



Crime or Deterrence: The Role of Capital Punishment in Preventing Crime

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Article information

Article History:

Received: 2025-02-07

Received in revised form:
2025-03-011

Accepted: 2025-03-21

Published Online: 2025-03-29

Keywords:

Death Penalty; Murder as
Punishment; Legal Method;
Muslim Nation; Pakistan.

ABSTRACT

The death penalty, also known as capital punishment, is a legal method in which a person is killed by a formal courtroom for murder as punishment. "The term capital begins with a Latin underwrite in the proper sense of 'head-to-head' (implying execution by beheading)." This article highlights the topic of the death penalty in society, provides a holistic view of the death penalty, and points out the controversies surrounding the implementation of the death penalty. Everywhere, interest in the abolition of the death penalty has widened in recent years. However, 56 countries, including Pakistan, consider sentencing an important part of their prison system. Pakistan uses a special phrase to solve the fate of the perpetrators in around 27 different crimes. This document aims to review and share Pakistan's perspective as a Muslim nation. In this way, this research first elucidates the Islamic perspective and then internationally, also emphasizes the importance of the death penalty as deterrence.



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The Journal is published quarterly (March, June, September & December) by the Centre for Children Literacy and Lifelong Learning (CCLL), Pakistan. Web link: <https://ccll.org>

Introduction

All punishments rely upon a comparable idea for instance there should be a punishment for a terrible way of behaving. There are two major clarifications behind causing the punishment. One is the conviction that it is both right and just that a person who has messed up should grieve over it; the other is the conviction that causing punishment for scoundrels deflects other from messing up. The death penalty debate is the most applicable discussion, keeping in mind the situation that has been brought about by today. It is an essential part of the Pakistani law enforcement framework. The growing strength of the common freedom's development in Pakistan, the presence of capital punishment is tended to as improper. Anyway, this is an odd dispute as keeping one individual alive to the detriment of the presence of different people or expected casualties in the general public is mind-boggling and as a matter of fact, that is ethically wrong. ¹This research paper gives an overall idea of what the death penalty means and shows the contention spinning around the execution of death penalty and explores that it has actual effectiveness in deterrence of crime but if it is done in a proper way.

Objectives

- To study the concept of death penalty.
- To analyze theories of Punishments and how is it viewed in different religions
- To analyze crimes for death penalty in Pakistan and evaluation of Constitutional, Penal & Statutory provisions for Death Penalty in Pakistan
- To analyze arguments of people about death penalty.
- To analyze deterrence of crime by death penalty.

Historical Background

The death penalty is an antiquated sanction. There is no country in existence where the death penalty

has never existed. The history of human improvement uncovers that during no period capital punishment has been discarded as a technique for discipline. Capital punishment for crime, intrigue, unlawful fire and attack was comprehensively used in old Greece under the laws of Draco (fl. seventh century BCE), but Plato fought that it should be used interestingly for the absolute irredeemable. Nonetheless, the Romans similarly elaborate it for a wide extent of offenses, occupants were exculpated for a short time frame outline during the republic.

These notices support the discernment made by Sir Henry Marine who communicated that

"The Roman Republic didn't revoke the death penalty anyway its non-use was planned by the demonstration of punishment or exile and the procedure of inquiries².

Some of the **historical methods** of death penalty include hanging and decapitation which were among the earliest execution methods, often seen as quick or simple punishments. Burning at the stake and crucifixion served as public and symbolic acts of justice. Stoning and impalement, used in certain regions, were considered some of the most severe and painful forms of execution.

Theories of Punishment

Deterrent theory: deterrent theory alludes to avoiding doing a specific demonstration. The principal objective behind utilizing this theory is to limit hoodlums from perpetrating wrongdoing. In such theory, punishments granted are serious in nature which makes a dread in the crook's psyche as well as in the brain of others. This hypothesis is as yet common in a few Islamic nations.

The object of this theory isn't just to keep the transgressor from doing a wrong accordingly yet in addition to cause him a model for society and others who to have criminal propensities. **Locke** is the supporter of the deterrent theory and said that "every commissioner of crime should be made a 'bad bargain' for the offenders."

¹ LOK SABHA SECRETARIAT "CAPITAL PUNISHMENT IN INDIA "in /October.2015

² LOK SABHA SECRETARIAT "CAPITAL PUNISHMENT IN INDIA "in /October.2015

Retributive Theory: It is also known as **Vengeance Theory** that is based on the principle "tit for tat." There was a conviction that if the guilty party is exposed to a similar torment as he had done to the person in question, then, at that point, it causes the wrongdoer to acknowledge what he has done.

In other words: This theory proposes one good turn deserves another, tit for tat, tooth for a tooth. The punishment must be corresponding to the wrongdoing carried out. The devotees of this theory say that criminals should endure torment.

Preventive Theory: The primary point of this theory is to forestall wrongdoing. At the point when the crooks are kept in prisons, they are kept out of society. The object of this theory is to keep or cripple the wrongdoers from rehashing the offense by giving them punishment. An ally of preventive theory is **Paton**. This theory includes death, life imprisonment, forfeiture of property etc.

Case Law: Dr Jacob vs the State of Kerala:

Supreme court stated that punishment should be deterrent, retributive, preventive, expiatory, compensatory, incapacitation and utilitarian theory. Preference for one theory over the other is not a good policy to award punishment.

Reformative Theory: This theory centers around transforming the crooks and taking the lawbreakers back to society as great and reputable residents. The reformative theory of punishment expresses that the point of the corrective arrangement of a state ought to be to change the crook and not to simply rebuff him. The state must guarantee that the guilty party is a capable supporter of the general public once he goes through his punishment.

Compensatory Theory: This theory says that the object of the punishment is self-acknowledgment. If the guilty party, in the wake of submitting an offense, understands his culpability, he should be pardoned.

In other words: This hypothesis depends on remuneration to the victim for the misfortune brought about by the blamed. Along these lines,

the wrongdoers are made to understand similar sufferings they have caused to the person in question.

