

THE ABOLITION OF CAPITAL PUNISHMENT: AN ANALYSIS OF RELIGIOUSLY INSPIRED CRIMES IN PAKISTAN

DR. AISHA TARIQ

Department of Law

International Islamic University Islamabad, Pakistan

Email: aisha.tariq@iiu.edu.pk

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Abstract

Internationally the focus on abolition of the death penalty has increased during the past few decades. However, 56 countries including Pakistan still hold the punishment as an integral part of their penal systems. Despite the fact, Pakistan uses the particular sentence to settle the fate of offenders in approximately 27 assorted crimes, it still remains unclear what precise reasons provide support to the institutional legitimacy of this penalty. This paper is to explore and share the standpoint of Pakistan as a Muslim retentionist state. Thus the research first expounds the Islamic perspective on the death penalty and later it elucidates how this perspective has been incorporated in the constitutional and legal regime of the state. The paper concludes that Pakistan should re-evaluate its position on retaining death penalty for those crimes which do not clash with the constitutional, religious and social limitations of the state.

Keywords: Pakistan, Death Penalty, Retentionist State, Islamic Law

1. Introduction

Except only 56 countries, a greater majority of the states has abolished the death penalty either in law (these are the states which not only retain the death penalty in their statutes but also practically execute the punishment; such states are termed as ‘retentionists in practice’) or in practice (the states which though retain the capital punishment in their law books but have not carried out any executions since ten years or more. These countries might be considered, ‘retentionist in law’ or ‘abolitionist de facto’).¹

The opponents of the death penalty assert that the particular punishment, under any circumstance, violates human rights norms. Its imposition is against the universally accepted 'right to life' and that capital punishment is contrary to the prohibition of cruel, inhuman and degrading (or 'cruel and unusual') punishment. The death sentences continue to be handed down after trials which allegedly fall short of the international guarantees for a fair trial, including lack of adequate defense during the trials and appeals procedures. Sometimes the legal and procedural lacunas turn into the cause of innocent executions. At the same time they claim that the capital punishment does not fulfill any penological goals and carries no special deterrent affects.²

Despite these firm arguments, retentionist states are not only carrying but forcefully executing the capital sentence. They place social, constitutional/legal and religious reservations against the abolition of the particular punishment. Pakistan is one of those retentionist states which retain the particular punishment in practice. Constitutionally an Islamic state, Pakistan, carries this punishment for approximately twenty seven assorted crimes. The strings of capital sentence for a few of these twenty seven crimes are firmly tied with the Islamic system of punishments. However the increasing worldwide pressures and changing circumstances strained the government of Pakistan to mull over its position on capital sentence in 2008. This happened primarily because the perseverance of the death penalty had materialized as a budding impediment in seeking business from international markets especially from the European states that wanted the abolition of this punishment as one of the guarantees to award Generalised Scheme of Preferences Plus status (GSP + status) to Pakistan.³ To embark upon the conflicting domestic and international scenarios, the government eventually put a provisional stay on execution of capital sentence in September 2008 instead of clearly retaining or abolishing the penalty. However the incident of terrorist attack on a school, situated in Peshawar on December 16, 2014 which took 150 lives of students of age 5 to 16 years allegedly forced the government to reinstate the punishment right away especially to execute those heinous criminals who had been convicted under terrorism charges.⁴ This study is to discuss the point of view of Pakistan as that 'Muslim retentionist state' which maintained, restored and retains the particular punishment despite of all international pressures through especially invoking the religious and security centric reasons. The first part of this paper provides the Islamic perspective of the death penalty. The second part argues about the unusual position of this punishment within the Pakistani

legal system with special reference to its religious eminence that is strongly backed by the Constitution of Pakistan, 1973 (Constitution hereafter) and which is virtually the major serious stance of the state to retain the capital punishment. The very next segment is an analysis of those issues of law and order which ultimately affect the whole social fabric and which are one kind of the impediments for the abolition of the death penalty in Pakistan.

