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Averting Death by Doubt: Reconciling Shubhat in Islamic Law with Article 6 of the ICCPR

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ABSTRACT

This paper studies how Shubhat (doubt) in Islamic law can help bring Pakistan's use of the death penalty closer to Article 6 of the International Covenant on Civil and Political Rights (ICCPR). The classical rule al-hudud tudraʾ bi'l-shubuhāt states that fixed punishments should not be given if there is any doubt. This principle gives a local basis for limiting capital punishment in a way that fits international human rights standards.

Three types of doubt are discussed. The first is evidentiary doubt, where weak proof, like forced confessions, poor forensic methods, or weak legal defence, makes a conviction open to challenge. The second is doubt about capacity, shown in the Supreme Court's Safia Bano case (2021), which ruled it unfair to execute prisoners with severe mental illness because their responsibility is reduced. The third is doubt about offence classification. Islamic law includes a wide group of hudud crimes, while the ICCPR allows the death penalty only for "most serious crimes," usually meaning intentional killing.

By explaining Shubhat in terms of proof, capacity, and classification, the paper builds a framework for reform. The framework involves making statutory rules that avoid executions when there is doubt, raising evidentiary standards, and giving stronger judicial oversight. Looking at Malaysia's eradication of mandatory death sentences, Morocco's practices of moratorium, and Saudi Arabia's strict evidentiary rules shows that Islamic frameworks can work together with human rights. If Shubhat is written clearly as a statutory bar to execution, it will lower wrongful convictions and bring Pakistan's system closer to both its Islamic roots and global promises.

Keywords: Shubhat; Islamic Criminal Law; Article 6 Iccpr; Death Penalty Reform; Safia Bano; Proof And Evidence; Mental Disability; Hudud Offences; Pakistan.

Introduction

The preservation of life is both a Quranic imperative and the cornerstone of modern international human rights law. "Do not take life, which God has made sacred, except by way of justice and law" (Quran 17:33) echoes across centuries, the restraint enshrined in

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Article 6(1) of the International Covenant on Civil and Political Rights (ICCPR), which declares the right to life as inherent and non-derogable. Yet despite this shared moral grammar, the practice of capital punishment in many Muslim-majority states reveals striking divergence. Pakistan, in particular, retains the death penalty for twenty-seven offences, including blasphemy, drug trafficking, and kidnapping, far beyond intentional murder (Justice Project Pakistan, 2016). With over six thousand individuals on death row, the largest per capita in the world, executions occur under evidentiary uncertainty, political pressure, and social violence (Amnesty International, 2024).

Islamic jurisprudence itself developed a robust doctrine of restraint, encapsulated in the maxim idraʾū al-ḥudūd bi'l-shubuhāt (suspend fixed punishments in cases of doubt). This maxim, recorded in multiple hadith collections (al-Tirmidhī, no. 1424; al-Bayhaqī, al-Sunan al-Kubrá), instructed judges to acquit whenever evidence was ambiguous, confessions coerced, or intention unclear. Jurists from Abū Ḥanīfa to al-Shāfiʿī warned that wrongful execution was an irreparable violation of divine justice (Rabb, 2015). International law, through ICCPR Article 6 and General Comment No. 36, reaches a parallel conclusion: the death penalty is permissible only for intentional killing, never mandatory, and never applicable to juveniles or the mentally ill (UN HRC, 2018). Both traditions, therefore, converge on restraint. Yet Pakistan's statutes and judicial practice have steadily erased this commonality.

The distortion is institutional as much as doctrinal. The Federal Shariat Court in Muhammad Ismail Qureshi (1991) invalidated life imprisonment as an alternative to death under Section 295-C PPC, rendering blasphemy a mandatory capital offence. By contrast, the Supreme Court's acquittal in the Asia Bibi case (2019) showed how Shubhat could save a life from flimsy accusations, while Safia Bano v. State (2021) barred execution of the mentally ill on grounds of capacity doubt. The jurisprudence exists, but only in fragments. Without codification, thousands remain vulnerable to death sentences beyond both ICCPR thresholds and Islamic principles of doubt.

The regional landscape illustrates alternative trajectories. Malaysia in 2023 abolished the mandatory death penalty and introduced resentencing mechanisms, sparing over a thousand prisoners from automatic execution (SUARAM, 2023). Morocco has observed a de facto moratorium since 1993, reinforced by its 2011 Constitution's guarantee of the right to life, though parliament resists abolition under political pressure (Barr, 2020). Saudi Arabia, by contrast, remains one of the world's top executioners, expanding capital punishment to crimes such as sorcery, drug smuggling, and "corruption on earth" through discretionary fatwas (Peiffer, 2005; Amnesty International, 2024). These divergent models of incremental reform, moratorium, and expansion provide comparative insights into Pakistan's contested future.

