LAW, CRIMINOLOGY & CRIMINAL JUSTICE | RESEARCH ARTICLE

United Nations resolution for Moratorium on death penalty and its implications on counter terrorism

Shanzay Noor1* and Aitzaz Ajmal2

Abstract: Death Penalty is one of the most common punishments that have existed throughout history and was considered an effective measure to reduce criminal activities. Capital Punishment is being viewed as a violation of humanistic approach which guides the foundational infrastructure of International Organization like United Nations establishing regimes on the grounds that negate violation of right to life. United Nations Resolution 62/149 calls for removal of Death Penalty, or imposing moratorium on death penalty as part of its adherence to the Universal Declaration of Human Rights (UDHR). Nevertheless, there are domestic compulsions which may push the states to lift moratorium on Death penalty despite their adoption of UDHR and considering right to life as fundamental human right established in their constitutional law. There are two different approaches to view this dichotomy, on one hand adoption of moratorium on death penalty is considered humane, while on the other hand it is a burden on a state’s counter terrorism mechanism which requires a decisive action against the terrorists. The researcher has conducted a qualitative and descriptive research. Both primary and secondary

ABOUT THE AUTHOR

Shanzay Noor is a researcher academia and analyst. She has completed her post graduation in Political Science from a prestigious institution Kinnaird College For Women University, Pakistan. Currently she is serving as a lecturer in Lahore College for Women University, LCWU that is considered as the largest institution for Women in Asia. She believes in conflict resolution and peace building. Her vision is “Let us join our efforts toward building the unshakable foundations of culture of peace”. Her expertise fall in the domain of Conflict Resolution, Human Rights, Counter Terrorism and Dynamics of Global Politics. Her other remarkable research papers include: Balochistan Reconciliation, Impact of Covid-19 on Global Education Systems. Her recently published book titled “The Volatile Situation of Balochistan: Conflict Transformation Approach is available at Amazon. Co-author Aitzaz Ajmal has completed his LLB from Punjab University, Lahore Pakistan with distinction. Currently, he is serving as Advocate Lahore High Court and deals with Criminal Cases.

PUBLIC INTEREST STATEMENT

This research paper is an effort to delve into the resolution 62/149 passed by United Nations in order to impose moratorium on death penalty. Keeping this resolution in consideration, the author has tried to identify the humanitarian justifications for abolishing death penalty in different parts of the world. Moreover, in this paper the author has analyzed the deterrence effect of capital punishment and implications of moratorium on the crime rate in the world and particularly in Pakistan against terrorism. As there are two different approaches to view this dichotomy, on one hand adoption of moratorium on death penalty is considered humane, while on the other hand it is a burden on a state’s counter terrorism mechanism which requires a decisive action against the terrorists. The findings conclude that death penalty as a punishment to deter crime and violence has not proven successful as there are several other factors that are also crucial in reduction of violence. In the end, appropriate recommendations have been given in this paper.
data has been utilized in order to draw results about the impact of moratorium on death penalty in the context of terrorism specifically in Pakistan. The research concludes that lifting of moratorium on death penalty and establishing death penalty as a punishment to deter crime and violence has not proven successful as there are several other factors that are also crucial in reduction of violence.

**Subjects:** Education - Social Sciences; Sociology & Social Policy; Criminology and Criminal Justice

**Keywords:** Moratorium; capital punishment; counter terrorism; crime; violence and death penalty

1. Introduction

“Death penalty is an expression of punishment that involves the execution of a person by the legal system after he or she has been accused or found guilty of a crime” (Breyer, 1963)

United Nations resolution for moratorium on death penalty 62/149 was given for the general suspension of capital punishment throughout the world by European Union to the General Assembly of United Nations on 18 December 2007. The resolution 62/149 which proclaims a global moratorium on death penalty comprising 104 countries voting in the favor and 54 countries voting against this resolution and 29 abstentions. After one year on 18 December 2008 another resolution adopted by the General assembly 63/168 in which 106 countries voted in the favor of resolution 46 against the resolution and 34 abstentions. 65th General assembly adopted another resolution 65/206 on 21 December 2010 in which 109 countries voted in favor with 41 against the resolution and 35 abstentions.

67th General Assembly adopted a fourth resolution (67/176) on 20 December 2012 with 111 countries voting in favor 41 against the resolution and 34 abstentions. Another resolution was adopted as a fifth resolution 69/186 by the 69th General Assembly on 18 December 2014 in which 117 countries voted for the resolution 38 against the resolution and 34 abstentions. 71st General Assembly adopted a sixth resolution 71/187 on 19 December 2016 in which 117 countries voting for the resolution 40 against that resolution and 31 were abstentions (Schreiber, 1996).

