

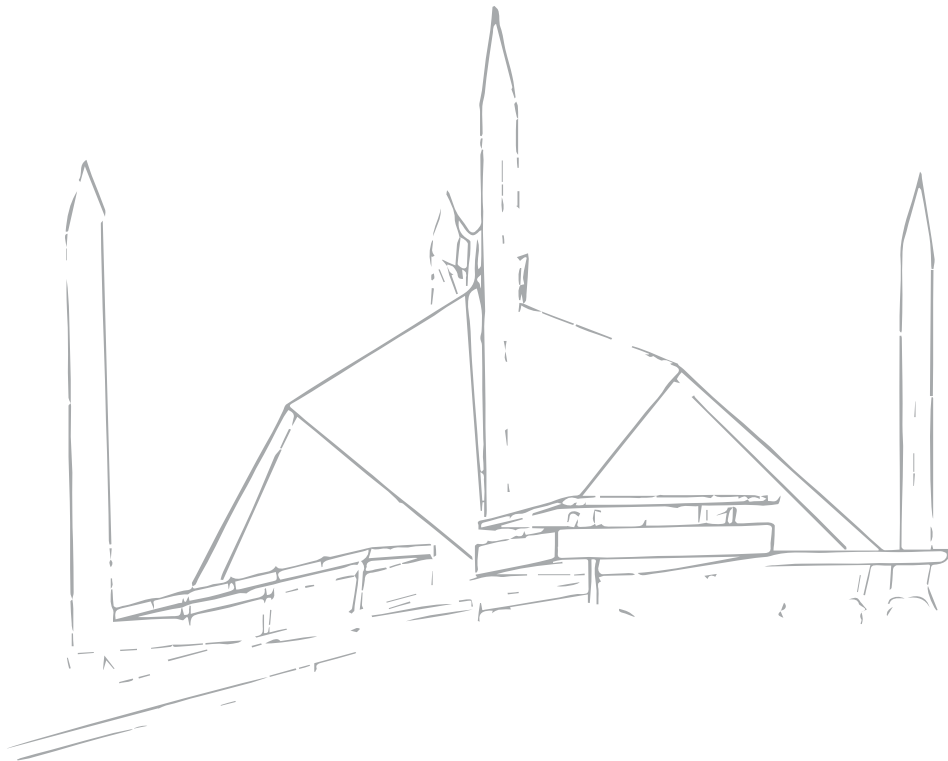


ISSN 1992-5018

ISLAMABAD LAW REVIEW

*Quarterly Research Journal of Faculty of Shariah & Law,
International Islamic University, Islamabad*

Volume 2, Number 3&4, Autumn/Winter 2018



Capital Punishment: An Analysis In The Light of International Human Rights Law and Pakistani Domestic Laws

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Abstract

This paper aims to analyze the possibilities of Pakistan's ratification of the 2nd optional protocol to the International Covenant on Civil and Political Rights (ICCPR). The study explores Pakistani laws to find out the number and nature of crimes which are punishable with death. The paper also aims to comprehend the grounds why Pakistan does not abolish death penalty and the realities which prevent Pakistan from ratification of the said protocol. The paper proposes to find a flexible solution to the issue by exploring the limitations on the death penalty under Islamic Law as it prescribes death penalty for very few crimes. The propagators of the abolishment of capital punishment, however, consider the right to life to be absolute which cannot be alienated. As a matter of principle both Islamic law and international human rights law (IHRL) consider the protection of life and endurance of justice to be very significant but the conflict, which has raised the discrepancy, is in the priorities between the interest of individual and public at large. Nevertheless, a comprehensive and impartial research leads to sort out the means to bridge the gap between the International Human Rights Law and the Pakistani Domestic laws. The paper concludes that as the protocol is not mandatory and is an option, so if it could not be followed in entirety, it is possible to ratify partially to the maximum extent, making possible amendments to ensure better accordance with it would surely be a remarkable step by the State's legislation.

Keywords: IHRL, Islamic Law, Pakistani Laws, Death Penalty

1. Introduction

Capital punishment means awarding death penalty to any offender. Historically, multiple offences were punishable by death.¹ Some of these crimes were really heinous in nature while others were not.² Capital punishment was neither challenged nor

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¹ Hood, R. (2019). capital punishment | Definition, Debate, & Facts. [online] Encyclopedia Britannica. Available at: <https://www.britannica.com/topic/capital-punishment> [Accessed last time: 21 Apr. 2017].

