



## **Capital Punishment at the Crossroads: Reconciling Sharia, Constitutional Law, and Human Rights in Pakistan**

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### **ABSTRACT**

The death penalty remains one of the most contested issues at the intersection of Islamic jurisprudence, state policy, and international human rights law. This paper explores the complex dynamics surrounding capital punishment, with a particular focus on Pakistan, while situating the debate within broader Muslim-majority contexts. The first section traces classical interpretations of Islamic jurisprudence, highlighting the principles of qisas, diyat, and hudood, and contrasts these with modern reformist readings that emphasize justice, mercy, and evolving standards of human dignity. The paper then examines Pakistan's legal and procedural framework, including statutory provisions, judicial practices, and policy shifts, to assess how they reflect both Islamic and constitutional principles. In parallel, international human rights standards are analyzed, particularly the growing global movement toward restriction and abolition of the death penalty. Comparative case studies from selected Islamic countries are presented to demonstrate reform initiatives that reconcile Sharia-based frameworks with contemporary human rights commitments. Special attention is paid to the impact of the death penalty on vulnerable groups, including juveniles, women, the poor, and religious minorities. Finally, the paper reviews emerging strategies of advocacy, litigation, and community engagement in Pakistan and beyond. By situating Pakistan within both its Islamic and international contexts, the paper argues for a nuanced, principled, and pragmatic rethinking of the death penalty that advances justice while honoring human dignity.

**Keywords:** Islamic Jurisprudence, Death Penalty, Pakistan, Human Rights, Sharia Reform, Vulnerable Groups, Advocacy, Litigation, Legal Reform

### **Introduction**

The death penalty is one of the most debated and controversial aspects of criminal justice, especially in Muslim-majority societies where religious law and modern legal systems coexist. The discourse over capital punishment is often framed as a moral and theological



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question as much as it is a legal or political one. In the Islamic tradition, certain offenses carry fixed punishments, but the Quran and Sunnah also emphasize justice, mercy, and the sanctity of human life. In modern states such as Pakistan, where Islamic principles are integrated into the legal framework, the implementation of the death penalty raises questions about due process, fairness, and compliance with international human rights standards.

### **Classical Islamic Jurisprudence: Qisas, Diyat, and Hudood**

In classical Islamic jurisprudence, the concept of qisas (retribution) and diyat (monetary compensation) represent key mechanisms of justice in homicide cases. Qisas allows the victim's heirs to seek retribution, whereas diyat offers an alternative through financial compensation. The Quran states, 'O you who believe, prescribed for you is legal retribution (qisas) for those murdered' (Quran 2:178). However, forgiveness and reconciliation are also strongly encouraged. The Prophet Muhammad (peace be upon him) frequently urged compassion and forgiveness as higher virtues than retribution. Hudood crimes, such as theft or adultery, are considered offenses against God, but the evidentiary standards are so high that executions are exceedingly rare when applied correctly.

### **Modern Reformist Interpretations and Maqasid al-Shariah**

Modern Islamic scholarship increasingly interprets Shariah through the lens of maqasid al-shariah—the higher objectives of Islamic law, which include the protection of life, intellect, religion, lineage, and property. Reformist scholars such as Abdullahi An-Na'im and Jasser Auda argue that the application of capital punishment should evolve in line with contemporary human rights norms and the ethical imperative of human dignity. This approach aligns with the Quranic emphasis on mercy and justice while allowing flexibility in adapting legal norms to modern realities.

### **Pakistan's Legal and Procedural Framework**

Pakistan's criminal justice system incorporates both colonial and Islamic legal traditions. The Pakistan Penal Code (Act XLV of 1860) prescribes death as a punishment for several offenses, including intentional murder under Section 302. The Qisas and Diyat Ordinance of 1990 introduced Islamic concepts into the Penal Code, allowing the heirs of a murder victim to forgive the offender or accept diyat instead of insisting on execution. However, the system has been criticized for procedural flaws, including coerced confessions, poor forensic investigation, and unequal access to justice. The Supreme Court of Pakistan has on several occasions commuted death sentences on procedural grounds, reflecting growing judicial awareness of these issues. In case of *Hassan and others vs. The State* (PLD 2013 SC 793) the Pakistan Supreme Court articulates that under certain provisions (e.g., Ta'zir provisions under Section 302(b), PPC), courts have discretion to impose either death or life imprisonment depending on the facts and circumstances. The Court noted that life imprisonment is a legal alternative. This dictum supports the argument that life imprisonment is also a "normal sentence" under Pakistani law



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when death sentence is not appropriate.