The research concludes that the death penalty has a strong religious significance in Pakistan and since the basic character of the Constitution of Pakistan is Islamic therefore, the complete abolition of the death penalty is possible only through bringing an amendment into this basic character of the Constitution. The espousal of such kind of Constitutional amendment is nearly impossible in Pakistani social scenario. Therefore it is suggested that the Pakistani legislature should reconsider those other two dozen common law crimes which have no religious association and for which the death penalty can be awarded.

2. The Islamic Perspective on the Death Penalty

The Holy Qur'ān states”

“...take not life, which Allah Almighty has made sacred, except by way of justice and law. Thus, does He command you, so that you may learn wisdom.”⁵

In Islamic legal corpus, the expression *Al-haqq* is used for the corresponding English word “right”.⁶ The primary meaning of *haqq* is “an established fact” and its secondary meaning is truth.⁷ Islam divides the “rights” or “*Huqūq*” in two broader categories. These are, “*Huqūq Allāh*” (the rights of Allah Almighty) and “*Huqūq al-‘Ibād*” (the rights of humans). All criminal, financial & social laws expounded through *Sharī‘ah* ultimately fit in to this categorization of *Huqūq*. While in the modern jurisprudence ‘state’ becomes party to the criminal case for the security and benefit of the society at large. In Muslim states, when a case is presented through “State”, it falls in the category of *Huqūq Allāh* and is also defended by the state. While in *Huqūq al-‘Ibād*, the individual and private rights of people are discussed.⁸

Muslim jurists divide the crimes in three types;

1. fixed crimes and punishments (*Hadd*, plural *Hudūd*) specified by the foundational texts which generally come under the category of *Huqūq Allāh*. They are adultery (*Zinā*), theft (*Sarqah*), drinking alcohol (*Shurab al-Khamr*), slander (*Qadhaf*), waging war against Allah Almighty (*Harābah*), apostasy (*Irtidād*) and transgression or rebellion (*Baghi*).⁹ (*Hadd* with a fixed nature of penalties primarily safeguard the public interest by taking the sanction from the concept of *Huqūq Allah*. Different from *Qisās*, they might not be waived off by the private persons or by the head of state. According to most of the jurists, the *Hadd* of *Qadhaf* is the only exception, for which the punishment is regarded as both for *Haqq Allāh* and *Haqq al 'Abd*.)
2. Laws of retaliation (*Qisās*) and financial compensation (*Diyat*) for homicide and personal injury are also drawn from the texts but they are part of the category of *Huqūq al-'Ibād*.
3. In addition to it, there are penalties for offences not addressed by the texts and which are at the discretion of the state and are dealt through *Siyāsah* or *ta'zīr*.¹⁰

Now out of the crimes mentioned in the above-cited three sets, there are only five crimes for which the death penalty has been identified as an appropriate punishment in Islamic Criminal Law. Muslim jurists collectively treated a set of four acts as '*Hudūd* crimes' designed for capital punishment, i.e. adultery (*Zinā*), apostasy (*Irtidād* / *Ridda*) [the jurists held the blasphemy to be equivalent to the apostasy], Highway robbery (*Harābah* or *Qat al-tariq*) and rebellion (*Bāghī*). And in a separate category from *Hudūd*, the death penalty is awardable for intentional murder through the law of retaliation (*Qisās*). In Islamic law the death punishment is justified by deterrence, retribution, rehabilitation and to protect the society by incapacitating the offender.

