

## **Critiquing the Abolitionist Argument: A Case for Retaining Death Penalty in Pakistan**

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### **Abstract**

*This paper aims to contribute to the debate on the abolition of death penalty in Pakistan. It highlights the laws and implementation of death penalty in the country along with certain challenges and criticism. It offers an insight into the conundrum faced by the intellectuals and professionals in Pakistan on whether to retain or abolish the punishment. The author is dyed in the wool retentionist and is of view that completely abolishing the death penalty would be inappropriate and an ill-advised step in the present socio-legal context of Pakistan as it would not only be repugnant to the teachings of the Quran and Sunnah but also the Constitution of Pakistan. Nonetheless, the author is conscious of the flaws and malpractice of the criminal justice system in the country, which render it unsuitable for final decisions on taking someone's life and offers recommendations to reform the laws and system to stop any future travesty of justice. In this regard, a conscious effort by the Supreme Court of Pakistan is required to prevent any further miscarriage of justice by exercising extreme caution in sentencing anyone to death where a single mitigating factor is available is to be duly appreciated. The author will also touch the history and rise of abolition movement to bring out the underlying narrative of the idea of abolition of death penalty like never before and present his own conviction that challenges the narrative in a way that has been found wanting. To sum up, abolishing death penalty in Pakistan might be counter-productive.*

**Keywords:** The Holy Quran, Torah, Capital Punishment, Death Penalty, Moratorium

## 1. Introduction

The phrase 'capital punishment' literally meaning “of the head punishment” comes from the Latin word *capitalis* from *caput* (head). Capital punishment is a state-sanctioned practice of execution imparted after conviction by a court of law of a criminal offense<sup>1</sup>. Crimes that constitute as capital crimes, resulting in capital punishment for an offender, vary depending on criminal justice code of any country but offences such as murder, terrorism, treason are generally categorized as crimes of capital nature across the criminal justice spectrum of the world.

Capital punishment, like in any retentionist country, is a legal penalty in Pakistan. Despite the instance for fundamental rights such as the ‘Right to Life’ is entrenched in the Constitution<sup>2</sup>; the court has jurisdiction to sentence a person to death. However, the Constitution contains a vivid preamble which states that Pakistan ought to follow and be operated by Islamic laws and teachings. The *Qur'an*, while it grants the right to life, permits individuals' lives to be taken away too<sup>3</sup>.

## 2. Capital Punishment – Past and Present

The first historically established death penalty law dates to 18<sup>th</sup> BCE Babylon, in the Code of Hammurabi<sup>4</sup>. The ancient Greek’s legal system also called the Athenian legal system, replacing the oral law system, was first legislated and enforced by Draco in 621 BCE<sup>5</sup>. It had death penalty for various offences. Later, the Romans also used the death penalty and it carried to the middle ages and to the modern era<sup>6</sup>.

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<sup>1</sup> Roger Hood, 'Capital Punishment' (Encyclopedia Britannica) <<https://www.britannica.com/topic/capital-punishment>> accessed 16 August 2021.

<sup>2</sup> The Constitution of Islamic Republic of Pakistan, pt I ch 1 art 9.

<sup>3</sup> Al Quran ch 6 verse 151.

<sup>4</sup> 'Early History of the Death Penalty' (Death Penalty Information Center DPIC) <<https://deathpenaltyinfo.org/facts-and-research/history-of-the-death-penalty/early-history-of-the-death-penalty>> accessed 16 August 2021.

<sup>5</sup> Antonios Loizides, 'The Beginning of Legal System' (World History Encyclopedia). <[https://www.worldhistory.org/Dracos\\_Law\\_Code/](https://www.worldhistory.org/Dracos_Law_Code/)> accessed 16 August 2021.

<sup>6</sup> Early History of the Death Penalty (n 4).

Historically, executions have been done publicly and gathered large crowds. Mutilated bodies were displayed to strike fear amongst the masses to discourage future acts for which the offender had been executed.

Later, many countries placed a ban on public executions. England banned public execution in 1868 and United States in 1930s though many countries like Iran, Saudi Arabia, Nigeria and Indonesia still practice public executions despite condemnation by the United Nations Human Rights Council [UNHRC]. One of the first international treaties to place limits on the death penalty was the 1929 Geneva Convention, this restricted death to prisoners of war taken in armed conflict<sup>7</sup>. The Charter of Fundamental Rights of the European Union prohibits capital punishment and deems it a gross violation of human rights that violates not just a person's dignity but also the right to life and declares it as inhumane and degrading to the core<sup>8</sup>. The Council of Europe has sought an end to the use of the death penalty by its members through Protocol 6 and altogether under any circumstances through Protocol 13 of European Convention on Human Rights. A ruling by the European Court of Human Rights bounds EU states that they may not extradite any, accused of capital crime, to a country that has capital punishment and also require a guarantee that the death penalty will not be sought<sup>9</sup>. Nevertheless, 60% of population still live in some 56 retentionist countries which include US, China, Japan, South Korea, Singapore, Vietnam Taiwan, Sri Lanka, India and almost all Muslim majority countries. A few countries allow for execution of offenders who are minors (below 18)<sup>10</sup>. Such executions - prohibited by The United Nations Convention on the Rights of the Child (UNCRC or CRC) and International Covenant on Civil and Political Rights (ICCPR) – have also taken place in US which is a signatory to the convention but has not ratified UNCRC despite being the most widely and rapidly ratified treaty on human rights in history<sup>11</sup>. ICCPR was ratified by US

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<sup>7</sup> The Global voice of the Legal Profession “The Death Penalty Under International Law: A Background Paper. to the IBAHRI Resolution on the Abolition of the Death penalty”, at p 9.

<sup>8</sup> Charter of Fundamental Rights of the European Union [2000] OJ 2 364/9.

<sup>9</sup> Soering v United Kingdom (1989) 11 EHRR 439.

<sup>10</sup> Roger Hood, 'Capital Punishment in the Early 21st Century' (Encyclopedia Britannica) <<https://www.britannica.com/topic/capital-punishment>> accessed on 12 June 2019.

<sup>11</sup> UNICEF UK, 'What is the UN Convention on Child Rights?' (UNICEF UK, 31 October 2016). <<https://www.unicef.org.uk/what-we-do/un-convention-child-rights/>> accessed 12 June 2019.

with reservations to article 6 of ICCPR concerning the death penalty<sup>12</sup>. United States has also imposed death penalty on the mentally impaired with over a dozen executions from 1990 to 2001 despite a UN prohibition against the practice in 1989. However, a US Supreme Court decision in 2002<sup>13</sup> and 2005<sup>14</sup>, respectively, declared the execution of minors and mentally disabled as unconstitutional.

### **3. The Abolition Movement**

Debate on abolition or retention of capital punishment has been going ever since the European Enlightenment with abolition movement gaining momentum and finding more ground specially in the latter part of the last century with countries choosing to abolish the death penalty increasing by threefold. The abolition movement has successfully managed to campaign death penalty as an issue of human rights and dignity rather than an internal matter of the country. First ‘World Day against the Death Penalty’ was organized by the World Coalition against the Death Penalty in 2003 and is observed on 10<sup>th</sup> October every year.

