

FOLLOW-UP REPORT ON PAKISTAN

Under Para. 18, CCPR/C/PAK/CO/1, 120th Session of Human Rights Committee

PREPARED BY:

Justice Project Pakistan (JPP)

September 2019

Recommendation of the HRC	Information received from the State	Further action needed
<p>18. The State party should reinstate the moratorium and consider abolishing the death penalty and acceding to the second Optional Protocol to the Covenant. If the death penalty is maintained, the State party should, as a matter of priority, take all measures necessary to ensure that:</p> <p>(a) The death penalty is provided only for the “most serious crimes” involving intentional killing; it is never mandatory; pardon or commutation of the sentence is available in all cases, regardless of the crime committed; and it is never imposed in violation of the Covenant, including in the absence of fair trial procedures, and is not imposed by military courts, in particular against civilians;</p>	<p>1. The International Convention on Civil and Political Rights (ICCPR) allows capital punishment but under certain limitations. Article 6 of the said Convention states that in countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes. There is no international consensus on the definition of “most serious crimes”.</p> <p>2. The Policy of death penalty in Pakistan is in line with the Constitution and national circumstances and is in consonance with our international obligations. Pakistan is examining the existing provisions of its Criminal Procedure Code (Cr. PC) and Pakistan Penal Code (PPC) to determine if the scope of death penalty can be narrowed</p>	<ul style="list-style-type: none"> ● Initiate a legislative process to revise the Pakistan Penal Code, 1860 and other laws to limit the death penalty to crimes of intentional killings or attempted killings in order to meet the “most serious crimes” threshold in Article 6(2) of the ICCPR. ● Provide a judicial remedy for accused persons in whose cases new evidence has been discovered, which could serve as a basis to mitigate his sentence. ● Launch independent investigations into cases alleging coerced confessions; juvenility or mental illness. ● Commute death sentence of all juveniles and individuals with mental illness ● Repeal provisions which stipulate the mandatory imposition of the death penalty.
<p>Further information/comments:</p> <ul style="list-style-type: none"> ● Since December 2014, the State has executed 513 people and 4688 are currently on death row¹. There have been 10 executions in 2019; 15 executions in 2018, 66 executions in 2017, 88 executions in 2016 and 332 executions in 2015 and December 2014. There is no centralised data maintained and published by the State. ● Justice Project Pakistan held a series of meetings and consultations with the Federal Ministry of Human Rights and the Federal Ministry of Law and Justice to evaluate the number of crimes stipulating the death penalty. It was found that capital punishment continues to be prescribed for over 33 crimes, as opposed to 27 crimes as previously believed. A list of crimes stipulating the death penalty has been linked below². ● Subsequently, to increase compatibility with the covenant, the Ministry of Human Rights in Pakistan initiated an official review of all existing offences that are punishable by death, with an aim to reducing the scope of the death penalty by imposing life imprisonment for more serious offences and alternative punishments for less serious offences. However, to date no concrete amendments have been made to existing legislations reducing the scope of the death penalty. ● The Constitution of Pakistan does not prescribe the death penalty for any offence. Moreover, the Pakistani Constitution contains safeguards and due process protections for individuals facing trials, which are poorly enforced³. Pakistan’s egregious application of the death penalty does not meet its own constitutional rights and neither is it in consonance with Convention rights. ● The Federal Ministry of Human Rights conducted a critical review of Pakistan’s State practice on international human rights and developed a roadmap for reform which brings Pakistan’s domestic legal landscape in line with its international human rights obligations. However, the findings have not been published nor shared publicly⁴. 		

	<p>3. The moratorium on death penalty was lifted after a national consensus developed in the wake of dreadful and atrocious attack on Army Public School, Peshawar in which more than one hundred and forty students and teachers lost their lives. This decision was supported by all the political parties.</p>	<ul style="list-style-type: none"> ● A moratorium should be reinstated until independent investigations into cases alleging coerced confessions; juvenility or mental illness have been finalised and until the mercy petitions procedure has been revised.
--	---	--

Further information/comments:

- On December 17, 2014, Pakistan lifted a seven-year moratorium on the death penalty. Coming in the wake of the tragic terrorist attacks on the Army Public School in Peshawar, the resumption of executions initially applied only to individuals convicted of terrorist offenses. Yet in March 2015, the moratorium was lifted for all capital crimes and without public justification.
- Research conducted by JPP and Reprieve showed that almost 86% of individuals sentenced to death by the Anti-terrorism Courts did not commit acts of terrorism per se. Rather the cases registered appeared to be ordinary criminal offences which should've been tried by the criminal courts⁵.

