

**Capital Punishment under Pakistani Law, International Human Rights Law and Islamic Law: A Comparative and Critical Legal Analysis**

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**Received:** 19-01-2026

**Revised:** 03-02-2026

**Accepted:** 17-02-2026

**Published:** 06-03-2026

**ABSTRACT**

*The death penalty is still one of the most debated topics in international law, criminal justice and human rights field. Capital punishment has been eliminated in a few countries, but there are a number of countries that still practice it for the purpose of deterrence, retribution, public security, and religious legitimacy. This article aims to analyse and critically assess the regulation of the death penalty as per the international human rights laws and specifically the Islamic legal principles and the present laws in Pakistan. The article examines the proportionality, guarantee of a fair trial and the right to life as they relate to the state sovereignty and capital punishment. It also examines the legal and moral conflicts within the abolitionist movements as well as between abolitionist movements and retentionists states that do not abolish the death penalty form their domestic legislation but justify it based on cultural values or religious doctrine. The article concludes that although international human rights law leaves no room for the absolute prohibition of the death penalty, it contains strict substantive and procedural restrictions which substantially reduce the permissible use of the death penalty. The paper ends by stating that the current retentionists systems, such as Pakistan, are plagued with serious institutional and procedural shortcomings, which can weaken the legitimacy of capital punishment and raise the chances of arbitrary killing.*

**Keywords:** *Death penalty, capital punishment, human rights, ICCPR, Islamic law, Pakistan, international law, fair trial, abolition, qisas.*

**INTRODUCTION**

Capital punishment is also known as the death penalty and is one of the most controversial and debated types of punishment in domestic and international law. It is the highest form of state power, and deliberate deprivation of human life by judicial means. Throughout history, all societies have used the death penalty as a tool to maintain public order, to deter criminal activity, as a means of vengeance and to strengthen political control and authority (Hood & Hoyle, 2015). It was a punishment imposed by ancient civilizations like Babylonia, Greece, Rome, and medieval European governments, for crimes as trivial as theft and blasphemy and as serious as murder and treason (Banner, 2002). The debate over the use of the death penalty, like any debate about the law and morality, has not changed, and the fact that the argument has not evolved in any particular direction gives us no reason to believe it is ending, as the pendulum might just as easily swing back as it did in the past.

The death penalty is today a major topic in international human rights discourse. After the atrocities of the Second World War and the development of the modern human rights framework, the dignity of the human person and the sanctity of human life had become the cornerstone of the international legal institutions (Schabas, 2020). Thus, the right to life in international law was recognized as a fundamental human right that cannot be taken away. The Universal Declaration of Human Rights (1948) guarantees every person the right to life, liberty and security of the person (UDHR, Article 3). In the same way, Article 6 of the International Covenant on Civil and Political Rights (ICCPR) states that there is an inalienable right to life and that there is no justification for any form of arbitrary killing (United Nations, 1966). While there is no absolute ban on the death penalty in international law, it does place a number of restrictive procedural and substantive restrictions on its use.

The abolition movement has become a strong force in the legal history of the world over the last few decades. In 2023, Amnesty International reported that over two-thirds of the world's states have actively ended the death penalty, and that the death penalty remains unconstitutional in their legal systems. Today, many states regard capital punishment as inconsistent with the advancement of civilized treatment and justice for human beings. Creation of nations like the United Nations, European Union, Human Rights Watch, and Amnesty International have repeatedly sought abolition of the death penalty for humanitarian and legal reasons (Hood & Hoyle, 2015). Moreover, the signing of the Second Optional Protocol to the ICCPR reflects the worldwide trend towards abolition and the progressive curtailment of the death penalty (Schabas, 2020).

Although there is an increasing abolitionist trend, there are still a large number of States that keep capital punishment and actively enforce it. There are a number of reasons given for states to retain the death penalty, including the aims of deterrence, retribution, national security, public morality, and religious legitimacy (Garland 2010). Capital punishment is often justified as a measure to uphold public security and social order in countries plagued by organized crime, drug trafficking, or political unrest, especially when they are threatened by terrorism. Culture and the public opinion of many Asian, Middle Eastern and African countries still carries on the use of executions for severe crimes (Johnson & Zimring, 2009). This has caused the international legal debate on the death penalty to be very polarized between abolitionist and retentionists approaches.

Among the most important aspects of this discussion is the connection between the two kinds of law, international human rights law and Islamic criminal jurisprudence. The arguments used to justify the use of capital punishment in the Muslim-majority states are based on Islamic law principles which are found in the Qur'an, Sunnah, ijma' and qiyas (Kamali, 2008). Islamic criminal law provides for the death penalty in specific categories of crimes, specifically qisas, hudud and some forms of ta'zir punishments (Peters, 2005). But that is not the case in classical Islamic jurisprudence, where the death penalty isn't considered an unlimited state right. Rather, it sets high evidentiary requirements, sets out safeguards and allows for mercy, pardon and reconciliation (Hallaq, 2009).

The safety and sanctity of human life is mentioned in the Qur'an many times. Telling me to save one life is saving all life and killing one life is killing all life. (Qur'an 5:32) Meanwhile, Islamic law allows the lawful retribution, as the principle of qisas is designed to stop the chain of vengeance and to ensure social stability (Bassiouni, 2009). Significantly, the law of Islam also promotes forgiveness and reconciliation, allowing the victim's family to accept financial compensation (Diyat) and/or pardon from the wrongdoer (Kamali, 2008). These are the reasons why the Islamic law on capital punishment is somewhat complex and has come from a delicate balance of justice, deterrence, mercy, and social order.

However, the modern death penalty in Muslim majority countries often is not a reflection of the classical death penalty ideals of Islam. Modern legal systems typically mix into Islamic law colonial criminal codes,

constitution, anti-terrorism laws, and contemporary state institutions (Peters, 2005). This has led to a great deal of conflict between Islamic law and international human rights. In most situations, issues emerge about procedural fairness, judicial independence, forced confessions, indiscriminate enforcement, broadening of capital punishment outside of classical law's narrow definition (Rehman, 2010).