² An Athenian lawgiver Draco, (7th century BC), gave a very harsh legal code to Athens in which he punished both serious and trivial crimes with death. Details

put for abolishing question in ancient era. Human conscious accepted this punishment for several crimes as an absolute solution. This punishment remained in practice in pre and post Islamic regime; although Islam reduced the number of offences to four crimes only and further restricted it by very tough criteria to prove the crime for death penalty.

Capital punishment for arson, treason and murder were commonly inflicted in ancient Greece under the laws of Draco (fl. 7th century BCE), however Plato claimed that it should be used only for the habitual offenders.³ The Romans also imposed capital punishment for so many offences. Apart from that, the capital punishment has been endorsed by major religions of the world.⁴

Capital punishment is still in practice in many countries across the globe and human rights activists consider it against the dignity and honor of human beings and thus, demand for its abolishment. For the said purpose, United Nations General Assembly adopted the second optional protocol to International Covenant on Civil and Political Rights (ICCPR). Some Islamic countries ratified the said protocol but many of them have not ratified it yet.⁵ Although Pakistan also did not ratify the said protocol, but it had imposed moratorium on executions in 2008, which was later lifted after the incident of terrorist attack on Army Public School, Peshawar⁶ in December 2014; which claimed lives of more than 100 students, teachers and officials.⁷ Pakistan

are available at: <https://www.britannica.com/biography/Draco-Greek-lawgiver> [Accessed last time: 20 Feb. 2017].

³ "Draco | Greek Lawgiver". 2019. *Encyclopedia Britannica*.

<https://www.britannica.com/biography/Draco-Greek-lawgiver>

⁴ Hood, R. (2019). *capital punishment | Definition, Debate, & Facts*. [online] Encyclopedia Britannica. Available at:

<https://www.britannica.com/topic/capital-punishment> [Accessed last time: 21 Apr. 2017].

⁵ https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-12&chapter=4&clang=_en (Accessed last time: 26 Oct. 2016).

⁶ <http://tribune.com.pk/story/878637/the-death-penalty-in-pakistan/> [Accessed last time: 27 Nov. 2016]

⁷ <http://tribune.com.pk/story/807564/gunmen-target-school-in-peshawar/> [Accessed last time: 29 Sep. 2017]

executed 332 people after lifting the moratorium⁸ and some of them were minors as well.⁹ The appeals of these minors were also dismissed from the Supreme Court of Pakistan.

There are twenty-seven crimes in which death penalty can be awarded in Pakistan, but Pakistan cannot digress from the laws of *hudūd* only as they are obligatory. But the areas of law on which jurists do not agree unanimously can be altered and induced in law according to the International Human Rights Law (IHRL) documents, which is in fact not prohibited by the Islamic law. Pakistan did not ratify the said Protocol because it demands to abolish the capital punishment in *hudūd* as well, which are very less in number and also very much difficult to prove the crime. Moreover, in *hudūd* crimes, lack of sufficient prescribed form of crime and evidence that incur the death penalty, shall also result in abolishment of the capital punishment.

The issue needs to be examined from the perspective of international human rights law (IHRL) norms as well as the principles of the *Shari'ah* (Islamic law) so that a solution acceptable to Muslims can be found. In 2015, from all over the world, almost 90% of executions occurred in just three Muslim countries: Iran, Pakistan and Saudi Arabia.¹⁰ In order to reduce the gap between IHRL, Islamic law and Pakistani legal system, a thorough study of the issue will be conducted in the following paper and an attempt will be made to find out reasonable solution which might be acceptable for all.

2. Capital Punishment and IHRL

In the current International Human Rights scheme, many scholars demand for complete abolishment of capital punishment. The idea of complete abolishment of capital punishment was

⁸ <http://tribune.com.pk/story/1028511/pakistan-executed-332-after-reinstating-death-penalty-report/> [Accessed last time: 26 Sep. 2017]

⁹ <http://www.dawn.com/news/1177934/shafqat-hussain-to-be-executed-on-may-6> [Accessed last time: 28 Oct. 2017]

¹⁰ <https://www.amnesty.org/en/latest/research/2016/04/death-sentences-executions-2015/> [Accessed last time: 25 Dec. 2016]

given by Cesare Beccaria.¹¹ He wrote a comprehensive essay "*On Crimes and Punishment*" in 1767, in which he argued that "There is no justification for the state's taking of a life of any human being".¹² This essay put a significant impact on the philosophy of abolishment.