Incapacitation Theory of Punishment: This theory places the crooks into the incapacitated condition to forestall the offense. A dread additionally fills in the psyche of the crooks and people in the future before endeavoring to carry out future wrongdoings, subsequently preventing it.

Utilitarian Theory: This theory applies deterring techniques on crooks to forestall violations, for example, devastating or disablement, and so forth. This hypothesis gives both confirmed and adverse outcomes. Such punishments are viewed as exceptionally brutal in nature.

Multiple Approach Theory: If a solitary theory neglects to meet the goal, a blend of speculations is the decision. Henceforth the court should make a reasonable methodology while choosing speculations of disciplines.³

Historical Practice of death penalty in different countries

China:

So historically in China, the two most typical sorts of execution in the Tang Dynasty were strangulation and decapitating, which were the embraced methodologies for execution for 144 and 89 offenses separately. Strangulation was the suggested sentence for lodging a claim against one's parents or grandparents with an appointed authority, planning to get an individual and sell them into coercion, and opening a coffin while ruining an entombment place. Decapitating was the technique for execution suggested for more authentic infringement like conspiracy and resistance. A few further types of the death penalty were drilled in the Tang dynasty, of which the first was scourging to death with the thick pole which was normal, particularly in instances of gross defilement. The second was truncation, in which the sentenced individual was cut in two at

³ "5 Kinds and Theories of Punishment." 2020. Writing Law. May 3, 2020. <https://www.writinglaw.com/5-theories-of-punishment/>.

the abdomen with a grub blade and afterward left to drain to no end. Essentially all executions under the Tang administration occurred in broad daylight as an advance notice to the populace. The highest points of the executed were displayed on posts or spears. At the point, local authorities beheaded a sentenced criminal, the head was boxed and transported off the capital as proof of character and that the execution had happened. These days' capital punishment in China is a lawful punishment. It is regularly applied for homicide, drug dealing, and monetary violations, even though it is likewise a legitimate punishment for different offenses. Executions are done by deadly infusions or by shooting. Most Chinese individuals support the death penalty.⁴

Ancient Greece:

In Old Greece, Protagoras (whose pondering is represented by Plato) censures the norm of retaliation, because once the damage is done it can't be dropped by any movement. Thusly, accepting the death penalty is to be constrained by society, it is simply to shield the last choice against the culprit or for a dissuasive reason. "The vitally right that Protagoras knows is likewise common liberty, which, spread out and approved by a sovereign collectivity, perceives itself with positive or the law in force of the city. As a matter of fact, it notices its confirmation in capital punishment which sabotages all of the people who don't respect it.⁵

Ancient Rome:

In Old Rome, the use of capital punishment against Roman occupants was exceptional and considered unprecedented. They leaned toward elective sentences going, dependent upon the bad behavior and the evildoer, from a private or public reprimand to exile, including the capture of his property, or torture, or even prison, and as a last

⁴ "Capital Punishment." 2022. Wikipedia. March 15, 2022.

https://en.wikipedia.org/wiki/Capital_punishment#International_views

⁵ "Capital Punishment." 2022. Wikipedia. March 15, 2022.

https://en.wikipedia.org/wiki/Capital_punishment#International_views

resort, demise. Generally, Romans utilized the strategy for Executing or beheading by edge or ax for execution. This was a crazy and messy strategy for execution however essentially the casualty was saved from the torment and torment. Decapitating was last practiced in Bavaria in 1954, after which the guillotine replaced it as an execution procedure.⁶

America:

In America, England affected America's use of capital punishment more than other countries. At the point when European trailblazers came to the new world, they brought the demonstration of capital punishment. The chief recorded execution in the new states was that of Commander George Kendall in the Jamestown area of Virginia in 1608. Kendall was executed for being an administration specialist for Spain. In 1612, Virginia Lead agent Sir Thomas Dale organized the Heavenly, Moral, and Military Regulations, which gave capital punishment to even minor offenses like taking grapes, killing chickens, and trading with Indians.⁷

India:

The death penalty in India is a lawful punishment for certain violations under the country's principle considerable correctional regulation, the Indian Penal Code, as well as different regulations. Executions are completed by hanging. Right now, around 403 prisoners are hanging tight for capital punishment in India. The most recent executions in India happened in Walk 2020 when the four 2012 Delhi attack and murder guilty parties were executed at the Tihar Prison in Delhi.⁸

⁶ "Capital Punishment." 2022. Wikipedia. March 15, 2022.

https://en.wikipedia.org/wiki/Capital_punishment#International_views

⁷ "Capital Punishment." 2022. Wikipedia. March 15, 2022.

https://en.wikipedia.org/wiki/Capital_punishment#International_views

⁸ "Capital Punishment in India." 2022. Wikipedia. March 11, 2022.

https://en.wikipedia.org/wiki/Capital_punishment_in_India#:~:text=Capital%20punishment%20in%20India%20

Abolitionist Movement History

It moreover has been approved eventually by most of the world's critical religions. In 1794 the U.S. region of Pennsylvania transformed into the essential ward to keep the death penalty to first-degree murder, and in 1846 Michigan dissolved capital punishment for all manslaughters and other typical bad behaviors. In 1863 Venezuela transformed into the primary country to invalidate capital punishment for all bad behaviors. Portugal was the essential European country to invalidate the death penalty (1867). By the mid-1960s around 25 countries had invalidated capital punishment for murder. During the last third of the 20th century, the number of abolitionist countries extended more than triple. No matter what the improvement toward cancelation, various countries have held capital punishment, and some have expanded their certification. In the U.S., the public government and around three-fourths of the states hold the death penalty, and death sentences are regularly done in China, Saudi Arabia, Singapore, and Iran. Allies of the death penalty ensure that life confinement is unquestionably not a strong check to criminal approach to acting. Adversaries keep up with that the death penalty has never been a viable impediment, that mistakes once in a while lead to the execution of guiltless people, and that capital punishment is constrained unfairly, by and large on destitute individuals and racial minorities. ⁹ Numerous countries have abolished the death penalty either in regulation or practically speaking. Since **World War II** there has been a pattern toward canceling the death penalty. The death penalty has been abolished by 108 nations, a further seven have done as such for all offenses besides under extraordinary conditions and 26 more have annulled it practically speaking since they have not used it for any less than 10 years and are accepted to have an arrangement or laid out training against doing executions. in **United Stated** there was a case called ⁹ in which supreme court of US put

is.