	<p>4. The death penalty is awarded by courts after following due process of law. Every accused sentenced to death has constitutional right and access get pardon, reprieve and respite, and to remit, suspend or commute any sentence passed by any court, tribunal or other authority. Every person condemned to death has right to seek pardon or commutation of sentence. Article 45 of the Constitution of the Islamic Republic of Pakistan states, “The President shall have power to grant pardon, reprieve and respite, and to remit, suspend or commute any sentence passed by any court, tribunal or other authority.” All the prisoners sentenced to death, whether by Ordinary Courts or Military Courts are given opportunity to seek Presidential Pardon. This is part of right to due process of law as guaranteed in Article 10-A of Pakistan’s Constitution.</p>	<ul style="list-style-type: none"> ● The Government of Pakistan should immediately and publicly disavow the policy decision not to grant mercy petitions, in addition to publishing data relating to the exercise of the President’s power under Article 45 since December 2014. ● The Government of Pakistan should reform the process for submission and consideration of mercy petitions for death row prisoners. ● The Government of Pakistan should work with provincial authorities to educate prisoners about their rights under Article 45, and to establish a clear and transparent process for the consideration of all mercy petitions, which provides reasonable opportunities for the participation of the prisoner and their representatives. ● The Government of Pakistan should commit to providing written reasoning for all decisions relating to the exercise of the power to pardon under Article 45. ● The Government of Pakistan should initiate a review of all cases where outstanding questions regarding the juvenility, mental illness and physical disability of the accused have been raised with a view of commuting their sentences.
--	--	--

Further information/comments:

- Although the President of Pakistan possesses the constitutional authority to pardon death row defendants by accepting mercy petitions under Article 45 in practice, such petitions are always denied.
- In a research conducted by JPP it was seen that in the three years since the moratorium on the death penalty was lifted, the Government of Pakistan executed nearly 513 prisoners. According to the Ministry of Interior, the President's office rejected 513 mercy petitions of condemned prisoners over the last five years, 444 of which were in the first fifteen months after the resumption of executions in Dec. 2014⁶. According to published reports in 2018, 74 mercy petitions from the province of Punjab remain pending with the President of Pakistan⁷. The government has not provided statistics regarding the overall number of mercy petitions submitted to the President this year.
- Mercy petitions have been consistently denied since Dec. 2014, even for cases with strong evidence of humanitarian abuses and violations, such as persons sentenced to death as juvenile offenders (Iqbal, Anwar, Azam), those with severe physical disabilities (Abdul Basit) and those who are severely mentally ill (Imdad Ali, Kanizan Bibi, and Ghulam Abbas).
- After extensive consultations with JPP, of The Ministry of Human obtained Cabinet approval to reform the mercy petitions procedure in 2019. At present the Ministry of Interior and Ministry of Human Rights are drafting rules and regulations under the new procedure, which will then need to be approved and notified in the official gazette before they can be implemented.

6. In the wake of daunting challenges and threats posed by terrorists' attacks and loss of precious life and property, the military courts were established under the 21st Constitutional amendment with limited scope i.e. to deal with terrorism related cases, only. These military courts had expired on January, 2017 but were given extension for another two years through Constitutional Amendment. These courts have now expired in March 2019. The establishment of the military courts was in accordance with our constitution and international obligations. In this regard, it may be noted that the process of processing cases for the military courts was designed with checks and balances. Thus, out of 869 cases received from the provinces, only 59 prisoners were executed after observing due process of law through courts including Supreme and High Courts. The following steps were taken to ensure right of fair trial:

- (i) All cases to be tried in Military Courts were to be approved by respective Provincial Apex Committee by Law.
- (ii) Sanction of the Federal Government for trial or such cases in Military Courts was also a pre-requisite as per law.
- (iii) Condemned prisoners by Military Court have right to appeal to Court of Appeals against any judgment passed by Military Courts. They can also appeal before Chief of Army Staff. They further have the right to appeal for mercy to the President under Article 45 of the Constitution of Pakistan.

JPP is refraining from commenting as it falls outside the purview of our mandate.