When the United Nations came into existence in 1945, its aim was to cover all counties under one umbrella and make some international treaties and covenants for the globe to avoid any kind of violation against mankind.¹³ UN worked very well and in a very short time brought a significant document on Human Rights in 1948 which is called "The Universal Declaration of Human Rights (UDHR)", which stated that "Everyone has the right to life, liberty and security of person".¹⁴ Right after the declaration many countries, including Islamic Republic of Pakistan, voted in favor of the declaration. The UDHR is a milestone in the history of human rights as it sets common standard of fundamental human rights to be universally protected and is also influenced various subsequent international conventions.¹⁵

This declaration was successful to receive praise from various notable figures across the globe and, on the other hand, it was criticized by various Muslim scholars. Further, some states, including the Kingdom of Saudi Arabia, raised questions on UDHR on the bases of its partial contradictions with the injunctions of Islam. Later on, the Muslim countries also adopted

¹¹ Cesare Beccaria (1738-1794) was an Italian criminologist, philosopher and politician. He is widely considered as the most talented jurist and greatest thinker.

¹² <http://www.deathpenaltyinfo.org/part-i-history-death-penalty> [Accessed last time: 11 Dec. 2017]

¹³ All detail about the UN is available on the official website at: <https://www.un.org/en/> [Accessed last time: 18 Nov. 2018]

¹⁴ Article 3 of UDHR, available at:

http://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf. [Accessed last time: 20 Jan. 2017]

¹⁵ The UDHR was drafted by representatives with different cultural and legal background from all around the world, the details are available on official website at: <https://www.un.org/en/universal-declaration-human-rights/> [Accessed last time: 19 Mar. 2017].

a separate declaration on Human Rights namely Cairo Declaration which was adopted by the Muslim countries in 1990.¹⁶

After the declaration of the Human Rights, the UN adopted International Covenant on Civil and Political Rights (ICCPR) in December 1966, and it came into force on 23 March 1976,¹⁷ which covers and protects civil and political rights of the individuals on international level.¹⁸ Article 6 of the ICCPR refers to abolition of the capital punishment in terms that strongly suggests that abolition is desirable. It convinced that all measures of abolition of the capital punishment should be considered as progress in the enjoyment of the right to life. The said article demanded from the state parties, which did not abolish the capital punishment, to reduce the applicability of the punishment to serious crimes only and the executions should be in accordance with law and after a judgment from a competent court.¹⁹ Thus, ICCPR is recognized for convincing the international community to reduce the scope of capital punishment, if the punishment for some reasons could not be abolished in entirety. Pakistan signed the covenant on 17 April, 2008 and ratified it on 23 June, 2010.²⁰

Following the ICCPR the UN, In December 1989, adopted second optional protocol of the covenant, which was intended to abolish capital punishment in entirety.²¹ It considered death punishment a brutal act against the dignity and honor of human beings. Right to life is regarded to be absolute by the Second Protocol which reads:

“No one within the jurisdiction of a State Party to the present Protocol shall be executed, Each State Party shall take all

¹⁶ http://www.bahaistudies.net/neurelitisim/library/Cairo_Declaration_on_Human_Rights_in_Islam.pdf [Accessed last time: 10 Jan. 2017].

¹⁷ <http://www.austlii.edu.au/au/other/dfat/treaties/1980/23.htm> [Accessed last time: 10 Dec. 2018].

¹⁸ Complete covenant (ICCPR) can be read at: <https://treaties.un.org/doc/publication/unts/volume%20999/volume-999-i-14668-english.pdf>, [Accessed: 25 Mar. 2019]

¹⁹ <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>. [Accessed last time: 12 Jan. 2019].