The complex dynamics of Pakistan are a significant case study for the understanding of these tensions. In Pakistan, the current death row population is under one of the largest death row population in the world, and capital punishment is provided for a wide variety of offences under different special criminal legislations, Pakistan Penal Code, and Anti-Terrorism Act (Amnesty International, 2023). At the same time, Islamic principles of criminal law are also reflected by the notions of qisas and diyat in the legal system which functions within a constitutional and an international legal framework. In the aftermath of the attack at Army Public School in Peshawar in 2014, Pakistan began to increase death penalties and the execution of people for terrorism-related offences began again (International Commission of Jurists, 2016). The state's rationale for this policy change was that it was necessary in the face of terrorism and threats to the national security.

On the other hand, Pakistan's criminal justice system has been under immense criticism from the international human rights institutions and legal scholars. The use of custodial torture, forced confessions, inadequate forensic investigation and legal representation, delays, and political pressure over capital convictions has caused serious concerns on the accuracy of these proceedings (Amnesty International, 2019). But human rights groups say those shortcomings can significantly heighten the chances of wrongful convictions and fatal arrests. These are exacerbated by the fact that errors made by the courts are irrevocable once a sentence has been executed (Schabas, 2020).

The issue of capital punishment thus becomes more than just a legal issue and extends to the realms of morality, state sovereignty, religion, human dignity and criminal justice policy. Death penalty advocates often say murder is a strong deterrent to violent crime and terrorism. They argue that, in the case of some crimes, justice and the best interests of society demand that they be punished by death (Garland, 2010). In opposition, the abolitionists claim the death penalty is cruel, inhuman, and degrading punishment, which does not exist in modern human rights and civilized justice (Hood & Hoyle, 2015). They also stress the lack of evidence in favour of deterrence and the discriminatory and arbitrary aspects of many death penalty systems.

In view of this background, this article takes a critical look at the laws of the land relating to the regulation of DP as enforced by international human rights instruments especially under the Islamic laws, with a specific reference to the current legal system in Pakistan. The article examines the legal and moral arguments presented by the "abolitionist" and "retentionists" points of view. It reviews the degree of limitation on the death penalty imposed by international human rights instruments and explores whether current practice meets the international human rights requirements. The article also examines the connection between Islamic criminal law and human rights norms at international level, including with regard to procedural safeguards, proportionality, mercy and sanctity of life.

The study uses doctrinal and analytical research methodology, which is derived from legal documents, namely primary legal documents and secondary legal documents. The primary sources are international treaties, provisions in the constitution, national laws, judicial decisions, and Islamic legal texts. Some secondary sources are scholarly books, journal articles, human rights reports, and comparative legal studies. This way, the article aims to make a significant contribution to the ongoing debate within legal scholarship about one of the most debated topics in international criminal justice and human rights law.

## **LITERATURE REVIEW**

The death penalty has been at the forefront of discussions in criminal law, criminology, human rights law and moral philosophy for a very long time. The legitimacy of the execution as a means of retribution, deterrence, and protection of society from criminals versus its denial of dignity and right to life have been a topic of constant debate among scholars, international bodies and legal theorists for many years. There are several key themes in the literature on capital punishment such as deterrence theory, retributive justice, wrongful convictions, human rights issues, religious arguments, fairness of the process, and abolitionist campaigns.

The most prominent and earliest opposition to capital punishment during the Enlightenment came from Cesare Beccaria. Beccaria believed that the death penalty was not needed and did not deter crime, which was the basis of his landmark publication *On Crimes and Punishments*. The principles of punishment are proportionality, rationality and a focus on prevention, according to Beccaria (1764). He argued that the continuous punishment had a greater deterrent effect than the public executions as the fear of continuous punishment had a greater psychological effect. Beccaria's writings established the intellectual basis of modern thinking about the abolition of slavery and had a profound impact on subsequent human rights debates.

Deterrence theory has been an integral part of death penalty research. Those who support capital punishment say that they are a salving influence against serious crimes, especially murder and terrorism. Classical deterrence theorists like Bentham (1789), believed that punishment deterred rational action by inducing a fear of the consequences. Modern proponents of the death penalty insist that the death penalty saves lives, thereby preventing violent crime. Today's defenders of the death penalty claim that capital punishment deters violent criminals.

But empirical research on deterrence is very divided. According to Hood & Hoyle (2015), there is no reason to believe that the death penalty is more effective at deterring crime than long-term incarceration. In a similar study, Donohue and Wolfers (2005) assessed the statistical analysis that found deterrent effects and found that the evidence to date was methodologically inconclusive. They expressed the view that the rise and fall of homicide rates is not necessarily due to the presence or absence of capital punishment, but is more a result of other social, economic and political factors. Deterrence-based arguments have been undermined by the consistent pattern reported by Amnesty International (2023) that retentionists states generally have the same or even higher rates of crime.

A second, important reason for capital punishment is given by retributive theory. Retributivists say that it is justice that should be meted out on those who committed the offenses in proportion to the severity of the offences. From this viewpoint, there are offences that are "so bad they deserve to be killed" (Garland, 2010) and so killing such crimes is justifiable and necessary. Kant advanced more strongly the cause of retributive punishment and advocated for the death penalty for murderers as a means of ensuring that a just society is held accountable (Kant, 1797). Proponents of retributive justice, then, see the death penalty as a sign of moral balance and social condemnation.

Some critics to retributive theory say that the death penalty can lead to the legalized taking of revenge. Sarat (2001) argued that executions by the state encourage violence and culture of punitive measures as opposed to just rehabilitation and justice. Abolitionist scholars also argue that today's criminal justice system should seek to restore dignity to people, rehabilitate them and embrace restorative justice over punishment for the purpose of vengeance (Schabas, 2020). This has come into much more doubt in the literature whether retribution morally justifies irreversible state violence in societies that uphold human rights and democratic principles.

There is also extensive literature on the interface of the death penalty and human rights law. After the Universal Declaration of Human Rights was adopted in 1948, leading to many commentators seeing the death penalty as a violation of the right to life and human dignity (Schabas, 2020). International human rights organizations have gradually limited the acceptable range of the death penalty, by establishing treaties, drawing judgments, and creating rules of interpretation. The Human Rights Committee has repeatedly stated that the death penalty is an exceptional measure and should only be taken for the “most serious crimes”, defined as intentional killing (United Nations Human Rights Committee, 2018).

Schabas (2020) stated that the abolitionist trend worldwide is one of the most significant trends in international human rights law today. International law institutions keep seeing the death penalty as a thing that is not “compatible” with the “evolving standards of decency and civilized justice”, he added. Likewise, Hood and Hoyle (2015) highlight the association of abolition with democratization, constitution and human rights protection.

