

REPORT ON THE DEATH PENALTY IN PAKISTAN

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The United Nations *International Covenant on Civil and Political Rights* (ICCPR) advocates the abolition of the death penalty as an essential step for progress in the enjoyment of the right to life¹. States maintaining the death penalty should, under the *Commission on Human Rights*, restrict its implementation to the most serious crimes i.e. intentional crimes with lethal and extremely grave consequences². Such crimes do not include non-violent acts like financial offences, non-violent religious practice or expression of conscience, and sexual relations between consenting adults³. The *Second Optional Protocol* of the ICCPR also allows States to retain the death penalty for crimes "in time of war or of imminent threat of war"⁴. Wartime, is not a time of 'no-law', but is defined as a period framed by International Treaties to protect civilians and combatants⁵. During war States cannot award the death penalty to juveniles, pregnant mothers or those with dependent children⁶.

As a member of the international community, Pakistan is under an obligation to follow customary International Law. However, in Pakistan the death penalty is imposed for numerous offences that surpass the limitations laid out in the 'most-serious crimes' and 'war-crimes' provisions defined above.

In Pakistan, a convict can be sentenced to death for various crimes, some of which are listed below:

- Murder (section 302 Qiyas and Diyat Ordinance)
- Offences against Property (Enforcement of Hudood Ordinance, 1979),
- Waging war, or abetting the waging of war against the state (section 121 PPC),
- Abetting mutiny (section 13 PPC),⁷
- Kidnapping for ransom (section 364 PPC),

¹ Comment on Article 6, International Covenant on Civil and Political Rights, 1982

² *Resolution 2001/68 and 2002/77*

³ Commission on Human Rights Res/2001/68, 25 April 2001, Commission on Human Rights, Resolution 2002/77, 25 April 2002,

⁴ Protocol No. 6 to the European Convention for the Protection of Human Rights and Fundamental Freedoms concerning the abolition of the death penalty, as amended by Protocol No.11, 28 April 1983

⁵ Geneva Convention relative to the Protection of Civilian Persons in Time of War and the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflict (Additional Protocol 1 and 2 in 1977)

⁶ Geneva Convention relative to the Protection of Civilian Persons in Time of War, 12 August 1949 and Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts, 8 June 1977

- Kidnapping a person under the age of 10 with intent of murder or causing grievous bodily harm (section 364-A PPC)
- Dacoity [robbery] (section 396 PPC),
- Assault or use of criminal force to woman and stripping her of her clothes (section 354-A PPC)
- Hijacking (section 402-B PPC) and harbouring a hijacker (section 402-C PPC),
- Zina and rape (Offence of Zina, Enforcement of Hudood Ordinance, 1979)
- Blasphemy (section 295-C),
- Importing, exporting into and from Pakistan dangerous drugs (section 13 and 14 of the Dangerous Drugs Act, 1930),
- Control of Narcotic Substances Act 1997, (Section 9<c>)
- Planning or sabotaging the railway system (section 127 of the Railways (Amended) Act, 1995),
- Arms trading (Section 13-A (1) of the Pakistan Arms (Amendment) Ordinance, 1996).

Thus in Pakistan the provision of capital punishment is not only extremely broad, but is in blatant contravention of International Law; it can, under the *zina* and blasphemy laws also be used to shun expressions of sexuality and conscience. These two laws are also problematic due to the gruesome nature of death they impose – stoning to death. Although the sentence of ‘stoning to death’ has never been implemented (it has been awarded) in Pakistan, its mere presence in the country’s criminal law is shocking. The laws are also biased in their implementation, and are used to target weaker groups of society. The blasphemy laws have previously been applied to oppress religious minorities and modern religious thinkers, through the registration of fake cases against them. The cases below illustrate the grave injustice created under these two laws:

- In August 2003, the Lahore High Court confirmed the death sentence against two Christian prisoners, Amjad Masih and Asif Masih, charged under the blasphemy law for allegedly desecrating the Holy Koran. The prisoners asserted, however, that they had been framed by prison officials on refusing the payment of a bribe. The accused were acquitted in 2005.
- In 2002, Muhammad Younas Sheikh, a devout Muslim, and a professor at the homeopathic medical college in Islamabad, was charged with blasphemy by his students for expressing a non-orthodox view about the early life of the Holy Prophet Muhammad (PBUH). (Sheikh had said that before he was 40, Muhammad was neither a prophet nor a Muslim, as there was no Islam). Sheikh was sentenced to death, and then acquitted on appeal.
- In April 2002, Zafran Bibi was sentenced to stoning to death under the Zina (Enforcement of Hadd) Ordinance 1979 in the town of Kohat (located in the North West Frontier Province of Pakistan). She was raped by her husband’s younger brother, Jamal, became pregnant and gave birth to a girl. Her father-in-law, however, accused a third person, Akmal Khan and said the rape took place on 15-16 March 2001 (later than the actual rape had occurred). Zafran was found

to be 7-8 weeks pregnant while her father-in-law's complaint provided that she was raped 11-12 days earlier. As a result she was charged with zina, adultery. She was, however, later absolved of the offence.