²⁰ http://iccpr.sojhla.org/?page_id=145 [Accessed: 27 Dec. 2016]

²¹ <http://www.ohchr.org/EN/ProfessionalInterest/Pages/2ndOPCCPR.aspx> [Accessed last time: 10 Jan. 2018].

necessary measures to abolish the capital punishment within its jurisdiction".²²

Many countries adopted and ratified the said Protocol but for Muslim countries the issue of contradiction with injunctions of Islam was a hurdle in ratification of the Protocol. Almost all Muslim countries denied ratifying the said protocol except than Turkey, which ratified the protocol in 2006.²³

It was much expected that Pakistan would not ratify the Second Optional Protocol on some very obvious religious grounds. There were certain forces, such as constitutional limitations, Islamic society, religious elements and religio-political parties' resistance, which would prevent Pakistan from ratification of the Protocol. Being an Islamic State, Pakistan has constitutional provisions²⁴ which prohibit promulgation of any law which is inconsistent with Islamic law as laid down in the *Qur'ān* and the *Sunnah*, and according to Islamic law there are some offences which are punishable with death. Further, no derogation from the Islamic injunctions is allowed at any cost. Although the application of such injunctions is almost near to impossible, even then the abolishment of such laws would be deemed as a deviation from the Islamic principle. In order to better understand the conflict of these legal systems, it seems appropriate to elaborate the Islamic law of crimes and punishments briefly.

3. Crime and Punishment in Islamic Law

Islamic criminal law links specified crimes to violation of various kinds of rights. Thus, under Islamic law, the nature of crimes varies to the violation of specific right, and consequently the punishment to the crime also varies accordingly. For this purpose, Islamic law divides all punishments into four broad categories of violations of rights: rights of God, joint rights of God and individuals, rights of individuals and rights of community

²² <http://www.ohchr.org/EN/ProfessionalInterest/Pages/2ndOPCCPR.aspx> [Accessed last time: 10 Feb. 2018].

²³ "UNTC". 2019. *Treaties.Un.Org*.

https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-12&chapter=4&clang=_en. [Accessed last time: 15 Mar. 2018].

²⁴ Article 227, Constitution of Pakistan, 1973.

respectively. These punishments are *Hudūd*,²⁵ which are fixed and specified punishments. *Qīṣāṣ*,²⁶ punishments which are related to bodily harms (murder and injury). *Ta'zīr*,²⁷ punishments which are based on the discretion of the judge in case of offences related to violation of the right of individual and/or community. *Siyāsah*,²⁸ offences in which the pure right of state is violated.²⁹

Among these four categories of crimes, the *ḥadd*³⁰ punishment is the strictest, that even the head of state cannot pardon that. The *qīṣāṣ* is less rigid as compared to *ḥadd* punishment as the heirs of the victim have right to pardon and compound.³¹ The *ta'zīr* and *siyāsah* punishments are flexible and can be abolished by the state as these are the rights of state.

All capital punishments cannot be awarded in existence of *shubḥah* (mistake of law or fact), even the *ḥadd* punishments also must be suspended due to existence of *shubḥah*.³² *Shubḥah* is more general than the English law concept of “benefit of the doubt”. The “benefit of doubt” is in the mind of judge, while *shubḥah*, which is an excuse in Islamic law, even considered as an excuse when it is in the mind of accused. It is more in line with the notions of “mistake of law or of fact” than with the “benefit of the doubt”.³³ Mistake of law in the mind of accused may not be an excuse in common law, but it is an excuse in Islamic Law and it abolishes the *ḥadd* punishment also. *Shari'ah* principle states: “*ḥudūd punishments are waived due to mistake of law*”.³⁴

It is not an easy task for judges to award death penalty under Islamic law. Islam has protected the human dignity and honor.

²⁵ Right of Allah.

²⁶ Right of Allah and individuals, but the right of individual is dominant.

²⁷ Right of individual.

²⁸ Right of community.

²⁹ Kāsānī, *Badā'i' al-Ṣanā'i' fī Tartīb al-Sharā'i'*, 9:248-250; Burhān al-Dīn Abū l-Ḥasan Alī b. Abī Bakr al-Marghīnānī, *al-Hidāyah Sharḥ Bidāyat al-Mubtadī* (Beirut: Dār Iḥyā' al-Turāth al-Arabī, n.d.), 2:339.

³⁰ Singular of *ḥudūd*.