⁹ Wikipedia Contributors. 2019. "Furman v. Georgia."

moratorium on death penalty in 1972 that capital punishment, as applied, abused the Eighth Amendments' restriction on savage and surprising discipline and the Fourteenth Amendment's Equivalent Insurance Proviso. Fundamentally, the Court observed that needy individuals and minorities were bound to get capital punishments than rich or white litigants blamed for comparative violations. To cure what is happening, the Court guided states to make more clear methodology and rules for judges and juries to continue in capital condemning ¹⁰**Gregg v. Georgia**, Lifting the death penalty moratorium imposed in previous case the U.S. Supreme Court held that the death penalty was not intrinsically "brutal and uncommon." The Court maintained Georgia's new rules and strategies in the death penalty cases, which turned into a model for different states. As **justice steward** held that: "Although some of studies suggest that death penalty may not function as a significant deterrent than lessor penalties, there is no convincing empirical evidence supporting or refuting this view. We may nevertheless assume there are murders, such as those who act in passion, for whom the death has little or no deterrent effect but for many others death has undoubtedly, is a significance deterrent. there are carefully contemplated murders, such as murder for hire, where the possible penalty of death may well enter the code calculus that precedes the decision to act."

International Scenario

The worldwide scene concerning death penalty - both in terms of international law and state practice - has developed in the previous many years. Universally, nations are arranged on their death penalty status, in light of the accompanying classifications:

1. Abolitionist for all wrongdoings

Wikipedia. Wikimedia Foundation. February 25, 2019. https://en.wikipedia.org/wiki/Furman_v._Georgia.

¹⁰Wikipedia Contributors. 2019. "Gregg v. Georgia." Wikipedia. Wikimedia Foundation. March 5, 2019. https://en.wikipedia.org/wiki/Gregg_v._Georgia.

2. Abolitionists for ordinary crimes
3. Abolitionist de facto
4. Retentionist

Toward the finish of 2014, 98 countries were abolitionists for all crimes, 7 nations were abolitionist for normal crimes only, and 35 were abolitionists in practice, making 140 countries in the world abolitionist in regulation or practice. 58 countries are viewed as retentionist, who have capital punishment in their statutes, and have used it in the past. While just a minority of countries hold and utilize death penalty, this rundown remembers probably the most crowded countries in the world, including India, China, Indonesia what's more, the US, making a larger part of the populace in the world possibly dependent upon this punishment.¹¹

Executions around the World:

Amnesty International recorded at least 657 executions in 20 countries worldwide in 2019.¹²

Countries with most confirmed execution in 2019¹³

¹¹ “LOK SABHA SECRETARIAT PARLIAMENT LIBRARY and REFERENCE, RESEARCH, DOCUMENTATION and INFORMATION SERVICE (LARRDIS) for the Use of Members of Parliament Not for Publication CAPITAL PUNISHMENT in INDIA CAPITAL PUNISHMENT in INDIA.” 2015.
http://164.100.47.193/Refinput/New_Reference_Notes/English/CAPITAL_PUNISHMENT_IN_INDIA.pdf.

¹² “Executions around the World.” 2017. Death Penalty Information Center. 2017.
<https://deathpenaltyinfo.org/policy-issues/international/executions-around-the-world>.

¹³ “Executions around the World.” 2017. Death Penalty Information Center. 2017.
<https://deathpenaltyinfo.org/policy-issues/international/executions-around-the-world>.

China	1000s
Iran	251+
Saudi Arabia	184
Iraq	100+
Egypt	32+
United States	22
Pakistan	14+
Somalia	12+

Countries with most death sentences in 2019¹⁴

China	1000s
Pakistan	632+
Egypt	435+
Bangladesh	220+
India	102+
Zambia	101

¹⁴ “Executions around the World.” 2017. Death Penalty Information Center. 2017. <https://deathpenaltyinfo.org/policy-issues/international/executions-around-the-world>.

Religious views on death penalty

Buddhism:

There are no lessons in Buddhism that advance capital punishment, yet a few Buddhist nations truly do in any case utilize death penalty. Purposes behind this are: conviction by lawmakers that the death penalty is important for revenge and discouragement, a long custom of the death penalty, in some cases, maintaining everything under control in the public arena is a higher priority than the Buddha's teaching

The Buddha didn't unequivocally talk about the death penalty yet his lessons show no compassion toward actual punishment, regardless of how terrible the wrongdoing was.

"An action, even if it brings benefit to oneself, cannot be considered a good action if it causes physical and mental pain to another being". BHUDDA¹⁵

Christian

A few Christians contend that death penalty assists with keeping everything under control and assurance in the public eye. They would agree that this in light of the fact that The Good book write down death penalty for certain violations, so it should be OK to God. This is regularly seen as reprisal. The Congregation of Britain has not canceled the explanation in Article 37 of its 39 Articles which says: "The Laws of the Domain might rebuff Christian men with death for intolerable and shocking offenses." **St. Thomas Aquinas** contended that harmony in the public eye was a higher priority than transforming the heathen He reflects the Roman Catholic Church's training that the confirmation of the whole of society is a higher need than the individual.

Judaism:

Various Jews acknowledge that capital punishment is good anyway that it should be used when in doubt. People who are likely not going to change and who are a threat to society should be

¹⁵ "Crime and Punishment - Revision 4 - GCSE Religious Studies - BBC Bitesize." 2019. BBC Bitesize. 2019. <https://www.bbc.co.uk/bitesize/guides/zfbwmn/revision/4#:~:text=Many%20Jews%20believe%20that%20capital>

given capital punishment. The **Torah** says that capital punishment should be used for specific infringement:

"If anyone takes the life of a human being, he must be put to death". **Leviticus 24: 17**

The **Torah** recommends that discipline ought to be proportionate:

"If there is a serious injury, you are to take life for life, eye for an eye, tooth for a tooth." **Exodus 21:23-24**

The **Talmud** says the death penalty is permitted. Rules are encompassing this, e.g., the crook more likely than not been cautioned of the outcomes, and there should be two free observers to the wrongdoing.