The zina and blasphemy laws are only two examples of the grave injustice created by the imposition of the death penalty. The list is innumerable, for although in practice, murder is the main crime punished by death, convicts of *less serious* continue to be executed each year, thereby violating International Law.

It is also important to note that those subject to the death penalty come from the uneducated and poor strata of society, and are often burdened with the responsibility of maintaining families. In 2003 71% of the convicts sentenced to the death were uneducated, 59% had incomes ranging from 2500-4000 rupees/month. 80% of the convicted individuals were married⁸.

Death Penalty awarded in Pakistan from 1st Jan to 30th June 2006 :⁹

TABLE I:

Offence	Attempted Murder	Murder	Robbery/ Murder	Rape/ Murder	Kidnapping/ Murder	Kidnapping for Ransom	Terrorism	Drug Smuggling
Awarded	2	118	10	5	4	3	2	1

TABLE II:

Gender	Male	Female	Total
Awarded	148	3	151
Executed	15		15

Prison population in the provinces of Pakistan awarded the death penalty :¹⁰

Province	Punjab (April 2006)		Sindh(Sukkur and Hyderabad 2003)		N.W.F.P August(2003)		Baluchistan August (2003)	
	M	F	M	F	M	F	M	F
Death Penalty Awarded	6915	40	329	1	107	3	247	1

⁸ Data collected by AGHS Legal Aid Cell, Prison Surveys 2003

⁹ Data collected by the Human Rights Commission of Pakistan

¹⁰ Data collected by AGHS Legal Aid Cell, Prison Surveys 2003 and Population Statement of Prisoners confined in Punjab Jails, IF Prisons Punjab Office.

Multan Jail Visit (Women Section)

A team comprising of SAHR member, Hifza Aziz, Advocate Supreme Court and Sabahat Riaz, Advocate High Court visited Central Jail (Women Section) Multan from 22nd to 24th May 2006. During the visit, the members of the team met various women prisoners including those who had been sentenced to death. Some of the cases in which the death sentence had been given were

- Imam Sain w/o Mohammad Hanif aged 35 years was convicted to the death sentence under section 302-B/34/324/34/337/34 PPC. The jail appeal was filed in the Lahore High Court but was dismissed being time barred. The application for condonation of delay has been filed through jail. She stated that she was earlier engaged with her husband's elder brother but later she was married to Mohammad Hanif. Therefore her husband's elder brother had enmity with her and her husband and had kicked them out of the house. The couple lived independently for 15/16 years. Her husband and son were sick due to sickness and vomiting and had been admitted in the hospital. Later on they died. The elder brother of her deceased husband got a case registered against her due to personal enmity.
- Shamshad w/o Hidayat Ali aged 54 years was convicted under section 302-B PPC to death and Rs 1,00,000 compensation for legal heirs. The appeal is pending in the Lahore High Court. She stated that there was some quarrel of her husband and son with the brothers of her husband regarding agricultural land. Her husband was forced to put thumb impressions on fake documents of the agricultural land. The son when grew up demanded the agricultural land. Therefore the brothers murdered her husband and son and put the blame on Shamshad
- Sultana alias Roobi w/o Mohammad Ramzan aged 40 years was convicted under section 302/34/201 PPC to death sentence and compensation of Rs 1,00,000. The appeal in the Lahore High Court has been dismissed on 10-01-2002. Now the appeal is pending in the Supreme Court. She has been accused of murdering her husband in collusion with her friend. The complainant is her father in law who did it due to enmity.
- Razia Bibi d/o Mohammad Ashiq aged 45 years was convicted to death sentence under section 302/201/34 PPC and Rs 25,000 compensation to each of the legal heirs. The appeal in the High Court has been dismissed on 3-07-2003. Now the appeal is pending before the Supreme Court of Pakistan. She has stated that her husband was sick and hospitalized. He was a contractor by profession and had gone to take money from someone. He did not come back. After some days his dead body was found. The deceased husband's brother got a case registered against her due to enmity.

- Uzma d/o Bashir aged 23 years. She was convicted under section 302/148/149/201 PPC. The appeal filed by the legal heirs is pending in the Lahore High Court. No one is now conducting the appeal. She has stated that her husband's brother had killed her husband but had put the blame on her.
- Fazlan Bibi d/o Bhai Khan aged 38 years. She was convicted under section 302/34 PPC and sentenced to death. The jail appeal is pending in the Lahore High Court and there is no one to pursue her case.