³¹ Al-Qur'ān, 2:178.

³² Abū Bakr Muḥammad b. Abī Sahl al-Sarkhasī, *Al Mabsūṭ* (Beirut: Dār al Fikr, 2000), 18:315.

³³ Imran Ahsan Khan Nyazee, *General Principles of Criminal Law* (Islamabad: Advanced Legal Studies Institute, 1998), 142-143.

³⁴ Sarkhasī, *al Mabsūṭ*, 18:315.

Death penalty cannot be awarded usually in crimes except four punishments only. It is much important to understand the principles of Islamic law in order to elaborate the capital punishments with respect to IHRL. Thus, in the following we shall discuss the crimes and analyze the possibility of execution and abolishment.

1. Hadd:

Rajam: (stoning to death)

Hirāba: (violence in society)

Apostasy

In these three cases death penalty should be awarded to offenders as a *ḥadd*. *Rajam* is the death penalty awarded to a married person who commits adultery. Islamic law has stipulated strict conditions to inflict this penalty due to which it is near to impossible to apply this punishment. First of all, the person must be married; secondly the *shubhah* plays a significant role in suspending the punishment. The Muslim jurists have discussed various *shubuhātt*³⁵ which suspend the punishment. Thirdly and most importantly, the crime must be proved by four male competent eye witnesses who testify the actual penetration. The standard of competence is much strict and high. Further, Islam exceptionally encourages the witness to avoid testimony in *ḥadd*;³⁶ so that the punishment may be suspended. So far no one has been executed in Islamic history on the basis of testimony.

Hirāba also has a *ḥadd* punishment, but it has four punishments and only one of them is death penalty. Three *ḥadd* punishments of *hirāba* are not capital punishments.

Apostasy according to the Islamic law is also a *ḥadd* crime. If a person after embracing Islam converts to any other religion or

³⁵ Plural of *Shubhah*. See: for a comprehensive discussion on *Shubhah* Abu Zahra, *Al-Jarimah wa al-'Uqūbah fī al-Islām* (The crime and Punishment in Islam) 2nd volume.

³⁶ Muḥammad Amīn b. 'Ābidīn, *Radd al Muḥtār 'alā al Durr al Mukhtār* (Beirut: Dār al-Fikr, 2000), 7:70.

becomes atheist, he will be given 3 days to deliberate and his misconception and doubts about Islam shall be addressed and removed. And even after that he does not return to the fold of Islam, he will be punished by death.³⁷ However, this rule only applies to male apostates. If a women commits apostasy, she will not be awarded death penalty.³⁸ This punishment for apostasy has not been incorporated in Pakistani legal system.

2. Qiṣāṣ

Qiṣāṣ is death penalty awarded to the crime of intentional murder (*Qatl-e-Amd*). Under Islamic law intentional murder is that, in which the life of a person is taken away by intentional use of a weapon which is normally used to kill, such as guns and sword.³⁹ It should be noted that among five kinds of homicide only intentional murder is liable to death penalty.⁴⁰ Again in order to apply this punishment the crime must be proved beyond any reasonable doubt by the testimony of two male competent eye witnesses. The *shubhah*, also suspends the punishment. *Qiṣāṣ* is under Islamic law a compoundable offence. Hence, the heirs of the victim may pardon and/or compound⁴¹ and consequently the punishment can be suspended.

3 & 4. Ta'zīr and Siyāsah

These two punishments are not specified and based on the violation of the rights of individual or state and it can be abolished. Under Islamic law, state can pardon these offences and also can alter their punishments from one nature to another nature. Capital punishment under these can be abolished and thus can be brought in line with IHRL documents.

Capital punishment is also related to the nature of punishments under Islamic law, then to the concept of *shubhah*, and consequently to the criteria of witnesses and high level of testimony. At the end, not remarkable number of capital

³⁷ Muhammad b. Isma'īl al-Bukhārī, *al-Jāmi' al-Ṣaḥīḥ*, Ḥadīth No. 9622.

³⁸ Abdul Ghani al Dimashqi, *al-Lubāb fī Sharḥ al kitāb*, (Beirut, Dār al kitāb al-Arabī), 1:405.

³⁹ Muḥammad Amīn b. 'Ābidīn, *Radd al Muḥtār*, 6:531.