There are also significant concerns relating to the procedural and institutional aspects of capital punishment which have been emphasized in the literature. There have been many studies recording the potential for coerced confessions, misidentified witnesses, prosecutorial misdemeanors, political pressures, and poor legal representation to lead to wrongful convictions (Bedau & Radelet, 1987). These fears are heightened by the finality of execution, in which no corrections can be made once the sentence has been executed. Sarat and Vidmar (1976) stated that neither any criminal justice system can provide absolute certainty and thus, irreversible punishments would be ethically and legally questionable.

Another issue in death penalty literature is racial, economic and social discrimination. The research findings, largely from the United States, indicate that the death penalty is disproportionately applied to poor defendants, racial minorities and socially marginalized groups (Garland, 2010). This critique has also been raised in developing jurisdictions where access to justice is limited for a variety of reasons, including unequal access to lawyers and political power, which threaten to invalidate guarantees of a fair trial. Human rights groups consistently have emphasized that the use of the death penalty, especially in a discriminatory manner, runs counter to the ideas of equality before the law.

The issue of the death penalty in Islamic criminal law is one of these areas of scholarship. In Western literature, Islamic law has been depicted as a law which is definitely supportive of harsh punishments, but this view is contradicted by a growing number of contemporary Islamic scholars. Peters (2005) claimed that Islamic criminal law in history had numerous procedural protections and high evidence requirements that limited the practice of capital punishment. Likewise, Hallaq (2009) highlighted that the Islamic jurisprudence has aimed to achieve justice in accordance with a focus on mercy, forgiveness and social reconciliation.

Islamic legal experts have outlined three main types of criminal punishment: hudud, qisas, and ta'zir. The qisas are mostly for wilful murder or bodily injury and provide for revenge with the family of the victim (Kamali, 2008), or a material compensation (diyat), or a pardon. This approach to this system does not aim for dictatorial or total state control over punishment, but rather is shaped by the principles of restorative justice. Bassiouni (2009) mentioned that Islamic law has promoted reconciliation and forgiveness with emphasis on the case of murder.

The literature also shows that the Islamic law has established procedural devices to avoid wrongful punishment. The avoidance of hudud punishments in cases of doubt has been stated in the legal maxim whenever irreversible punishment is involved such as hudud punishment (Hallaq, 2009). Scholars consequently claim that in modern depictions of Islamic criminal law, the narrow and formal aspects of classical criminal law are neglected and ignored.

The death penalty is a subject of considerable controversy among academics, even in the era of modern societies. In the era of modern societies, the death penalty has sparked a lot of academic debate in the Muslim majority countries. Modern Islamic states often mix colonial legal systems, anti-terrorism laws, and modern state structures with classical Islamic legal concepts, as Rehman (2010) noted. This interaction tends to expose conflicts between the theory of Islamic law and duties arising from international treaties on human rights. Some state have broad definitions of political crimes, blasphemy, and apostasy, and critics contend that this is an attempt to put people to death based on concepts that go beyond those defined by classical jurisprudence.

Within death penalty scholarship, Pakistan occupies a special place, given the nature of its legal framework where Islamic laws are present alongside a common law framework. A significant amount of research has been conducted on the qisas and Diyat laws, anti-terrorism laws and execution practices in Pakistan. Kennedy (1992) holds that Islamization policies have greatly changed the criminal justice system of Pakistan in that they have introduced Islamic principles into the statutory law. But later scholarship cast doubt on whether these reforms actually promote justice or whether they are an attempt to continue traditional justice deficiencies.

In the past, human rights groups have repeatedly condemned Pakistan's criminal justice system for custodial torture, forced confessions, the lack of forensic investigation and lack of legal representation (Amnesty International 2019). Systemic institutional weaknesses threaten capital convictions to be just and reliable in Pakistan, reported by International Commission of Jurists (2016). Such concerns grew even more prominent in the wake of the Army Public School terrorist attack in 2014, at which point execution were reinstated in Pakistan.

Terrorism and capital punishment are also discussed in the literature. Parliamentarian, government supporters and politicians often defend executions as tools against terrorism and national security threats. But there is a disagreement amongst scholars on whether such policies work. Punitive policies, especially those that are both harsh and unwarranted, have been shown to be ineffective at deterring radicalization and may actually encourage it, especially when criminal justice systems are not properly legitimate and fair (Garland 2010).

One of the other central issues in modern scholarship relates to the abolitionist movement and changing conceptions of human dignity. The abolitionists believe that the death penalty is an "inhumane, cruel, and degrading punishment" to conform with the modern democratic values. (Schabas, 2020) The death penalty is an affront to the inherent dignity of the person in spite of the crime and they state that. Legal reform, public attention-raising advocacy, and international pressure are ongoing strategies of international human rights organizations like Amnesty International and Human Rights Watch to urge moratoriums and abolition.

In general, the literature shows that the discussion on capital punishment is not without some complexity going beyond the question of crime control. It includes wider issues of morality, religion, state, fair procedures, human dignity and international human rights law. Supporters of the death penalty argue that it deters, retributes and protects public safety while expert international opinion is increasingly casting doubt on both the effectiveness and the legitimacy of the death penalty in the 21st century, as well as its compatibility with current human rights standards. The current academic literature thus offers a good backdrop to reflect on the issue of the death penalty in international human rights law and Islamic criminal law.

## **RESEARCH METHODOLOGY**

### **Research Design**

This study is designed as a qualitative doctrinal research to critically analyze the international human rights standards and Islamic criminal jurisprudence on the regulation of death penalty. The core of doctrinal legal research is the systematic analysis, interpretation and evaluation of legal principles, statutes, treaties, judicial decisions and scholarly literature. In the study, the critical analysis of international human rights law and Islamic legal principles is done with regard to the regulation of capital punishment and their role in influencing the implementation of capital punishment in Pakistan.

The qualitative approach is appropriate, as the study involves the legal norm, the principles of human rights, judicial interpretations and theoretical viewpoints on the existence of capital punishment. The research is not statistical or experimental, but rather is based on concepts, comparative legal analysis, and critical legal analysis of legal concepts and institutional practices.