2.1. Death Penalty through the Imposition of *Hudūd*

The unlawful sexual intercourse between two people of opposite sex who are not married to each other is termed as adultery (*Zinā*). The Holy Qur'ān discusses the crime of adultery whereas its punishment is elaborated by the *Sunnah*. The penalty for unmarried adulterers is flogging with 100 stripes while for the married, it is stoning to death.¹¹ To inflict the penalty of *Zinā*, *Shari'ah* prescribes a very detailed and strict procedure of evidence. The Holy Qur'ān says:

“Those who accuse chaste women ‘of adultery and fail to produce four witnesses, give them eighty lashes each . And do not ever accept any testimony from them for they are indeed the rebellious.”¹²

The *Āyat* basically deals with ‘*Hadd al Qadhaf*’ enforceable against the people who put false accusation of adultery against chaste women. However the jurists have deducted the rule of four witnesses for the enforcement of *Hadd al Zinā*. For this purpose, they say that the four eye witnesses must give complete details of the incident with corroborative evidences. A four time repetition of the narration to the Judge on four different occasions by them is also required or the confession made by the offender (which has not been reverted later on) is necessary to precede the punishment. In case the four witnesses are not available but the crime might be established through the circumstantial evidences, the punishment under *Hadd* shall not be carried out rather a *ta‘zīr* punishment will be awarded. Nevertheless it is nearly impossible to satisfy the rules of evidence in such cases unless the act is performed at an open public space.¹³

The crime of *Ridda* or apostasy is set forth in the Holy Qur’ān. It says,

“And whoever of you turns from his religion and dies disbelieving, their works have failed in this world and the next. Those are the inhabitants of fire: therein they will dwell forever.”¹⁴

This verse was interpreted by the Prophet (*Ṣal Allah-u-‘alaihe wa sallam*) as constituting a *Hadd* requiring the death penalty. Muslim scholars have long debated over this crime. Some see it as the modern equivalent to high treason while others take it as a rejection of Islam altogether.¹⁵ Except the some jurists from *Hanafī* and *Shi‘ah* school of thoughts, most schools of Islamic law consider the apostasy a *Hadd* crime to be punished with death. They justify their claim that since the apostate becomes a potential enemy combatant therefore he should be penalized with death.¹⁶ Some jurists include blasphemy within the meaning of *ridda* and treat it as a novel and severe form of defamation or *Qadhaf*. These jurists criminalized apostasy and blasphemy alike.¹⁷ However some jurists deemed the blasphemy as a *ta‘zīr*.¹⁸

The crime of rebellion / transgression (*Baghāwat*) is defined in the Holy Qur’ān. It says:

*"If two parties among the believers fall in to a quarrel, make ye peace between them, but if one of them transgresses beyond bonds against the other, then fight ye all against him who transgresses until he complies, then make peace between them with justice and be fair (and just)."*¹⁹

The commonly agreed definition of *Baghāwat* refers to an unlawful uprising against the legitimate ruler (*Imām*) by use of force (equivalent to treason and armed rebellion). However, since the Muslims are entitled to rebel against unjust rulers thus the complexity involves to draw the line between lawful and unlawful rebellion.²⁰

For the crime of *Ḥarabah* (*Qatl al Tarīq*), the Holy Qur'ān has mentioned four penalties in *Surat al-Ma'idah* which include capital punishment, crucifixion, cross-amputation or banishment. It says:

*"The penalty of those who wage war against Allah and His messenger and seek corruption in the land is to be killed, or crucified, or to have their hands and feet cut on alternate sides, or to be banished from the land. That is their disgrace in this world, and in the Hereafter they shall have a great punishment."*²¹

The different punishments deal with different situations arising during *Baghāwat*. *Mālikī* School of Law recommends minimum penalties in each case while judge has the freedom to impose serious punishments if he finds severity in the crime committed. Since in this *Ḥadd*, sometime a relationship between the *Ḥaqq Allāh* (regarding the imposition of *Ḥadd*) and the *Ḥaqq al 'Abd* (in case of homicide) can arise thus contrary to the general rule about the concurrence of penalties, most schools hold that *Ḥadd* precedes the *Qisās*. In the case only if *Ḥadd* lapses, e.g. because of the repentance of the culprit expressed before his arrest then the claims of man can become enforceable. The *Shāfi'ī* (*Raḥmat Allah 'alaiḥ*) however, give priority to *Qisās* over *Ḥadd*.²²