### **4. Abolitionist v Retentionist**

Proponents of capital punishment, inspired by the writings of Cesare Beccaria<sup>15</sup> — argue that the right to life is the most supreme and most unchallengeable right, and any exception to it must be constricted and well founded and that idea of retribution is against human rights. Supporters for death penalty argue that a person who has committed a cruel and heinous crime, such as murder has forfeited the right of life by claiming another life. They see it as a form of retribution and moral indignation of victim’s relatives based on the

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<sup>12</sup> Richard C. Dieter, 'The Death Penalty and Human Rights: US Death Penalty and International Law' (Death Penalty Information Center DPIC, 3 August 2002) 16 <<https://deathpenaltyinfo.org/Oxfordpaper.pdf>> accessed 12 June 2019.

<sup>13</sup> *Atkins v. Virginia*, 536 U.S. 304 (2002).

<sup>14</sup> *Roper v. Simmons*, 543 U.S. 551 (2005).

<sup>15</sup> Italian criminologist and economist credited as the first modern writer to advocate the complete abolition of capital punishment and regarded as founder of the abolition movement based upon his work *Dei delitti e delle pene* Eng. Crimes and Punishment, (1764).

principle of *Lex talionis* — “an eye for an eye, a tooth for a tooth, a life for a life”<sup>16</sup>. This principle is endorsed almost in all divine books.

*“Whoever sheds the blood of man by man shall his blood be shed, for God made man in his own image”*<sup>17</sup>.

The Quran also refers to the commandment given to the Children of Israel in the following verses:

*“On account of this WE prescribed to the Children of Israel that whoever killed a person, except as a punishment for murder or for disorder in the land, it would be as if he killed all the people; and whoever made him survive, it would be as if he saved the lives of all the people. And indeed, Our Messengers came to them with evident signs. Yet, even after that, the majority from amongst these people are certainly those who commit excesses in the land”*<sup>18</sup>.

*“And WE ordained for them therein a life for a life, an eye for an eye, a nose for a nose, an ear for an ear, a tooth for a tooth, and for wounds is legal retribution. But whoever gives charity with it, then it is an expiation for him. And whoever does not judge by what Allah has revealed – then those are the wrongdoers”*<sup>19</sup>.

Law of Retribution (*Qisas*) gives victim’s relatives the right to decide; either punish with death by authorities or pay *Diyat* (blood money) as compensation<sup>20</sup>.

The Quran commands:

*“O believers! Retribution is prescribed for you in the case of those who are unjustly slain: a free man for a free man, a slave for a slave and a woman for a woman. Then, if he is granted some remission by his brother, that should be executed fairly according to the law, and should be paid in a graceful manner.*

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<sup>16</sup> The Editors of Encyclopedia Britannica, ‘Talion’ (Encyclopedia Britannica, 20 February 2004) <<https://www.britannica.com/topic/talion>> accessed 12 June 2019.

<sup>17</sup> Torah, Book of Genesis ch 9 verse 6.

<sup>18</sup> Al Quran ch 5 verse 32.

<sup>19</sup> Al Quran ch 5 verse 45.

<sup>20</sup> Amnesty International, ‘PAKISTAN: The Death Penalty’ [1996] ASA 33/010/96 5 para 12 <<https://www.amnesty.org/download/Documents/172000/asa330101996en.pdf>> accessed 16 August 2021.

*This is a concession and kindness from your Lord. So, anyone who transgresses after that, there is painful torment for him”<sup>21</sup>.*

Another argument of abolitionists is that capital punishment is counter-productive because it legitimizes an irreversible act of violence as per Amnesty International (AI) while allowing for ‘miscarriage of justice’ as world over, even in a well-run criminal justice system, there have been cases that post-execution people have been found innocent and vindicated by courts. Thus, errors are inevitable and innocent people are likely to get executed for crimes they did not commit. On the contrary, those for retention argue that it is possible to fashion laws and reform criminal justice system that ensure that only those deserving of death penalty are executed and possibility of wrongful conviction does not mean that the punishment be eliminated altogether rather than improving the process and the system to mitigate any travesty or miscarriage of justice because it is equally possible in cases other than capital punishment, say life imprisonment, that an innocent may be convicted and subject to trauma and suffering of punishment of life imprisonment for crime not committed. This does not entail that life imprisonment or other punishment be abolished too!

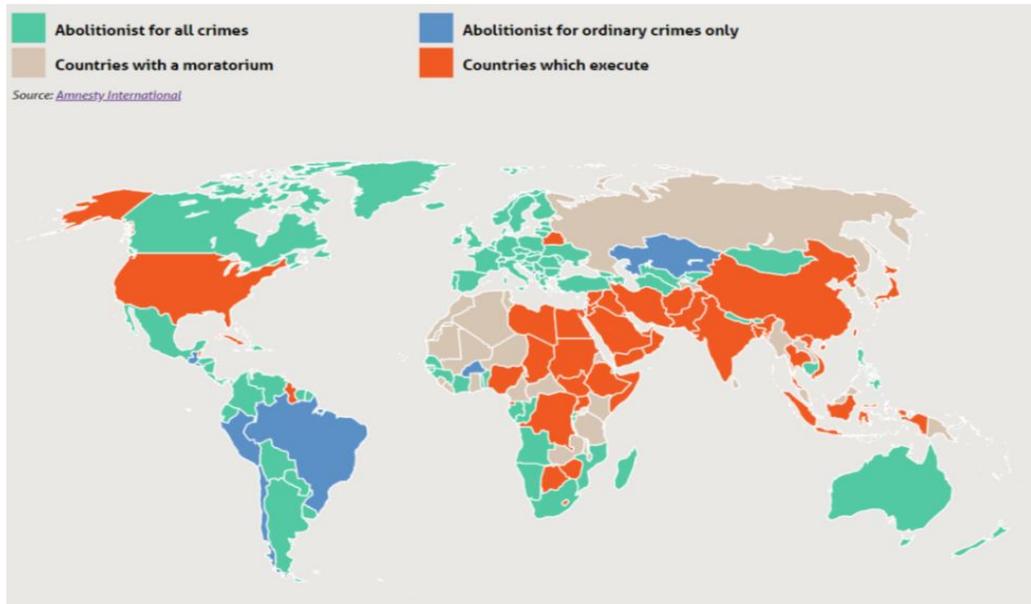
***“Fiat justitia, ruat caelum”***

*(Let justice be done, though the heavens fall).*

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<sup>21</sup> Al Quran ch 2 verse 178.

## WORLD MAP OF ABOLITIONIST & RETENTIONIST COUNTRIES (DEC 2018)

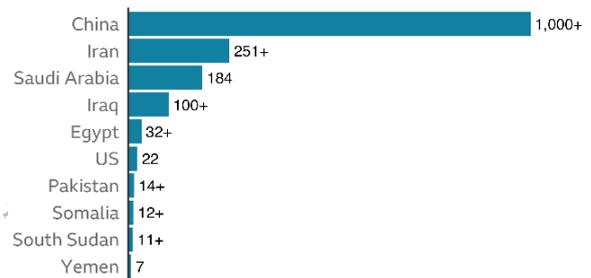


### Countries which carried out executions in 2013-2017



### Top ten countries by number of executions

Numbers with '+' indicate the figure calculated is a minimum



Note: Data for China is unavailable but Amnesty estimates thousands are executed

Source: Amnesty International

BBC Source: Amnesty International 2019 report

BBC

### KEY FIGURES<sup>22</sup>

106	142	690
Completely abolished capital punishment by July 2018	Abolished death penalty in law practice	Executions in 20 countries (2018)

<sup>22</sup> BBC News Reality Check Team, 'Death penalty: How many countries still have it?' BBC (London, 14 October 2018) <<https://www.bbc.com/news/world-45835584>> accessed 26 June 2019.