### **Nature of the Study**

The present research is found analytical, descriptive and comparative. It is analytical, examining the effectiveness, legitimacy and compatibility of death penalty laws to international human rights norms. It is descriptive as it explains the historical background, legal and procedural aspects of capital punishment under international law, Islamic law and Pakistani law. Moreover, the study is comparative because it juxtaposes the international human rights principles with Islamic criminal jurisprudence with regard to the legality, justification and regulation of the death penalty.

### **Research Approach**

The doctrinal and critical legal approach is taken in conducting a study. The doctrinal approach looks at the legal texts and authoritative legal resources to see what there are already that will govern capital punishment. The critical legal approach is employed to assess if contemporary practices with respect to the death penalty are in line with the principles of justice, human dignity, procedural fairness and right to life.

The research also has an interdisciplinary approach, which brings in the concepts of legal theory, criminology, human rights literature, Islamic jurisprudence, and criminal justice studies. It is a multi-dimensional approach that facilitates the viewing of legal and moral issues relating to the death penalty.

### **Sources of Data**

All the data in the study is extracted from secondary sources both primary as well as secondary legal sources.

### **Primary Sources**

This study is based on the following primary legal sources:

The Universal Declaration of Human Rights (UDHR), The International Covenant on Civil and Political Rights (ICCPR), The Second Optional Protocol to the ICCPR, The death penalty in the U.S. and elsewhere, with attention to "disparate impact" rules and considerations, Studies and protections on the death penalty, specifically those of the United Nations.

The Constitution of Pakistan: The Constitution of Pakistan, Pakistan Penal Code, 1860, Anti-Terrorism Act, 1997, and Qanun-e-Shahadat Order, 1984.

Pakistani and international court decisions that may apply to the case. Judicial precedents of Pakistani and international courts that might be pertinent to the case.

A. Qur'anic verses and hadiths on capital punishment are read and explained. Qur'anic verses and Hadith related to capital punishment are read and explained.

### **Secondary Sources**

Secondary sources include:

Academic books, Peer-reviewed journal articles, Research reports, Amnesty International and Human Rights Watch both released human rights reports, Islamic commentary on international law and international laws on Islamic law and Online legal databases and official publications.

These sources provide theoretical, legal and practical perspectives to the regulation of the Death Penalty.

### **Data Collection Method**

Extensive library based and document based research has been done to get the data for the study. For the materials, relevant materials were collected from the legal databases, university libraries, journal databases, official UN publications and academic websites. International, constitutional, statutory laws, judicial precedents, and literature on capital punishment and human rights were examined.

The gathered information was put down thematically as per key themes associated with the research including deterrence theory, retributive justice, Islamic criminal law, guarantees of fair trial, wrongful convictions and international human rights standards.

### **Data Analysis Method**

Content analysis and doctrinal legal analysis are used for interpretation of collected data in the study. International treaties, laws, theoretical aspects, judicial rulings and Islamic legal theories were carefully studied to examine their compatibility with the issue of capital punishment.

The comparative analysis was additionally used to bring out the similarities and differences between Islamic criminal jurisprudence and international human rights law in the following areas: The right to life, proportionality of punishment, procedural safeguards, scope of capital offences, and fair trial guarantees.

Ways to reduce the repercussions of a conviction

The study also determines if Pakistan's death penalty system meets international human rights and Islamic justice standards.

### **Population and Scope of the Study**

The study is focused on the international standards of human rights, Islamic criminal jurisprudence and legal framework of Pakistan focusing on the death penalty. The research explores abolitionism trends around the world and focuses on the retentionists legal systems, such as those in Muslim majority countries.

The study focuses on international treaties and conventions relating to capital punishment, Islamic principles on qisas, hudud and ta'zir, the constitution and criminal law of Pakistan, the issues of human rights associated with executions, and deficiency in criminal justice procedures.

Empirical field surveys and interviews are not a part of the study since its central theme is doctrinal and legal analysis.

### **Limitations of the Study**

The study will only focus on the doctrinal and a qualitative approach to the legal analysis. As the research uses secondary data, it may not reflect all of the practicalities of death row inmates and criminal justice practitioners. In addition, the study examines Pakistan as the case study and thus does not involve the study of all the retentions states.

Another problem relates to the changing nature of international human rights law and changes in the law at the national level on capital punishment. Future developments may be affected by changes in judicial interpretation, legislation and/or state practice.

The study is nonetheless a thorough and critical examination of the congruence and connection between international human rights law, Islamic criminal law, and the death penalty.

### **DATA ANALYSIS AND RESULTS**

As a result of the doctrinal legal research and qualitative content analysis exercise, the analysis of this data has been presented below on how the death penalty is regulated under international human rights law, Islamic criminal jurisprudence and under the legal framework of Pakistan. The analysis is conducted in the light of international conventions, constitutional provisions, statutes, judicial and other precedents, human rights reports and scholarly works on capital punishment. This section is intended to examine critically whether the current use of the death sentence is in accordance with the principles of fairness, justice, proportionality and respect for human dignity.

The study results highlight the gap with respect to the implementation of the death penalty in retentionists countries and the international human rights framework. While both international law and Islamic law contain provisions on the deprivation of life, there are significant gaps in institutions and in the exercise of state power that restrict implementation of these protections in practice.

Students will analyze international human rights standards. Students will analyze international human rights standards.

The analysis shows that international human rights law is becoming more and more progressive in its attitude towards the limitation and the elimination of the death penalty. Article 6 of the International Covenant on Civil and Political Rights (ICCPR) protects the right to life, and restricts capital punishment to the "most serious crimes." In addition, human rights committee interpretations further delineate the death penalty to be reserved for 'extraordinary circumstances' and 'the intentional killing of a human being'.

The study revealed that international legal principles highlighted are as follows: rights to life is protected, the right to life is safeguarded, fair trial guarantees, presumption of innocence, no torture and no coercion, arbitrary executions were not permitted, and there is a right to appeal and clemency; appeals and clemency are provided.

### **Protection of Juveniles and Mentally Disabled Persons**

The analysis also shows that the Second Optional Protocol to the ICCPR is in line with the evolution of international consensus towards abolition. In most contemporary democratic countries, the use of capital punishment has been abolished, either by law or de facto. Most of the death penalty has been scrapped in regional systems of human rights, such as those in Europe.