The legal argument for the idea behind this resolution that death penalty violates and ruptures the most fundamental human right that is right to life with reference to “Universal Declaration of Human Rights” (UDHR). It is a milestone document in the history of fundamental human rights proclaimed by UN General Assembly in 1948 to protect human rights. According to UDHR, the Article 6 of the International Covenant on Civil and Political Rights (ICCPR) declares that each individual has an innate right to live and it strictly forbids the tyrannical deprivation and withdrawal of that right. It regards as the basis of this movement which makes a clear mention of the abolition of death penalty and those countries that still retain death penalty demand them to limit their span for the most serious and heinous crimes (Amann, 2000).

Over the time several tools have been adopted by the international community to impose a ban on the use of the death penalty. It includes the Second Optional Protocol to the International Covenant on Civil and Political Rights to focus the abolishment of the death penalty. European Convention on Human Rights Protocol No. 6 concerned about the abolition of the death penalty and Protocol No. 13 to the European Convention on Human Rights also focuses on the abolition of the death penalty in all situations. It also includes the Protocol to the American Convention on Human Rights for the abolishment of the death penalty (Amann, 2000).

Most of the countries with the majority of Muslim population have defied the moratorium on death penalty. They believe that Islam does not demand executions. The primary principle of Islam
is to maintain the situation of law and order in the society. It assures a society where justice is prevailed and provided without detain and prejudice. The greatest deterrence adduce by Islam is conviction that each and every person will be held accountable for their deeds. Many countries with a majority of Muslim Population such as Pakistan, Saudi Arabia and Oman have refused the idea of abolition of death penalty on the grounds that it would baffle or oppose Islamic Law.

Many countries abolished death penalty as a result of the United Nations resolution 62/149 for moratorium on death penalty. Similarly, In Pakistan a moratorium on executions was inflicted in 2008. From 2009 to 2011 there were no executions occurred in two years. Only 1 execution occurred in the year 2012 and 0 execution in the year 2013. But the countries like Pakistan in order to assured their national safety and security often exhibit that government is doing something and resort death penalty in the aftermaths of terrorist attacks. In 2014 when terrorists attacked on Army Public School in Peshawar, Government of Pakistan decided to lift the moratorium on death penalty in Pakistan. After lifting the moratorium routine executions resumed once again. Pakistan fetched out 7 executions in the year 2014, 326 executions in 2015 more than 87 executions carried in the year 2016, and 65 executions in the year in 2017. The danger and threat of execution does not stop the criminals to commit the crime specially the terrorists such as suicide bombers whose belief is to die for getting heaven (Muhammad, 2015).

1.1. Problem statement
The lifting of moratorium on death penalty increases terrorism.

1.2. Purpose of the study
This research covers the broader context of the death penalty and the arguments which are for or against the abolishment of death penalty and whether the abolishment or retentiveness of death penalty is viable and justified in a terrorism prone society. It also seeks to enclose the national and international status on death penalty. This research is a critical analysis with respect to the contemporary trends leading to the present concept about retentiveness or abolishment of death penalty in Pakistan which can be notable in understanding the impact of death penalty on society, responsibility of the state and its implications on counter terrorism.

1.3. Research objectives
• To analyze the UN resolution 62/149 placing moratorium on death penalty

• To examine impact of moratorium on death penalty with respect to counter terrorism efforts in Pakistan

• To understand deterrence factor in imposition of death penalty in terrorism prone society

1.4. Research questions
(1) What is the UN resolution 62/149 which places moratorium on death penalty?

(2) What is the impact of moratorium on death penalty with regard to counter terrorism efforts in Pakistan?

(3) How deterrence factor in imposition of death penalty plays a role in a terrorism prone society?

2. Literature review
Amann (2000) argues in “Speech in favor of capital punishment” death penalty makes their law abiding citizens feel safe at their homes. It has a fortifying effect on society. By witnessing the execution of their loved one’s murderer it provides a final retributive justice and a sense of closure to the victims and their families. The justification and a counter argument is that society has no right to take the life of the murderer and it cheapens the life of an innocent murder victim. Another
justification is that society also has the duty and soul responsibility to protect the innocent. Another argument that life is God given to everyone and no state has a right to deprive any person from his God given life. It can be traced from the time when during a war enemy soldiers and personnel are killed for their state in order to protect the nation and its people. This very argument is applied on the hardcore terrorist who have declared war on our nation with an aim and mission to maim and kill us. Moreover, there is no credible evidence which can justify that the death penalty deters crime more effectively than a prison term.

Schabas (2000) suggests that Islamic laws perform functions on this idea that all the people have an inherent right to life unless it is determined by the administration of Islamic law. Killing is only allowed when a court of law demands it. Islam does not insist on execution. Its prime concern lies in bringing justice in the society and maintenance of law. Islam emphasis on a society that must be established on the principles of nature, where human relationships are formed on the basis of affection and mutual love. Bedau and Cassell (2005) suggests murder or killing of a person create anger and hatred among the relatives of the victims. This anger can be so overwhelming that the butcher may not grant forgiveness or blood money could be accepted as a result of crime. Islam does not rely on the death penalty as the only deterrence. It includes purification, training and reforming society. It also ensures that justice must prevailed without any discrimination.