## 5. Pakistan and the Death Penalty

Death Penalty is a legal punishment in the Islamic Republic of Pakistan (IRoP) as Article 6 of its Constitution deals with High Treason<sup>23</sup>. The Constitution also gives courts the jurisdiction to sentence an individual to death guilty of any capital crimes under the Pakistan Penal Code (Act XLV of 1860) PPC 1860<sup>24</sup>. The legal proponents basically describe according to law that whoever commits the act of a high treason shall be put to death or get life imprisonment by the Court of law.

## 6. Whether Pakistan has a Mandatory Death Penalty?

Yes. The only legal method of execution for most offences is by hanging<sup>25</sup>. Under the *Qisas* and *Diyat* Ordinance, a punishment equal to the offence committed.

## 7. Public Executions

Special Courts for Speedy Trial were setup in 1992<sup>26</sup>. The act that allowed the creation of these courts provided that the manner and place of execution could be decided by the court<sup>27</sup>. Later that year, the then Prime Minister (PM), Nawaz Sharif announced that as a deterrent to other criminals, those sentenced to death by Special Courts would be hanged in public, which became an issue of debate as this announcement by PM was checked by Supreme Court (SC) under its *suo moto* powers. SC declaring PM's decision of public executions as incompatible with human dignity guaranteed unconditionally by the constitution under Article 14 issued a stay order on public executions.

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<sup>23</sup> The High Treason (Punishment) ACT 1973 (LXVIII OF 1973), s 2(b).

<sup>24</sup> The Constitution of Islamic Republic of Pakistan, pt VII ch 2 s 184, 185 (2)(a) and (2)(b), ch 3 s 199, ch 3A s 203F(2A) (a).

<sup>25</sup> Code of Criminal Procedure 1898 as amended by Act 2 of 1997, s 368(1).

<sup>26</sup> The Special Courts for Speedy Trials Act, 1992 (Act IX of 1992).

<sup>27</sup> *Ibid* (n 26), s 10.

In Feb 1994, Benazir Bhutto decided to ban public hanging and execution as a matter of policy<sup>28</sup>. The SC declared that executing even the worst criminals in public violated the fundamental right contained in article 14<sup>29</sup>. The Special Courts for Speedy Trials Act, 1992 was repealed on July 26, 1996 under the Gazette of Pakistan which was published on August 15, 1996<sup>30</sup>.

## 8. Islamic Law on Death Penalty

The Islamic Law has remained exactly the same for crimes punishable by death since the time it was prescribed to the Children of Israel in Torah<sup>31</sup>. They can be categorized into two basic categories: Murder and *Fasad fil-ardh* (spreading mischief/disorder or disturbing peace on land).

The essence of the Islamic Penal Code is to protect lives, establish order, uphold justice and remove corruption and oppression. The Quran establishes killing as forbidden, but under certain conditions capital punishment may be enacted:

*“And do not kill the soul which Allah has forbidden, except by right. And whoever is killed unjustly - We have given his heir authority, but let him not exceed limits in taking life. Indeed, he has been supported”*<sup>32</sup>.

## 9. Capital Offences in Pakistan

There are a total of 27 offences which carry death sentence in Pakistan<sup>33</sup>. Some of them are as follows:

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<sup>28</sup> Muhammad Ahmad Pansota, ‘Justice at last’ Geo News (Lahore, 22 Oct 2018) <<https://www.geo.tv/latest/215634-justice-at-last>> accessed 15 June 2019.

<sup>29</sup> 1994 SCMR 1028.

<sup>30</sup> Special Courts for Speedy Trials (Repeal) Act 1996 (Act XI of 1996), s 2(1); (The Gazette of Pakistan, 15 Aug 1996) [4274 Ex. Gaz.], pt I.

<sup>31</sup> Al Quran (n 18).

<sup>32</sup> Al Quran ch 17 verse 33.

<sup>33</sup> FIDH and HRCP, ‘Mission of Investigation: Slow march to the gallows - Death penalty in Pakistan’ (FIDH - International Federation For Human Rights, 2007) 21 <<https://www.fidh.org/IMG/pdf/Pakistan464angconjointpdm.pdf>> accessed 15 August 2021.

## 10. Murder

The Quran has clearly established death penalty for murder whereas forgiveness and compassion have also been strongly encouraged. The Islamic retribution law allows the victim's family the following choices<sup>34</sup>:

- death penalty as *Qisas* (equal retaliation/punishment for crime committed or retaliation in kind) OR
- accept *Diyat*<sup>35</sup> (compensation to be paid to the victim or heirs of victim) OR
- pardon the offender<sup>36</sup>

According to Penal Code of Pakistan, causing death whether intentional or of someone other than the person intended classifies as *Qatl-i-Amd*<sup>37</sup>. The penalty for *qatl-i-amd* is *qisas* where applicable<sup>38</sup>.

## 11. Diyat (wergild) - Compensative Punishment

An alternative punishment for a capital offence to compensate the victim heirs in which the capital offender or the death row inmate can be pardoned from *qisas* by victim's heirs if they agree to accept *diyat*, wergild, from the offending party<sup>39</sup>. However, if the offender is a terrorist or a habitual murderer then the court of law may still sentence him to death or life imprisonment as *ta'zir* or discretionary punishment<sup>40</sup>.

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<sup>34</sup> Al Quran (n 21), The death penalty under the Qisas and Diyat Ordinance (n 20).

<sup>35</sup> PPC 1860, s 323.

<sup>36</sup> PPC 1860, s 309 and 310.

<sup>37</sup> PPC 1860, s 300 gives the definition as 'Whoever, with the intention of causing death or with the intention of causing bodily injury to a person, by doing an act which in the ordinary course of nature is likely to cause death, or with-the knowledge that his act is so imminently dangerous that it must in all probability cause death, causes the death of such person, is said to commit *qatl-i-amd*'. See also PPC 1860, s 301.

<sup>38</sup> PPC 1860, s 302(a). See also PPC 1860, s 302(c).

<sup>39</sup> Al Quran (n 21); 'QISAS AND DIYAT' (PROSECUTOR GENERAL Government of The Punjab) <[https://pg.punjab.gov.pk/qisas\\_and\\_diyat](https://pg.punjab.gov.pk/qisas_and_diyat)> accessed 16 August 2021.

<sup>40</sup> PPC 1860, s 302(b).

## 12. Raymond Allen Davis v State Islamic Republic of Pakistan

Raymond Davis was a former soldier of US Army and a contractor with the CIA. On January 21, 2011 he killed two armed men in Lahore. He was charged with the double murder and holding the illegal possession of firearm<sup>41</sup>. Davis was released upon payment of \$2.4 million as blood money to the families of the two victims<sup>42</sup>.