2.2. Death Penalty through the Imposition of *Qisās*

Qisās or retaliation is another crime for which death penalty is fixed. The word *Qisās* means equivalence. The rule of equal retaliation

is not only applicable for homicide but also for all types of bodily harms.²³ For penal purposes, Islamic law divides the crime of murder in two categories. One is intentional (the willful and intended murder) for which *Qiṣāṣ* (the killing of the offender in same way) can be claimed and the other is unintentional for which monetary compensation (*Diyyāt*) is allowed. The crimes amounting to *Qiṣāṣ* are considered the breach of the 'right of man' (*Ḥaqq al 'Abd*). Therefore this is the discretion of the family of the victim either to take *Qiṣāṣ*²⁴ or to claim the blood money or *Diyyāt*²⁵. The state or no other person can intervene into or take away this right of the legal heirs of the victim. However this is very clear that the rule of equality and proportionality should be strictly followed in the infliction of *Qiṣāṣ*.²⁶ Just like *Hudūd* punishments, Islamic law provides strict evidentiary requirements for the infliction of penalty of death through *Qiṣāṣ*. There is a requirement of two eye witnesses or a free, voluntary confession made with full understanding and acumen without having any compulsion or coercion upon the person. Additionally, the testimony should be corroborated with evidences. If the evidential requirements are not fulfilled, the death penalty through *Qiṣāṣ* cannot be inflicted.²⁷

2.3. Death Penalty through the Imposition of *Ta'zīr*

In addition to these crimes, Islam allows to award death penalty through *Ta'zīr* and *Siyāsah* (*Ta'zīr* and *Siyāsah* both signify the punishments awarded by the state. Although both expressions are sometimes used as synonyms however they refer to different concepts. *Ta'zīr* can only be imposed for the acts forbidden by the *Sharī'ah* while *Siyāsah* may be administered for any act which can threaten the public peace.)²⁸ While keeping in regard the principle of legality which stipulates that there is neither any crime nor any punishment without law. *Ta'zīr* crimes are lesser of the category of *Hudūd* and *Qiṣāṣ* crimes and may be applied;

1. Where the *Hadd* or *Qiṣāṣ* laws cannot be imposed due to weak evidence;
2. Reduced penalties for inconclusively established, or insufficiently proven *Hadd* and *Qiṣāṣ* charges where individual or social harm is perceived by the Judge;
3. Regulatory offences where an individual, social or public harm exists.²⁹

The most prominent imposition of *Siyāsah* is to award death sentence to habitual criminals for ‘striving after corruption in the land’. For example, the Holy Qur’ān says,

*“the only reward of those who make war upon Allah and His messenger and strive after corruption in the land will be that they will be killed or crucified, or have their hands and feet on alternate sides cut off, or will be expelled out of the land. Such will be their degradation in the world, and in the Hereafter theirs will be an awful doom”.*³⁰

The Āyat further says,

*“Save those who repent before ye overpower them. For know that Allah is Forgiving, Merciful”.*³¹

2.4. *Maqāṣid al-Sharī‘ah*

As a policy matter for the Muslim rulers, the jurists have classified *maṣāliḥ* (benefits) into *ḍarūrat* or ‘necessary interests’, *ḥājāt* or ‘supporting interests’, and *teḥsināt* or ‘complementary interests’. *Ḍarūrat* or necessary interests are those without the protection of which there would be anarchy or chaos in the society.³² These are basically founded on the principle of relationship between ‘*Ḥukm* and *Ḥikmat*’. One set of these rules *ḍarūrat* is termed as, *Maqāṣid al-Sharī‘ah* or the ‘fundamental objectives of *Sharī‘ah* (or the ‘higher objectives of *Sharī‘ah*) according to which the purpose of revealing the injunction was in fact preservation of certain values, freedoms or rights which are essential for maintenance of balance among society. These *Maqāṣid* are preservation of faith, life,³³ property,³⁴ intellect,³⁵ progeny³⁶ and according to some, it also includes the preservation of reputation.³⁷ “In the detailed scheme of rights and their normative structure, the priorities have been assigned not only with respect to the rights but also with respect to the right holder. In this scheme, everyone possesses rights but no one has a right above the right of *Allāh*.”³⁸ After this, the right of man of preservation of his life is kept at the highest pedestal. Thus the Muslim rulers should as a matter of policy create circumstances where these *Maqāṣid* can be safeguarded and preserved in the given hierarchy.