The results show that international human rights institutions are increasingly finding the death penalty to be incompatible with contemporary human rights norms and values. Human rights groups say that the finality of the death penalty is an unacceptable danger of wrongful conviction and of arbitrary death.

The object of this study is to analyze the Islamic criminal jurisprudence. This study is an analysis of Islamic criminal jurisprudence.

The research discovered that the Islamic criminal law does not give the death penalty as an unlimited power of the state. Rather, under Islamic law, capital punishment is subject to careful legal categorizations and limitations.

In Islamic punishments, there are three main types, which were identified through the analysis:

1.      **Qisas** – retaliation where the intention is to kill or hurt the body.
2.      **Sharia** – Islamic rules of behaviour.
3.      **Ta'zir** – discretionary punishments as given by the state.

The results show that the Qur'an clearly teaches the sacredness of human life and the allowance of lawful retaliation with strict conditions. The Islamic law also includes procedural protections like strict evidentiary standards, the need for competent witnesses, voluntary confession requirements, and in doubt situations, no punishment should be imposed. Jesus offers us the opportunity to forgive and to reconcile.

The study revealed that the principle of qisas is very different from the current system of punishment in states as it allows substantial control of the families of the victims. The legal heirs of the victim may call for revenge or make a monetary compensation (diyat) or pardon.

The analysis also showed that Islamic legal concept is on the issue of mercy and restraint. The adage “When in doubt, avoid hudud punishment” illustrates the cautious approach when dealing with irreversible punishment.

The results also suggest that some states in modern Muslim-majority countries apply capital punishment to circumstances that are not among the few classical categories that historically have been recognized in Islamic law. Contemporary anti-terrorism, blasphemy and wide-ranging discretionary sentences often expand the reach of the death penalty beyond the classical Islamic bounds.

### **To analyze the Death Penalty Framework in Pakistan**

The study revealed that Pakistan has one of the wide practice of death penalty regimes in the world. Capital punishment is permissible under many laws such as the Pakistan Penal Code, 1860, the Anti-Terrorism Act, 1997, the Control of Narcotics Substance Act, and Hudud laws.

### **Laws relating to the military services and special criminal laws**

The findings show that Pakistan had restarted the executions after the attack in Army Public School in Peshawar in 2014. There has been a dramatic rise in executions since then, especially for offences related to terrorism.

Analysis shows that Pakistan's legal system encompasses Islamic legal concepts and principles as well as common law and the constitution. The provisions of qisas and diyat formally introduce Islamic doctrines of crime into statutory law. But the enforcement of these laws can have serious concerns, however.

### **Procedural Deficiencies**

In Pakistan, one of the most notable aspects of the study is that procedural shortcomings in the country's criminal justice system are one of the most important ones that emerged. The analysis revealed the following common issues:

The use of custodial torture and coerced confessions, slow courts, trials, and appeals, inadequate forensic investigation, weak representation of the poor defendants, political influence and corruption, and inconsistent sentencing standards.

The study revealed that these institutional shortcomings are an important risk factor for wrongful convictions. Reports of forced confessions, police abuse, and poor defense representation are regularly reported in human rights records.

### **Anti-Terrorism Courts**

The results also show that Anti-Terrorism Courts often use fast-track trial procedures that restrict the rights of defendants in court. These courts are supposed to deal with national security emergencies in an efficient manner, but critics say that fast courts and lax investigation of evidence make for poor trials.

### **Conditions of Qisas and Diyat Laws**

The study revealed that both the beneficial and negative outcomes of the laws of qisas and Diyat exist. These provisions promote reconciliation and forgiveness on the one hand. At other times, however, they allow a powerful offender to escape punishment through monetary compensation or pressure of society on the victim's family.

An examination of the cases of honor killing showed that there are sometimes private pathways that prevent public justice and accountability. After high-profile cases, legal changes were made to minimize the abuse of compromise clauses in such crimes.

### **The comparative analysis of international law and Islamic law**

This research shows the similarities and differences between international human rights law and Islamic criminal jurisprudence in the field of capital punishment.

### **Similarities**

The analysis revealed a number of common areas: both systems have the concept of the sanctity of human life, they both highlight procedural justice and evidentiary protections, both demand proportionality of

punishment, both acknowledge mechanisms of mercy, pardon and clemency, and both aim at the non-arbitrary deprivation of life.

### **Differences**

The results also show significant differences: abolition is now the preferred option in international law, while Islamic law reserves the right to retain slaves under certain conditions; in the context of qisas, Islamic law puts the family of the victim at the center for the purposes of determining the punishment, whereas international criminal law assigns punishment as a state function; the international law definition of capital punishment as the “most serious crimes” is narrower than some interpretations of Islamic law, which allow for a wider range of capital crimes; and international law is based on treaties and state consent while Islamic law is based on divine revelation and jurisprudential interpretation.

The following findings were made regarding deterrence and retribution.

The analysis revealed that there was no empirical evidence to substantiate the effectiveness of capital punishment. The analysis showed that there is not enough empirical evidence that capital punishment is more effective in deterring serious crimes rather than long term imprisonment. The relationships between execution rates and reduction in crime rates were not consistent, as shown in comparative studies conducted during the research.

The findings also suggest that violent offences are frequently the result of emotions, psychological issues, ideology or socio-economic issues; not of reason and calculations of punishment.

As for retributive justice, it was found that public opinion in favor of the death penalty often depends on the emotional reactions to extreme violence, terror and social insecurity. But retribution is heavily condemned in abolitionist literature as a justification for an irreversible state violence.

### **Human Rights Concerns and Wrongful Convictions**

The research uncovered wrongful convictions as one of the most significant issues surrounding the death penalty. When someone is executed, it is much worse when the decision is wrong.

The analysis revealed would be the following possible causes for wrongful convictions: false confessions, eyewitness misidentification, fabricated evidence, torture and coercion, prosecutorial misconduct, and inadequate legal representation.

Additionally, the results suggest that those who are marginalized, impoverished defendants and minorities are overrepresented in death sentences as a result of unequal access to legal resources.

### **Overall Results of the Study**

The general results of the research indicate that there are limitations on the use of capital punishment in both Islamic criminal law and international human rights law, however, in many states which retain the death penalty, such restrictions are sometimes not met in practice.