Fisher (2006) focuses on the socio-economic classes which has played a significant role in supporting and opposing capital punishment. His whole perspective of the sentence depends upon the idea of racial and ethnic underclass which is shaped by the memory of the economic underclass. High-middle and upper-classes are those classes which are supporting more and more the death penalty for crimes committed because of deviance. In the lower socio-economic classes where more crimes are committed due to less economic, educational and political injustices. They are the mere opponents of the death penalty. Moreover the social status of victims plays a very strong and influential role in death related cases. Social status of the victim had a significant influence and it determines whether the death penalty would be sought and imposed on the criminal or defendant. Death penalty is unjust and discriminatory it inflicts the chances six times more likely to receive a death sentence if the criminal has killed a person who belongs to the highest status as compared to those defendants who killed the victims belonging to the lowest status.

Beck et al. (2007) explain prison is an indication of the extent of civilization existing in societies. Offender’s family lives with this fear that the state is going to execute their loved ones. Such families condemned by the community, shunned from communal activities and forced into submission. Moreover, the offender living in the shadow of death feels emotional turmoil and experiences suicidal thoughts and anxiety. Offender family members matter because the whole family has to bear the brunt of crime and to grow under such burden. Eventually, they face mental health problems and isolate themselves from the criminal justice system of their country. Society can never grow unless we listen to the social problems of such people that motivated them to commit a heinous crime. Restorative justice calls for the remedies and solutions for communities in order to develop mechanisms for all the stakeholders to communicate. Restorative justice seeks to deal with crime in a more holistic manner and strengthens community by providing the restorative process for everyone affected by heinous crime.

Andrews and Bonta (2010) laid stress that for over 30 years, criminal justice policy has been dominated by a “get tough” approach to offenders. Increasing punitive measures have failed to reduce criminal recidivism. The inability of reliance on official punishment to deter crime is understandable within the context of the psychology of human conduct. A better option for dealing with crime is to place greater effort on the rehabilitation of offenders. In particular, programs that adhere to the risk-need-responsivity (RNR) model have been shown to reduce offender recidivism by up to 35%. The model describes: (a) who should receive services (moderate and higher risk cases), (b) the appropriate targets for rehabilitation services (criminogenic needs), and (c) the
powerful influence strategies for reducing criminal behavior (cognitive social learning). Although the RNR model is well known in the correctional field it is less well known, but equally relevant, for forensic, clinical, and counseling psychology.

Ndombi (2014) used the social cognitive and planned behavior theories and the trans theoretical model, which assume that behavior is dependent on one's intention to perform and that crime and criminality are driven by both inner and external forces. The study revealed that the lower the socio-economic background of victims, the higher the recidivism. The study also observed that more males than females were recidivists. The study further revealed that younger criminals dominated the sample of recidivists. Moreover, the study found that the lower the level of education, the higher the recidivism. There is a need for the management of prisons to provide guidance and counseling as well as education and training programs among the prisoners so that they can increase their knowledge regarding negative effects associated with recidivism.

Khan (2015) explains that an increasing number of countries have restored capital punishment due to the disturbing phenomenon that has took place in the name of combating terrorism. In 2014, Pakistan started executing again. But in Karachi, the fight against terrorism was just for bringing back the death penalty. Among them only 10% were based on terrorism cases. Pakistan executed criminals under common law offences. Iran executed on the basis of ethnic belongings. While Egypt announces death penalty for terrorist leaders. Hundreds of Muslim members hanged on the basis of forced confessions. After considering national and international forum, every country which is making capital punishment a part of their legal, sees terrorism of terror related crimes think that all are eligible for punishing with death. According to Amnesty International, almost 20 countries execute people to death for terror related offenses.

Barrile (2015) considers a paradox of “forgive but die” sentiment persists even after the reconciliation and mutual expression of remorse from both the parties. Survivors commonly believed that the factors such as justice is a vindication for the victim, solace from the judicial process and deterrence for the offender play a vital role towards the execution. They considered execution as “an ending point” or “conclusion” to their painful process and a clear vindication that justice has done. Irrespective of capital punishment, life imprisonment and execution, the hallmark of victim’s perspective is “reason-giving” that perhaps provides a partial emotional relief. For this, the first step in restorative justice is to create a communicative environment between the survivor and the offender.

Breyer and Bessler (2016) analyzes that the dialogue between the victim's family member and offender is the most common reparative communication. In this way, the victim's family can discover the offender's motives and situation at the fateful day of crime and can directly confront the offender with grief and anger. On the other hand, the victim gets a chance to show regret and remorse. Most often the victim's family realise the pain of the offender's family and forgive the culprit but they believe that the punishment is protection for the community and justice for the victim.