Further information/comments:

- Military courts, established, under the National Action Plan (NAP) in 2015 to try civilians on terrorism charges finally ceased to function in 2019.⁸ The government failed to acquire two-thirds majority in the parliament; a prerequisite to the introduction of constitutional amendment necessary for extension of the court’s tenure. To date military courts have executed 70 persons⁹ of which 56 were civilians.¹⁰
- An analysis of the functioning of military courts is provided in the report by the International Commission of Jurists¹¹.
- The courts were established to deal with “terrorism” related cases only. The misapplication of the Anti- Terrorism Act (ATA) is largely due to the extremely broad definition of terrorism in the law, which allows the inclusion of offences bearing little or no connection to terrorism as it is traditionally understood and covers essentially any violent crime¹².
- Punishments provided under the ATA are harsher than those provided for corresponding provisions under the PPC and evidentiary standards are different which allows for easier convictions. Since the lifting of the moratorium on the death penalty in 2014, over 77 prisoners have been executed for sentences under the ATA.
- A large majority of cases registered under the ATA were not acts of terrorism per se. Rather, the cases registered appeared to be ordinary criminal offences which bore no indication of terrorist intent¹³. This is backed by Justice Project Pakistan’s research¹⁴ which shows that, by December 2014, more than 86% of prisoners tried in ATCs were not ‘terrorists’ as the term is commonly understood. This has led to a significant backlog of cases with reportedly more than 17,000 cases still pending under the ATA in July 2014. By July 2017, more than 5,000 cases were pending in around 50 anti-terrorism courts in Sindh alone.

7. A Committee to review mercy petitions has been notified under Article 45 of the Constitution whereby the President of Pakistan has been granted powers to pardon prisoners on the death row.

The government of Pakistan should implement an open committee structure for mercy petitions composed of experts on law, corrections, medicine or community relations rather than political appointees.

Further information/comments:

- JPP welcomes the work done by the Federal Government to reform the mercy petitions procedure.
- At present, the rules for the new procedure are being drafted. Thereafter the rules and procedure must be notified.
- In the short term, until the new procedure is implemented, rejection of mercy petitions by the President’s office must be halted to prevent any human rights violations routine under the old procedure as was evident in the case of mentally ill prisoners Ghulam Abbas’s execution warrants issued in June 2019.¹⁵

Recommendation of the HRC	Information received from the State	Further action needed
<p>18 (b) No person who was below 18 years of age at the time of the commission of an offence is subjected to the death penalty and those charged with a capital offence have access to an effective and independent age determination process, and are treated as children if doubts remain about their age at the time of the crime;</p>	<p>5. In accordance with the Juvenile Justice System (Juvenile Justice System Ordinance (2000), death penalty cannot be imposed on individuals below the age of 18 in Pakistan. Adequate safeguards are in place to ensure this, and no death penalty has been awarded to any individual below the age of 18. The Juvenile Justice System Act, 2018 has also been promulgated. The Act provides for disposal of cases through diversion and social-reintegration of the juvenile offenders. Provision in the law allows for self-determination of age, shifting the onus to prove otherwise on the prosecution. The age of accused is determined at several stages:</p> <ul style="list-style-type: none"> (i) Time of arrest (ii) Arrest Certificate (Hulaiya Form) (iii) Statement u/sec 161 CRPC (iv) Entry in police diary (Zimni) (v) Statement u/164 CRPC (vi) Recording of evidence (vii) Statement u/sec 340, 342 CRPC (viii) Appeal to High Court (ix) Appeal/Revision Petition to Supreme Court (x) Pardon to President u/Art 45 of the Constitution. 	<ul style="list-style-type: none"> • Conduct age-determination inquiries of all juvenile offenders sentenced to death prior to the enactment of the JJSO, under the Presidential Notification and grant them automatic remission on the basis of such inquiry. • Amend the Anti-Terrorism Act, 1997 to ensure that Anti-Terrorism Courts do not have the jurisdiction to try and convict juvenile offenders • Compile statistics of the total number of juvenile offenders on death row along with the crimes that they are convicted under.
<p>Further information/comments:</p> <ul style="list-style-type: none"> • In 2018, the Juvenile Justice System Act (2018) (JJSA) was promulgated with a complete revision of the special judicial regime for juveniles to correct legal loopholes of the Juvenile Justice System Ordinance 2000 (JJSO) and to better adapt it to international standards. The new legislation which includes age determination protocols, has paved the way for protecting minors in the criminal justice system. • Moreover, since 2019, there has been a considerable effort to establish juvenile courts throughout the country, some of which are already in operation^{16 17}. • However, in a context marred with low birth registration and a lack of sensitisation of law enforcement and judiciary to juvenile delinquency, a significant number of juvenile offenders fall outside the few institutional safeguards actually implemented in practice. Despite including age determination protocols, the JJSA 2018 does not accord the benefit of the doubt to the child in case of conflicting or inconclusive evidence in line with General Comments of the Committee on the Rights of the Child. Specifically, General Comment 24 and its predecessor General Comment 10¹⁸. • Moreover, offenders sentenced to death while under 18, continue to languish on Pakistan's death row, despite conclusive evidence of their age being confirmed by their Provincial governments. Muhammad Anwar, Muhammad Azam and Muhammad Iqbal were sentenced to death before the enactment of the JJSO 2000. Despite specific directions to the relevant authorities, they both continue to be on death row and their new mercy petitions remain pending before the President of Pakistan. 		