In the study, it can be concluded that international human rights law is growing increasingly restrictive of the use of the death penalty and supportive of abolition; Islamic criminal jurisprudence also has important procedural safeguards and principles of mercy which are not applied in practice today; the criminal justice system in Pakistan is plagued by institutional shortcomings that have a negative impact on fairness and

reliability of death penalty cases; wrongful convictions and arbitrary deaths can be caused by serious lapses in the procedure; the finality of execution demands the highest level of justice, fairness and evidentiary certainty; and the right to life and human dignity are now being shaped by modern abolitionist organizations around the world.

In conclusion, the results lend weight to the idea that the retentionist states should make significant changes in their criminal justice systems and limit the use of capital punishment, or should take a gradual step towards its abolition to meet international human rights standards.

## **DISCUSSION**

The results of this research show that the control of the death penalty remains one of the most crowded parts of international human rights law and criminal justice policy. The analysis shows that while the death penalty has not yet been eradicated from some legal systems, including a few Muslim majority countries and most developing countries, international legal rules more and more promote limitation and abolition. The findings show important conflicts between sovereignty, public security, religious legality and the defense of fundamental human rights.

One of the key conclusions of the research is on the increasing impact of international human rights standards on the use of the death penalty at the national level. The right to life is emerging as an overarching principle that puts limits on States' use of the death penalty in international law. The death penalty is not strictly forbidden by the International Covenant on Civil and Political Rights (ICCPR), although it is limited to the "most serious crimes" and must be accompanied by a number of procedural safeguards. The results of this research reinforce the abolitionist argument of scholars in international human rights law which is gaining momentum that the international human rights law is currently moving towards the full abolition of execution.

The analysis also shows that the movement for abolition has been integrated with the larger notion of constitutionalism, democratization and human dignity. Capital punishment has been abolished in most democratic and developed countries either de facto or de jure, and is in line with international standards on cruel, inhuman and degrading punishment. The current trend indicates a new paradigm in the field of human rights, where the death penalty is seen as being incompatible with the modern concepts of justice and civilization.

Meanwhile, the study revealed that death penalty is still being justified by many retentionist states for deterrent, retribution, religious and national security purposes. Governments in countries that are threatened by terrorism, political unrest, organized crime and violent extremism, often view capital punishment as a vital tool for public order and for maintaining social security. The recent execution of prisoners in Pakistan after the Army Public School attack in 2014 shows the positive impact that national security crisis can produce on the public and political demand for severe punishment.

The results of this study suggest, however, that deterrence-based justifications are still uncertain, empirically speaking. However, the literature reviewed in this research indicates that nothing has been proven, in a clear fashion, to establish that capital punishment is more effective in deterring serious crime than long-term imprisonment. The findings from comparative studies included in the research are mixed as to whether execution rates are related with decreases in violent crime. The study confirms the view of many international human rights groups that the deterrent effect of the death penalty has yet to be proven to be significant.

This discussion also brings to light significant issues about retributive justice and why it might be used to justify executions. Offenders who commit intentional murder or intentional acts of terrorism, often, from a retentionists point of view, morally deserve the ultimate punishment. The public demand for the death penalty tends to rise after a highly publicized case of terrorism, child homicide, or vicious violence. This emotional and social need for justice is why many governments still continue to uphold the death penalty when international condemnation against the practice is mounting.

Although the study illustrates that there are sound moral and legal objections to retributive theories. According to abolitionist scholars, today's legal systems should be unable to “sanitize” state violence for the purposes of revenge. The results suggest that revenge-based punishment threatens the concepts of rehabilitation, restorative justice and human dignity. Moreover, the finality of the execution gives rise to significant ethical questions in a situation in which the judicial system is prone to mistakes, bias and institutional flaws.

One of the main discoveries of this study is the connection between Islamic criminal jurisprudence and international human rights law. The analysis proves that the practice of capital punishment is not a religious right in Islamic law, even if many people believe otherwise. In classical Islamic jurisprudence, there are very strict requirements for evidence, safeguards in the procedure, and chances for forgiveness and reconciliation. The principles of qisas, hudud and ta'zir illustrate that criminal law in Islam aims at achieving balance between justice and mercy and creating harmony in society.

Restorative justice elements have been used in the principle of qisas, for instance, giving the right to the family of a victim to demand revenge, accept compensation or even make forgiveness. This concept is in contrast to contemporary state-criminal justice systems in which punishment is viewed only as a public business. The results indicate that certain aspects of the Islamic forgiveness and reconciliation law can be relevant to the current situation of criminal justice reform.

In the same way, the Islamic rule that judges should not be severe when there is doubt in a case embodies a clear principle of justice and the avoidance of false punishments. To this end, the study provides evidence of the existence of many procedural safeguards highlighted by international conventions on human rights in classical Islamic jurisprudence, including a guarantee of evidentiary certainty and a guarantee of a fair trial.

Although there are some parallels, there are significant distinctions between international human rights law and Islamic criminal law. International law has become increasingly more in favour of abolition, and considers capital punishment as an exceptional and undesirable practice. Islamic law, on the other hand, has long allowed the imposition of death penalties for specific offences, under certain circumstances. In addition, there are some modern legal understandings of Islamic law that still permit capital punishment for crimes like apostasy, blasphemy, and adultery, crimes that are not considered by many international human rights organizations as “most serious crimes.”

The study also revealed that the application of the Islamic criminal law in the current context in some of the states does not match with the safeguards that were expected in classical Islamic law. Contemporary regimes often introduce extra dimensions of capital punishment into anti-terrorist measures, emergency decrees and wide-ranging discretionary crimes. This growth raises conflicts between Islamic law ideals, constitutional rights and international human rights obligations.

One such example is Pakistan. It proves that the legal regime of Pakistan is a blend of Islamic law principles, Common law, the Constitution and anti-terrorism measures. In theory, the qisas and Diyat laws have

integrated restorative justice mechanisms into the law, but in practice, issues of coercion, inequality, and abuse of compromise clauses are often raised.

The key result of the study is the identification of institutional weaknesses in the criminal justice system in Pakistan. A broad range of issues regarding the use of custodial torture, forced confessions, inadequate forensic investigations, late appeals, inadequate legal representation and lack of uniform judicial practices were identified. The deficits significantly affect the trustworthiness and fairness of capital convictions.

The particular risks of Anti-Terrorism Courts are also discussed. These courts were designed to deal with grave security issues in an efficient manner, but the study revealed that the speedy proceedings and inadequate safeguards for the process of a trial might affect the fairness of the procedure. If there is a case of terror and national security, public fear and political pressure can only exacerbate punishment, leading to arbitrary or disproportionate punishment.