2.1. Purpose of the study

This research covers the broader context of the death penalty and the arguments which are for or against the abolishment of death penalty and whether the abolishment or retentiveness of death penalty is viable and justified in a terrorism prone society. It also seeks to enclose the national and international status on death penalty. This research is a critical analysis with respect to the contemporary trends leading to the present concept about retentiveness or abolishment of death penalty in Pakistan which can be notable in understanding the impact of death penalty on society, responsibility of the state and its implications on counter terrorism.
2.2. Research objectives

- To analyze the UN resolution 62/149 placing moratorium on death penalty
- To examine impact of moratorium on death penalty with respect to counter terrorism efforts in Pakistan
- To understand deterrence factor in imposition of death penalty in terrorism prone society

2.3. Research questions

1. What is the UN resolution 62/149 which places moratorium on death penalty?
2. What is the impact of moratorium on death penalty with regard to counter terrorism efforts in Pakistan?
3. How deterrence factor in imposition of death penalty plays a role in a terrorism prone society?

3. Research methodology

3.1. Research design

The research is qualitative and descriptive in nature. Both primary and secondary data has been utilized in order to draw results about the impact of moratorium on death penalty in the context of terrorism specifically in Pakistan and in the world.

3.2. Research tools

Semi-structured interviews using open ended questions were conducted in order to acquire relevant information from the concerned persons. Three different perspectives have been examined i.e. human rights, criminal psychologies and security perspectives. For human rights perspective the interview has been conducted from human rights activist Saeda Diep. For security perspective the interview has been conducted from SP Farhan Zahid law enforcement personnel and third interview has been conducted from Hassan Shad law Associates having expertise in criminal law.

3.3. Data collection

Data collected using secondary sources include books, journals, United Nations reports on death penalty, research articles and interviews etc. However, deterrence theory of punishment has been applied in the research order to understand different dimension of the prevalent international argument over the question of death penalty.

3.4. Theoretical framework

Deterrence as a theory of punishment has been established to understand deterrent effect of death penalty and its implications on counter terrorism. This theory supports this research in a best possible way as it leads to find out the justification of retentivity or abolition of death penalty in Pakistan.

“Offences which have been committed are considered as an act of past and punishment can be used as an opportunity in order to prevent future crimes” “Deterrence in relation to criminal offending is the idea or theory that the threat of punishment will deter people from committing crime and reduce the probability and level of offending in society” (Bentham, 1962)

3.4.1. Deterrence as a theory of punishment

Deterrence theory can be stated as “punishment will keep people away from committing crimes as they are afraid of being snubbed and caught”. According to this theory people do not commit crimes if the penalty of crimes is severe, harsh and swift. Deterrence is one of the five objectives of punishment. It revolves around two assumptions. First assumption is that the deterrence effect of
punishment prevents the particular offender from committing future crimes who have already committed crimes in his past. The second assumption is that it creates a generalized deterrent effect in the society when people get to know that certain offences have been punished so it prevents the other people from committing those crimes. There are two types of aspects of punishment which have an impact on deterrence. The first aspect is certainty of punishment and the second one is severity of punishment. The severity of punishment of a particular crime leads to change the behavior of the potential criminal towards crimes.

Deterrence theory was originally developed by Jeremy Bentham and Cesare Beccaria. They considered it as a threat associated with the legal penalties granted to the offenders by the state. Deterrence theory became immensely popular with the Gary Backers work in 1970 which had a strong impact on current policies of controlling crimes. Since 1960s it played an important part in criminal justice system. In the eighteenth century deterrence theory has expanded its scope by including extra legal punishments.

If we look at this theory from Pakistan’s perspective we will find that it has served as a milestone in death penalty system because Pakistan has remained a hub of terrorism for a long time. Death penalty serves as a deterrent factor in controlling the crime rate. Deterrent theory has helped to understand the importance of death penalty and whether death penalty should be abolish or reinstate in Pakistan.

4. Results
This chapter will draw upon the main themes and present the findings which arose out of the interview process. First and foremost the profile of each of the interview personnel is presented. First is the human rights activist Saeeda Diep who is the founding director of institute for peace and secular studies. She is a peace activist and a human rights defender. Second one is SP Farhan Zahid a grade-18 officer of PSP who is providing services at the disposal of National Terrorism Authority (NACTA). Previously he was serving in Islamabad Capital Terrorist Police under interior division. The last person conducting the interview was Advocate Hasan Shad Hasan has led the corporate and commercial practice of A.R.A.B advocate and legal consultant. He has advised the Ministry of Foreign Affairs, the Strategic Plans Division, compliance issues related to the

| Themes                                                | Sub Themes                                      |
|-------------------------------------------------------|------------------------------------------------|
| Justification of death penalty                        | • Violation of human rights                     |
|                                                       | • Deterrent effect of Punishment                |
| Lifting of Moratorium and implications on counter     | • Lifting of Moratorium                          |
| terrorism                                             | • Effective in curbing terrorism                |
| Reinstitution of Capital Punishment in Pakistan and   | • Retentivity of Capital Punishment              |
| scope of military courts dealing with terrorism.      | • Military or special courts dealing with terrorism |
| Other ways of execution and the best possible         | • Humane and Painless ways of execution          |
| alternative to deter crimes                           | • Alternate to deter crimes                      |
|                                                       | • Death penalty for certain non bailable offences |
|                                                       | • Provision of Justice                          |
international suppression of Acts of Nuclear Terrorism and prepared a first study for “National Measures for the Implementation of International Humanitarian Law in Pakistan”.