Recommendation of the HRC	Information received from the State	Further action needed
<p>18 (c) No one with serious psychosocial or intellectual disabilities is executed or sentenced to death, including by establishing an independent mechanism to review all cases where there is credible evidence that prisoners who are facing the death penalty have such disabilities and reviewing the mental health of death row inmates;</p>	<p>The state has refrained from commenting on this recommendation.</p>	<ul style="list-style-type: none"> ● Permanently commute death sentences of all prisoners on death row suffering from mental illness ● Enact legislation explicitly prohibiting the execution of mentally ill persons regardless of whether the illness occurred either prior to the time of the commission of the offence or following conviction to bring domestic law in line with Article 6 & 7 of the ICCPR. ● Ensure that all prisoners suffering from mental illness who are currently confined in prison are transferred to mental health facilities in accordance with the Pakistan Prison Rules, 1860 ● Ensure the psychological assessments are made mandatory at the time of arrest and at the time of admission in prison for all prisoners. Additionally, ensure that regular psychological assessments are conducted for all prisoners, including those on death row. ● Provide regular trainings and workshops for members of the judiciary, prosecution and defence lawyers on mental illness and the rights of mentally ill prisoners under domestic and international human rights law ● Allow post-conviction reviews on the basis of mental illness that was either undetected or not adequately taken into account during the first line of proceedings.
<p>Further information/comments:</p> <ul style="list-style-type: none"> ● Pakistan’s criminal justice system fails to provide meaningful protection to persons suffering from mental illness at all stages of arrest, trial, sentencing and detention. The process to identify or suspect those with mental disorders is a very vague and informal one. This practice of informal identification varies across the country and there is no standard criteria or formal training of staff to accurately identify or triage them according to their care needs. As a result, many prisoners are never assessed or adequately treated by a mental health professional. ● JPP has been in consultation with the Ministry of Law and Justice to review the prison rules and other laws relating to the treatment of mentally ill prisoners. This study is ongoing and will conclude in October 2019. ● Several prisoners with severe mental disabilities continue to be on death row. Shiraz Butt, Kanizan Bibi, Imdad Ali, Muhammad Saleem, have all been diagnosed with severe mental illness yet have had several execution warrants issued. Even when their executions have been stayed at the last minute, they continue to languish on death row without access to adequate treatment and no intimation of their mercy petitions being decided by the President any time soon. Mentally ill death row prisoner Khizar Hayat died while still in custody due to his deteriorating health. His execution had been scheduled four times despite being housed in the jail hospital and prescribed powerful anti-psychotics. ● Prison officials and judges lack basic understanding of mental disorders or disabilities associated with these disorders, that impair mental capacity in criminal proceedings. Prison doctors are undertrained and unfamiliar with the pharmacology of the medicines used to treat mental disorders. ● A recent example of the dire need for reform is the case of Ghulam Abbas, a mentally ill prisoner scheduled to be executed in June 2019. Despite being under treatment for mental illness by the prison authorities, his warrant of execution was issued. However, due to the intervention of the Ministry of Human Rights, the Ministry of Law and Justice and a member of the Provincial Assembly, a medical board was convened which found him to be severely mentally ill. Subsequently, the Supreme Court of Pakistan suspended his execution warrants and the proceedings are pending. 		

Recommendation of the HRC	Information received from the State	Further action needed
<p>18 (d) The execution protocol is in line with international human rights standards and executions are carried out in accordance with the established protocol</p>	<p>The state has refrained from commenting on this recommendation.</p>	<ul style="list-style-type: none"> Amend the Pakistan Prison Rules to reinstate the original rule allowing for 14-21 day limit between the request for a warrant of execution and the date of scheduling the execution. Execution protocols contained in the Pakistan Prison Rules need to be amended to incorporate prohibition on the execution of mentally ill prisoners as well as those who are physically disabled.