Most Jews accept that disciplines should plan to safeguard society. In some cases, capital punishment is the only way to ensure that society remains protected.¹⁶

Sikhism:

There is no particular instruction on the death penalty in the **Guru Granth Sahib**. A few Sikhs perceive this to intend that assuming the death penalty was off-base, there would be a particular educating on it for them to follow. As there isn't, it should be acknowledged as a type of punishment but some Sikhs argue against the death penalty because the thought there is no teaching in the Guru Granth Sahib on the death penalty, and a few Sikhs believe that assuming it was permitted, the heavenly book would give rules for its use. The Ten Masters have all the earmarks of being against the death penalty as they didn't involve it for crooks they experienced.

Sikhs are prohibited from "killing in cold blood. The death penalty might be viewed as "killing in cold blood"

Whenever **Maharaja Ranjit Singh** governed Punjab toward the beginning of the nineteenth

¹⁶ "Capital Punishment - Crime and Punishment - GCSE Religious Studies Revision." n.d. BBC Bitesize. <https://www.bbc.co.uk/bitesize/guides/zhts4wx/revision/4#:~:text=Many%20Jews%20believe%20that%20capital>

century, his subjects were generally not executed. As this was the possibly time when Sikhs ran a free country, Sikhs ought to follow this model today and go against the death penalty.¹⁷

Hinduism

Despite the fact that Hinduism has commonly not taken a situation on capital punishment and has little impact on its public power's appraisal, India (an 80% Hindu country) has the most diminished speed of execution of a few different nations. A reason can be found in Hindu lessons like the Mahabharata, for limiting capital punishment, despite the fact that it has commonly been done by Hindu pioneers. Hinduism teaches ahimsa (or ahinsa, peacefulness), yet, also, educates that the spirit can't be killed and end is limited unmistakably to the actual body, raising feeling of the hell in picking what is happening on capital punishment. Hinduism's conviction that life in this world is a greater amount of deception incredibly diminishes the strict effect on legislatures in larger part Hindu nations. The utilization of death penalty has not confronted a lot of resistance by Indian residents all things considered, except for some new backlash. Hinduism's faith in karma might make sense of why there is no solid help or resistance to the death penalty since it is trusted that assuming somebody perpetrates wrongdoing in this life, they will pay for it in another life. It is additionally accepted that the soul returns ordinarily after death to be purged by great karma and a people's fate decides when they kick the bucket.¹⁸

Islam:

Islamic concept of death penalty is that it on the whole accepts capital punishment.

¹⁷ "Capital Punishment - Crime and Punishment - GCSE Religious Studies Revision." n.d. BBC Bitesize. <https://www.bbc.co.uk/bitesize/guides/zhts4wx/revision/4#:~:text=Many%20Jews%20believe%20that%20capital>

¹⁸ Wikipedia Contributors. 2019. "Religion and Capital Punishment." Wikipedia. Wikimedia Foundation. April 3, 2019. https://en.wikipedia.org/wiki/Religion_and_capital_punishment.

"Take not life, which God has made sacred, except by way of justice and law. Thus, does He command you, so that you may learn wisdom"
Qur'an 6:151

However, even though capital punishment is permitted, absolution is best. Pardoning, along with harmony, is an overwhelming Qur'anic theme.

Both the Hadiths and the Quran notice explicit wrongdoings for which the death penalty is a substantial punishment. In the four primary schools of Sunni Fiqh (Islamic law) and the two elementary schools of Shi'a Fiqh, particular sorts of violations order the death penalty.

Death penalty in Pakistan

Universally the attention on abrogation of capital punishment has increased during the past few decades. Nonetheless, 56 countries including Pakistan still hold the punishment as an integral part of their penal systems. Despite the reality, Pakistan utilizes the specific sentence to settle the destiny of offenders in around 27 assorted crimes, it actually stays unclear what precise reasons offer help to the institutional authenticity of this punishment the death penalty is a lawful punishment.¹⁹ But in past, moratorium was imposed on death penalty in Pakistan which was, after few years, lifted.

Kinds of Punishments in Pakistan:

According to **Section 53** of the Pakistan Penal Code (PPC), punishments are classified into ten categories. These include Qisas, which means retributive punishment equal to the harm caused; Diyat, monetary compensation to the victim or their heirs; Arsh, fixed compensation for specified injuries; and Daman, compensation for harm not covered under Arsh. Tazir refers to discretionary punishment awarded by the court for offenses where no fixed penalty is prescribed under

¹⁹ Tariq, Dr Aisha. 2021. "THE ABOLITION of CAPITAL PUNISHMENT: AN ANALYSIS of RELIGIOUSLY INSPIRED CRIMES in PAKISTAN." Hamdard Islamicus 44 (1). <https://hamdardislamicus.com.pk/index.php/hi/article/view/199>.

Islamic law.

Additionally, the Code provides for death penalty in grave offenses such as murder and waging war against Pakistan, and imprisonment for life for crimes including subversion and dacoity with murder. Imprisonment, whether simple or rigorous, involves confinement in jail. The law also recognizes forfeiture of property used or gained through criminal acts, and fine, which may be imposed alone or alongside other punishments.