(1) In your opinion is death penalty a violation of fundamental human rights and it is not necessary as just retribution for victim families?

(Respondent 1: Saeeda Diep)

According to human rights activist death penalty is a violation of rights International human rights charter provides right to life to every individual and capital punishment violates this right. Some institutions like Amnesty international campaigns actively to abolish death penalty they have played great role. But they have not got fruitful results yet. Data from the world last year among which 2170 people were executed the researchers were happy that less than hundred executions were done. Every year countries join this resolution. 55 countries signed this that they will not allowed capital punishment in their country but still many countries are allowing executions.

(Respondent 2: SP Farhan Zahid)

Article 10-A of the constitution of Pakistan furnishes a fundamental right to every citizen of Pakistan to have a fair trial and due process. If your criminal justice system is not good then capital punishment given to criminals is not effective. Overall policing and the criminal justice system or prosecution should be good in order to deter crimes.

(Respondent 3: Hassan Shad)

Criminal expert consider death penalty as just retribution. Laws are the result of the social, cultural and religious milieu of a country. In Pakistan—an Islamic country—Islamic laws prescribe the punishment for crimes such as murder. The death penalty for certain crimes in Pakistan derives from lex talionis i.e. eye for an eye and tooth for a tooth—an integral part of Islamic religious doctrine. Retribution, both as a right of the state and the individual, is an integral part of Islamic Law. From an individualistic perspective, the responses to this question may vary, however, purely from an Islamic perspective, retribution is a right of victims' families.

What do you think about deterrent effect of death penalty. Does not the death penalty deter Crimes?

(Respondent 1: Saeeda Diep)

Human Rights activist have their opinion that death penalty does not deter crimes. People are conducting research particularly in the United States. Few are allowing death penalty in their state while few countries do not allow capital punishment in their states. In those countries where people are executed there is a growing rate of crimes. Sometimes people justify that if we hang or kill people the others will not do it. This is not true. The countries where this is happening there is no less crime rate.

(Respondent 2: SP Farhan Zahid)

Death penalty does not deter crimes. The less crime rates are not because of death penalty. Many countries in the world have not death penalty system but they have less crime rate. Which shows that death penalty system is not necessary to control crime rate and the countries which have death penalty system these countries have not less crime rates. Death penalty is not effective unless your criminal justice system is good.

(Respondent 3: Advocate Hassan shad)
According to the him in the Pakistani context, death penalty does deter crime to some extent. I remember the words of the late Ijaz Batalwi (famous criminal lawyer) who once told me: “for criminals who get away with life sentence instead of death penalty, it is as if they have won an acquittal”.

Are there any significant results showing decrease in terrorism after moratorium on death penalty was lifted post APS attack?

(Respondent 1: Saeeda Diep)

Terrorism in Pakistan originated with the Afghan War in the 1980s. The Pakistani state has created the Taliban. Innocent people go and kill in fiddles. Because there was no system to settle rehabilitation or training to kill people. After some time the mission is completed they start killing their own people. Violators having death penalty is not the way to punish them. If there is humane equality there will be no crimes. Death penalty has never helped and will never help in future. I am so against capital punishment it does not deter crimes it is the most cruel form of punishment. We should campaign to abolish death penalty.

(Respondent 2: Security personnel SP)

Death penalty provides some temporary relief it is not the solution. The solution is terrorists are captured after successful investigation they are trialed in court of law or they are convicted. which shows that your criminal justice system is effective. if your criminal justice system is not good then capital punishment given to criminals is not effective. Overall policing and criminal justice system or prosecution should be good in order to curbing terrorism. In some studies researchers show that more than 480 persons have been executed since lifting of the moratorium in 2014. but the effectively executed are only 14% which were hardcore terrorists other are not hardcore terrorists. They have terrorist sanctions on them but they were those people who were involved in other cases e.g. disputes etc. For example Zainab Murder case. The victim executed. he has 780A of terrorism. He was not a terrorist in that sense, Jahadi or Taliban. He was a psychopath. Decrease came in terrorism but this is not due to death penalty. There are other reasons like military operations law enforcement operations, intelligence led policing, border fencing, search and com operations.