Further information/comments:

- Under the current law and procedure dictated under the Pakistan Prison Rules 1978, after the execution warrant is issued by a judge, the execution has to take place between 3-8 days. The original and long-standing rule, which was revised in the aftermath of the moratorium being lifted in December 2014, required a period of 14-21 days between the issuance of an execution warrant by the judge and the date of execution
- The removal of this essential safeguard in domestic law, has resulted in fewer days that a legal counsel can effectively represent and halt an execution when there are extenuating circumstances in the case.
- Moreover, a tabulation of all execution dates since the revision of this rule, reveal that jail officials purposefully issue execution warrants later in the week (mostly Wednesday and Thursdays) so that there are only two working days for the counsel of the accused to pursue relief.
- Given that courts close early on Fridays in Pakistan and Sunday is a public holiday, this only leaves the lawyer 2 days to be effectively represent their client. Given the procedural and infrastructural shortcomings causing delays within the court structure 2 days are grossly inadequate to pursue relief. Lawyers are also not allowed to meet the condemned after the execution warrant has been issued contradicting Article 10A of the Constitution that guarantees the right to due process. This has been illustrated in the table below that details the executions in Punjab by day.
- The Ministry of Law and Justice has formed a working group with civil society actors to review the Pakistan Prison Rules with the intent to accord better protections to vulnerable prisoners in line with Convention rights. This is a commendable step and JPP welcome any progress made in this regard.

Day	2019	2018	2017	2016	2015	2014	Total
Monday	1			4	5		10
Tuesday	6	3	9	27	110		155
Wednesday	2	4	9	27	88		130
Thursday	1	2	7	12	52		74
Friday			1	3	8	6	18
Saturday			2	4	14		20
Sunday					3		3

Day-wise Breakdown of Executions in Punjab

Recommendation of the HRC	Information received from the State	Further action needed
<p>18 (e) Pakistani migrant workers sentenced to death overseas are provided with sufficient legal and consular services throughout their legal proceedings.</p>	<p>The state has refrained from commenting on this recommendation.</p>	<ul style="list-style-type: none"> ● Identify the names and details of the overseas Pakistanis on death row and investigate the circumstances of their arrest and imprisonment ● Enact a uniform consular protection policy for Pakistanis facing imprisonment and/or execution abroad ● Negotiate a prisoner transfer agreement with the governments holding large number of Pakistani prisoners so that these Pakistanis serve the remainder of their sentences in their home country
<p>Further information/comments:</p> <ul style="list-style-type: none"> ● Nearly 11,000 Pakistanis are currently imprisoned across the world, 7,000 of them in the Middle East. The number of those on death row is unknown. Moreover, Saudi Arabia has executed over a 100 Pakistanis over the last 5 years, many of them for drug crimes. Pakistanis make up the largest group of foreigners executed in Saudi Arabia each year. Human Rights Watch counted 17 executions of Pakistanis last year¹⁹, while Justice Project Pakistan recorded at least 20 executions of Pakistanis in 2018²⁰. As of September 2019, there have been a total of 26 Pakistanis executed in Saudi Arabia. ● Pakistanis imprisoned in Saudi Arabia are at the mercy of local courts without access to lawyers, impartial translators, or consular assistance from the Pakistani diplomatic missions. These destitute Pakistanis face the harshest punishments because of a lack of understanding of the legal process, ability to communicate directly with the court, and the difficulty of producing evidence from Pakistan in their defence²¹. ● To date, Pakistan does not have a uniform consular policy that regulates steps to be taken by missions abroad in case of arrest or detention of a Pakistani national. The Lahore High Court, in pursuance to a litigation filed by Justice Project Pakistan on behalf of the families of 10 prisoners facing execution in GCC, had directed the Ministry of Foreign Affairs to draft a consular policy for its overseas citizens who are imprisoned abroad and/or facing execution²². Years later, however, a consular policy remains to be enacted. ● In March 2018, the Government of Pakistan made a milestone decision when it approved prisoner transfer agreements with China and Saudi Arabia²³. However, there has been no follow through and the agreement has not been approved by the Federal Cabinet. ● Inadequate coordination between the different state authorities responsible for aspects of the labour migration process in Pakistan leads to poor enforcement of protections against trafficking²⁴. ● Under the Control of Narcotics Substances Act 1997, can ask a foreign state for assistance in investigations. They have not locally investigated any one of the cases of Pakistani detainees in GCC jails, nor has there been any move to request information from these detainees to carry out domestic investigations. There is failure on part of the Ministry of Foreign Affairs to coordinate with foreign governments to not only increase security measures at home but prevent harm to innocent Pakistani migrant workers seeking employment abroad²⁵. ● At the request of Prime Minister Imran Khan, in February 2019 the Crown Prince Mohammad bin Salman, during his visit to Pakistan, ordered the release of 2,107 Pakistani prisoners in Saudi Arabia²⁶. However, the Government of Pakistan has yet to provide details of any prisoners released under this promise²⁷. 		