⁴⁰ al-Marghinānī, *al-Hidāyah*, 4:173.

⁴¹ Al-Qur'an, 2:178.

punishments can be found in Islamic law. So, if even one witness is absent or not trustworthy or lacks honesty, the accused cannot be given death penalty. Hence, whatever element creates mistake of law (doubt) in the deliberate commission of the crime, the *ḥadd* punishment is absolved. Such strict conditions are prescribed to ensure the conservation of the dignity and significance of human life. It depicts that taking a human life must not be an easy matter. The general principle, purpose and motive of Islam is that no life should be taken and preserving human life must always be encouraged. But the general rule has some exceptions, as in Islamic criminal law, there are only these four exceptions under which one can impose death penalty. These exceptions are further restricted with strict conditions of implementation.

Capital punishments under Islamic law are: namely capital punishment as a *ḥadd* in crime of *zinā*;⁴² which is neither practically possible nor cannot be abolished. As a *ḥadd* in the crime of *ḥirābah*, which has four punishments and only one is death penalty. Capital punishment as *qisās*; which cannot be abolished through legislation, but it has the chances of pardon and compromise from the heirs of victim.⁴³ Capital punishment as *ta'zīr*; not specified for any crime and it is the discretion of the judge.⁴⁴ Capital punishment as *siyāsah*; it is also not specified in Islamic law and the ruler can award death penalty in crimes against the community or state.⁴⁵ Moreover, the implementation of punishment of death over these crimes has prescribed conditions. Without the fulfilment of these strict conditions, implementing death penalty is not allowed. If there is any *shubḥah* (Mistake of Law) or lack in the evidence or witnesses or any other prerequisite, the accused cannot be executed.

⁴² *Zinā* means fornication, if the offender is *Muḥṣan*.

⁴³ Al-Qur'ān, 2:178.

⁴⁴ Wazārah al- Awqāf wa al- Shu'ūn al Islāmiyyah, *al-Mawsū'at al-Fiqhiyyah al-Kuwaitiyyah*, 12:263.

⁴⁵ Ibn 'Abidīn, *Radd al Muḥtār*, 4:215.

4. Capital Punishment in Pakistani Legal System

Currently, in the Pakistani criminal law the number of crimes punishable by death goes to 27.⁴⁶ The major statutes which provide such crimes include Pakistan Penal Code 1860⁴⁷, *Zinā* Ordinance 1979⁴⁸, *Hudūd* Ordinance 1979⁴⁹, Pakistan Army Act 1952⁵⁰, High Treason Act 1973⁵¹, Dangerous Drugs Act 1930⁵², Railways Act 1890⁵³, Control of Narcotics Substances Act 1997⁵⁴, Anti-Terrorism Act 1997⁵⁵ and Prevention of Electronic Crimes Act, 2007⁵⁶. These crimes can be divided into three categories: *hudūd* and *qiṣāṣ*, most heinous crimes and less heinous crimes. Pakistan cannot digress from the laws of *hudūd* and *qiṣāṣ* only as they are obligatory. But the areas of law on which jurists do not agree unanimously can be altered and induced in law according to the International Human Rights law documents, which is in fact not prohibited by the Islamic law.

4.1. Cases where capital punishment can be abolished

As has been discussed briefly, Pakistan cannot ratify the Second Protocol in its present form and cannot abolish capital punishment in entirety due to some constitutional obligations along with other pressures. It is necessary to find out solution for this issue and abolish the capital punishment to the maximum extent as per IHRL documents, with adherence to Islamic law.

In Pakistani legal system, Pakistan cannot abolish those crimes which are based on *Shari'ah* principles, which are only four crimes among twenty seven namely *zinā* (fornication),⁵⁷

⁴⁶<http://www.ips.org.pk/politics/1075-should-pakistan-abolish-or-retain-capital-punishment.html?start=7> [Accessed last time: 04 Oct. 2016].

⁴⁷ Sections: 121, 132, 194, 295-C, 300, 301, 354-A, 364-A, 365-A, 367-A, 376, 396, 402-B.

⁴⁸ Section; 5.

⁴⁹ Sections; 6, 12, 15.

⁵⁰ Sections; 24, 31.

⁵¹ Section; 2.