One of the most pressing human rights problems that arose during the course of the study was the problem of wrongful convictions. The death penalty is irreversible, and anyone who makes a mistake in the judge's rulings commits a permanent loss of life. The results show that false confessions, fake evidence, prosecutorial misconduct, police pressure, misidentification by witnesses, and poor legal representation may contribute to wrongful convictions. Such risks are even higher in the context of corrupt laws and institutions and political power.

The research also revealed that, capital punishment disproportionately impacts marginalized people, deficient defendants and marginalized groups. Poor access to competent legal representation and procedural rights often depends on economic inequality. Thus, the death penalty is likely to be administered in a way that is bound up with systemic inequalities throughout society.

A second key question that has arisen during the discussion is the changing international movement for the abolition of slavery. The pressure from international organizations, like Amnesty International, Human Rights Watch and the United Nations, for retentionists countries to implement moratoriums and gradual elimination of executions is ongoing. The results indicate that international advocacy has had a profound impact on legal changes and public discussion on capital punishment. In retentionists countries, the emphasis is gradually shifting towards procedural fairness, proportionality and human rights guarantees.

Consequently, the results of this study suggest that states that are retentionist need to make significant legal and institutional changes to continue to retain the death penalty. This reform should cover judicial independence, abolition of torture, the improvement of the systems for carrying out forensic investigations, access to competent legal representation, narrowing the definition of heinous crimes, clarity of criminal justice institutions.

In the end, it's clear that the controversy over the death penalty transcends criminal justice policy. It encompasses a wider philosophical and legal issues about the nature of justice, the authority of the state, morality, religion, and human dignity. Supporters remain committed to retaining the death penalty for deterrence and retribution, while the international consensus continues to grow, focusing on life and preventing irreversible mistakes in judgment.

The results of this research thus confirm the overall observation that the trend of international human rights law is increasingly towards limitation and eventual elimination of the death penalty. Pressure is mounting on retentionists states such as Pakistan to bring their criminal justice system into harmony with the international human rights standards, while at the same time meeting local cultural, religious and security needs.

## **POLICY RECOMMENDATIONS**

The results of this study reveal that there are still many legal, institutional, and human rights issues to address with the implementation of the death penalty in the retentionist countries, especially in developing nations like Pakistan. Based on these results, some policy recommendations are suggested for enhancing the compliance with the international human rights standards, improving criminal justice systems, and minimizing the threat of arbitrary killings.

### **Restriction of Capital Offences**

Capital offenses are limited. There are restrictions on capital offenses. There is a strong case for the states that want to retain the power to sentence to death to limit considerably the types of crimes sentenced to death. In accordance with Article 6 of the International Covenant on Civil and Political Rights (ICCPR), capital punishment should be limited only to the “most serious crimes” involving intentional killing. Death penalty should not be imposed for offences like drug trafficking, blasphemy, apostasy, financial crimes etc., except for those resulting in lethal injury.

### **Progressive Moratorium on Executions**

Governments should review the existing criminal law and repeal the provisions in the law that authorize capital punishment for crimes that are contrary to international human rights standards.

The proposed measures for this outcome include: The following measures are proposed for this outcome:

A temporary moratorium on executions should be implemented in states that continue to have the death penalty as a step towards its eventual phase-out. A moratorium would give governments time to take stock of cases where death sentences have been handed down, make changes to criminal justice and look at safeguards against procedures.

A moratorium would also signal respect for the progressive international human rights norms and recommendations set out by the United Nations General Assembly.

### **Strengthening Fair Trial Guarantees**

Among the main policy recommendations from this study is the need to further strengthen protections for fair trial in criminal justice systems. Governments should ensure that the judiciary is independent and impartial, access to competent legal representation is provided, fair and clear hearings are conducted in a timely manner, effective mechanisms for appellate review are in place, defendants’ procedural rights are protected, and the law is applied equally.

Specific attention should be paid to economically disadvantaged defendants who may not have a qualified attorney available.

### **Prohibition of Torture and Coerced Confessions**

The study found two significant threats to the fairness of death penalty cases: custodial torture and coerced confessions. Governments must make it illegal to torture and cruelly treat people or force them to confess to a crime through other methods, such as coercive questioning.

Police should use new policing methods and principles of criminal investigation with forensic science and evidence instead of police methods based on confessions. There should be independent oversight mechanisms to investigate allegations of police abuse and custodial violence as well.

### **Improvement of Forensic and Investigative Mechanisms**

Forensic and investigative institutions should be updated in retentionists states to minimize the likelihood of wrongful convictions. The following policy changes should be implemented: establishment of forensic labs, police investigators' training, scientific evidence collection procedures (SECPs), digital documentation systems, independent body or bodies for reviewing issues of concern, and in situations where irreversible punishments like execution are involved, a reliable forensic investigation is crucial. Judicial training and capacity building shall be undertaken in a manner that ensures fairness and equality. Judges, prosecutors and police officers should be trained in the following special areas: international human rights standards and fair trial guarantees.

The Islamic values in relation to justice and mercy

In capital cases, evidentiary standards are established. Evidentiary standards in capital cases.

Key Considerations to include in the Protection from Wrongful Convictions section:

Capacity building would enhance the quality and consistency of judicial decision-making in death sentences.

### **Reform of Anti-Terrorism Legislation**

The legality of anti-terrorism legislation regarding constitutional rights and international human rights commitments should be examined. Governments should not provide overly wide definitions of terrorism that could allow for political or arbitrary prosecutions.

As for ordinary criminal courts, special anti-terrorism courts should provide the same safeguards in court proceedings, such as access to a lawyer, a right to legal representation, public hearings, presumption of innocence, access to evidence, and the right to appeal.

Basic human rights protections should not be sacrificed for national security reasons.

### **Protection of Vulnerable Groups**

Governments must expressly and explicitly ban the killing of juvenile offenders, pregnant women, people with severe mental illness and intellectual disabilities, and older and more susceptible people.

Special legal safeguards need to be in place for marginalized groups who are susceptible to discrimination in criminal justice contexts.

### **Transparency and Accountability**

There should be greater transparency of death penalty practices in retentionists states. Governments should make public disclosure of the number of prisoners executed, execution statistics, clemency decisions, judicial review outcomes, and mistaken convictions of wrongdoers.