References:

- ¹ Justice Project Pakistan - Death Penalty Database.” • Justice Project Pakistan - Death Penalty Database. <https://data.jpp.org.pk/>
- ² “Justice Project Pakistan - Death Penalty Database.” List of offences punishable by death in Pakistan <https://data.jpp.org.pk/en/document/ngo5vvasxsr>.
- ³ JPP, Counting the Condemned, October 2018, <https://www.jpp.org.pk/report/counting-the-condemned/>
- ⁴ “Legal Review of Pakistan's International Human Rights Obligations and Their Domestic Implementation.” Research Society of International Law, January 3, 2019. <https://rsilpak.org/project/ministry-of-human-rights/>.
- ⁵ Research Society of International Law, The Case for Change: A Review of Pakistan’s Anti-Terrorism Act of 1997, October 2013, <https://rsilpak.org/project/the-case-for-change-a-review-of-pakistans-anti-terrorism-act-of-1997/>
- ⁶ Raza Khan, President turns down 513 mercy petitions over last five years: <https://www.dawn.com/news/1252257>
- ⁷ “Pakistan Operating a Blanket Policy of Refusing All Mercy Petitions.” Daily Times, April 11, 2018. <https://dailytimes.com.pk/226884/pakistan-operating-a-blanket-policy-of-refusing-all-mercy-petitions>.
- ⁸ Wasim, Amir. “Military Courts Cease to Function Today.” DAWN.COM, March 31, 2019. <https://www.dawn.com/news/1472947>. <https://www.dawn.com/news/1472947>
- ⁹ “Justice Project Pakistan - Death Penalty Database.” [https://data.jpp.org.pk/en/library/?q=\(filters:\(current_status:\(values:!\(%2710480b52-bd9a-436b-8886-7985beaf6bca%27\)\),type_of_court:\(values:!\(sewugy7m4f\)\)\),limit:30,order:desc,sort:metadata.date_of_execution,types:!\(%275bcd692bf834e87d6dd936d6%27\)\)](https://data.jpp.org.pk/en/library/?q=(filters:(current_status:(values:!(%2710480b52-bd9a-436b-8886-7985beaf6bca%27)),type_of_court:(values:!(sewugy7m4f))),limit:30,order:desc,sort:metadata.date_of_execution,types:!(%275bcd692bf834e87d6dd936d6%27)))
- ¹⁰ Inter Services Public Relations Pakistan. <https://www.ispr.gov.pk/press-release-detail.php?id=5096>.
- ¹¹ International Commission of Jurists, “Military Injustice in Pakistan: A Briefing Paper”, July 2016.
- ¹² JPP and Reprieve, Terror on Death Row: The Abuse and Overuse of Pakistan’s Anti-Terrorism Legislation, December 2014
- ¹³ Research Society of International Law, The Case for Change: A Review of Pakistan’s Anti-Terrorism Act of 1997, October 2013
- ¹⁴ Supra Note 12
- ¹⁵ Dawn.com. “CJP Stays Execution of Mentally Ill Prisoner Ghulam Abbas: JPP.” DAWN.COM, June 17, 2019. <https://www.dawn.com/news/1488738>.
- ¹⁶ “Juvenile Courts Established across Sindh.” Business Recorder, April 3, 2019. <https://fp.brecorder.com/2019/04/20190403460673/>.
- ¹⁷ “PHC CJ Inaugurates First-Ever Child Protection Court in KP.” Pakistan Today. Accessed September 13, 2019. <https://www.pakistantoday.com.pk/2019/03/16/phc-cj-inaugurates-first-ever-child-protection-court-in-kp/>.
- ¹⁸ CRC/C/GC/24
- ¹⁹ “‘Caught in a Web’: Treatment of Pakistanis in the Saudi Criminal Justice System.” Human Rights Watch, May 24, 2019. <https://www.hrw.org/report/2018/03/07/caught-web/treatment-pakistanis-saudi-criminal-justice-system>
- ²⁰ <https://www.worldpoliticsreview.com/articles/26803/he-never-came-back-the-plight-of-pakistani-migrants-on-death-row-in-saudi-arabia>
- ²¹ JPP, Caught in a Web:Treatment of Pakistanis in the Saudi Criminal Justice System, March 2018, <https://www.jpp.org.pk/wp-content/uploads/2018/03/CAUGHT-IN-A-WEB.pdf>
- ²² <https://tribune.com.pk/story/1355379/prisoners-abroad-lhc-seeks-protection-policy-april-26/>
- ²³ <https://dailytimes.com.pk/223391/govt-has-approved-prisoner-transfer-agreement-with-ksa-lhc-told/>
- ²⁴ JPP, Through the Cracks: The Exploitation of Pakistani Migrant Workers in the Gulf Recruitment Regime, April 2019, https://www.jpp.org.pk/wp-content/uploads/2019/04/Through_the_cracks_JPP.pdf
- ²⁵ ibid
- ²⁶ Dawn.com. “Saudi Crown Prince Orders Release of over 2,000 Pakistani Prisoners.” DAWN.COM, February 18, 2019. <https://www.dawn.com/news/1464580>.
- ²⁷ Shahid, Jamal. “Senate Panel Calls for Release of Pakistani Prisoners in Saudi Jails.” DAWN.COM, July 5, 2019. <https://www.dawn.com/news/1492201>