## 13. *Fasaad Fil – Ardh*

*Fasaad Fil - Ardh* (spreading mischief/disorder or disturbing peace on land) constitute various offences. Crimes that fall under this description that mandate a death penalty include:

1. Terrorism<sup>43</sup>.
2. Blasphemy: Violation of article 295-C of PPC; derogatory remarks, spoken, written, innuendo that directly or indirectly defile the Last Prophet Hazrat Muhammad (Peace And Blessings of Allah Be Upon Him and His Holy Progeny) or other Prophets (Peace Be Upon Them) carries a mandatory death penalty and fine<sup>44</sup>. It is pertinent to mention here that section 295-C of the Pakistan Penal Code regarding blasphemy applies to all the Prophets (Peace Be Upon Them) though this has never been amended in the books of statute by any government<sup>45</sup>. The law applies to Muslims and non-Muslims alike; till date no

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<sup>41</sup> Declan Walsh and Ewen MacAskill, 'American who sparked diplomatic crisis over Lahore shooting was CIA spy' *The Guardian* (Washington, 20 Feb 2011) <<https://www.theguardian.com/world/2011/feb/20/us-raymond-davis-lahore-cia>> accessed 13 June 2019.

<sup>42</sup> Carlotta Gall and Mark Mazzetti, 'C.I.A. Security Officer Is Freed In Pakistan as Redress Is Paid' *The New York Times* (New York, 17 March 2011) A1.

<sup>43</sup> The Anti-Terrorism Act 1997 (ACT NO. XXVII OF 1997) ATA 1997, s 7.

<sup>44</sup> PPC 1860, ch XV s 295(c) as inserted by Criminal Law (Amendment) Act III of 1986, s 2.

<sup>45</sup> Muhammad Ismail Qureshi v Pakistan PLD 1991 FSC 10. Qureshi explained to The News, published 12 Jan 2011, in article 'Blasphemy law applies to all Prophets' that after the Federal Shariat Court's (FSC) judgment, the Section 295-C would be read in the light of the Shariat

one has been executed under the law<sup>46</sup>. Most death sentences, over 80 percent, overturned or commuted on appeal as per International Commission of Jurists ICJ's study on death penalty in Pakistan in 2015 because appellate courts found claims of fabricated evidence based on personal or political agenda<sup>47</sup>. Asiya's case was the first case under section 295-C to be heard by the Supreme Court in which she was acquitted<sup>48</sup>.

3. Mutiny and insubordination<sup>49</sup>.
4. Abetment of mutiny<sup>50</sup>.
5. Wage or abet war against Pakistan<sup>51</sup>.
6. Rape or gang rape of women or girl under age of 16 to be punished by death<sup>52</sup>. Abducting someone for purpose of submitting them to unnatural lust including homosexuality carries death penalty<sup>53</sup>. Assaulting a woman to intentionally display her body in public view also carries the death penalty<sup>54</sup>. For instance, the Zainab rape case was one of them. Zainab Ansari was a seven years old Pakistani girl who was kidnapped by her religious teacher on January 4, 2018.

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Court's decision. Former Chief Justice of Pakistan Justice (ret'd) Saeeduzzaman Siddiqi, when approached by The News, endorsed Qureshi's viewpoint and said that after a superior court's ruling gets finality, it becomes law no matter whether the concerned law is amended by the government or not.

<sup>46</sup> Waseem Abbasi, 'No execution under blasphemy law in Pakistan so far' *The News* (Islamabad, 1 Nov 2018) <<https://www.thenews.com.pk/print/388047-no-execution-under-blasphemy-law-in-pakistan-so-far>> accessed 13 June 2019 .

<sup>47</sup> ICJ, 'Pakistan: trials for 'blasphemy' fundamentally unfair – ICJ new report' (ICJ, 4 November 2015) <<https://www.icj.org/pakistan-trials-for-blasphemy-fundamentally-unfair-icj-new-report/>> accessed 13 June 2019.

<sup>48</sup> '10 things you need to know about Pakistan's blasphemy law' *The Nation* (Lahore, 14 October 2016) <<https://nation.com.pk/14-Oct-2016/10-things-you-need-to-know-about-pakistan-s-blasphemy-law>> accessed 13 June 2019.

<sup>49</sup> Pakistan Army Act 1952, s 31.

<sup>50</sup> PPC 1860, s 132 as substituted by Federal Laws (Revision and Declaration) Ordinance, 1981 (XXVII of 1981).

<sup>51</sup> PPC 1860, s 121.

<sup>52</sup> PPC 1860, s 376 as inserted by Protection of Women (Criminal Laws Amendment) Act of 2006, s 5.

<sup>46</sup> PPC 1860, s 367-A as inserted by Protection of Women (Criminal Laws Amendment) Act 2006, s 3.

<sup>54</sup> PPC 1860, s 354(a) as inserted by Criminal Law (Amendment) Ordinance, XXIV of 1984.

She was rape and then strangled to death by her Quran recital. Her corpse was even discarded on a garbage in the city of Kasur. It incited a widespread protests and outrage in entire Pakistan. After this incident the bill was passes in National Assembly known as Zainab Alert Bill on 2019. According to this bill, the unnecessary delay in investigating the rape cases within two hours by the police brought to a legal action against them. When this incident happened, her parents were in Saudia Arabia for performing Umrah and Zainab was living with her uncle. The offender Imran Ali was awarded a death penalty by the Anti-terrorism court in Lahore Central Jail. He not only raped the Zainab but 12 other underage girls and this death penalty was executed in the Kot Lakhpat Jail. However, the offender Imran Ali was identified in CCTV footage before captured by the police.

7. Hijacking and harboring hijacking<sup>55</sup>.
8. Other offenses:
  - a. Use of force against victim in robbery resulting in victim's death carries death penalty<sup>56</sup>.
  - b. Bearing false witness deliberately resulting in sentencing and execution of an innocent person is to be punishable by death<sup>57</sup>.
  - c. Arms Trafficking: illegal arms trafficking of military-class arms<sup>58</sup>.
  - d. Sabotaging the railway system<sup>59</sup>.

#### **14. Classes of Offenders Excluded from the Death Penalty**

- Pakistan is among the earliest countries in the world to ratify the UNCRC, which prohibits death penalty for persons below 18 years<sup>60</sup>. Therefore, under its

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<sup>55</sup> PPC 1860, s 402-B and 402-C as inserted by PPC (Second Amendment) Ordinance XXX of 1981, s 2.

<sup>56</sup> PPC 1860, s 396.

<sup>57</sup> PPC 1860, s 194.

<sup>58</sup> Pakistan Arms (Amendment) Ordinance 1996, s 13-A (1).

<sup>59</sup> Railways (Amended) Act, 1890 (ACT IX OF 1890), s 127.

<sup>60</sup> UNCRC 1990, pt I art 37(a).

obligation to UNCRC and to its own law - Juvenile Justice System Ordinance 2000 (XXII of 2000) JJSO 2000, enacted 10 years after to honor UNCRC - child offenders cannot be sentenced to death<sup>61</sup>. Additionally, juvenile offenders sentenced to death before JJSO 2000 were to be given remission to establish their juvenility under a presidential notification issued in 2001<sup>62</sup>. The reality though violates not only Pakistan's own laws but also international law as juvenile offenders have been sentenced to death<sup>63</sup>; a fact also admitted by Pakistan<sup>64</sup>.