This article proposes to recover and operationalise Shubhat as a jurisprudence of restraint capable of reconciling Islamic law with Article 6 ICCPR. The argument is not abolitionist in abstraction, nor apologetic in tone. It seeks to recalibrate the debate by showing that Islamic jurisprudence itself, when read through Shubhat, demands the restriction of capital punishment to a vanishing point, and that international law provides the parallel normative architecture. The paper proceeds in seven parts. First, it excavates the doctrinal foundations of Shubhat in the Quran, hadith, and classical fiqh. Second, it outlines the international legal framework under Article 6 ICCPR. Third, it analyses Pakistan's statutory regime and judicial practice. Fourth, it proposes a

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taxonomy of doubt: classification, evidentiary, and capacity as bars to execution. Fifth, it compares Malaysia, Morocco, and Saudi Arabia. Sixth, it outlines legislative, judicial, and executive pathways for embedding Shubhat into law. The article concludes by reflecting on Shubhat not merely as a technical safeguard but as an ethic of humility: in matters of life and death, doubt is justice.

Doctrinal Foundations of Shubhat in Islamic Law

The principle that doubt suspends punishment is not a marginal gloss on Islamic criminal law but a central maxim. The hadith recorded in Sunan al-Tirmidhī (no. 1424) and al-Bayhaqī's al-Sunan al-Kubrá instructs: idraʾū al-ḥudūd bi'l-shubuhāt "suspend fixed punishments in cases of doubt." The Prophet is also reported to have said, "If you find a way for a Muslim to be spared the prescribed punishment, then leave him to that way, for it is better for the ruler to err in pardon than to err in punishment" (al-Tirmidhī, no. 1424). This ethic was echoed across the legal schools and reflected a Quranic principle: "Whoever kills a soul not in retaliation for another soul or corruption in the land, it is as though he has slain all humanity" (Quran 5:32). The preservation of life was the priority; certainty was demanded for execution, while even minor doubt became a shield for the accused (Rabb, 2015; Kamali, 2019).

Quranic Anchors and Prophetic Precedent

The Quran legislates explicitly for only a handful of offences. Adultery requires four witnesses (Quran 24:13), theft proof of unlawful taking (Quran 5:38), and highway robbery a range of penalties (Quran 5:33). Even these verses embed possibilities of repentance: "But if the thief repents after his crime and reforms, God will turn to him in forgiveness" (Quran 5:39; Kamali, 2019). The Prophet reinforced this approach. In the case of Māʿiz al-Aslamī, he required repeated confessions and allowed opportunities for retraction (Ṣaḥīḥ Muslim, no. 1691). In other cases, he turned away from confessions or asked questions that enabled withdrawal. Such precedents institutionalised an interpretive elasticity that jurists later systematised as Shubhat (Rabb, 2015; Peters, 2005).

Juristic Development of the Maxim

Jurists defined Shubhat broadly. It could be factual, such as contradictory testimony; legal, where texts were contested; or moral, where punishment seemed disproportionate. The Hanafi school gave the widest scope, holding that mistaken belief in ownership could excuse theft or that ambiguous words could suspend blasphemy liability (Abbas, 2013). The Maliki and Shafiʿi traditions were narrower, yet all agreed that hudud must be suspended in doubt. This doctrinal richness reflected an epistemic humility: since certainty in intention or speech is rarely possible, the law must err on the side of life (Rabb, 2015).

Classical Legal Practice

Coulson (1964) and Peters (2005) show that hudud punishments were rarely executed. Ottoman court records reveal that zina or theft charges were regularly downgraded to taʿzīr or dismissed for lack of evidence. Judges invoked procedural flaws or repentance as grounds for leniency. Execution was the exception, not the norm. Hallaq (2009) explains that in pre-modern Shariʿa, law was administered through a decentralised moral order of qāḍīs and muftis. Multiple entry points, juristic interpretation, mediation,

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and victim forgiveness created barriers to capital punishment. Colonial codification, and later post-colonial Islamisation, froze these fluid doctrines into rigid statutes (Lau, 2006; Abbas, 2013).

Philosophy of Punishment

Kamali (2019) highlights that Quranic hudud verses are never divorced from repentance, reform, and forgiveness. Punishment was not meant to define Islam but to uphold justice and prevent harm. The rigid division between "rights of God" and "rights of man" obscures the Quran's consistent valorisation of mercy and compensation. Mumisa (2015) develops this further, arguing that the expansion of death to drug offences, sorcery, or blasphemy has no basis in the Quran or Sunnah. In his view, ʿafw (forgiveness) and diyya (compensation) are Quranic alternatives that should prevail in nearly all cases.