⁵² Sections; 13, 14.

⁵³ Section; 127.

⁵⁴ Section; 9-C.

⁵⁵ Sections; 6-B, 7-A.

⁵⁶ Section; 17.

⁵⁷ *Zinā* Ordinance, 1979, S. 5.

intentional murder,⁵⁸ blasphemy,⁵⁹ and *ḥirābah* (violence in society).⁶⁰ Although these crimes have many options other than capital punishment in Islamic law. *Zinā* has never been proved in Islamic history by testimony, intentional murder has an option of pardon or compromise, non-Muslim blasphemer cannot be awarded death penalty under *Ḥanafī* School of law,⁶¹ (further, a Muslim women cannot be punished with death for blasphemy), and *ḥirābah* has four punishments and only one of these is death penalty.⁶² These four death penalties are not compulsory for every offender under Islamic law. Even the offences are of such nature that it is difficult if not impossible to prove the crime and award capital punishment for them. All other twenty-three capital punishments can be abolished from Pakistani legal system and no resistance is expected to be offered from the perspective of *Sharī'ah*, constitutional limitations and religious elements.

5. Conclusions and Recommendations

The propagators of the abolishment of capital punishment consider the right to life as absolute which cannot be alienated. As a matter of principle, both Islamic law and international human rights law consider the protection of life and endurance of justice to be very significant, but the conflict which has raised the discrepancy, is in the priorities between the interests of individual and public at large. In respect of execution, irrespective of terrorist or non-terrorist, we should focus on peace and harmony in the society and solve the reason of these offences instead of resorting to executions.

Pakistan, as we have discussed cannot ratify the second optional protocol of ICCPR, because the protocol demands the abolishment of death penalty in *ḥudūd* and *qisās* as well. Under Islamic law, some punishments fall under the domain of the rights of Allah and no one has authority to alter them. As the protocol is

⁵⁸ Pakistan Penal Code 1860, S. 302-A, as *qisās*,

⁵⁹ Pakistan Penal Code, S. 295-C, when blasphemer is Muslim according to *Ḥanafī* School.

⁶⁰ Pakistan Penal Code, S. 376.

⁶¹ Ibn 'Ābidīn, *Radd, al-Muḥtār*, 4:215.

⁶² Al-Qur'ān, 5:33.

not mandatory and is an optional one, so if it could not be followed in entirety, it is possible to abolish capital punishment partially to the maximum possible extent. Hence, making possible amendments to ensure better conformity with the protocol would surely be a remarkable step by the State's legislation.

It is mentioned that Pakistan cannot put any reservations, which could allow Pakistan to maintain death penalty in some crimes,⁶³ on the said Protocol according to the law of treaties as mentioned in Vienna Convention on the law of treaties, 1969.⁶⁴ So, it is my recommendation that a new protocol should be adopted in accordance with *Shari'ah* provisions, dividing death penalty into crimes' categories, which would enable Muslim countries particularly Pakistan to ratify the Protocol and reduce the applicability of capital punishment. If Pakistan ratifies the protocol about death penalty and makes some new legislation to abolish the death penalty to the maximum extent, then other Islamic countries may also follow Pakistan to ensure incorporation of International Human Rights Laws at domestic level. So, if we cannot abolish it totally, let's start abolishing capital punishment to the maximum possible boundary. Furthermore, following the footprints of Cairo Declaration which was adopted by the Muslim countries in 1990⁶⁵, the Muslim countries may also adopt a new convention for this purpose to restrict the applicability of death penalty to only those crimes for which only death penalty has been prescribed by Islamic law.

⁶³ According to Article 19 (c), of the Vienna Convention on the law of treaties 1969, a state cannot formulate a reservation if the reservation is incompatible with the purpose and object of the treaty. The purpose of the second optional protocol of the ICCPR is to abolish the death penalty entirely. So, the reservation about those crimes which are punishable with death penalty under *Shari'ah*, will be against the purpose and object of the said Protocol.

⁶⁴ Article 19, its electronic copy is available at:
https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf
 [Accessed last time: 03 Mar, 2017].

⁶⁵http://www.bahaistudies.net/neurelitism/library/Cairo_Declaration_on_Human_Rights_in_Islam.pdf [Accessed last time: 14 Dec. 2016].