3. REASONS FOR THE RETENTION OF THE DEATH PENALTY IN PAKISTAN

3.1. Contemporary Legal Reasons

The religious grounds are used as the principal plea against the abolition of the capital punishment in Pakistan. In Pakistan, the basic character of the constitution is Islamic. Article 2 of the Constitution declares Islam as the state religion. Whereas Article 2-A affirms the Holy Qur'ān and the *Sunnah* as the ultimate law of the land. Islamic teachings are made part of public policy through Article 31 while Article 203-A to 203-J require that the legal verdicts should be in accordance with Islamic injunctions. Article 227, which is considered as one of the most influential provision of the Constitution, maintains that no such law should be promulgated which is incompatible with the Islamic injunctions of the Holy Qur'ān and the *Sunnah*. (Besides Article 227, there are other subsidiary laws such as Enforcement of *Shari'ah* Act 1991, which has specifically been drafted to check the conformity of all minor and major statutes with *Shari'ah*.)

The combined effect of all these provisions of the Constitution is that the Islamic imperatives have the superior authority against rest of the statutes. The litmus test to determine the legal validity of every statute is its consonance with the Holy Qur'ān and the *Sunnah*. In other words, the Holy Qur'ān and the *Sunnah* are the ground-norms for Pakistani legal system.³⁹

The legal justification for the death penalty given by Pakistan should be examined in the light of the afore-mentioned constitutional scenario. The particular punishment can be awarded against twenty seven crimes in Pakistan. The common law crimes include the commission of immoral and illicit crimes against women (Pakistan Penal Code, 1860 [PPC]⁴⁰ Section 354-A), crimes relating to property (PPC, Section 365-A), dacoity and murder (PPC, Section 396), hijacking (PPC, Section 402-B), harbouring the hijackers (PPC, Section 402-C), import and export of dangerous drugs (Section 13 of the Dangerous Drugs Act, 1930), various crimes against the state (Sections 24, 26 and 31 of the Pakistan Army Act, 1952), high treason (Section 2 of the High Treason Act, 1973), maliciously hurting or attempting to hurt persons traveling by railway or damaging property belonging to railway (Section 127 of the Railways [Amended] Act, 1995), transportation of specific dangerous arms (Section 13-A of

the Pakistan Arms (Amendment) Ordinance, 1996), the crime of possessing narcotic substance (Section 9 of the Control of Narcotics Substances Act, 1997) and for the commission of terrorist acts (Section 6, 7 and 8 of the Anti Terrorism Act, 1997). While the death penalty receives authority from direct and indirect Islamic injunctions for intentional murder, adultery and crimes against religion and the respective law has been codified in accordance to these injunctions. The highest numbers of executions are however carried out for intentional murder and for the commission of terrorist acts throughout Pakistan. This is pertinent to elaborate those relevant provisions here which get the punitive sanction from the Islamic injunctions.

Under Section 302 of the PPC, the intentional murder with reference to its punishment is further categorized into three kinds:

- (a) Intentional murder liable to death through following the Islamic rule of *Qisās* under Section 302(a);
- (b) Intentional murder liable to death or life imprisonment through *Ta'zīr* (the punishment awarded through exercise of discretionary powers of the relevant court) under Section 302(b) (read with Section 311 and 338 [e-1]);
- (c) Intentional murder punishable with imprisonment of either description for a term which may extend to twenty five years, where the punishment of *Qisās* is not applicable owing to deficient evidentiary requirements.