Shubhat as Restraint

The logic of Shubhat is stark. Life once taken cannot be restored, so the threshold of certainty must be absolute. Since absolute certainty is rarely achievable, doubt becomes a jurisprudential safeguard. Rabb (2015) and Kamali (2019) describe it as a deliberate interpretive restraint. This explains why Islamic courts historically acquitted in most hudud cases (Peters, 2005; Coulson, 1964).

Modern statutory regimes have eroded this ethic. Pakistan's Hudood Ordinances (1979) and the Federal Shariat Court's judgment in Qureshi imposed mandatory death for blasphemy, removing the judicial discretion that Shubhat required (Abbas, 2013; Lau, 2006). Saudi Arabia expanded taʿzīr punishments to capital crimes such as sorcery and drugs (Peiffer, 2005). Nigeria's early 2000s Shariʿa codes sentenced women to stoning for zina based solely on pregnancy, before appellate courts invoked Shubhat to acquit (Peters, 2005). Such cases show how modern states instrumentalise Shariʿa as a political symbol while neglecting its ethic of restraint (Nazir, 2019).

Convergence with International Human Rights Law

Article 6 ICCPR and General Comment No. 36 (2018) establish that death is permissible only for intentional killing, never mandatory, and never applicable to juveniles or the mentally ill. This framework parallels Islamic law's bars on execution where doubt exists. Both traditions recognise that coercion, contradictory evidence, or ambiguous statutes cannot justify irreversible punishment (Mumisa, 2015).

Recovering Shubhat thus means more than reviving a juristic maxim. It uncovers a shared normative core linking Islamic jurisprudence and international law. Doubt is not weakness but a guardian of life. The challenge for Pakistan is to codify Shubhat into its statutes and judicial practice, ensuring that certainty falsely claimed no longer costs human lives.

ICCPR Article 6 and International Standards

ICCPR, adopted in 1966 and ratified by Pakistan in 2010, enshrines in Article 6 the strongest international protection of the right to life. It declares that "every human being has the inherent right to life" and that this right "shall be protected by law." While not abolishing capital punishment outright, Article 6 restricts it to narrow circumstances, progressively clarified by the Human Rights Committee (HRC) and regional courts.

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These restrictions amount to a jurisprudence of restraint that resonates with the Islamic maxim idraʾū al-ḥudūd bi'l-shubuhāt suspend punishments in cases of doubt (Rabb, 2015; Kamali, 2019).

The "Most Serious Crimes" Threshold

Article 6(2) allows capital punishment only "for the most serious crimes." The travaux préparatoires show this was intended as a limit. General Comment No. 36 defines the phrase to mean intentional killing alone (UN HRC, 2018). Offences such as blasphemy, adultery, apostasy, robbery, drug trafficking, and corruption fall outside this scope. Pakistan's Penal Code nonetheless retains them, a position Amnesty International (2024) and Justice Project Pakistan (2016) describe as incompatible with international law.

Ban on Mandatory Death Sentences

The HRC regards mandatory death penalties as inherently arbitrary, since they bar courts from considering mitigating factors (UN HRC, 2018). This approach has been endorsed in Hilaire v. Trinidad and Tobago (2002) and Reyes v. The Queen (2002). Yet Pakistan still enforces mandatory death for blasphemy under Section 295-C, upheld by the Federal Shariat Court in Muhammad Ismail Qureshi (1991). Such rigidity departs from both ICCPR standards and Islamic principles of Shubhat (Abbas, 2013).

Protection of Vulnerable Persons

Article 6(5) prohibits executing offenders under eighteen. General Comment No. 36 extends this bar to those with severe intellectual or psychosocial disabilities (UN HRC, 2018). Pakistan has executed juveniles amid disputed age records (Justice Project Pakistan, 2016). In contrast, the Supreme Court in Safia Bano (2021)prohibited executing the mentally ill, echoing Islamic exemptions for children, the insane, and coerced persons (Rabb, 2015).

Fair Trial Safeguards

The HRC stresses that death sentences after trials lacking Article 14 guarantees, judicial independence, presumption of innocence, counsel, and freedom from torture are arbitrary (UN HRC, 2018). The European Court of Human Rights confirmed this link in Al-Saadoon and Mufdhi v. United Kingdom (2010). In Pakistan, reliance on weak testimony and coerced confessions is widespread. The Asia Bibi case (2019) showed how such flaws nearly produced wrongful execution. The International Commission of Jurists (2013) has criticised Pakistani courts for inconsistency in applying safeguards.