2008-2014 moratorium:

There applied a moratorium on death penalty since 2008 to 2014 in which the Constitution of Pakistan empowers the President to absolve or dispatch convictions. The Pakistan People Party government, whose past chief Benazir Bhutto was a remarkable adversary of the death penalty, came to drive in Walk 2008 and presented its Chief, Asif Ali Zardari on 9 September 2008. After accepting obligation for the work environment, he gave an unending prohibition on executions; regardless, one prisoner was executed in 2012. The boycott was completed on 14 November 2014 when Muhammed Hussain, a contender, was hanged for manslaughter at Central Jail Mianwali but on 16 December 2014, after the Peshawar school attack, in which the Pakistani Taliban killed 132 adolescents and something like nine others, the experts announced the boycott would be lifted for mental fighting cases. Executions quickly proceeded, with small bunches following. Finally, on 10 Walk 2015, Pakistan lifted the prohibition on the use of capital punishment in the country altogether.²⁰

Reasons for retention of death penalty in Pakistan

Contemporary Legal Reasons

Religious principles serve as the primary legal foundation against the abolition of capital punishment in Pakistan. The Constitution

²⁰ Wikipedia Contributors. 2019. "Capital Punishment in Pakistan." Wikipedia. Wikimedia Foundation. October 30, 2019.

https://en.wikipedia.org/wiki/Capital_punishment_in_Pakistan.

establishes Islam as the state religion under Article 2, while Article 2-A affirms the Quran and Sunnah as the supreme sources of law. Articles 31 and 203-A to 203-J further require that all legal decisions conform to Islamic injunctions, and Article 227 explicitly prohibits legislation contrary to the Quran and Sunnah. Complementary statutes, such as the Shariah Act 1991, reinforce this framework, ensuring that all laws align with Islamic principles. Consequently, the validity of Pakistan's legal provisions is measured by their conformity with the Quran and Sunnah, which serve as the ultimate sources of law.²¹

Contemporary Reasons with Regard to Security & Order System

The retention of capital punishment in Pakistan is often justified on grounds of deterrence, security, and preservation of public order. Empirical evidence indicates that during the moratorium on executions (2008–2014), the national crime rate rose by an average of 17.86% compared to 2007, suggesting that the absence of the death penalty diminished deterrence.²²

The suspension also contributed to growing frustration among victims' families, occasionally leading to vigilante justice due to declining trust in the judicial system.

Nevertheless, while the restoration of executions aimed to reinforce public confidence and strengthen state authority, the deterrence rationale remains debated. Many scholars contend that effective policing, judicial efficiency, and institutional reforms could serve as more sustainable deterrents than executions. Hence, Pakistan faces the ongoing challenge of balancing the perceived deterrent role of capital punishment with its commitments to justice, human rights, and the rule of law²³.

²¹ THE ABOLITION OF CAPITAL PUNISHMENT:AN ANALYSIS OF RELIGIOUSLY INSPIRED CRIMES IN PAKISTAN DR. AISHA TARIQ on 22.6.2020

²² THE ABOLITION OF CAPITAL PUNISHMENT:AN ANALYSIS OF RELIGIOUSLY INSPIRED CRIMES IN PAKISTAN DR. AISHA TARIQ on 22.6.2020

²³ Angry mob sets ablaze 2 dacoits", Dunya news, last modified July 03,

Constitutional, Penal & Statutory provisions for Death Penalty in Pakistan

Constitutional provisions:

The 1973 Constitution of Pakistan is separated into twelve parts, with 280 articles. This crucial report attests to individual privileges and assurance, for example, the status of women, the right to a fair trial, and the right to life. Nevertheless, regardless of the essential right to life settled in its Constitution, the Court has the locale to condemn an individual to death. Part 6 of the Constitution gives the Court the option to see as an individual at fault for any wrongdoings deserving of death under the Reformatory Code (Act XLV of 1860), or some other pertinent law.

In any case, the Constitution contains a distinctive introduction that expresses that Pakistan should keep and work by Islamic regulations and educating. While holding the popularity-based standards dug in Article 1 of the All-inclusive Revelation of Common freedoms that of all man are made equivalent and hence, ought to similarly be decided under public law. The Constitution is a harmony between two universes, Islamic and non-Islamic. Article 31 of the Constitution discusses the 'Islamic way of life' in the interim part 9 contains Islamic provisions²⁴

Penal Code-1860 Provision on death penalty:

- Murder (Causing demise of individual other than the individual whose passing was planned) according to Sec 301 of Pakistan Penal Code
- Quatl-i-amd (first degree murder) according to Section 302 of Pakistani Penal Code
- Dacoity with Murder according to Section 396 of Pakistani Penal Code

²⁴ 2016 <https://dunyanews.tv/an/Pakistan/343743-Karachi-Angry-mob-sets-ablaze-2-dacoits>, "Two alleged robbers set on fire in Karachi", SAMMA webdesk, posted Jul 3, 2016 <https://www.samaa.tv/news/2016/07/two-alleged-robbers-set-on-fire-in-karachi/>,

²⁵ Wikipedia Contributors. 2019. "Capital Punishment in Pakistan." Wikipedia. Wikimedia Foundation. October 30, 2019.

https://en.wikipedia.org/wiki/Capital_punishment_in_Pakistan.

- Blasphemy according to Section 295-C of the Pakistani Penal Code. As in **1990, the Federal Shariat Court** ruled that "The punishment for contempt of the Holy Prophet P.B.U.H. is death and that's it", and on May 1, 1991, capital punishment became required for people indicted under 295-C. Section 295-C applies just to abuses to Islam. The denounced might be captured without a warrant, and the person in question can't get bail. Preliminary is under the steady gaze of a meeting court; the adjudicator is expected to be a Muslim.
- Abetment of mutiny according to Section 132 of the Pakistani Penal Code
- Giving or fabricating false evidence with intent to procure conviction of capital offence according to Section 194 of Pakistani Penal Code
- Hijacking and harboring hijacking according to Section 402-B of Pakistani Penal Code: Section 402-C of Pakistani Penal Code
- Abduction of a minor under fourteen years old according to Section 364-A of the Pakistani Penal Code
- For extorting property, valuable security, etc. according to Section 365-A of Pakistani Penal Code
- Stripping a woman's clothes according to Section 354-A of the Pakistani Penal Code
- Offences against the State - Waging or attempt to wage war or abetting waging of war against Pakistan according to Section 121 of the Pakistani Penal Code²⁵
- Rape according to Section 376 of Pakistan Penal Code that states if and when the act of rape is committed by two or more individuals with common intention like gang rapes the criminals should meet the fate of death or life imprisonment.