### **Expectation of Life Principle**

There are several Supreme Court decisions and precedents where due to very long delay in execution of death sentence or in appeal, courts have applied the doctrine of expectation of life (i.e. that a person has expectation of life if they've spent many years on death row with pending appeals) to commute death sentence, or avoid imposing death sentence, recognizing life imprisonment as more just under such delay. For instance the supreme court case like *State v. Rab Nawaz, Muhammad Nawab v. Muhammad Sadiq*, etc. In research Foundation for Fundamental Rights Study (2010-2018) while not a single case, the study noted that during this period, the Supreme Court has developed a "presumption in favour of life imprisonment over the death penalty" lower courts often still use death as a "normal punishment" for murder. The SC has overturned many death sentences (by commuting, reviewing, etc.) on appeal or constitutional grounds. This indicates that in practice, the Supreme Court jurisprudence is trending toward treating life imprisonment more regularly. There is jurisprudence (e.g. in *Muhammad Riaz & another v. State* cited in *Muhammad Sharif v. The State*, PLD 2009 SC 709) where the SC has held that though under law the "normal penalty" for Qatl-i-Amd (intentional murder) is death, the law also gives option for life imprisonment (via Ta'zir) when mitigating circumstances are present. In *Tanveer Ahmed vs. The State* (AJK Supreme Court), the court held that under statutory provisions for Ta'zir, both death and life imprisonment are 'alternate' sentences and "normal punishments." Here the court explicitly said: "both can be treated as normal sentences."

### **Relevant Constitutional / Statutory Texts & Provisions**

Section 302(b), Pakistan Penal Code: Provides for qisas but also under Ta'zir allows life imprisonment or death depending on facts & circumstances. Thus, legally life imprisonment is a permissible and regular alternative.

Juvenile Justice System Ordinance, 2000: Prohibits death penalty for juveniles, hence death sentences in such cases must be converted (retrospectively or otherwise) to life imprisonment. The SC's Anwar case (supra) is an example.

### **Comparative Case Studies: Indonesia and Malaysia**

Indonesia and Malaysia provide insightful examples of reform within Islamic contexts. Indonesia's 2023 Criminal Code reclassified the death penalty as an 'alternative punishment' rather than a mandatory sentence, allowing judicial discretion and the possibility of commutation after ten years. Malaysia, similarly, abolished the mandatory death penalty in 2023, retaining it only for the most severe crimes and allowing judicial discretion. Both countries demonstrate that Islamic legal principles can coexist with evolving human rights frameworks through reinterpretation and legislative reform.



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### **International Human Rights Standards**

Internationally, the movement toward the abolition of the death penalty has gained momentum under instruments such as the International Covenant on Civil and Political Rights (ICCPR). Article 6 of the ICCPR restricts the death penalty to the 'most serious crimes' and mandates strict procedural safeguards. Pakistan, a signatory to the ICCPR, faces increasing international pressure to align its legal practices with global human rights standards, particularly concerning fair trials and the protection of vulnerable populations.

### **Vulnerable Groups and Disproportionate Impact**

Research indicates that the death penalty in Pakistan disproportionately affects vulnerable groups such as the poor, women, juveniles, and religious minorities. The litigants from lower socioeconomic backgrounds often lack competent legal representation and are more likely to suffer convictions due to poor assistance.

### **Advocacy, Litigation, and Reform Strategies**

Reform efforts must combine legal, theological, and civic approaches. Strategic litigation can challenge unconstitutional applications of the death penalty. Civil society organizations play a vital role in raising public awareness and providing legal aid to death row prisoners. Religious scholars and jurists can advance reform by emphasizing Islamic principles of mercy and justice, demonstrating that the maqasid al-shariah align with modern human rights ideals. Lessons from Malaysia and Indonesia show that reform within Islamic frameworks is both possible and effective.

### **Conclusion**

The intersection of Islamic jurisprudence and international human rights presents both challenges and opportunities for rethinking the death penalty. By revisiting classical Islamic principles through a modern lens, Pakistan and other Muslim-majority countries can pursue reforms that preserve justice, uphold human dignity, and reflect the true spirit of Shariah.

Comparative experiences from Indonesia and Malaysia demonstrate that such reforms are not only feasible but also consistent with both religious and moral imperatives. Ultimately, a balanced approach rooted in the values of justice, mercy, and human rights can guide the evolution of the death penalty discourse in the Muslim world.

### **References**

- Ariffin, F., Putera, A., Jannah, M., & Setiawan, H. (2023). Legal Review of the Death Penalty in the Perspective of Human Rights. *Shautuna: Jurnal Ilmiah Mahasiswa Perbandingan Mazhab*.
- Human Rights Watch. (2023, April 11). Malaysia Repeals Mandatory Death Penalty. HRW.
- Hassan and others vs. The State (PLD 2013 SC 793).
- Ismail, S. Z. (2024). Proposing Diyat as an Alternative to Death Penalty for the Crime of Murder in Malaysia. *Jurnal Syariah*, 32(3), 487–518.
- Mohas, M., Rofiana, R., Jastisia, M., Anwar, J., & Risyawan, A. (2025). Legality and Controversy: The Death Penalty in Indonesia from the Perspectives of Islamic



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Law.

Muhammad Riaz & another v. State cited in Muhammad Sharif v. The State, PLD 2009 SC  
709).

Pakistan Penal Code (Act XLV of 1860). Government of Pakistan.

Qisas and Diyat Ordinance, 1990. Government of Pakistan.