Clemency and Commutation

Article 6(4) guarantees all death-sentenced prisoners the right to seek pardon or commutation. The HRC frames this as a legal safeguard, not discretionary mercy (UN HRC, 2018). Islamic law provides comparable mechanisms through ʿafw (forgiveness) and diyya (compensation), praised in Quran 2:178 as superior to retaliation. Yet in Pakistan, mob violence and political assassinations often prevent clemency in blasphemy cases (Abbas, 2013).

Progressive Restriction

Although Article 6 does not abolish capital punishment, it requires states to narrow its

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use. General Comment No. 36 affirms that expanding capital statutes or reintroducing executions after moratoria breaches the Covenant (UN HRC, 2018). The Second Optional Protocol codifies abolition as the goal. Pakistan has resisted accession, citing constitutional and religious concerns (Kakar, 2018). Yet both ICCPR jurisprudence and Islamic doctrines of Shubhat and mercy converge on progressive elimination.

Article 6 ICCPR thus constructs a layered framework: limiting death to intentional killing, prohibiting mandatory penalties, protecting the vulnerable, demanding fair trials, and guaranteeing clemency. Each safeguard finds a parallel in Islamic jurisprudence. The divergence lies not in principle but in Pakistan's practice, a gap explored in the next section.

Pakistan's Death Penalty Landscape

Pakistan retains one of the most expansive death penalty regimes in the world. The Penal Code, Anti-Terrorism Act, Army Act, and Hudood Ordinances collectively prescribe death for at least twenty-seven offences, many of which fall outside the narrow "most serious crimes" category of Article 6 ICCPR (Justice Project Pakistan, 2016; Kakar, 2018). This breadth, compounded by mandatory provisions, weak safeguards, and politicised religion, has produced a death row population exceeding six thousand, where executions occur under conditions that diverge from both Islamic jurisprudence of Shubhat and international standards (Amnesty International, 2024).

Statutory Basis and Expansion

The Penal Code prescribes death for murder under qisās and taʿzīr provisions, but also for kidnapping, sabotage of utilities, drug trafficking, treason, and blasphemy under Section 295-C. The Hudood Ordinances (1979) added capital punishment for zina and apostasy, though prosecutions are rare (Lau, 2006). The Anti-Terrorism Act 1997 extended death to vaguely defined "terrorism," often encompassing ordinary homicide (Justice Project Pakistan, 2016). Such statutory inflation departs from the Quranic limit of life-taking to intentional killing (Quran 17:33).

The Federal Shariat Court and Mandatory Death

A pivotal moment came with Muhammad Ismail Qureshi (1991), where the Federal Shariat Court struck down life imprisonment as an alternative under Section 295-C, rendering blasphemy a mandatory capital offence. This eliminated judicial discretion precisely where Shubhat required suspension (Abbas, 2013). Attempts to revisit the judgment have failed, despite scholarly consensus that blasphemy lies outside Quranic capital crimes (Kamali, 2019; Mumisa, 2015).

Judicial Interventions: Glimpses of Restraint

Despite statutory rigidity, higher courts have sometimes invoked doubt. In Asia Bibi (2019), the Supreme Court acquitted a Christian woman sentenced to death for blasphemy, citing contradictory testimony, delay, and coercion. The Court stressed that doubt must favour the accused, echoing both Islamic and ICCPR standards. In Safia Bano (2021), it barred the execution of mentally ill prisoners, aligning domestic law with General Comment No. 36 and Islamic exemptions for incapacity (Rabb, 2015). These cases show Shubhat at work, but only sporadically.

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Weaknesses in Trial Safeguards

At the trial level, systemic deficiencies undermine the right to life. Justice Project Pakistan (2016) reports widespread reliance on coerced confessions, cursory defence, and weak forensics. Anti-Terrorism Courts, designed for speed, often convict in days, raising serious due process concerns (ICJ, 2013). Juveniles and the poor are disproportionately sentenced. Evidentiary weaknesses that should trigger Shubhat instead fuel executions.

Politicization of Blasphemy

Blasphemy prosecutions exemplify the gulf between principle and practice. As Abbas (2013) shows, colonial-era provisions were expanded under Zia-ul-Haq to include mandatory death. Since then, accusations have been used to settle personal disputes and silence dissent. Many accused are lynched before trial; judges face threats; and reform advocates, such as Governor Salman Taseer in 2011, have been assassinated. In this climate, neither judicial independence nor Shubhat operates effectively, making Pakistan's divergence from both ICCPR and Islamic jurisprudence most acute.