As in **ZAINAB ANSARI CASE**: On 17 February 2018, an enemy of illegal intimidation court in

²⁵ Refugees, United Nations High Commissioner for. n.d. "Refworld | Slow March to the Gallows: Death Penalty in Pakistan." Refworld. <https://www.refworld.org/docid/46f1469f0.html>. In Jan 2007

Lahore Focal Prison viewed Ali to be unquestionably blameworthy for the rape and murder of Zainab Ansari and twelve other underage young ladies. The court gave him four counts of the death penalty, one life term, a seven-year jail term, and Rs3,200,000 in fines. He was executed by hanging on 17 October 2018 at 05:30 area time.²⁶

Different Statutory Provisions for Death Penalty:

- Disclosure of parole or watchword according to Section 26 of the Pakistan Army Act
- Drug smuggling according to Section 9 of the Control of Narcotics Substances Act 199
- Harabah according to Section 17(4) of the Offences Against Property (Enforcement of Hudood) Ordinance, 1979
- High treason according to Section 2 of the High Treason Act, 1973
- Importing, exporting into and from Pakistan dangerous drugs according to Section 13 of the Dangerous Drugs Act, 1930
- Kidnapping or abduction - With the intention of unnatural lust according to Section 12 of the Offence of Zina Ordinance (Enforcement of Hudood), 1979
- Mutiny and insubordination according to Section 31 of the Pakistan Army Act, 1952
- Offences in relation to enemy according to Section 24 of the Pakistan Army Act, 1952
- Sabotage of the railway system according to Section 127 of the Railways (Amended) Act, 1995
- Terrorism Laws according to Section 7 of the Anti-Terrorism Act 1997
- Zina (illegal sexual intercourse) - Zina liable to Hadd according to Section 5 of the Offence of Zina Ordinance (Enforcement of Hudood), 1979
- Zina-bil-jabr (Rape) according to Section 6 of

²⁶“Murder of Zainab Ansari.” 2022. Wikipedia. February 21, 2022.
https://en.wikipedia.org/wiki/Murder_of_Zainab_Ansari

Offence of Zina Ordinance (Enforcement of Hudood), 1979.²⁷

Categories of offenders excluded from death penalty:

Minors: The Punjab Youthful Offenders Ordinance of 1983 in section 45(1) states that no wrongdoer beneath the age of 15 at the hour of the offense might be condemned to death or life detainment.

Pregnant Women: If a pregnant lady is condemned to death as a qisas punishment, the court can counsel an approved clinical official and defer the execution for as long as two years after the kid is conceived. During this period, the lady might be delivered on bail, according to sec 382 of CRPC.

Intellectual Disabled person: In a milestone decision, Pakistan's High Court has decided that overwhelming capital punishment on detainees living with a genuine dysfunctional behavior, especially the people who don't get the idea of the punishment, “won't meet the closures of equity”²⁸.

How death penalty executes in Pakistan?

Under Code of Criminal Procedure 1898:

According to **sec 368**, the criminal will be Hang by the neck till he is dead.

According to **sec 374**, the sentence of death by court of session should be submitted to High Court for confirmation, and death will not be executed until confirmation.

Which Court Can Pass death penalty?

- Session court

²⁷Refugees, United Nations High Commissioner for. n.d. “Refworld | Slow March to the Gallows: Death Penalty in Pakistan.” Refworld. <https://www.refworld.org/docid/46f1469f0.html>. In Jan 2007

²⁸“Pakistan's Supreme Court Repeals Death Penalty for People with Intellectual Disability.” 2021. WCADP. February 10, 2021. <https://worldcoalition.org/2021/02/10/pakistans-supreme-court-repeals-death-penalty-for-people-with-intellectual-disability/#:~:text=in%20Your%20Country%3F->

- High court

Appeal

By court of session according to **sec 410** of CRPC: a person convicted by session court can appeal in High court.

By High court according to **sec 411(a)** of CRPC can be in supreme court.

Limit on Appeal:

According to **sec 150 of Limitation Act:**

Penalty given by session court of high court can be appeal in **7 DAYS**.

Flaws in justice system of Pakistan

The legitimate structure in Pakistan isn't without its flaws and deficiencies. There is an emphasis of cases that truly question the legality of the decision and punishment gave to the sentenced basically because of political impact, maltreatment of guideline for own inspiration, and benefit or possibly broken assessment. The criminal value system is stunning and an extra of frontier time. Its inconsistencies cause a quick encroachment of the constitution; article 10-A guarantees fair primer., One such **case** is the "**Ghulam Qadir and Ghulam Sarwar**", siblings, who were unjustly executed by the request for the lower court. The two siblings were indicted for homicide and were executed by the state before the requests could be decided²⁹. Similarly, **Mazhar**, accused of murder burned through 19 years of his life in jail under the steady gaze of being absolved by court. Unfortunately, the choice came past the point of no return as he had died in prison two years preceding his **absolution**³⁰. Another case is that of Shafqat Hussain, indicted for killing a seven-year-old kid. Shafqat was executed at the Karachi central jail on August 04, 2015 after his execution order were given for fifth time by court, the past four execution notices were suspended without a second to spare because of global tension as well as resistance from the common society and

²⁹ 5 Editorial, 'Wrongfully Hanged' Dawn (Karachi, 24 Oct 2016) accessed 19 Jun 2019

³⁰ Zaheer Ahmed Cheema, 'Hanged Unlawfully' Dawn (Karachi, 30 Oct 2016) accessed 19 Jun 2019.

activists.³¹ His legal advisors of Justice Project Pakistan (JPP), activists and family solidly accepted that he was a minor when the offense was accounted for and tormented into admitting the wrongdoing. AI and Asian Legal Resource Center (ALRC) have expressed in their reports on the death penalty in Pakistan that it is being met out after an unreasonable preliminary and furthermore disregards the constitution of Pakistan, article 9: "No Person shall be deprived of life or liberty save in accordance with law", yet the common and military courts are condemning without following fair treatment. In sharing its interests, ALRC kept in touch with the UN Basic freedoms Gathering about Pakistan not following worldwide standards and for acting in outright infringement of Article 6 of ICCPR³².