(Respondent 3: Advocate Hassan Shad)

Implementation of “National Action Plan” has shown great achievement and terrorism has been reduced to a huge extent. Death penalty to terrorists will proved to be a key to success in eradication of terrorism in Pakistan only if it is given to hardcore terrorists and ensured that it is not given to innocents. It is possible after some time when we have rooted out terrorism completely we may ban the death penalty forever.

How do you see Capital Punishment in Pakistan. Should it be abolished or retained in Pakistan? Military courts or special courts to deal with the cases of terrorism are seen as negation of democratic values and regular state judicial procedures, how would you justify?

(Respondent 1: Saeeda Diep)

The human rights activist plea that we should campaign for the abolition of death penalty because no person can justify death penalty and the countries where executions are done there is no lesser crime. There should be no death penalty in Pakistan. According to her military courts where criminals terrorists and militants are sent as worst. Because no common person can interfere in these courts they don't know what is the procedure and what is happening there. So there is no justification of death penalty.
(Respondent 2: SP Farhan Zahid)

Criminal justice system or prosecution should be good, police and intelligence bodies should be well equipped in order to have a good investigation system so that they could capture and curb the crimes like other countries. Death penalty is not necessary. According to the security personnel in democratic society there should be no military courts. Country's regular system should be strengthened or military courts are for crimes among the military or military related. Every country has such courts. But military courts such as in Pakistan controlled by parliament are showing that you are such a fragile country your system is not good.

(Respondent 3: Advocate Hasan Shad)

The promulgation of any death penalty criminal legislation is contrary to international law, in particular, the UDHR (1948) and the International Covenant on Civil and Political Rights (1966). In the present circumstances the system of justice of Pakistan is rotten to the core and we must overhaul the system and once this is done, only then we should reinstate the death penalty.

Do you think there is a humane and painless way to execute a person and what would be the possible alternative to deter crimes?

(Respondent 1: Saeeda Diep)

The Human rights expert who is strictly against death penalty. According to her, many organizations are working on painless ways for example, injecting the person in spite of hanging. But the mental pain or torture they faced that they will be executed in two or three days. So instead of talking about less painful ways there should be a campaign to abolish death penalty as no human being can justify death penalty. The most cruel is beheading people and hanging them in public forcing people to see this. Before civilization it was very common everywhere but now Saudi is the only example. It is very important to go to the root cause of people like criminals. If there will be equal distribution of wealth, no difference among rich or poor. Welfare states where the state takes care of its people there are lesser crimes. State should take the responsibility of people and address the issues of common people.

(Respondent 2: SP Farhan Zahid)

Overall system should be good to capture terrorists and stop them to attempt attacks. If the country's system is good there will be fewer crimes.

(Respondent 3: Advocate Hassan Shad)

According to Criminal expert Islamic punishment is most humane from a medical perspective as it inflicts least pain on the criminal. This is not to say that the punishment does not appear grotesque to the general public. Death by hanging (currently used in Pakistan) is far more painful as it is strangulating the criminal to death (a process that may end up being long). The most important thing to consider is evidence. Mostly, evidentiary norms are not met before individuals are charged with offenses. Life imprisonment is a better alternative Only if rules of evidence fail to establish the crime or in circumstances where the justice system is ineffective and ends up sending the innocent to the gallows (which is currently the case).

A common reasoning in provision of justice in case of killing or dishonoring of an innocent person is capital punishment. How can you justify or nullify this stance?

(Respondent 1: Saeeda Diep)
The most ridiculous system and investigation system in Pakistan. People use their personal enmity even police and other investigating authorities use their personal authorities and influence to persecute people. Even a recent example when court order over a case that person should be release from jail the court was told he has been executed many years ago that innocent person no where in the world even the very organized and investigating system no where in the world it should be allowed but particularly in Pakistan many innocent people are been executed mostly due to political influence. Government should not allow death penalty for certain non bailable offences. Not at all because during my visits or meeting extremists who killed many people repent if we don’t give them a chance to apologize. No human being can justify death penalty. A person who has killed thousands of people should not be killed and provide an apology for their crimes.

(Respondent 2: SP Farhan Zahid)

Death Penalty is applied unfairly. Poor people are more prone to death sentencing. Moreover minorities are also given more often death sentences if they do any crime.

(Respondent 3: Advocate Hassan Shad)

All agree that this is a travesty of justice and must be stopped. The system has failed if one innocent person loses his/her life. In Pakistan, it is common for persons to be awarded death penalty who did not commit the crime. It is for this reason that I feel death penalty should be suspended until such time we have established a system of justice which ensures only the guilty are given the death penalty.