MUHAMMAD IQBAL

YEARS ON DEATH ROW: 19

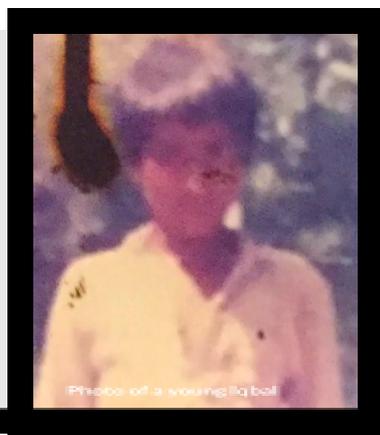


Photo of a young Iqbal

IMPRISONED AT:

DISTRICT JAIL, MANDI BHAUDDIN

CASE TIMELINE

1998

10th Jul: Incident occurs at 12:30am in Mandi Bahauddin, Punjab

1999

28th Jun: Iqbal's ossification test confirms that he was a juvenile at the time of the alleged offence

5th Jul: Trial Court **sentences Iqbal to death under the ATA**; and determines his age to be 17 years

16th Sept: Criminal Appeal filed in Lahore High Court

2000

1st Jul: **Juvenile Justice System Ordinance (JJSO)** passed prohibiting execution of juveniles

2001

13th Dec: **Presidential Notification** issued granting remission to juvenile offenders sentenced to death before JJSO.

2002

20th Mar: Lahore High Court dismisses Iqbal's appeal

11th Sept: Supreme Court dismisses Iqbal's appeal

2003

18th Aug: Home Department forwards list of prisoners eligible to receive benefit of remission to the Lahore High Court containing Iqbal's name.

2004

9th Jun: Petitioner withdraws Criminal Review Petition in Supreme Court due to compromise between the parties

Continued on Page 2

Muhammad Iqbal was just 17 years old when he was convicted of a fatal shooting in Mandi Bahauddin in 1999. The Special Court, Gujranwala determined his age to be 17 following an ossification test, confirming that he was a juvenile. Yet, he was sentenced to death under the Anti-Terrorism Act (ATA).

Iqbal's death sentence is in gross violation of Pakistan's Juvenile Justice laws and a Presidential Notification granting commutation to juveniles. The victim's family have forgiven Iqbal and do not want him hanged. But Iqbal remains on death row lost in a system that refuses to grant him his legal rights for the past 19 years.

BACKGROUND

Muhammad Iqbal, also known as Bali, comes from a poor family hailing from a village near Mandi Bahauddin. Friends and neighbours describe him as mild-mannered, with deep-rooted respect for authority.

The FIR states that Iqbal and four others surrounded a wagon near Mandi Bahauddin. Upon being surrounded, the driver of the vehicle reversed the car in an attempt to escape. As a reaction, shots were fired that smashed the windscreen, and injured the driver and three passengers. They were moved to a hospital, where one of the four injured parties succumbed to their injuries.

Iqbal was arrested two months after the incident and a Special Court judge in Gujranwala sentenced him to death. Suspecting that he was a juvenile, the prosecution moved an application before the trial court to determine Iqbal's age through an ossification test. It was subsequently determined that his age was 17 years at the time of the alleged offence. The trial court also held in its judgment that Iqbal was a minor at the time of the occurrence.

In fact, ossification tests were conducted on all five of the accused which determined three to be juveniles. All but Iqbal were given life sentences, including the ones found not to be juveniles. Iqbal remains the only accused on death row – despite his juvenility being recognized. The basis for his sentence is dubious eyewitness testimonies, made even more problematic by the fact that the offence took place at 12:30am, in a street with no lights.

FORGIVEN BY COMPLAINANTS

In Pakistan, the accuser and accused can reach a compromise of forgiveness or financial settlement which releases the accused from the sentence.