The first two categories that carry the death penalty in one way or another ultimately connect to the Islamic rules of punishment. The first category which is relevant to the rules of *Qisās* (revenge or retaliation) is the most significant one; it is one of those punishments which are specifically provided in the Holy Qur'ān and the *Sunnah* of the Prophet Muhammad (*Ṣalāllahu-ʿalaihe wa sallam*) (refer sec: 1.2). Under the principle of *Qisās*, the matter, after exhaustion of all the rights of appeal by the offender ultimately ensues straightly between the parties to the case. Once the final conviction is pronounced by the court, the right of legal heirs of the deceased to take revenge from the accused (through giving the approval for the execution of judicially approved death penalty) or to let him off becomes operative. At this point they solely can decide about the fate of the offender and the state or the court can exercise no authority over this right.⁴¹ If the legal heirs decide to take revenge, the

court and the state are obliged to honour this decision by executing the death penalty and if they decide not to take vengeance through the way of *Qisās* and agree to compound the offence, they can simply pardon the offender under the principle of *Al-’afw* (the principle of forgiveness) discussed in Section 309 of the PPC or can receive the blood money as *diyat* (which means the compensation money fixed by the government (in accordance with the Islamic injunctions) as specified in Section 323 of the PPC payable to the heirs of the victim or the legal heirs can compound their right of *Qisās* by accepting *Badl-e-Sulah* which is the mutually agreed compensation given under Section 310 of the PPC. Since constitutionally the Islamic injunctions are the most superior part of the Pakistani legal system therefore it might be stated that the state cannot use the power to wholesomely abolish the death penalty. Because such usage of power would be against the rules prescribed under the penal law mentioned in the Holy Qur’ān and the *Sunnah* for the *Qisās*; the Constitution does not allow such bypass.

Under the second category of intentional murder, the death penalty might be awarded through *ta’zīr*. This category also essentially takes its strength from Islamic law. Here the courts usually use discretionary powers to award death penalty under the principle of *fasād-fil-arḍ* to award death penalty through *ta’zīr*.⁴² This Islamic rule applies to the cases where the killer is a potential danger for the society or where he adopted an extremely atrocious or shocking method of killing which is outrageous to the public conscience at large, or if he has been previously convicted for the same crime or is a habitual offender or a professional criminal.⁴³ Such convict may be sentenced to death by the court in exercise of its discretion which may be gathered through the connecting circumstances under Section 302(b) (read with Section 311 and 338 [e-1]) of the PPC.⁴⁴ Here through applying this rule, the court may pronounce the death penalty even though a compromise had already taken place between the parties through the operation of the rules of *’Afw*, *diyat* or *badl-e-ṣulḥ*.⁴⁵

Though the offence of adultery or *Hadd of Zinā* comes next in this list of crimes for which the death penalty can be pronounced under Islamic law however the Pakistani courts have never awarded capital sentence by applying the particular provisions of *Hadd of Zinā* ever since the inception of the crime in offence of *Zinā* (Enforcement of *Hudūd*) Ordinance in 1979 under Section.

This is due to the strict testimony criterion fixed under the law which is basically derived from the Islamic provisions mentioned in the

Holy Qur'ān and the *Sunnah*. It requires, either the confession of the accused before a court of competent jurisdiction or at least four Muslim adult male eye witnesses of the act of penetration and who satisfy the requirement of *tazkiyah al- shuhūd* [that they are truthful persons and abstain from major sins (*kabā'ir*)] (Provided that, if the accused is a non-Muslim, the eye-witnesses may be non-Muslims.)⁴⁶

The prosecution could never present the mandatory proofs and evidences before the courts to apply the punishment as prescribed under the *Hadd* of *Zinā*. To tackle this matter, the courts pronounce the death penalty or any other suitable punishment for the crime of adultery under *ta'zīr*.

