

PAKISTAN

@Executions under the Qisas and Diyat Ordinance

The offence for which the death penalty is most frequently imposed in Pakistan is murder. Those sections of the Pakistan Penal Code which relate to the offences of murder and manslaughter were replaced in 1990 by the Qisas and Diyat Ordinance which redefines the offence and its punishment in Islamic terms. Under Islamic law, the punishment for murder, homicide or infliction of injury can either be in the form of qisas (equal punishment for the crime committed) or diyat (compensation payable to the victims or their legal heirs).

Shortly after the promulgation of the Qisas and Diyat Ordinance, Amnesty International expressed its concern about some of the changes it introduced into Pakistan law (see: Pakistan: Legal changes affecting application of the death penalty, AI Index: ASA 33/03/91).

Amnesty International unconditionally opposes the death penalty in all cases. It believes that the death penalty violates the right to life and the prohibition of cruel, inhuman and degrading treatment or punishment, as recognized in Articles 3 and 5 of the Universal Declaration of Human Rights. In Amnesty International's view, the death penalty is inherently unjust and arbitrary, however heinous the crime for which it is awarded and however scrupulous the procedures by which it is enforced.

Two recent cases of the application of the death penalty, one relating to the payment of compensation, the other to a public execution which would re-enact the crime, have reinforced Amnesty International's concerns that executions of death sentences imposed under the Qisas and Diyat Ordinance constitute particularly inhuman and degrading forms of punishment. They contravene international human rights standards, including those contained in the United Nations Safeguards guaranteeing protection of the rights of those facing the death penalty which lays down in Safeguard 9: "Where capital punishment occurs, it shall be carried out so as to inflict the minimum possible suffering".

Amnesty International has received reports that at least 55 persons were sentenced to death in Pakistan in 1994, 48 of these for murder under the Qisas and Diyat Ordinance. This was a significant decline compared to 1993 when 176 people were reportedly sentenced to death, mostly for murder. In 1993 six people were reportedly hanged in jails in Punjab while in 1994 only one execution was known to have been carried out. A public execution may take place shortly in Swabi in the North West Frontier Province.

Swabi: prisoner to be publicly shot dead by the heirs of the victim

In early May 1995, a sessions judge in Swabi, North West Frontier Province, issued a "black warrant" (order for execution) for the public execution of Jahangir who had been sentenced to death for murder.

Jahangir, a resident of Permooli, Swabi district, was found guilty of murdering a woman school teacher, Farhat Naz. Her parents had reportedly turned down his marriage proposal and Farhat Naz reportedly refused to elope with him. On 31 May 1992, Jahangir shot Farhat dead in the playground of the Government Boys High School where she was employed. Jahangir, in his early twenties, was arrested after the murder and charged under section 302 of the Pakistan Penal Code as replaced by the Qisas and Diyat Ordinance. Following his conviction and death sentence, Jahangir appealed to the High Court of the North West Frontier Province and later to the Supreme Court of Pakistan. Both courts reportedly dismissed his appeal.

In accordance with the "black warrant" issued in early May 1995, Jahangir was to be hanged in Haripur Jail where he has been imprisoned. The sessions judge later reportedly revised the execution order to bring it into consonance with the requirements of the ordinance relative to the requirement of qisas, for equal punishment for the offence committed. Accordingly the execution is to be carried out in the same manner in which the murder was committed: Jahangir is to be taken to the playground of the school and is to be shot dead by the wali or legal heir of the victim, i.e. Farhat Naz' father. If carried out, this would be the first case in Pakistan in which the infliction of the death penalty is identical in form with the crime.

Information from Pakistan indicates that the execution which was fixed for 8 May 1995 has been postponed as the Advocate General has filed an appeal in the High Court of the North West Frontier Province questioning the order of public execution. According to newspaper reports people in Kaloo Khan village in Swabi, where Farhat Naz lived, have protested against the postponement and are demanding immediate execution of the convict. Farhat Naz' father, too, has reportedly declared his readiness to perform the execution as soon as possible.

Peshawar: Prisoner hanged when no agreement on payment of compensation was found

On 17 October 1994, Rehan, aged 45, was executed in Central Jail, Peshawar, North West Frontier Province. A sessions court in Peshawar had sentenced him to death in June 1991 for murdering another man in the context of a family feud in 1988. Appeals to the Peshawar

High Court and the Supreme Court were rejected in October 1991 and April 1993 respectively. A mercy petition addressed to the President was rejected in early October 1994.

