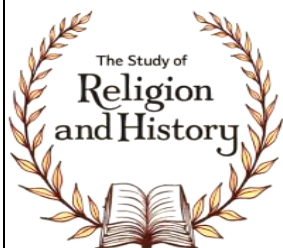
Challenges for Death Penalty in Pakistan

In the case of Asia Bibi, who spent nine years on death row after being accused of blasphemy but later acquitted, this problem is more glaring because of the possibility of these blasphemy laws being misused by people at their own ends or as a tool for inciting religious hatred. The death penalty in anti-terrorism cases under the Act also poses comparable due process problems. As the government continues to defend capital punishment in the context of terrorism, the cynics argue that the state uses the justification as a means of evading the core causes of extremism that manifest daily in the form of lack of education, political instability, poverty, etc.

Furthermore, due process is often denied by the expedited case process under the ATA, which increases wrongful conviction cases. Saulat Mirza, a former political worker executed in 2015, raised concerns about the safeguards of due process and transparency. (25 words) In Pakistan, people still have disparate views about the death penalty. Many people defend the death penalty as a means of law and order. Nonetheless, this quite often has not taken into account the human rights implications and the lack of evidence to support its usefulness as a deterrent. Human Rights groups, whether local or international, have consistently demanded a complete abolition of the death penalty by the Pakistani authorities. They have also recommended a moratorium as the death penalty laws of the government do not meet the international human rights standards. Although Pakistani citizens are dealing with these demands, the government has mainly dismissed those demands due to the public sentiments.

Opportunities for Death Penalty Laws in Pakistan

Justice Project Pakistan, Human Rights Commission of Pakistan and others have challenged the injustice's related to the death penalty and the injustices arising from wrongful convictions, including the abuse of blasphemy laws which usually ensnares a majority of impoverished IDPs suffering from even more abuses from the state or society than others. The contributions of civil society organizations have been important for general public awareness



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of the inadequacies and injustices of the death penalty, including awareness raised globally and growing consternation towards it. Additionally, the growing general public condemnation of the death penalty.

In addition, the implementation of alternatives to the death penalty, including life without parole, is a possibility. Providing the state with an option that protects the public and serves as a means of accountability for offenders, without the irrevocable consequences to the offenders' lives, is a fair option. Nations like Canada and South Africa who have abolished the death penalty also demonstrate that alternative means of sentencing can be viable means to provide justice that upholds human rights for all.

Pakistan could take inspiration from at least some of these examples to construct a humane and sustainable justice system. Pakistan may adopt global trends, make judicial reform, engage civil society to consider alternative sentence to develop a much fairer and humane criminal justice system. The objective of this research article is to pinpoint these possibilities with the aim of adding to a bigger discussion about Pakistan's death penalty future.

Discussion

The death penalty issue in Pakistan is political, legal, and social in nature. As per the research paper on Death Penalty in Pakistan, the history of capital punishment in Pakistan, its legal frameworks, and the opportunities and challenges it creates have been discussed. As a result, capital punishment can be justified on the basis of punishment as well as on the basis of deterrence. The practical implementation of the law has many loopholes which results in wrongful conviction, denial of the legal aid, misuse of the blasphemy and anti-law and violations of principles regarding equity and fairness.

The study argued several global trends which are moving towards the abolition of the death penalty. It further suggested realistic options for Pakistan to adopt international human rights standards. One way to fix the deficiencies of systems could be judicial reform better legal defence services and alternative sentencing. A civil society organization plays a significant role in ensuring justice and human rights. It is the weak aspect of the ever-growing system. The recent judgment on Asia Bibi displays how the tool of judicial activism presents an alternative narrative vis-a-vis capital punishment.

Conclusion

The issue of capital punishment in Pakistan continues to be debated in relation to retributive justice, deterrence and human rights. This research study has provided insights into history of capital punishment, law of capital punishment, sociology of capital punishment, wrongful convictions, abuse of blasphemy laws and lack of adequate legal aid. Although capital punishment raises many issues, there still are opportunities for reform in Pakistan's justice system that lie in judicial reforms and alternative sentences, and human rights standards.

There is also a rising wave of activism in favor of capital punishment among NGOs and civil society as well as human rights courts, providing some ground to claim that we are witnessing efforts being made toward a more just and morally sound law. Through setting up a position where one acknowledges and eradicates these problems, and at the same time embracing world trends, Pakistan will be able to fulfill its duty towards justice and human dignity. In this research, we have shown the importance of implementing comprehensive reforms, and the reform and advocacy agenda we are putting forth is a moderate approach

towards justice that deserves transparency, visibility, and due process to all in the administration of capital punishment.