Blasphemy committed against Prophet Muhammad (*Ṣal Allah-u- 'alaihe wa sallam*) is another crime punishable with death through Section 295-C of the PPC. In Pakistan, the topic of blasphemy has held a special position ever since the time of its inception in law in 1986. A strong social relevance and influence which immensely affects the religious sentiments of common people of the country has been observed throughout since 1986 to date. And therefore, every effort to amend the law eventually proved grave.⁴⁷ The law though contains death penalty for the commission of the crime of blasphemy however the punishment has never been executed for the crime.

3.2. Contemporary Reasons with Regard to Security & Order System

There are various reasons behind retention, reinstatement and maintenance of the death penalty in Pakistan. Besides other motives, the statistics prove that it works as a deterrent strategy and such deterrence plays its role in smooth running of the whole society. This claim might be better established through an analysis of crime statistics of Pakistan during the trial-moratorium against the death penalty and after the lifting up of this temporary stay.

The Open Crime Data of Pakistan indicates that the crime in the country constantly increased during the six years of ban on the death penalty (from 2008 to 2014) with an average of 17.86% as compared to the figures of 2007. Whereas the total crime increase in these six years was of 27.53%. The crime against person and property shows upward trend with the average of 24.12% in comparison to the figure of 2007.⁴⁸ While some obvious decrease was seen in the rate of some very serious

crimes after the reinstatement of the death penalty in December 2014. For example, the death toll through sectarian violence was at 767 in 2013-14 that diminished immediately towards 276 in 2015 and 131 in 2016.⁴⁹ Pakistan had been facing the most prominent intransigent hostility through terrorism since almost two decades.⁵⁰ Besides other repercussions such as economic loss, devastation of business industry, uncertainty, and insecure borders etc., the state has also been combating with a very complex frame of mind since 2001 after becoming an ally in 'war against terror'. This war paved the grounds for allegedly reactionary terror campaign which started spreading like an endemic within the country in the form of frequent bomb blasts. This hostility reached at its peak during 2008 to 2014. According to the 'National Counter Terrorism Authority (NACTA) Pakistan', 18,193 terrorist incidents in total took place since 2001 to 2017 in Pakistan, out of which 11,977 occurred only during 2008-2014. However, in 2015, Pakistan recorded a substantial drop in terrorist activity with 45% lesser attacks, 38% fewer deaths and 54% decrease in injuries than in the previous year. According to the South Asia Terrorism Portal (SATP) Pakistan, total civilian casualties through terrorism declined 47.2% in 2015. This year Pakistan had the third largest decline in deaths. There were 677 fewer deaths in Pakistan. As a result, Pakistan had the lowest number of deaths from terrorism since 2008. 2016-17 are the second and third consecutive years in which Pakistan has seen a reduction in terrorism.⁵¹

The afore-mentioned violence industries have their own impact over the entire society with their separate spheres and methodologies to deal and cope with. Pakistan's stay on executions, being a fix situation, could not muddle through contemporary demands. The pause on death punishment mounted the sense of lack of deterrence in the society which upraised the incidents of terrorism and commission of heinous crimes. The condemned prisoners, particularly the terrorists started the intensification of their net from within the bounds of prison camps and instead they got punished, their associates started haggling and threatening of serious consequences to the government authorities in case of executions of their associated condemned terrorists.⁵² The members of higher judiciary as, Justice Mushir Alam⁵³ and even the government officials like the then Interior Minister, Mr. Rehman Malik⁵⁴ had been pointing out the trial-moratorium on death penalty as one of the prime obstacles to maintain peace and security and protection of human rights of the individuals within the country.