Arguments for and against capital punishment

Capital punishment has long induced extensive discussion about the two its ethical quality and its impact on criminal way of behaving. Contemporary arguments for and against capital punishment fall under three general headings: moral, utilitarian, and practical.

Moral Arguments:

Allies of capital punishment accept that individuals who submit murder since they have finished the presence of another, have surrendered their right to life. Also, they acknowledge, capital punishment is a basic kind of reprisal, conveying and developing the moral outrage of the loss relatives as well as of legit occupants generally. Alternately, enemies of capital punishment, following the pieces of Cesare Beccaria (specifically On Crimes and Punishments 1764), a battle that by legitimizing the actual approach to acting that the law tries to repress killing capital punishment is counterproductive in the moral message it passes on. Likewise, they ask, when it is used for lesser bad behaviors, capital

³¹ Al Jazeera and AFP, 'Pakistan hangs Shafqat Hussain despite appeals' Al Jazeera (Doha, 5 Aug 2015). accessed 19 Jun 2019.

³² 8 ALRC, 'Pakistan: Government Undermines the People's Right to Life' [2016] 15(1) Article2 accessed 20 June 2019.

punishment is bad since it is uneven to the harm done. Abolitionists moreover ensure that capital punishment manhandles the condemned people doing great to living and is generally barbaric and debasing.³³

Utilitarian Arguments:

Allies of capital punishment also ensure that its deterrent affects possibly savage wrongdoers for whom the danger of detainment is genuinely not a sufficient restriction. Adversaries, however, feature that generally have shown that the death penalty is positively not a more effective snag than the elective approval of life or long-term imprisonment.³⁴

Practical Argument:

There are likewise inquiries regarding whether capital punishment can be controlled in a manner dependable with value. The people who support capital punishment acknowledge that it is attainable to form guidelines and techniques that ensure that super individuals who are truly meriting passing are executed. Paradoxically, adversaries stay aware that the recorded utilization of capital punishment shows that any undertaking to single out specific kinds of bad behavior as justifying passing will unavoidably be flighty and out of line.³⁵

Issues

Whether death penalty should be abolished or not in Pakistan?

Whether death penalty has effectiveness in

deterrence of crime?

Should Death penalty be abolished or not?

The constitution of Pakistan declares individual freedoms and insurance, for example, the right to fair preliminary and the right to life and sacredness of pride of man nevertheless, despite these key privileges dug in the constitution adjusting with the popularity-based standards set down under article 1 of the 'Universal Declaration of Human Rights by United Nations in 1948 – the constitution of Pakistan permits the courts to condemn criminals to death.³⁶ Notwithstanding the truth is that the constitution was made with a plan to find some kind of harmony between two universes, Islamic and secular. Thus, the constitution begins with a vivid Preamble followed by article 1 which states that "Pakistan shall be the Federal Republic to be known as the Islamic Republic of Pakistan" and article 2 that "Islam shall be the State religion of Pakistan" order that the standards of a majority rule government, opportunity, resistance, uniformity, and civil rights will be completely noticed yet as enunciated by Islam since sway over the whole 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 Him³⁷. 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 Pakistan³⁸ and argue that death penalty should not be abolished on several basis like firstly, capital punishment will forestall future offenses. Future violations might be deterred by forcing the most awful punishment for the most ridiculously horrendous of offenses. This profoundly affects human psychology. At the point when an individual realizes he is probably going to be seriously punished for explicit lead, and the

³³ Hood, Roger. 2019. "Capital Punishment - Arguments for and against Capital Punishment." In *Encyclopædia Britannica*. <https://www.britannica.com/topic/capital-punishment/Arguments-for-and-against-capital-punishment>.

³⁴ Hood, Roger. 2019. "Capital Punishment - Arguments for and against Capital Punishment." In *Encyclopædia Britannica*. <https://www.britannica.com/topic/capital-punishment/Arguments-for-and-against-capital-punishment>.

³⁵ Hood, Roger. 2019. "Capital Punishment - Arguments for and against Capital Punishment." In *Encyclopædia Britannica*. <https://www.britannica.com/topic/capital-punishment/Arguments-for-and-against-capital-punishment>.

³⁶ NATIONAL ASSEMBLY of PAKISTAN." n.d. https://na.gov.pk/uploads/documents/1333523681_951.pdf.

³⁷ NATIONAL ASSEMBLY of PAKISTAN." n.d. https://na.gov.pk/uploads/documents/1333523681_951.pdf.

³⁸ NATIONAL ASSEMBLY of PAKISTAN." n.d. https://na.gov.pk/uploads/documents/1333523681_951.pdf.

expense of that conduct much outperforms the award, it is undeniable that he won't submit that demonstration. Secondly, the death penalty isn't forced arbitrarily Capital punishment in India isn't forced based on no proof or with next to no rationale or thinking. In any case, as recently shown, the death penalty is just applied in the most extraordinary of conditions. Regardless of whether capital punishment is done, the convict has the option to make a benevolence request, or capital punishment might be adjusted to life detainment attributable to the excessive postponement. The executive may launch a separate investigation and request new evidence after receiving the mercy petition. Assuming new material is uncovered, or at least, data that are excluded from the legal record of the case, the chief might support the kindness request and diminish the convict's capital punishment to life detainment.