5. Discussion

Many jurists, scholars and lawyers have debated whether death penalty is a violation of 4right to life or not. Constitution of Pakistan Article 9 provides right to life to individuals “No person shall be deprived of life or liberty save in accordance with law.” On one hand “UDHR” grants protection of fundamental human rights and provides freedom of life to individuals. According to UDHR the Article 6 of the International Covenant on Civil and Political Rights (ICCPR) declares that each individual has an innate right to live and it strictly forbids the tyrannical deprivation and withdrawal of that right. On the other hand a society needs to safeguard and shield itself as an institution. The basic principle to safeguard this institution is weeding out those who threaten the sovereignty and dignity of state. And as part of that process we need to take steps in order to eliminate those people who are unfit to live as a human being but it is only possible when the criminal justice system is good. From an Islamic point of view the retribution is a right of victim’s family because Islam describes “an eye for an eye”. But according to international standards the retribution of death penalty is unfair. It does not grant relief to the victim. Moreover, the suffering faced by the criminal before execution is far more than the suffering faced by the victim so it is not justified. In case of Pakistan the system is in a fetal stage where most of the times death penalty is granted to those who are innocent and being punished on the basis of some political influences or personal enmity. Therefore, in order to justify that death penalty should be given or not criminal justice system must be good in order to overcome crimes.

Death penalty is based on the belief that the threat of death makes prospective criminals think twice before resorting to certain crimes—such as murder, and forces them to give up on such crimes. The justification for death penalty is that if criminals hanged or kill it will stop the other people to do the same crime. but this could not be applied in all the cases for example as terrorists they are not afraid of death their sole purpose is to die in order to get heaven. Respondent I (Saeeda Diep) and respondent II (SP Farhan Zahid) believe that death penalty does not deter crimes. “There are countries without death penalty and still they have lower crime rates such as Switzerland, Sweden, Norway which prove the perception of executions leading to decreased crime rates wrong”. It should also pay attention to the fact that those criminals who seek to convey a lot of planning before committing the crime are aware of the consequences so they will never be
called a threat of being caught and convicted. The death penalty does not act as a deterrent for the crimes conducted by mentally handicapped people or children. Moreover the countries which are following death penalty such as Iran and Saudi Arabia have no lesser crime rates therefore, death penalty is not the only or necessary solution to control crime rates.

In 2008 Government of Pakistan imposed a moratorium on death penalty by following the UN resolution of moratorium on death penalty. But in 2014 lifted the moratorium and justified death penalty for 27 eligible death crimes as it is necessary to deter terrorist threats to Pakistan. According to the data gathered by Amnesty International just after one year of lifting the moratorium, Pakistan became the third most fertile executioner in the world. In Pakistan 480 prisoners were executed since then but only 14% of them were effective executions which consists of hardcore terrorists. More and more cases of wrongful executions have come to light since then. After 11 years on death row the supreme court acquitted two brothers of Bahawalpur and later came to know that they had already been executed the year before. Another prisoner was found innocent after one year when he had been found dead in his cell. The continued use of the unproductive death penalty system has been unable to meet international human rights commitments and fair trial standards.

In 2014 Pakistan decided to lift the moratorium on death penalty after Army Public School (APS) attack as part of the efforts of government to end terrorism. Which has proved counter productive because it has failed to curb terrorism and it is exceedingly used as a political tool. According to respondent I (Saeeda Diep) “death penalty has never helped and will never going to help in future”. According to the respondent II (Farhan Zahid) “the decrease came in terrorism is not because of death penalty. There are other reasons like military operations, law enforcement operations, intelligence led policing, border fencing, search operations, National Action Plan”. As a response to the Peshawar attack of 16 December 2014, the government of Pakistan formulated a nationwide counter-terrorism strategy in the form of the National Action Plan. The NAP was a multidimensional attempt to counter terrorism, in order to eradicate it completely. These factors highlight that Death Penalty is not effective until the criminal justice system of country is good. The purpose of death penalty is to curb the crimes not to provide to the innocents.

Criminal justice system is the most important element of any society in the world. It describes the procedures, penalties, punishments, and ways to punish those who violate the laws. It is the Criminal Justice System which makes prevention in society. But the criminal justice system in Pakistan is so ineffective and in dismal condition. The basic root cause for this failure is the lack of competitiveness of the police. Investigation of Police is the very first stage where most of the cases are ended due to corrupt officers. The condition of the Prosecution Department is failed; they lack proper offices or resources to perform their work. Delayed justice is another major problem. The case is being destroyed at the investigation stage which shows lack of the required level of evidence that is necessary for the conviction. Overall the Criminal Justice System in Pakistan is ineffective. So in the current time frame no one can justify the retentivity of death penalty in Pakistan.

Pakistan’s special military courts were setup to combat terrorism after APS attack in 2015. Their purpose was the speedy trial of hardcore terrorists. Initially these courts were made for two years but later on they were extended for another two years. All the respondents believe that these military courts have no space in democratic societies. Common persons do not know the procedure of these military courts. The countries having such special military courts like Pakistan which are controlled by parliament shows that they are such a fragile and weak state. Their country’s regular judicial system is weak. Therefore these military courts do not reflect the democratic notion.