- Pregnant women on death row have had their executions postponed<sup>65</sup>. Article 6(5) of ICCPR also declares that a pregnant woman shall not be sentenced to death penalty.
- Offenders if insane or those who are sane but unable to comprehend the legal proceedings against them are given some additional protections against the death penalty<sup>66</sup>. Khizer Hayat — serving death-row was diagnosed with paranoid schizophrenia. His execution was suspended by former Chief Justice of Pakistan Saqib Nisar. The request was filed by Hayat's mother before the court's human rights cell called for the attention of Supreme Court's to the fact that a mentally ill prisoner was had been sentenced to death<sup>67</sup>. Khizer Hayat, however, passed away on March 21, 2019 after spending 16 years on death row<sup>68</sup>.

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<sup>61</sup> Juvenile Justice System Ordinance JJSO 2000 (XXII of 2000), s 12(a); PPC 1860, s 306(a).

<sup>62</sup> Miqdad Naqvi, 'Executing Children' *Dawn* (Lahore, 16 Feb 2017) <<https://www.dawn.com/news/1315015>> accessed 14 June 2019.

<sup>63</sup> JPP and Reprieve, 'Juveniles on Pakistan's Death Row' (Office of the UN Commissioner for Human Rights (OHCHR), 2015) <[https://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/PAK/INT\\_CRC\\_NGO\\_PAK\\_21444\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/PAK/INT_CRC_NGO_PAK_21444_E.pdf)> accessed 14 June 2019; The case of juveniles (n 33) 38.

<sup>64</sup> Pakistan, 'CRC/C/PAK/5 Consideration of reports submitted by States parties under article 44 of the Convention' (OHCHR, 2015) para 99 <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/088/34/PDF/G1508834.pdf?OpenElement>> accessed 14 June 2019.

<sup>65</sup> PPC 1860, s 314(3).

<sup>66</sup> Qatl-e-Amd not liable to qisas (n 54); PPC 1860, s 308(1).

<sup>67</sup> Rana Bilal, 'Justice Nisar suspends execution of mentally ill prisoner Khizar Hayat' *Dawn* (Lahore, 12 January 2019) <<https://www.dawn.com/news/1457116>> accessed 15 June 2019.

<sup>68</sup> Rana Bilal, 'Mentally ill prisoner Khizar Hayat passes away after spending 16 years on death row' *Dawn* (Lahore, 22 March 2019) <<https://www.dawn.com/news/1471220>> accessed 15 June 2019.

## 15. Clemency or Mercy Petition

A defendant has the right to file a mercy petition to the President of Pakistan as a last resort if all the judicial appeals have been exhausted. Under Article 45 of the constitution '*The President shall have power to grant pardon, reprieve and respite and to remit, suspend or commute any sentence passed by any court, tribunal or other authority*'.

However, the Supreme Court, in a 1992 judgment, held that the President of Pakistan had no such authority 'to commute, remit or pardon' death sentences passed in matters of *Hudood, Qisas* and *Diyat* Ordinance except *Ta'zir* as they rest exclusively with the heirs of the victim<sup>69</sup>.

Furthermore, punishment of death for committing blasphemy is binding and cannot be commuted by anyone as Federal Shariat Court (FSC) that made death penalty the only punishment for blasphemy said in its judgment:

*'... discussion leaves no manner of doubt that according to Holy Qu'ran as interpreted by the Holy Prophet (p.b.u.h) and the practice ensuing thereafter in the Ummah, the penalty for the contempt of the Holy Prophet (p.b.u.h) is death and nothing else. We have also noted that no one after the Holy Prophet (p.b.u.h) exercised or was authorized the right of reprieve or pardon'*<sup>70</sup>.

## 16. Moratoriums on Death Penalty and Efforts to Commute / Abolish Death Penalty

Zulfiqar Ali Bhutto – founder: Pakistan People's Party (PPP), a center-left party - is widely credited as the main architect of the first ever consensus constitution of Pakistan in 1973. Under his premiership life sentence was increased to 25 years from 14 years with the desire to prevent capital punishment until its

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<sup>69</sup> Habib-UI-Wahab Alkhairi v Pakistan PLD 1991 FSC 236; Hakim Khan v Pakistan PLD 1992 SC 595.

<sup>70</sup> Muhammad Ismail Qureshi v Pakistan PLD 1991 FSC 26 [33].

permanent abolishment<sup>71</sup>. This could not materialize as Bhutto's government was overthrown by Zia ul Haq's martial law and he was implicated in a controversial and false case of assassination of a political opponent that earned him a death sentence ending his political career and life with execution on 4 April 1979, which has been termed as a judicial murder<sup>72</sup>. Once bitten twice shy; the execution of its founder drove PPP to place the idea of abolishment of capital punishment as a top priority the next time it were to come in power. Hence, when Benazir Bhutto, daughter of Zulfiqar Ali Bhutto and later Chairman of PPP, became Prime Minister (PM) in 1988, one of her first act was to request the President to commute all death sentences to life imprisonment of some 2,029 convicts<sup>73</sup>.

On 18 December 2007 - two months before the 2008 General Elections in Pakistan - the UN General Assembly UNGA adopted a momentous text requiring a moratorium on executions to be set by all states practicing the death penalty; Pakistan voted against the resolution<sup>74</sup>.

Benazir Bhutto was assassinated in the run-up to the election, which earned PPP a lot of sympathy vote<sup>75</sup>. Thus, PPP was catapulted into power in 2008 and with the precedence set by its slain leader; it once again sought to commute the death sentence to life imprisonment, subject to approval by the President, of around 7000+ condemned prisoners as a tribute to its slain leader on her birthday on

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<sup>71</sup> Nasir Iqbal, 'Apex court acts on govt plan to commute death sentence' *Dawn* (Islamabad, 5 July 2008) <<https://www.dawn.com/news/310393/apex-court-acts-on-govt-plan-to-commute-death-sentence>> accessed 16 June 2019.

<sup>72</sup> MB Kalhoro, 'Z.A. Bhutto's execution be declared judicial murder' *Dawn* (Karachi, 03 April 2018) <<https://www.dawn.com/news/1399170>> accessed 16 June 2019.

<sup>73</sup> Amnesty International, 'Human Rights Safeguards: Memorandum Submitted to the Government of Pakistan Following a Visit in July - August 1989' [1990] ASA 33/003/90 para 2 <<https://www.amnesty.org/download/Documents/200000/asa330031990en.pdf>> accessed 16 June 2019.

<sup>74</sup> UNGA Plenary, 'General Assembly adopts landmark text calling for moratorium on death penalty' [2007] (GA/10678) Press Release. See also Annex VI.

<sup>75</sup> Robert Birsell, 'Bhutto sympathy vote seen key to Pakistan election' *Pakistan* (Reuters) (Multan, 10 February 2008). <<https://www.reuters.com/article/us-pakistan-election/bhutto-sympathy-vote-seen-key-to-pakistan-election-idUSISL370720080210>> accessed 16 June 2019.

