

PAKISTAN: ANTI-TERRORISM COURTS AND THE DEATH PENALTY

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MORATORIUM ON EXECUTIONS

DECEMBER 2014

Pakistan lifts a seven-year moratorium on executions for terrorism related offences

MARCH 2015

Executions for all capital offences resumed

8,621

Prisoners on Pakistan's death row

DEATH PENALTY IN NUMBERS

27 crimes carry the death penalty in Pakistan including non-terrorism offences such as blasphemy, adultery, drug smuggling and kidnapping.

No link between increase in executions and decline in crime in Pakistan

| Year | Executions | Murders |
|------|------------|---------|
| 2005 | 66 | 9,631 |
| 2006 | 82 | 10,048 |
| 2007 | 135 | 10,556 |
| 2008 | 36 | 12,059 |

EXECUTIONS IN NUMBERS

405*

Executions since
December 2014

Only 1 in 10
of those executed
were 'terrorists'
(Reuters)

| Period | Total number of Executions | Terrorism Cases |
|--------------------------|----------------------------|-----------------|
| December 2014-April 2016 | 380 | 39 (10%) |
| December 2014-July 2015 | 180 | 29(16%) |

*As on 10 June 2016

DEATH ROW PHENOMENON

- A death row prisoner in Pakistan has to wait an average of 12-16 years on death row before facing execution
- Life Imprisonment under Pakistani law ranges from 12 to 14 years (including remissions).
- Supreme Court of Pakistan has ruled in a case that principle of 'Double Jeopardy' applies in such cases.

ANTI-TERRORISM LAWS IN PAKISTAN

- Suppression of Terrorist Activities Act, 1974
- Anti Terrorism Act, 1997 (*Repealed the Suppression of Terrorist Activities Act, 1974*)
- Protection of Pakistan Act, 2014
- Pakistan Army (Amendment) Act, 2015

ANTI-TERRORISM ACT 1997

- Primary legislation governing arrest, detention, prosecution and sentencing of terrorism in Pakistan
- Out of 380 executions till April 2016, **68** were convicted by anti terrorism courts.
- **86%** of prisoners tried under ATA are for crimes bearing no connection to “terrorism”
- Ordinary crimes are grouped with Terrorism offences and tried under the special law

“TERRORISM”: TOO BROADLY DEFINED

Anti-Terrorism Act 1997 (ATA) defines terrorism as any threat or action:

“designed to coerce and intimidate or overawe the Government or the public or a section of the public or community or sect or *create a sense of fear or insecurity in society*”

18 crimes considered ‘terrorism’, including:

- anything that causes death
- grievous damage to property
- kidnapping
- extortion of money
- endangering a person’s life

- Section 7 of the ATA sets out the available punishments. The punishment of 'death or imprisonment for life' is available for three of these actions: causing the death of any person (Section 7(a)); kidnapping for ransom or hostage-taking (Section 7(e)); and hijacking (Section 7(f))

DISPOSAL OF CAPITAL SENTENCE CASES BY ANTI-TERRORISM COURTS (JAN 2015- APRIL 2016)

| | DECIDED CASES | | | |
|----------------------|-----------------------|---------------------------|------------------|-----------------|
| | CONVICTION | | | |
| PENDING CASES | DEATH SENTENCE | IMPRISON- MENT | ACQUITTAL | DISPOSAL |
| 417 | 74 | 30 | 134 | 238 |

VIOLATION OF FUNDAMENTAL RIGHTS IN ANTI-TERRORISM TRIALS

Fast-Track Trials of Death Sentence Cases

- Denying the right to retain a lawyer of accused's choice in certain cases
- Ignoring/ waiving fundamental principles of law of evidence
- Trial in absentia in certain cases
- Unfettered powers of police for investigating such offences

VIOLATION OF HUMAN RIGHTS UNDER ANTI-TERRORISM TRIALS

Confession to police admissible in court

High risk of torture and cruel, inhuman and degrading treatment.

Police Remand of 90 Days

Whilst ordinary criminal procedure allows a remand of maximum period of 14 days, the ATA allows police to keep a suspect under remand for a maximum of 90 days

Maximum penalty to be imposed

Judges of ATCs are directed to impose the maximum penalty prescribed; if a lesser punishment is given, the judge has to record reasons for the decision (section 20)

VIOLATION OF CONSTITUTIONAL PROVISIONS

Against Islamic law

Non-compounding of death sentence on the basis of compromise between convict and heirs of deceased.

The safeguards regarding arrest and detention as well as engaging counsel of your choice

CASE STUDY: ZAFAR IQBAL

- Charged with the murder of his father over inheritance and executed in March 2015
- Zafar was still tried as a terrorist even though this was murder over inheritance' – the judge's reasoning was as follows: **“The cold blooded murder of father by his son is itself sufficient to create the sense of insecurity and terror in the people of the locality.”**
- Zafar was also convicted for terrorism charges and inflicted with death penalty.

- All of the evidence presented at trial against Zafar was, on the trial judge's own assessment, "not confidence inspiring". Despite that the judge chose to convict him with death penalty using powers under anti-terrorism laws.
- In 2008, shortly before Zafar was due to be executed, he was granted a pardon by the remaining legal heirs of the victim. But since his conviction was under anti-terrorism laws, the court did not grant leave to him and ordered execution.

Source: Terror on Death Row : JPP and Reprieve, December 2014.

CASE STUDY :SHAFQAT HUSSAIN

- 14 year old Shafqat Hussain was sentenced to death by an anti-terrorism court in November 2004 for alleged kidnap and murder.
- He was convicted on the basis of a single piece of evidence: a 'confession' extracted after nine days of savage beating and torture.
- In Shafqat's own words: "They could make you say that a deer was an elephant."
- No other legal evidence exists linking Shafqat to the crime. The victim's father knew Shafqat well, yet did not identify his voice as the voice he had heard during multiple ransom calls.
- Despite this, Shafqat's state-appointed defence lawyer told his client that "no-one leaves the anti-terrorism courts without a death sentence" and – apparently deeming it pointless – failed to raise evidence that would have prevented Shafqat being convicted or sentenced to death.