Civil Society and International Scrutiny

Civil society groups such as the Human Rights Commission of Pakistan and Justice Project Pakistan have documented these divergences, urging moratoria and eventual abolition. International scrutiny has intensified through the Universal Periodic Review, where Pakistan's capital regime has been repeatedly criticised (Nazir, 2019). The state defends retention on Islamic grounds, but jurists counter that hudud were historically suspended by doubt and rarely implemented (Peters, 2005).

Structural Contradictions

Pakistan's regime embodies structural contradiction. The Constitution affirms both Islam and international treaties. Courts occasionally apply Shubhat to save lives. Yet statutes and mandatory provisions force executions where both systems require restraint. The doctrine of doubt and ICCPR safeguards converge in principle, but Pakistan has created an architecture of divergence.

Operationalising Shubhat: Towards Bars on the Death Penalty

The maxim idraʾū al-ḥudūd bi'l-shubuhāt demands not rhetorical affirmation but systematic implementation. In classical fiqh, doubt guided judges in individual cases. In modern statutory systems, where mandatory punishments and rigid codes restrict discretion, the challenge is to operationalise Shubhat as a binding safeguard. This requires a taxonomy of doubts classification, evidentiary, and capacity, and recognition of each as a bar to capital punishment. Such codification would restore the integrity of Islamic jurisprudence while aligning Pakistan's regime with Article 6 ICCPR.

Classification Doubt: Contesting the Boundaries of Capital Offences

The Islamic Perspective

Classification doubt arises when the status of an offence as ḥadd or capital is contested. Rabb (2015) notes that jurists often downgraded hudud cases to taʿzīr where ambiguity existed The Hanafi school excused theft from ambiguous property, and the Maliki school resisted zina charges without direct evidence (Peters, 2005). Applied to blasphemy, the principle is decisive. The Quran prescribes no death for blasphemy, instructing withdrawal from offensive speech (Quran 4:140). Yet Section 295-C imposes mandatory

DIALOGUE SOCIAL SCIENCE REVIEW

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death. Abbas (2013) and Mumisa (2015) argue that this expansion is political, not Quranic. Where jurists disagree and a scriptural basis is absent, Shubhat bars capital punishment.

The International Standard

The Human Rights Committee defines "most serious crimes" as intentional killing only (UN HRC, 2018). Non-lethal offences, such as blasphemy, apostasy, drugs, and corruption, fall outside this scope. Comparative practice confirms this. Malaysia in 2023 abolished mandatory death for drugs, commuting over a thousand sentences (SUARAM, 2023). Morocco has not executed for non-lethal crimes since 1993 (Barr, 2020).

Pakistan's Position

Classification doubt requires statutory reform. Kakar (2018) identifies at least twenty-three of Pakistan's twenty-seven capital offences as inconsistent with both the Quran and ICCPR. A codified "classification bar" would confine death to intentional homicide.

Evidentiary Doubt: Safeguards Against Miscarriages

The Islamic Perspective

Evidentiary doubt is the most developed form of Shubhat. Hudud required strict proof: zina demanded four eyewitnesses (Quran 24:13), confessions were retractable, and circumstantial evidence was inadequate. The Prophet repeatedly redirected confessions to create space for doubt (Ṣaḥīḥ Muslim, no. 1691). Rabb (2015) shows jurists extended Shubhat to contradictions, delays, and unreliable witnesses. Kamali (2019) notes that weak modern institutions only enlarge this scope.

The International Standard

Article 14 ICCPR demands presumption of innocence, exclusion of coerced confessions, and proof beyond a reasonable doubt. The HRC views capital convictions without such guarantees as arbitrary (UN HRC, 2018). In Reyes v. The Queen (2002), the Privy Council struck down mandatory death partly because it ignored evidentiary distinctions.

Pakistan's Position

Evidentiary weaknesses pervade Pakistan's capital trials. JPP (2016) found 78 percent of death sentences rested on retracted confessions, often obtained through torture. Forensics is limited, and single-witness testimony is common. The Asia Bibi case (2019) illustrates how contradictions nearly produced wrongful execution before acquittal. A codified "evidentiary bar" would ensure such doubt precludes death in every case.

Capacity Doubt: Mental Illness, Minority, and Coercion

The Islamic Perspective

Islamic law exempts minors, the insane, and coerced persons. The Prophet said, "The pen is lifted from three: the child until maturity, the sleeping person until waking, and the insane until recovery" (Sunan Abū Dāwūd, no. 4399). Jurists extended protection to those under necessity (Rabb, 2015). Hudud were suspended whenever intent was absent. This reflected the maqāṣid principle that punishment without culpability is oppression (Kamali, 2019).