June 21, 2008<sup>76</sup>. This recommendation by PM was followed by a proposal adopted by the Federal Cabinet on 2 July 2008.

It is imperative to mention here that this initiative by government was taken albeit the Ministry of Law advises to PM against the commutation. The Law Ministry advised that the President had not right to pardon or commute death awarded under *Hudood* and *Qisas* and can only be done with the consent of heirs of victims<sup>77</sup>. Additionally, it noted in its formal legal advice to PM that the proposal would be in stark violation to Islamic law, contradicting to the rulings of the Supreme Court, and a sheer disregard to the sentiments of the heirs of victims suffering from grief and agony from the loss of their dear one<sup>78</sup>.

Consequently, the then Chief Justice of Pakistan Abdul Hameed Dogar took *suo moto* notice of the news and asked the Attorney General and the ministers of Interior and Law to explain such initiative from government<sup>79</sup>.

To avoid engaging in a legal battle given the current constitutional framework, the PPP government decided to drop the executive order for commutation and instead come up with a draft to abolish capital punishment by introducing an amendment in the law. Soon afterwards, PPP Co-Chairman, Asif Ali Zardari, became the President of Pakistan on September 09, 2008 and issued an indefinite moratorium on executions upon taking charge of the office. The law minister revealed on October 19, 2008, that his ministry had forwarded a summary for abolishing the death penalty from the Penal Code of the country to the PM but further developments on the summary were stopped due to the volatile political and security situation in the country as Pakistan was hit by a wave of terrorism<sup>80</sup>.

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<sup>76</sup> 'Pakistan PM Urges President to Commute Death Sentences' *The Jerusalem Post* (Jerusalem, 21 June 2008) <<https://www.jpost.com/International/Pakistan-PM-urges-president-to-commute-death-sentences>> accessed 16 June 2019.

<sup>77</sup> PLDs (n 69).

<sup>78</sup> 'Naek turns a blind eye to his own ministry's view' *The News* (Islamabad, 8 October 2008) <<https://www.thenews.com.pk/archive/print/138751-naek-turns-a-blind-eye-to-his-own-ministry%E2%80%99s-view>> accessed 16 June 2019.

<sup>79</sup> Nasir Iqbal, 'Apex court acts on govt plan to commute death sentence' *Dawn* (Islamabad, 5 July 2008) <<https://www.dawn.com/news/310393/apex-court-acts-on-govt-plan-to-commute-death-sentence>> accessed 16 June 2019.

<sup>80</sup> NF Gilani, 'Should Pakistan Abolish or Retain Capital Punishment?' [July-December 2009] 6(2) *Policy Perspectives* 133-148.

After the shattering attack on Army Public School, Peshawar on 16 Dec 2014, the moratorium was removed for terrorism cases and ultimately all cases on March 10, 2015<sup>81</sup>. The figure for executed, given by Justice Project Pakistan JPP, since Dec 2014 till August 2021 stands at 516 with 3,831 people on death row in Pakistan<sup>82</sup>. The current figure for death row population is after over a 73% decline in executions from 2015 to 2016 which stood at 8,261 in 2014 when moratorium was lifted in December 2014<sup>83</sup>. The numbers for women on death row have been reported to be 29 as of Feb 04, 2019<sup>84</sup>.

## 17. Flaws in the System and the Need for Judicial Reforms

The judicial system in Pakistan is not without its flaws and weaknesses. There is a litany of cases that seriously question the legality of the decisions and punishment handed to the convicted mainly due to political influence, misuse of law for own purpose and benefit and/or faulty investigation. The criminal justice system is appalling and a remnant of colonial era. Its discrepancies cause a direct violation of the constitution; article 10-A guarantees fair trial.

One such case is the “Ghulam Qadir and Ghulam Sarwar”, brothers, who were wrongfully executed by the order of the lower court. The two brothers were convicted for murder and were executed by the state before the appeals could be decided<sup>85</sup>. Similarly, Mazhar, accused of murder spent 19 years of his life in prison before being acquitted by court. Sadly, the decision came too late as he had passed away in jail two years prior to his acquittal<sup>86</sup>.

Another case is that of Shafqat Hussain, convicted for murdering a seven-year-old boy. Shafqat was executed at the Karachi Central Jail on August 04, 2015

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<sup>81</sup> AFP, ‘Death penalty moratorium lifted completely in Pakistan: Officials’ *Dawn* (Islamabad, 10 March 2015) <<https://www.dawn.com/news/1168652>> accessed 19 Jun 2019.

<sup>82</sup> JPP, ‘People executed in Pakistan since December 2014’ (JPP Death Penalty Database, 2019) <<https://data.jpp.org.pk/>> accessed 24 August 2021.

<sup>83</sup> JPP, ‘Death Penalty in Pakistan – Fact Sheet’ (OHCHR, 2017) <[https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/PAK/INT\\_CCPR\\_CSS\\_PAK\\_27602\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/PAK/INT_CCPR_CSS_PAK_27602_E.pdf)> accessed 19 June 2019.

<sup>84</sup> Email from Zainab Mahboob JPP to Death Penalty Worldwide DPW (4 Feb 2019).

<sup>85</sup> Editorial, ‘Wrongfully Hanged’ *Dawn* (Karachi, 24 Oct 2016) <<https://www.dawn.com/news/1291838>> accessed 19 Jun 2019.

<sup>86</sup> Zaheer Ahmed Cheema, ‘Hanged Unlawfully’ *Dawn* (Karachi, 30 Oct 2016) <<https://www.dawn.com/news/1293088>> accessed 19 Jun 2019.

after his death warrant were issued for fifth time by court, the previous four execution notices were suspended at the last minute due to international pressure as well as opposition from the civil society and activists<sup>87</sup>. His lawyers of Justice Project Pakistan (JPP), activists and family firmly believed that he was a minor when the offense was reported and tortured into confessing the crime.

AI and Asian Legal Resource Center (ALRC) have stated in their reports on capital punishment in Pakistan that it is being met out after an unfair trial and also violates the constitution of Pakistan, article 9: “No Person shall be deprived of life or liberty save in accordance with law,” yet the civil and military courts are sentencing without following due process. In sharing its concerns, ALRC wrote to the UN Human Rights Council about Pakistan not following international principles and for acting in absolute violation of Article 6 of ICCPR<sup>88</sup>.

## **18. To Abolish or not to Abolish the Death Penalty in Pakistan**

The constitution of Pakistan asserts individual rights and protection such as the right to fair trial and the right to life and inviolability of dignity of man<sup>89</sup>. Nevertheless, despite these fundamental rights entrenched in the constitution conforming with the democratic principles laid down under article 1 of the ‘Universal Declaration of Human Rights’ by United Nations in 1948 - the constitution of Pakistan still allows the courts to sentence anyone to death<sup>90</sup>. This may seem like a contradiction within the constitution itself. However, the fact is that the constitution was created with an aim to strike a balance between two worlds, Islamic and secular. Thus, the constitution begins with a vivid Preamble followed by article 1 which states that “Pakistan shall be a Federal

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<sup>87</sup> Al Jazeera and AFP, ‘Pakistan hangs Shafqat Hussain despite appeals’ Al Jazeera (Doha, 5 Aug 2015).