Hanging and beheading people in public is the most cruel form of punishment. Many organizations like Amnesty International are working on the less painful ways of executions such as injections etc which inflict least pain to the criminal but in all the situations criminals had to
face the mental trauma that they will be killed. It caused so much suffering to the criminal and as well as it is ethically wrong. All the methods of executions cause suffering. **Respondent I**

**Saeeda Diep** believes that if there will be humanity, equality and equal distribution of wealth then there will be less crimes. Country’s criminal judicial system is the most important element to reduce crimes. If the overall system of a country is good police working with honesty, having resources to perform their duty well, prosecution and judiciary is strengthened then it helps to reduce crime rate. **Respondent III (Hasan Shad)** considers a better alternative to death penalty is life imprisonment. Most of the cases evidences are not provided and the innocent persons are given death penalty which is against justice of a country in such situation life imprisonment is a better choice. Most of the people committing violent crimes are sentenced to life without parole. They are not released. Some people who get released after 25–30 years have become old. It costs less and allows for mistakes to be corrected.

Wrong executions are the most common pattern in Pakistan. Pakistan where the system of investigation and collection of evidence is still in the fetal and incipient stage. Dishonesty and corruption are like an epidemic in the country which leads to the situation where most of the time the reality of the executed person being innocent does not come to the knowledge even after years. Pakistan judicial system is discriminatory against poor. Poor people of Pakistan have to face the consequences of a defective system. They do not get justice. Influential or powerful people easily escape from the harsh penalties. Death penalty is increasingly used as a political gain. People use their personal enmity and most of the time innocent persons are hanged or killed on the basis of political influence. Therefore reforms need to be made in criminal justice system of Pakistan and until that time Pakistan need to restore the moratorium on death Penalty.

**6. Conclusion**

The finding of this study is that death penalty is not the solution to deter crimes. United Nations passed 62/149 resolution for moratorium on death penalty. As a result of this resolution many countries in the world abolished death penalty. Pakistan lifted this moratorium after APS attack and reinstate capital punishment to curb the terrorism but it has proved counter productive and exceedingly used as a political tool. The decrease in terrorism came due to the military operations, law enforcement operations, border fencing, Intelligence led policing etc. This decrease is not due to death penalty.

Death penalty is not effective unless the criminal justice system of the country is good. The criminal justice system consists of these three main institutions i.e. police, prosecution and judiciary in Pakistan. The basic root cause for the failure of Criminal Justice System in Pakistan is lack of competitiveness of police, failed prosecution department and Delayed Justice. The case is being destroyed at investigation stage which shows lack of the required level of evidence that is necessary for the conviction. A fair trial has been provided to every citizen of Pakistan according to the Article 10-A of constitution of Pakistan. But Pakistan fails to meet the fair standards and provision of Justice. In Pakistan it is common for persons to be awarded death penalty who did not commit the crime. Even the Islamic law emphasis that it is better for the authorities to release the person mistakenly than to execute an innocent mistakenly. Death Penalty is ultimate and irreversible punishment which can not eliminate the risk of the executions of innocent persons. Death penalty is often granted to those who belong to less advantage economic or social backgrounds, ethnic or religious minority.

The purpose of death penalty is to curb the crime rate and terrorism not to provide the death penalty to the innocent people. Lifting of moratorium on death penalty in Pakistan is an alarming situation that Criminal Justice System is getting worst. The continuous use of unproductive death penalty system of Pakistan has unable to meet the fair trial standards and International human rights community. Death penalty should be suspended until such time we have established a system of justice which ensures only the guilty are given the death penalty. Therefore in the current time frame there is no justification of retentivity of death penalty in Pakistan.
7. Limitations
Keeping in view the nature of this topic it was difficult task to find appropriate respondent especially regarding the security and defense aspect of the research.

8. Recommendations

- Country’s regular criminal justice system is the most important element to reduce crimes. Therefore, Pakistan needs to strengthen its Criminal Justice System to curb the crimes and militancy and it is mandatory that judicial system should be freed from the ill practices before death penalty is established punishment.

- Rehabilitative programs are an alternative to death penalty and effective in many countries such as Kenya and Norway. Rehabilitative programs provide guidance, counseling as well as education and training among the prisoners so that they can increase their knowledge regarding negative effects associated with recidivism. Such programs need to be adopted in Pakistan.

- There is need to use the bottom-up approach in addressing the problem of recidivism in society by involving prisoners in decision making processes so that suggestions can actually come from the prisoners themselves on the nature and quality of rehabilitation programs that would be more helpful to them after their release rather than top-bottom approach.

- The Government should also support rehabilitation programs in prisons in terms of both financial resources and professionals in the fields of crime and counseling so as to ensure success of these programs and therefore reduce re-offending in the country.

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Author details
Shanzay Noor1
E-mail: Shanzayrajput1@gmail.com
Aitzaz Ajmal2
1 Department of Political Science, Kinnaird College for Women, Lahore, Pakistan.
2 Department of Criminal, Lahore High Court, Lahore, Pakistan.

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