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The International Standard

Article 6(5) ICCPR prohibits executing offenders under eighteen, and General Comment No. 36 extends this bar to those with serious intellectual or psychosocial disabilities (UN HRC, 2018). The HRC views capacity doubt as an absolute prohibition.

Pakistan's Position

Pakistan's record is inconsistent. Juveniles have been executed where age records were disputed (Justice Project Pakistan, 2016). In Safia Bano (2021), the Supreme Court finally barred execution of the mentally ill, reflecting both ICCPR and Islamic law. Yet implementation remains uneven, with many still facing execution despite credible medical evidence. A codified "capacity bar" would institutionalise protection.

Codifying the Doubt Bars

Transforming these principles into statutory safeguards is the next step. A model Penal Code provision could state:

Classification Bar: Death shall apply only to intentional homicide as defined by the Quran and ICCPR; in ambiguity, the lesser penalty applies.

Evidentiary Bar: Where evidence is contradictory, coerced, circumstantial, or procedurally flawed, no death penalty may be imposed.

Capacity Bar: No person under eighteen, mentally ill, or lacking intent shall be executed; doubt precludes capital punishment.

This codification would bridge Islamic and international frameworks, reflecting Rabb's (2015) conception of doubt as interpretive restraint, Kamali's (2019) maqāṣid emphasis, and the ICCPR's layered safeguards (UN HRC, 2018).

Jurisprudence of Humility

Operationalising Shubhat is more than technical reform. It is a jurisprudence of humility. Human knowledge is fallible, evidence fragile, intentions opaque. To legislate doubt as a bar is to institutionalise recognition of these limits. In the Quran, the sanctity of life is the baseline, execution the exception (Quran 5:32). In the ICCPR, the right to life is inherent, with capital punishment tolerated only under narrow conditions. Both converge on the ethic that irreversible punishment demands certainty beyond human reach.

By narrowing capital offences, enforcing rigorous proof, and recognising diminished capacity, Pakistan could codify Shubhat into positive law. Such reform would align the country with its ICCPR obligations while restoring fidelity to its own legal tradition. The following section examines comparative jurisdictions of Malaysia, Morocco, and Saudi Arabia for insights into possible trajectories.

Comparative Insights: Malaysia, Morocco, and Saudi Arabia

Comparative analysis shows how Muslim-majority states diverge in reconciling Islamic law, political imperatives, and international human rights standards on capital punishment. Malaysia represents incremental reform, Morocco cautious restraint, and Saudi Arabia maximalist expansion. These trajectories highlight Pakistan's available choices and the costs of inaction.

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Malaysia: Incremental Reform

Malaysia long retained the mandatory death penalty for drug trafficking, firearms offences, and certain murders. Critics argued these provisions violated both international standards and Islamic principles of doubt, since judges lacked discretion (SUARAM, 2023). In 2023, Parliament abolished the mandatory death penalty, introducing alternatives such as long-term imprisonment. Over one thousand death sentences were commuted (Amnesty International, 2025).

The reform was framed not as abolition but as alignment with evolving standards of justice. Islam was not treated as an obstacle; rather, the flexibility of taʿzīr punishments was invoked to justify discretion. Malaysia demonstrates that reform can be incremental, politically feasible, and couched in terms of both international law and Islamic legitimacy. For Pakistan, often wary of backlash, Malaysia's model shows that codifying Shubhat and ending mandatory death sentences could be an attainable first step.

Morocco: Moratorium and Constitutional Right to Life

Morocco has observed a de facto moratorium since 1993, when police commissioner Mohamed Tabet was executed for serial rape. Courts continue to issue death sentences, but none are carried out. Barr (2020) notes that executions once symbolised sovereign power during the "Years of Lead," yet political liberalisation under King Mohammed VI produced restraint. The 2011 Constitution enshrined the right to life in Article 20, strengthening abolitionist arguments, though parliament has resisted repeal.

Civil society networks such as the Moroccan Coalition Against the Death Penalty have pressed for abolition, highlighting prolonged death row confinement as inhuman. International observers have praised the moratorium but criticised retention of capital statutes in the Penal Code, military justice system, and counter-terrorism law (Amnesty International, 2024). Morocco thus represents a middle path: executions halted in practice, but legal abolition blocked by politics. For Pakistan, the lesson is that constitutional rights and civil society mobilisation can narrow capital punishment even without immediate repeal.