<<https://www.aljazeera.com/news/2015/08/pakistan-hangs-shafqat-hussain-150804042659945.html>> accessed 19 Jun 2019.

<sup>88</sup> ALRC, ‘Pakistan: Government Undermines the People's Right To Life’ [2016] 15(1) Article2 <<http://alrc.asia/article2/2016/03/pakistan-government-undermines-the-peoples-right-to-life/>> accessed 20 June 2019.

<sup>89</sup> The constitution of Islamic Republic of Pakistan, pt II ch 1 art 10A, as inserted by Constitution (Eighteenth Amendment) Act 2010, s 5; pt II ch 1 art 9; pt II ch 1 art 14.

<sup>90</sup> The Constitution of Islamic Republic of Pakistan, pt VI ch2 art 185 s2, pt VI ch 3A art 203F s2A).

Republic to be known as Islamic Republic of Pakistan” and article 2 that “Islam shall be the State religion of Pakistan” mandate that the principles of democracy, freedom, tolerance, equality, and social justice shall be fully observed but as articulated by Islam because sovereignty over the entire Universe belongs to Almighty Allah alone, and the authority is a sacred trust to be exercised by the people of Pakistan within the limits prescribed by Him<sup>91</sup>.

The supporters of death penalty argue in the favor of death penalty based on articles and laws that conform or ensure an Islamic way of life in the constitution of Pakistan<sup>92</sup>. A sense prevails that the supporters of the death penalty turn a blind eye from the diametric ground reality and lack realization that capital punishment if to be dispensed must be dispensed by way of ‘justice and law’ as emphasized by Islam too. That is the only it would not violate fundamental human rights as well as an individual’s right to life and ensure fair trial but the reality is that implementation of the laws governing civil rights are at best random; poor legal representation, *Thaana* (police station) culture, rampant corruption, prejudices of society, no potent rehabilitation system for criminals. All this has allowed for a strong line of argument by abolitionist both inside and outside Pakistan to call for a moratorium on death penalty in the short term until the discrepancies are fixed or complete abolishment. This though would require altering and directing public opinion to introduce considerable legislation and amendments to the constitution of Pakistan because in the present legal system any measures to abolish the death penalty would constitute as a breach of the constitution<sup>93</sup>. The majority public sentiment and opinion in Pakistan is profoundly in favor of the death penalty also recognized by abolitionists<sup>94</sup>.

### **19. The Criticism on Qisas and Diyat**

One of the criticisms by human rights bodies and abolitionists on laws governing the death penalty in Pakistan is aimed at *Qisas* and *Diyat*. Therefore, when death penalty is called barbaric, inhumane and primitive by the

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<sup>91</sup> The Constitution of Islamic Republic of Pakistan, Preamble.

<sup>92</sup> The Constitution of Islamic Republic of Pakistan, pt II ch 2 art 31.

<sup>93</sup> The Constitution of Islamic Republic of Pakistan, pt IX art 227(1).

<sup>94</sup> FIDH and HRC (n 33) 19.

abolitionist; they are actually criticizing the underlying concept of death penalty which comes from *Qisas* given in Quran and Torah; the opposition at its root, it seems, is against the idea of religion or it being from religion. Religion or Islam in this case, in form of *Diyat*, offers an alternative to *Qisas* (death penalty) whereas the abolitionists don't have an alternate except banning it or life imprisonment, which definitely falls short of justly satisfying grievance of victim or victim's heir. Yet it is *diyat* that is shown in negative light as buying one's way out of murder with money. Some pro-abolition jurists and legal experts also dub it as a discriminatory legal regime where those who can pay can get away with murder but those who cannot pay must go to gallows<sup>95</sup>. The abolitionists fail to see that *Diyat*, while an alternate to death penalty, is not a straightforward way of paying one's way out because its summoning is dependent on the right of victim or heir of victim<sup>96</sup>. Thus, if the victim party chooses to exercise *qisas* (death penalty) instead of *diyat*, there is no way out for offending party irrespective of the social and financial status.

*“And there is a life for you in retribution, O wise people, so that you may guard”<sup>97</sup>.*

The Quran is not a piece of fiction or a collection of hypotheses or propositions restricted to a certain time or a group. It is absolutely the last divine revelation; word of Allah and unreservedly, His Last Prophet Hazrat Muhammad (Peace and Blessings of Allah Be Upon Him and His Holy Progeny); both are guidance for all times and for all humanity. The Quran contains incontestable truth, irrefutable facts and unchallengeable universal laws. The concepts of retribution (*qisas* and *diyat* or a pardon altogether) as laid down in Quran along with principles such as human rights are based on principles of equality, justice, compassion and altruism for well-being and prosperity of humanity. This leads to the question that how come legal system of Islamic Republic of Pakistan is such a quagmire when its penal code is based on such empathic principles? The problem, as with anything, is in the violation, abuse, misuse and the haphazard implementation of these laws which earns them misplaced abomination.

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<sup>95</sup> Subuk Hasnain, 'Life After Death', *Herald* (Karachi, June 2018).

<sup>96</sup> Al Quran (n 21).

<sup>97</sup> Al Quran ch 2 verse 179.

## 20. The Deterrent Effect

It is also argued by abolitionists that execution or a public execution as a means of deterrence against a crime such as murder or instilling fear against wrongdoing in society has failed to achieve its desired result. The abolitionists predicate their argument against deterrence on a 2009 research to study the deterrent effect of death penalty on homicides with findings supporting the arguments of abolitionists that death penalty does not add any more deterrence than life imprisonment<sup>98</sup>. However, a 2012 report by US National Research Council (NCR) of The National Academies of Sciences, Engineering and Medicine stated with disappointment that the research conducted in the past 30 years is not sufficient enough to decisively conclude the outcome of the death penalty on homicide rates and its committees that drafted the report concluded with recommendations in the following manner:

*“The committee concludes that research to date on the effect of capital punishment on homicide is not informative about whether capital punishment decreases, increases, or has no effect on homicide rates. Therefore, the committee recommends that these studies not be used to inform deliberations requiring judgments about the effect of the death penalty on homicide. Consequently, claims that research demonstrates that capital punishment decreases or increases the homicide rate by a specified amount or has no effect on the homicide rate should not influence policy judgments about capital punishment”<sup>99</sup>.*

The above conclusion and recommendation should make it abundantly clear that ‘science requires to interpret the evidence as it is, not as we want it to be’<sup>100</sup>.

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<sup>98</sup> Michael L Radelet and Traci L Lacoock, 'Do Executions Lower Homicide Rates? The Views of Leading Criminologists' [2009] 99(2) The Journal of Criminal Law & Criminology 489,490.

<sup>99</sup> Daniel S Nagin and John V Pepper (eds), Deterrence and the Death Penalty (The National Academies Press 2012) 102.

<sup>100</sup> Ibid (n 99) vii.

## 21. Pitching the Conviction

Our ability to do wrong or sin for that matter comes from the lack of fear and respect or disregard for an authority whether that authority be a state or its institutions, law, Allah (God) or it could also be anything that one holds dear such as loved ones, society, elders or believes in, such as religion; the underlying factors are lack of respect or disregard and fear. This conviction is based on Quran and is given in the account of sons of Adam (Peace Be Upon Him) in Torah and Quran<sup>101</sup>.