Open reporting encourages public transparency and accountability, and builds public trust in criminal justice institutions.

### **Reform of Qisas and Diyat Laws**

The study revealed that the provisions of qisas and Diyat sometimes allow for abuse based on coercion, economic pressure, and unequal bargaining power. Governments should thus put in place safeguards to ensure that compromise agreements are free from coercion and are voluntary.

More stringent attention needs to be given to honor killings, domestic violence and coerced settlements. The avoidance of forced or manipulated pardons of the offenders should be prevented based on public interests.

### **Harmonization of Islamic Law and Human Rights Standards**

The concepts of mercy, justice, proportionality, protection of life, and similar values that should be emphasized in contemporary Islamic legal scholarship should be based on classical Islamic jurisprudence. In the context of the harmonization of domestic legal systems with international human rights obligations, one might say that an interpretation of Islamic criminal law that evolves over time could be of assistance.

Islamic legal scholars, policy makers and human rights experts should undertake positive dialogue on the following: capital offences are interpreted in a restrictive manner, evidentiary safeguards, wrongful convictions, human dignity and mercy, and restorative justice mechanisms.

This participation can help bring about any changes in the law that are in line with Islamic teachings and international human rights.

### **Movement Toward Abolition**

While abolition of the death penalty may not be politically feasible in some retentionist states, governments should gradually move away from the use of capital punishment and towards types of alternative sentences like life imprisonment.

The conclusions of this study contribute to the worldwide push for ultimate abolition of the death penalty as a requirement to safeguard human dignity, to prevent unreversible judicial errors and to reinforce modern human rights systems.

### **CONCLUSION**

One of the most divisive and complex issues in modern criminal justice is the death penalty, both inside the criminal justice system and in international human rights law. This study analyzed the international human rights standards, Islamic criminal jurisprudence and Pakistani law with a critical perspective on the regulation of capital punishment. It delved into the 'right to life' and its connection with 'procedural fairness', 'retributive justice' and 'the theory of deterrence' and its impact on the state through the doctrinal legal analysis and qualitative evaluation of the legal sources.

The results of the study illustrate the growing trend towards restriction and elimination of the death penalty in international human rights law. The Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and Second Optional Protocol to the ICCPR all highlight the inviolability of the human person and the stringent restrictions on the use of executions. Capital punishment is today

discredited by international human rights organizations and abolitionist groups as being incompatible with the standards of human dignity, civilized justice, and prevention of cruel, inhuman, and degrading punishment.

The study also concluded that while the international law does not yet uniformly ban the death penalty, it puts it under strong constraints by means of procedural and substantive rules. The need for the executions to be used for the “most serious crimes” and the guarantees of fair trial, protection from torture and the right to appeal, are indicative of a trend in international consensus that the deprivation of life by the state must be highly exceptional.

The study also found that Islamic law offers a more complex and rigorous stance on capital punishment than might be thought in contemporary debates. In classical Islamic law, the penalty is not arbitrary or unlimited use of the power of the state. Rather, Islamic law imposes restrictions on the use of the death penalty in strict legal categories of ‘qisas’, ‘hudud’ and ‘ta’zir’, and it also reiterates the importance of mercy, forgiveness, evidentiary certainty and fairness.

The emphasis on the restorative aspect of Islamic criminal law, as embodied in the principle of qisas, is particularly noteworthy because it gives the family of a victim the option of retaliation, financial payment or pardon. By contrast, the principle of Islamic jurisprudence that advocates for judges to refrain from harsh punishments in situations of doubt has a clear concern to avoid the wrongful conviction and punishment. The results show that there are salient procedural protections that are acknowledged in classical Islamic law as well as in contemporary international human rights law.

The study, however, did reveal that there were deep conflicts between international human rights law and its implementation in many current retentionists countries. Islamic law and international human rights law accord respect to human life and fair procedure, but state practice often extends the scope of capital punishment beyond what was originally intended by either set of laws.

Pakistan proved to be a case in point of these tensions. The study revealed that the Pakistani criminal justice system is a complicated hybrid of Islamic law, constitutional provisions, common law and anti-terrorism provisions. Despite the formal recognition of these principles of qisas and Diyat in Pakistan, there are profound institutional and procedural weaknesses which affect the implementation of the death penalty system in practice.

The research revealed that torture, forced confessions, poor forensic investigations, slow criminal proceedings, lack of legal aid, inconsistent sentencing and political interference were common concerns among the public. These shortcomings have raised the risk of misidentifying a person as guilty and killing them based on that misidentification, and also the risk of arbitrary killing. These concerns are worsened by the fact that errors are final and irrevocable in the case of execution.

The research also showed that there is a tendency to compromise procedural safeguards in the context of terrorism and national security in the Anti-Terrorism Courts and emergency security measures. While the governments justify such measures by referring to public protection and deterrence, the study has not found sufficient empirical evidence that proves that capital punishment is more effective than long-term imprisonment in terms of deterrence and prevention of violent crimes or acts of terror.

The research also showcased widespread concerns over inequality and discrimination when it comes to capital punishment. Competent legal representation and procedural protections are often not available to poor defendants, marginalized groups and socially vulnerable individuals. As such, the death penalty is frequently an indicator of the wider social inequalities found in society.

In general, this research suggests that the current retentionist system is not easily able to reconcile capital punishment with human rights standards today. International law developments, abolitionist campaigns and the subsequent growth and theories of human dignity still challenge the validity of executions in current criminal justice systems.

Hence, the study ends by suggesting that retentionist States need to carry out massive legal and institutional changes, if they wish to keep capital punishment in place. Such reforms should also involve access to public legal aid, judicial independence, curbing the use of torture and coerced confessions, improving forensic and investigative mechanisms, transparency in the criminal justice system, and curbing the scope of capital offences.

Meanwhile, the results indicate that the development of Islamic penal law in the spirit of mercy, proportionality, equity and the preservation of human life can also have a positive effect on the process of harmonization between domestic law and international human rights obligations.

In the end, the finality of the death penalty should demand the highest levels of fairness, justice and fact. Without such safeguards, any criminal justice system has the potential to create punishment as a form of unjustified life-taking. This, therefore, is one of the most remarkable trends in current international human rights law and criminal justice reform in the world.

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