Recommendations

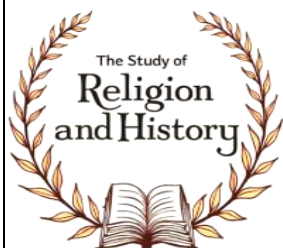
1. **Imposition of Death Penalty Moratorium:** A moratorium on the death penalty in Pakistan must be imposed as an immediate measure towards the abolition of death penalty in accordance with international human rights standards.
2. **Provide Adequate Legal Representation:** Adequate legal representation should be provided to all death row inmates especially those who belong to marginalized communities to avoid any miscarriage of justice.
3. **Constitutional Review of Blasphemy Laws:** Section 295-C PPC must be amended or repealed in order to ensure that the blasphemy law is not misused against religious minorities.
4. **Revision of Anti-terrorism Laws:** Anti-terrorism law must be reviewed in order to ensure that there is no violation of due process and that the trials are conducted in a fair manner.
5. **Establish Oversight Institutions:** Oversight institutions must be created to look into matters relating to death penalty trials and investigate alleged procedural violations.
6. **Conducting Judicial Training:** Mandatory training should be arranged for judges, prosecutors, and law enforcement officers regarding the standards set by international human rights organizations and the fair trial principles.
7. **Conducting Alternate Sentences:** Life imprisonment could be considered as an alternate form of punishment in order to ensure public security without committing any injustice against the offenders.
8. **Public Education Campaigns:** Campaigns could be organized to educate people about the deficiencies of the death penalty system in terms of fairness and justice.
9. **Collaboration with NGOs:** Human rights NGOs and activists must be involved in finding out the best reforms that can be made in order to abolish the death penalty system in Pakistan.
10. **Alignment with International Treaties:** Signing of treaties like the second optional protocol to the ICCPR could help in demonstrating the commitment of the Pakistani government towards abolishing death penalty.

These recommendations would help to reform the death penalty laws of Pakistan in a manner that is consistent with international norms related to human rights.

Research Limitations

This research article on the death penalty in Pakistan has multiple limitations. Firstly, this research article relies on secondary data from human rights organization reports, commentary and academic studies, and thus, it could have bias or gaps in information, as many sources of actual primary data from official government reporting is limited or restricted. Secondly, because death penalty cases, especially blasphemy and terrorism-related ones, are particularly sensitive in Pakistan, comprehensive, fact-based, and unbiased data is limited, as political and social factors often hinder analyses.

Third, this study's focus is influenced by the constantly changing legal and political environments of Pakistan, which limits the timeliness of the findings and whether they would be applicable at a later date. Moreover, this study primarily relies on legal and human rights perspectives, however, it neglects cultural and religious perspectives that contribute to public



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opinion on the topic, and can influence policy. These limitations are all valuable reasons to conduct additional primary research and hold interdisciplinary discussions on the death penalty in Pakistan.

Research Implications

There are a lot of insights from the current research that can be useful to legislators, lawyers, and people who defend the human rights. Some of the most striking problems revealed by the research include wrongful conviction, lack of legal defense and abuse of blasphemy laws and anti-terrorism acts. The research shows the importance of cooperation between government, judicial authorities, civil society organizations in order to find a solution to those grave problems and "launder" the whole system of criminal justice in Pakistan. This study can contribute to better decision-making process in the sphere of capital punishment in Pakistan.

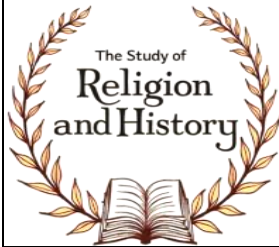
Future Research Directions

In order to increase our knowledge about the issue, future studies on the death penalty in Pakistan need to take into consideration various areas which require exploration. Firstly, gathering primary data from interviews with the sentenced individuals and their families can give us an insight into the real problems experienced during the criminal procedure process. Secondly, conducting comparative research to study how the presence of death penalty affects crime levels and public safety in Pakistan in comparison to other countries which have abolished the practice can help to create evidence.

Moreover, researches should explore the influence of culture and religion on public opinion and legislation regarding the death penalty since this aspect is rarely mentioned in human rights oriented research. Lastly, multidisciplinary research taking into account different approaches including legal, psychological and sociological perspectives may give additional information regarding the society consequences of capital punishment practice, such as mental and psychological consequences.

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