Case Law:

As in **Bachan Singh v. State of Punjab (1980)**³⁹

It was argued during the hearing of **Bachan Singh's case** that the following conditions may be used as parameters for finding aggravating circumstances that would support the application of the death penalty:

- in the event that the homicide occurred in the wake of preplanning and includes outrageous barbarism;
- assuming the homicide includes unprecedented evil; or
- if the murder of army men or any public servant was committed—
- while such person was on duty; or
- because of anything is done or endeavored to be finished by such party in the legitimate release of his obligation, if he was such member or public servant, by and large, at the hour of the homicide, or had stopped to be such individual from a public servant; or
- On the off chance that the VICTIM was an

³⁹ AIR 1980 SC 898, 1980 CriLJ 636, 1982 (1) SCALE 713, (1980) 2 SCC 684, 1983 1 SCR 145

individual who had acted in the genuine activity of his obligations under Section 43 of the Code of Criminal Procedure 1973, or who had given help to a Justice or a cop who had requested or needed his help under Section 37 and 129 of a similar Code.⁴⁰

The deterrent theory provides a central justification for retaining capital punishment: punishment is morally defensible when it prevents future crimes by instilling fear of legal consequences. The death penalty is the most absolute form of prevention, ensuring that convicted murderers cannot reoffend either within prison or after release. This point is illustrated by cases where violent offenders continued to pose lethal risks while incarcerated or after parole — notably the case of **James "Whitey" Bulger**⁴¹, a convicted gangster who was murdered by fellow inmates while serving a life sentence — underscoring concerns about the insufficiency of life imprisonment alone to neutralize some offenders.

Religiously and constitutionally, Islam permits capital punishment for certain grave crimes, and as an Islamic republic Pakistan must reconcile this mandate with its criminal law. Philosophically, classical thinkers also acknowledged limited circumstances for irreversible sanctions: **Plato** viewed execution as a purgative response to moral corruption, while **Aristotle** accepted capital punishment where rehabilitation was impossible and proportionality demanded it. Taken together — empirically, religiously, and philosophically — these arguments are marshalled to support the view that the death penalty can serve a legitimate role in protecting society where less final sanctions demonstrably fail.

Whether death penalty have effectiveness in deterrence of crime?

For supporters, the death penalty is virtuous and there are strict premises that legitimize it. Capital

⁴⁰ Bachan Singh vs State of Punjab on 9 May, 1980.

⁴¹ Wikipedia Contributors. 2019. "Whitey Bulger."

Wikipedia. Wikimedia Foundation. September 7, 2019.
https://en.wikipedia.org/wiki/Whitey_Bulger.

punishment is moral since it is proportionate to the damage done to the homicide casualty, the sentence keeps indicted executioners from carrying out another crime. Furthermore, the execution of a killer could likewise forestall other potential executioners to submit murder. It is accepted that life detainment is not a hindrance of wrongdoing and that detainees in life jail without the chance for further appeal could perpetrate crimes from jail since they don't have "nothing to lose" In New York, the governor **Crevasse E. Pataki** makes sense that he marked the law that reestablished capital punishment since he gets that execution is an impediment of wrongdoing and simultaneously it gives a social message. The message is that individuals who submit to murder will be not allowed to proceed to live. This law of 1995 lays out in addition to other things that executioners, who kill a cop, an adjudicator, or an observer, are "dependent upon death punishment". It is accepted that moral culpability can be connected, according to the law, to the shock a crime has on the victim. and believe homicide is at fault for a graver offense than an individual who just wounds another. During the 1970s, Studies breaking down the public homicide rate somewhere in the range of 1930 and 1970, market analyst **Isaac Ehrlich** assessed that every execution can forestall around seven or eight murders. In 2001 investigation of certain financial specialists like Paul Rubin, Joana Mehlhop and others showed that one execution can forestall between seven furthermore, 25 killings. This shows that the utilization of capital punishment is worth of study to decide its impact on wrongdoing. Likewise, different examinations have shown that capital punishment is a hindrance of wrongdoing in light of the fact that every execution of a killer is identical to the decrease of kills by around five. This study also considers that regardless of the proof capital punishment will generally diminish the wrongdoing, additionally, it is significant for any present or future review, to think about other conceivable actors that could be associated with condemning a criminal ridiculously. The fact that fair treatment can put clear the elements that can include a decision that would bring about the

death penalty for criminals.⁴² As in **case of Murder of Noor Mukadam** in which Noor Mukadam aged,27, was killed and executed at Zahir Jaffar's home in Islamabad on 20 July 2021. Zahir, his parents, and their staff individuals were captured not long after. Following a seven-month preliminary, Zahir was seen as blameworthy and condemned to death. The staff, who were available at the location of the crime, were given ten-year prison sentences. Zahir's parents, who were asserted to have helped Zahir in discarding Noor Mukadam's body, were vindicated by the court.⁴³ and many people are in favor of giving death sentence to Zahir Jaffar in Pakistan.

Conclusion

Pakistan's independence was rooted in religious ideology, a principle that continues to shape its constitutional and legal framework. The Constitution affirms that no law shall contravene the injunctions of Islam, as enshrined in the Holy Quran and Sunnah. Within this context, capital punishment is sanctioned under Islamic jurisprudence as a means of upholding justice, safeguarding society, and deterring crime. Consequently, the complete abolition of the death penalty remains a complex issue, particularly in cases derived from religious injunctions. Nevertheless, as a responsible member of the international community, Pakistan must also respond to global concerns regarding the continued implementation of capital punishment. A balanced approach is required—one that preserves religious and constitutional integrity while aligning with evolving human rights standards. To this end, a comprehensive review of capital offenses is essential, ensuring that the death penalty is restricted to the most grievous crimes. Furthermore, meaningful judicial reforms

⁴² Leocadio, Permitterio. 2022. "Evaluating The Deterrent Effect of Capital Punishment On Crime Ect of Capital Punishment On Crime". *Academicworks.Cuny. Edu.* https://academicworks.cuny.edu/cgi/viewcontent.cgi?article=1001&context=cc_etds_theses

⁴³ "Murder of Noor Mukadam." 2022. Wikipedia. March 2, 2022. https://en.wikipedia.org/wiki/Murder_of_Noor_Mukadam

must be prioritized. Judicial competence, independence, and accountability should be strengthened through rigorous evaluation, adequate remuneration, and enhanced capacity-building measures. Likewise, law enforcement processes must be grounded in impartiality and

evidence-based investigations. By reinforcing the rule of law and harmonizing religious mandates with international norms, Pakistan can move toward a more equitable, transparent, and just legal system.

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Declaration of Conflicting Interest

The author declared no potential conflicts of interest with respect to research.

Funding Statement

No funding is received for this project.