In 2004, the complainants in Iqbal's case – i.e. the victim's family, forgave Iqbal and reached a compromise. The son of the victim, Waheed Ahmad, said that they believe Iqbal has already spent several years in imprisonment and that alone is punishment enough. They have categorically stated that they do not want Iqbal hanged.

However, due to the non-compoundable nature of the problematic Anti-Terrorism Act (ATA), under which Iqbal was convicted, all his appeals have been rejected and he remains on death row.

THE LEGAL BASIS FOR COMMUTATION

JUVENILE JUSTICE SYSTEM ORDINANCE (JJSO)

Section 12 of the Juvenile Justice System Ordinance (JJSO) – now repealed and replaced by Juvenile Justice System Act (JJSA) – prohibits the sentencing to death of any person who was under 18 at the time of his/her alleged offence. The JJSO came into force in 2000 – almost two years after Iqbal was sentenced to death sentence by the trial court.

PRESIDENTIAL NOTIFICATION

In 2001, the President of Pakistan issued Notification No. F.8/41/2001-Ptns, in exercise of his powers under Article 45 of the Constitution of Pakistan, 1973, granting remission to those juvenile offenders whose death sentences had been confirmed prior to the enactment of the JJSO on the basis of an inquiry into their juvenility. In fact, **Iqbal was listed as one of the prisoners that would benefit from this notification** as he fulfilled the criteria for retrospective force.

THE HOME DEPARTMENT'S DUTY TO ENFORCE FEDERAL POLICY

According to Schedule 2 read with Rule 3(3) of the Punjab Government Rules of Business, 2011, the execution of sentences, including reprieve, commutation and remission of sentences falls squarely within the powers of the Home Department. As the Presidential Notification has the effect of commuting Iqbal's sentence under Article 45 of the Constitution, there is a positive duty on the Punjab Provincial authorities to process this commutation.

PROVINCIAL GOVERNMENT'S OWN POWER TO REMIT SENTENCES

Under Section 401 of the Code of Criminal Procedure, the Provincial Government has the power to suspend or remit sentences at any time, with or without conditions.

UN CONVENTION ON THE RIGHTS OF THE CHILD

The United Nations Convention on the Rights of the Child (CRC), ratified by Pakistan in November 1990, dictates under Article 37 (a) that *"neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below 18 years of age."*

ICCPR

Pakistan is party to the International Convention on Civil and Political Rights (ICCPR), wherein Article 6, Paragraph 5 of the ICCPR provides explicitly: *"Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age."*

Continued from Page 1

2005

16th Jul: Anti-Terrorism Court, Gujranwala, dismisses application for acquittal on grounds of compromise

22nd Jul: Writ petition filed in Lahore High Court against order of the trial court

2006

13th Nov: Lahore High Court dismisses petition stating that no illegality was committed by the trial court

2007

21st Feb: Supreme Court dismisses appeal on the ground that offences under the ATA are non-compoundable

2016

16th Mar: Iqbal's mercy petition rejected

26th Mar: **Black warrant issued**, scheduling execution for 30th March

28th Mar: Civil review petition filed in Supreme Court on basis of compromise, juvenility under JJSO and double punishment; **execution stayed**

2017

28th Apr: Supreme Court dismisses civil review petition

3rd Jul: National Commission for Human Rights orders interim relief for Iqbal, on a complaint filed by JPP on Iqbal's behalf

2018

13th Feb: Writ petition filed in Lahore High Court, resulting in direction to Home Department to proceed in accordance with law.

04th May: Home Department confirms in its order that a new mercy reference on ground of juvenility has been forwarded to the Chief Minister for further transmission to President of Pakistan.

18th May: Juvenile Justice System Act (JJSA) 2018 comes into force.

THE GOVERNMENT OF PAKISTAN MUST ACCORD IQBAL THE BENEFIT OF THE SPECIAL REMISSION ALLOWED TO JUVENILE PRISONERS IN ACCORDANCE WITH PAKISTAN'S INTERNATIONAL OBLIGATIONS AND UNDER THE JJSO READ ALONG WITH PRESIDENTIAL NOTIFICATION NO. F.8/41/2001.

Justice Project Pakistan is a non-profit organization based in Lahore that represents the most vulnerable Pakistani prisoners facing the harshest punishments, at home and abroad. JPP investigates, litigates, educates, and advocates on their behalf.

In recognition of our work, in December 2016, JPP was awarded with the National Human Rights Award, presented by the President of Pakistan.

For more information, email: communications@jpp.org.pk