As the fundamental requirement of both, the national law (under the Pakistan Prison Rules No. 224 to 249 of 1978) and the international law, the authorities are required to completely segregate prisoners according to their criminal history sheets and age groups. However in Pakistan, the penitentiaries are overcrowded and convicts (including high profile criminals who are condemned to death) generally intermingle and remain open to inspire, pressurize and influence the other prison fellows. During the pendency of the trial-moratorium the large numbers of 8000 death row prisoners were incarcerated in Pakistani prisons with other low profile offenders. To avoid their negative influence on other offenders, the government, before halting the capital punishment should had constructed the separate prison camps to imprison the potential beneficiaries of moratorium; additionally, reasonable budgets should had been allocated to deploy a special task force for controlling these highly dangerous offenders. Nevertheless no such measures were taken and consequently due to poor security system, the criminal networks and their members had got so powerful, well informed and connected to the dangerous prison inmates during five to six years of moratorium that they repeatedly attacked the prisons and got their hundreds of crime fellows escaped from there.⁵⁵

As another upshot of the cessation of the death penalty, a clear increase was noticed in the feelings of dejection, hopelessness and helplessness in society in finding justice against the culprits. It grew as a provocation for the legal heirs of the victims to take revenge on personal level who actually had no prior motives to commit crime. And so the six years of trial-moratorium repetitively witnessed the mobs killing the dacoits and culprits under a belief of failure to get the offenders legally punished.⁵⁶ Thus the people started assuming that they themselves should settle the scores instead of invoking the legal methods. This was a new but very alarming phenomenon. Therefore, it was vital with the law and security point of view to bring back the trust of the common people in state's legal system by reinstating the capital punishment.

4. PROOF OF THE CLAIM

There are 27 crimes labeled with the death penalty in Pakistan. The claim of this paper is that these crimes may be divided into three groups. The first category includes those crimes for which the death penalty is awarded under the Islamic laws in *Qisās*, *Hudūd*, the blasphemy, etc.

The second category has in it those crimes which seriously threaten the law and order of the state like terrorism, intentional killing, etc. The death penalty for the crimes falling in these two groups should be retained. The third category comprises nearly two dozen crimes like anti-narcotics, crimes against railway, etc. for which the capital sentences are awarded. State should reconsider its position on retaining the highest punishment for these offences.

The first prong of the claim is proved by the constitutional sanctity afforded through the injunctions of Islam since to do away with death penalty in these crimes, constitutional amendment is needed (refer sec: 2.1). For the second type of classification, the limb of the claim is proved by the fact that the death penalty falling in this group is prescribed as 'a tool of deterrence' against those who sabotage the law and order. The annual crime rates of reliable sources prove these claims (refer sec: 2.2). Whereas, the third classification includes less serious crimes with minor constitutional, legal and social sanctions. Therefore, the logical way to get through the increasing economic pressure of the international community to abolish the death penalty and to serve the domestic needs of the country is that the legislature should revisit its retention policy of the death penalty with reference to this list of crimes.

5. CONCLUSION AND SUGGESTIONS

Pakistan got independence on religious grounds primarily. This fact can evidently be noticed in the Constitution of the state which is certainly drafted in accordance with the beliefs of the common people. The Constitution contains a vivid preamble and various specific provisions which declare and affirm that the state of Pakistan ought to follow and operate the Islamic laws and teaching. Hence as a constitutional restriction, no law can be promulgated in the country which goes against the Holy Qur'ān and the *Sunnah*. The Islamic injunctions allow the state to grant capital punishment in various cases to satisfy the parameters of justice. In this scenario, this is near to impossible for the legislature to abolish the death penalty especially for those crimes which take their authority from the Islamic injunctions.

On the other hand, Pakistan has been facing a dreadful kind of terrorism specifically and a critical law and order situation generally to deal with which the legislature regards deterrence as the precise policy. This policy has also been proved successful in previous years after the lifting up of moratorium on executions. Nonetheless, the state of Pakistan,

being the member of the international community, is facing an utmost pressure against the retention of the death penalty in its law and practice. To cope with the international pressures to abolish the death penalty and to attain the domestic religious, constitutional and security requirements, the government should revisit the provisions dealing with the capital punishment. For this purpose, the reasonable consideration is required to continue those executions which are supported by the religion based provisions and for the offences relating to terrorism; however a review should be made for the remaining list of two dozen crimes carrying the death sentence.

Notes and References

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