It was felt that the appeals filed through jails are often badly drafted on account of the incompetence of the jail authorities. The women prisoners have no lawyers who can file appeals on technical grounds and can know the difference between legal and illegal procedures and orders. The grounds on which the appeals are drafted are insufficient. Thus it becomes very difficult to pursue these cases before the High Court and the Supreme Court

Central Jail Lahore Visit (Women Section):

A team comprising of SAHR member Alia Malik, Advocate High Court, Shazia Naz, Advocate High Court and Zainab Siraj, Project Co-ordinator visited the women section of the Central Jail Lahore on 4th July 2006. Only one woman in that jail had been sentenced to death

- Nayyer aged 45 years used to work in United Bank. She was accused of murdering her sister-in-law and had consequently been sentenced to death under section 302 Of the PPC. According to Nayyer she had been falsely implicated in the case. On the day of the murder Nayyer's sister-in-law was supposed to visit her at her house, though she never arrived. However her sister-in-law's driver claimed that he had dropped her at Nayyer's house. When the police suspected Nayyer's son of committing the murder, Nayyer claims that she took the blame upon herself to save her son. Though the execution was to take place in December, it has been delayed to allow Nayyer's family to complete negotiations with the victim's family, for Nayyer's release.

Death penalty and Juvenile offenders:

The U.N. *Convention on the Rights of the Child* specifically prohibits the use of the death penalty for juvenile offenders. In 1990, Pakistan ratified this convention and thus, it has to comply with it. Its article 37(a) states: "Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age."¹¹

¹¹ Convention on the Rights of the Child, G.A/44/25, 20 November 1989, <http://www.unhchr.ch/html/menu3/b/k2crc.htm> (March 24, 2005)

President Pervez Musharraf on 1 July 2000 promulgated the Juvenile Justice System Ordinance (JJSO), which sets courts of juveniles separate from adult accused and prohibits the imposition of the death penalty on anyone under the age of 18 years at the time of the alleged offence. Although between July 2000 and June 2006 no child has been given the death penalty, it is apparent that its execution is proving to be rather challenging for the Pakistani authorities. Separate juvenile courts have not been set up. Furthermore the Ordinance was not extended to the Provincially and Federally Administered Tribal Areas in the north and west until October 2004. On 6th December 2004, the Lahore High Court revoked the JJSO when a petition was filed by Farooq Naqvi, whose son had been sodomized and burned alive by several young men including a juvenile who was sentenced to life imprisonment. Farooq Naqvi believed that the juvenile should have been sentenced to death as well and had been unjustifiably protected by the JJSO. The Lahore High Court presented various reasons for discontinuing with the JJSO which were met with a number of counter arguments.

- 1) Already existing legal provisions give sufficient protection to juveniles and courts adopt a more sensitive attitude towards juvenile.

After the JJSO was introduced, in 2001 Nadeem at the age of 13 was sentenced to a 273 year imprisonment. On 22nd April 2006 Additional Sessions Judge, Rahimyar Khan sentenced 14 year old Abdul Majeed Balouch to death under section 302 and 377 of the Pakistan Penal Code. Abdul Majeed is currently in Rahimyar Khan District Jail. An appeal has been filed in the Bahawalpur High Court which is pending for regular hearing.

- 2) There was an increase in crime rate as adults were prompting juveniles to carry out capital offences on their behalf.
- 3) The families of the accused were producing fake birth, school and medical certificates to establish that the accused persons were juveniles.
- 4) Since separate courts had not been set up for juveniles, difficulties arose as juvenile courts and courts trying adults had on occasion reached different conclusions.

Practical difficulties being faced in the implementation of the JJSO should be addressed rather than used as an excuse to revoke the Ordinance all together. Furthermore scientific studies have shown that the implementation of the death penalty does not deter crime in any way.

- 5) Preferential treatment of juveniles violates the constitutional guarantee of equality before the law and equal protection of the law.

The Pakistan Penal Code provides provisions for the protection of women and children without compromising the rights of others

- 6) The judgment further challenged the definition of a juvenile as a person below 18 years, saying this was arbitrary. Social, economic, climatic and dietary factors in Pakistan, it said, accelerated maturity. Laws derived from Islamic understanding link

majority to the attainment of puberty and differentiate between male and female ages of majority.

In February 2005, the Supreme Court of Pakistan which had admitted appeals against the Lahore High Court judgment stayed the Lahore High Court judgment. While the appeals are pending in the Supreme Court the JJSO has been temporarily restored pending a decision. However if Pakistan is to fulfill its commitment to the U.N. *Convention on the Rights of the Child*, the JJSO should not be revoked.