The two brothers were by themselves when the incident occurred. The Quran in depicting their argument also truthfully and precisely provide the insight behind the motives of both brothers. The one who was slain deterred from murder due to 'fear' of Allah and the absence of the same 'fear' and sheer disregard, as a result, permitted the 'self' of the other to murder his brother<sup>102</sup>.

It is clear as night and day from the above account that 'fear' of Allah (Supreme Authority/Being) deters one from any wrongdoing whatever that may be. Fear in any form does play a key role in deterring one from something be it crime or any wrongdoing.

## 22. Understanding the Basis of Abolition Movement

With the conviction established, it is worth examining the ideologies and circumstances that gave birth to, nurtured and ultimately caused the expansion of the idea of abolition of death penalty worldwide to an extent that today it is exercised by 170 out of 193 members of UN<sup>103</sup>.

The idea to abolish death penalty truly reared its head during the European Enlightenment in 17<sup>th</sup> – 18<sup>th</sup> century. The period known as 'Age of Reasoning' was an era of many philosophical movements emphasizing humanism, individualism, skepticism, and science. It was a time that challenged traditional

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<sup>101</sup> Al Quran ch 5 verse 27-31; Genesis ch 4 verses 2-5.

<sup>102</sup> Al Quran ch 5 verses 28-30.

<sup>103</sup> BBC News Reality Check Team (n 22).

religious views and gave rise to deism<sup>104</sup>. As these philosophical ideologies spread clamoring against religion and concept of God they tried to desensitize the importance and seriousness of faith and religion which propelled secular and liberal movements advocating limited to no role whatsoever of religion and faith in society. This eventually spurred atheism and fanned the doctrine that man does not need religion or God to act ethically or do good or bad. These movements made concerted efforts to put faith on trial by (i) trying to sow doubt about Holy Scriptures (word of Allah) by arguing their authenticity by standing on the shoulder of those who abused and misused religion and faith by misinterpreting and hiding the truth and tailoring it for personal benefits and favor (ii) relegating the Prophets (Peace Be Upon Them), their stature and subjecting their words and actions to questioning under the pretext of freedom of speech and (iii) radically proselytizing the idea that humanity above all including its Creator.

These belligerent creeds are categorized as *Fitna* and *Fasadh Fil Ardh* in the Quran as they disturb order on land and transgress its established limits, which tantamount to war with Allah and His Prophet (Peace and Blessings of Allah Be Upon Him and His Holy Progeny)<sup>105</sup>.

The advancements in science and technology along with the rise of social media has snowballed these ideologies and today humanity has got more –isms than it can wrap its head around - challenging established norms, beliefs and values especially that come from divine revelations has become the new norm. All this has pushed humanity to the brink where it is on the verge of disfigure as faith in Allah (God) and religion drastically disappears from the lives of individuals and at present anyone with even a semblance of faith in Allah (God) and an iota of religion is frowned upon as holding to something outdated, draconian and despicable.

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<sup>104</sup> Deism is a reaction against theism - a belief in a Supreme Being or God that is not involved in the world, does not intervene in life of humans and lets the world run by natural laws. Deists believe in understanding God through human logic and reasoning. They believe in a natural religion, stress ethical conduct and reject the religion acquired through revelation as well as miracles and Prophets.

<sup>105</sup> Al Quran ch 5 verse 33. *Fitna*, according to Quran is more severe than murder; See Al Quran ch 2 verse 191, 193 and 217.

There is no doubt that the concept of abolishing the death penalty spars directly with the concept of capital punishment in Holy Scriptures. The entire debate on abolition of death penalty is merely a diversion and a hindrance in the pursuit of crime-free and just society because the effort that could go into actually curbing and riding the society of crime and dispensing timely and swift justice, which should be the real concern, gets wasted in the futile debates whether to abolish or not to abolish the death penalty<sup>106</sup>. What is required is the willingness to uphold justice in all walks of life with concrete steps that prevent any injustice at the individual and collective level. Only then there will not be any unjust or wrong conviction of anyone let alone a capital one.

*“O believers! Become tenaciously firm on justice, bearing witness for the sake of Allah even if it is against your own selves or parents or relatives. Whether the person is rich or poor, Allah is a greater Well-Wisher of them both. So do not follow the desires of your selves lest you swerve from justice. But if you twist your statement or evade, then Allah is indeed Well Aware of that you are doing”<sup>107</sup>.*

### **23. Conclusion**

Pakistan is a retentionist state and will continue to be so as long as its constitution and more importantly its people remain true to their religion. As for the flaws and malpractice, there is presently a conscious effort by Supreme Court to prevent any further macabre of justice by exercising caution in sentencing anyone to death where a single mitigating factor is available. In 2017 alone Pakistan has seen a 31% decline in executions<sup>108</sup> while in 2018, the Supreme Court upheld the death penalty in only 3% of its reported capital punishment cases<sup>109</sup>. This exercise has put a lot of burden on higher courts and so the lower trial courts need to feel this responsibility and take the burden off

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<sup>106</sup> Debates about the death penalty distract Congress and state legislatures from focusing on real solutions to crime problems (n 99) 506.

<sup>107</sup> Al Quran ch 4 verse 135.

<sup>108</sup> 'Executions in Pakistan Decline by 31pc in 2017: Amnesty International' (The Express Tribune, 12 April 2018) <<https://tribune.com.pk/story/1683813/3-executions-pakistan-decline-31pc-2017-amnesty-international/>> accessed 25 June 2019.

<sup>109</sup> 'Launch Of Pakistan Capital Punishment Study By FFR And Reprieve' (Courting The Law, 21 April 2019) <<http://courtingthelaw.com/2019/04/21/news-events/launch-of-pakistan-capital-punishment-study-by-ffr-and-reprieve/>> accessed 25 June 2019.

higher courts by exercising the same, which will eventually cut any propagation of miscarriage of justice<sup>110</sup>. The author believes that this is the right approach to the issue and against the argument that a moratorium or abolition should be placed till the fixation of legal system, which is more of a secular desire<sup>111</sup>. The belief emanates from the fact that the commandments of Allah and His Last Prophet Hazrat Muhammad (Peace and Blessings of Allah Be Upon Him and His Holy Progeny) in the Quran are final and be upheld without any prejudice and excuse and in face of every odd at any cost as shown and proven to the letter by the sacrifices of *Ahle Bait* (The Holy Household Peace Be Upon Them) of the Last Prophet Hazrat Muhammad (Peace and Blessings of Allah Be Upon Him and His Holy Progeny) in Karbala.

#### **24. Recommendations**

The reform movement must be accompanied with impactful research keeping in view future demands and capacity building of the legal system. In addition to this, it is a dire need to push for creation of a national research center consisting of multi-disciplinary committees of academia and professional-experts from all related fields of law and criminal justice in Pakistan. Based on their findings, the research body should suggest recommendations to Ministry of Law and Justice for the introduction and reform of new and existing laws so that they remain relevant to evolving crimes.

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<sup>110</sup> Ibid (n 109).

<sup>111</sup> 'So do not follow the desires of your selves lest you swerve from justice' (n 107).

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