Saudi Arabia: Expansion and Politicisation

Saudi Arabia demonstrates the opposite trajectory. Rooted in Hanbali jurisprudence, the kingdom's Basic Law of 1992 entrenched the Quran and Sunnah as legal sources. Courts apply hudud, qisās, and taʿzīr, but discretionary punishments have been expanded to include sorcery, apostasy, drugs, and corruption, often through fatwas rather than statute (Peiffer, 2005). In 2022–23, Saudi Arabia ranked among the world's top three executioners, carrying out hundreds for drug-related and non-lethal crimes (Amnesty International, 2024).

Although safeguards exist on paper, trials are opaque, confessions are frequently coerced, and appeals rarely succeed. The Human Rights Committee and UN Special Rapporteurs have condemned these practices, but Saudi Arabia defends them as consistent with Shariʿa (Nazir, 2019). This trajectory shows how Shariʿa is politicised: hudud become symbols of authenticity, while the ethic of Shubhat is ignored. For Pakistan, Saudi Arabia is a cautionary tale of reputational isolation and domestic critique when executions expand rather than recede.

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Reform Pathways: Legislative, Judicial, Executive

Codifying Shubhat into Pakistan's capital punishment regime requires a multi-level strategy. No single institution can achieve reform in isolation. Legislative amendment, judicial interpretation, and executive policy must align if the jurisprudence of doubt is to be translated into binding safeguards.

Legislative Reform

Parliament holds the constitutional authority to amend the Penal Code and related statutes. The most urgent task is to abolish death for all offences beyond intentional homicide. Kakar (2018) identifies at least twenty-three capital offences that fall outside both the Quranic hudud and ICCPR standards. These include blasphemy, kidnapping, sabotage of utility services, drug trafficking, and treason. Their removal would restore coherence between domestic law, Islamic jurisprudence, and Article 6 ICCPR.

Second, parliament should repeal mandatory death sentences. Section 295-C, upheld by the Federal Shariat Court in Muhammad Ismail Qureshi (1991), is the most prominent case, but mandatory provisions exist elsewhere. Reinstating judicial discretion would not only harmonise with General Comment No. 36 (UN HRC, 2018) but also revive the Islamic principle that doubt suspends punishment (Rabb, 2015). Finally, the statutory codification of doubt bars in classification, evidentiary, and capacity would provide clear guidance to trial courts.

Judicial Reform

The superior judiciary has already shown that restraint is possible. In Asia Bibi (2019), evidentiary contradictions led to acquittal. In Safia Bano (2021), the Court barred the execution of the mentally ill. These judgments demonstrate judicial willingness to operationalise Shubhat. What remains is systematic extension.

The Supreme Court could develop binding guidelines under Article 187 of the Constitution, requiring trial courts to suspend death sentences where doubt arises. Such jurisprudential leadership would echo precedents from other jurisdictions. The Privy Council in Reyes v. The Queen (2002) invalidated mandatory death, and the Inter-American Court in Hilaire v. Trinidad and Tobago (2002) held that capital punishment must be subject to individualized sentencing. By aligning Pakistan's jurisprudence with both Islamic and international standards, the courts can recalibrate the constitutional balance between Articles 2A (Islamic injunctions) and 9 (right to life).

Executive Reform

The executive branch has direct control over moratoria, clemency, and prison conditions. Pakistan lifted its moratorium in 2014 after the Peshawar school attack, leading to a surge of executions, many unrelated to terrorism (Justice Project Pakistan, 2016). Reinstating a moratorium would be the most immediate signal of compliance with ICCPR obligations.

The executive must also ensure that clemency petitions under Article 45 of the Constitution are processed transparently and insulated from mob pressure. Islamic law itself values ʿafw (forgiveness) and diyya (compensation) as superior alternatives to retaliation (Kamali, 2019). Institutionalising these mechanisms would align executive discretion with both Quranic and ICCPR safeguards.

Integrated Approach

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Legislative, judicial, and executive reforms reinforce each other. Parliament narrows the scope of capital punishment, courts entrench doubt as a binding safeguard, and the executive halts executions pending reform. Civil society and international scrutiny, including the Universal Periodic Review, can provide external momentum (Nazir, 2019). Together, these pathways would operationalise Shubhat not as a rhetorical flourish but as a structural bar, aligning Pakistan with its religious heritage and its international obligations.

Conclusion

The jurisprudence of doubt in Islamic law and the safeguards of Article 6 ICCPR converge upon a single imperative: the sanctity of life must never be surrendered to human error. The maxim idraʾū al-ḥudūd bi'l-shubuhāt is more than a procedural rule; it embodies an ethic of humility. Early jurists insisted that ambiguity in classification, evidence, or capacity suspended punishment, for wrongful execution was an affront not only to human dignity but to divine justice (Rabb, 2015; Kamali, 2019). International law, through the ICCPR and its interpretive corpus, arrives at the same conclusion in secular idiom: capital punishment, if retained at all, must be confined to intentional killing, never imposed mandatorily, excluded for the vulnerable, and always subject to pardon (UN HRC, 2018).

Pakistan embodies the stark gap between principle and practice. Statutes extend death to speech, belief, and non-lethal offences; the Federal Shariat Court has entrenched mandatory provisions; and fragile trial safeguards multiply risks of wrongful execution. Still, some cases show restraint. Asia Bibi's acquittal proved that doubt in evidence can save the innocent. In Safia Bano (2021), doubt protected the mentally ill. These examples show Shubhat is already present, though not always applied fairly.

Malaysia shows reforms can incrementally codify discretion inside an Islamic system. Morocco shows constitutional rights and civil society can maintain restraint. Saudi Arabia shows expansion without care for Shubhat brings moral and reputational costs that cannot be ignored.

Making Shubhat into the rules of classification, evidence, and capacity as legal limits connects Islamic law with Article 6 ICCPR. This is not a compromise but shows both share one idea: doubt means justice, not weakness.

References

Primary Texts

Al-Tirmidhī. Sunan al-Tirmidhī. Dār al-Gharb al-Islāmī.
Al-Bayhaqī. Al-Sunan al-Kubrá. Dār al-Kutub al-ʿIlmiyyah.
The Quran. The Quran (various translations).
Ṣaḥīḥ Muslim. Ṣaḥīḥ Muslim. Dār al-Salām.

International Law

United Nations Human Rights Committee. (2018). General Comment No. 36 on Article 6: Right to life (CCPR/C/GC/36).
United Nations. (1966). International Covenant on Civil and Political Rights.

Pakistani Case Law

Asia Bibi v. State (2019). PLD 2019 SC 64 (Pak. Supreme Court).
Muhammad Ismail Qureshi v. Pakistan (1991). PLD 1991 FSC 10 (Fed. Shariat Court, Pak.).
Safia Bano v. State (2021). PLD 2021 SC 488 (Pak. Supreme Court).

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Comparative Case Law

Hilaire v. Trinidad and Tobago (2002). Inter-Am. Ct. H.R. (Ser. C) No. 94.

Reyes v. The Queen (2002). UK Privy Council Appeal No. 64.

Al-Saadoon and Mufdhi v. United Kingdom (2010). Eur. Ct. H.R., App. No. 61498/08.

Reports and NGOs

Amnesty International. (2024). Death penalty in 2023: Facts and figures. Amnesty International.

Justice Project Pakistan. (2016). A most serious crime: Pakistan's unlawful use of the death penalty. Justice Project Pakistan.

International Commission of Jurists. (2013). Authority without accountability: The search for justice in Pakistan. International Commission of Jurists.

SUARAM. (2023). Malaysia Human Rights Report 2023. SUARAM.

Books and Scholarship

Abbas, S. B. (2013). Pakistan's blasphemy laws: From Islamic empires to the Taliban. University of Texas Press.

Barr, H. (2020). The political development of capital punishment in the modern Moroccan state. Al Akhawayn University Press.

Coulson, N. J. (1964). A history of Islamic law. Edinburgh University Press. Emon, A. M., Ellis, M. S., & Glahn, B. (Eds.). (2012). Islamic law and international human rights law. Oxford University Press.

Hallaq, W. B. (2009). Sharīʿa: Theory, practice, transformations. Cambridge University Press.

Kamali, M. H. (2019). Crime and punishment in Islamic law: A fresh interpretation. Oxford University Press.

Kakar, M. S. (2018). Capital punishment: An analysis in the light of international human rights law and Pakistani domestic laws. Islamabad Law Review, 2(1), 1–25.

Lau, M. (2006). The role of Islam in the legal system of Pakistan. Brill.

Mumisa, M. (2015). Sharia law and the death penalty: Would abolition be unfaithful to the message of Islam? Penal Reform International.

Nazir, A. F. (2019). An Islamic member state and the scrutiny of the death penalty in the Universal Periodic Review (Doctoral thesis). University of Warwick.

Peiffer, E. (2005). The death penalty in traditional Islamic law, as interpreted in Saudi Arabia and Nigeria. Universität Bielefeld.

Peters, R. (2005). Crime and punishment in Islamic law: Theory and practice from the sixteenth to the twenty-first century. Cambridge University Press.

Rabb, I. A. (2015). Doubt in Islamic law: A history of legal maxims, interpretation, and Islamic criminal law. Cambridge University Press.