Officials of Peshawar Central Jail reportedly stated that the noose was put around Rehan's neck on 17 October at 5.00 am in the presence of the jail superintendent, a magistrate and a medical officer. They waited for half an hour while the families of the prisoner and of the heirs of the victim argued outside the jail gate over a pardon and payment of compensation or diyat. Jail officials reportedly sent a messenger to the gate to keep them informed if a compromise was reached at the last minute. When no agreement could be found, Rehan was hanged at 5.30 am.

Prisoners who were released in the following days from Peshawar Central Jail reported that all the jail's inmates were depressed over the hanging; several of them had sent mercy petitions and requests for postponement of Rehan's execution to the Governor of the North West Frontier Province. They were told that the mercy petition had been rejected by the President who has the final authority with respect to commuting sentences.

The Qisas and Diyat Ordinance

The Qisas and Diyat Ordinance was first promulgated in September 1990. Presidential ordinances in Pakistan remain in force for 120 days unless they are placed before parliament and passed into permanent law. The Qisas and Diyat Ordinance was never brought before parliament and has been periodically re-promulgated since September 1990.

The Qisas and Diyat Ordinance redefines the offences of murder and bodily hurt and their punishment in Islamic terms and replaces or amends the relevant sections of the Pakistan Penal Code (sections 299 to 338) and the Code of Criminal Procedure. Under Islamic law the punishment for murder, homicide or infliction of injury can either be in the form of qisas (equal punishment for the crime committed) or diyat (compensation payable to the victims or their legal heirs). These concepts are applied in different ways in different Islamic systems.

Under the Qisas and Diyat Ordinance the death penalty can now be given as qisas for intentionally causing death or for causing the death of someone other than the person intended. The death penalty can also be given as ta'zir (discretionary punishment) for these crimes, depending on the circumstances. The death penalty can only be given as qisas if the accused confesses before a competent court or if the rules of evidence under Article 17 of the Qanun-e-Shahadat Order, 1984 (Law of Evidence) are fulfilled¹. A minor (defined as a

person below 18) or insane person cannot be sentenced to death as qisas; nor can a person who has killed his child or grandchild; nor can a person whose direct descendants are the heirs of the victim. If the standards of evidence required for qisas are not fulfilled, the court can pass a ta'zir punishment instead, taking the circumstances of the case into account.

The concept of qisas is defined in the Ordinance as "punishment by causing similar hurt at the same part of the body of the convict as he has caused to the victim or by causing his death if he has committed qatl-i-amd (intentional killing), in exercise of the right of the victim or a wali (heir of the victim, or the provincial government if there is no heir)". In a murder case this means that, if the relevant rules of evidence are fulfilled, the heirs of the victim have the right to have qisas (equal punishment) inflicted on the offender. The heirs may also waive this right, however, in which case the death penalty cannot be imposed as a qisas punishment.

In most cases where the death penalty cannot be imposed as a qisas punishment for murder, the prisoner becomes liable to pay diyat (compensation) to the heirs of the victim, and may also be sentenced to imprisonment. The Ordinance specifies a minimum value of diyat, but the court can determine the actual amount to be paid, "keeping in view the financial position of the convict and the heirs of the victim".

In qisas cases the Ordinance alters the role of the state in the prosecution of criminal cases: the state's role is to ensure fair passage of the case through the courts, but the victim or the victims' heir has the right to decide whether or not the punishment will be inflicted after the qisas sentence has been passed. Should they forgive the offender and waive qisas punishment, the state still retains the right to intervene and punish the offender with a ta'zir punishment. In cases of murder, where the heirs have waived the qisas punishment, the Ordinance provides for up to ten years' imprisonment as ta'zir.

Death sentences under the Qisas and Diyat Ordinance are, like death sentences under other sections of the Pakistan Penal Code, automatically referred to the High Court of the province concerned for confirmation. If the death sentence is confirmed, the prisoner can appeal to the Supreme Court but the Supreme Court can decide whether it accepts an appeal. If the appeal is not heard or is rejected, a prisoner sentenced to death for murder, could, before the Qisas and Diyat Ordinance was promulgated, appeal for commutation of his death sentence to the President, the federal or the provincial government. The Ordinance makes the powers of the federal and provincial government conditional: they may

¹ Article 17 says that "the competence of a person to testify, and the number of witnesses required in any case shall be determined in accordance with the injunctions of Islam as laid down in the Holy Qur'an and Sunnah". In cases that do not pertain to financial or future obligations or the enforcement of Hudood as laid down in the Hudood Ordinances of 1979 or other special laws, "the Court may accept, or act on, the testimony of one man or one woman or such other evidence as the circumstances of the case warrant".

commute a death sentence only if the heirs of the victim agree to the commutation. However, the powers of the President "to grant pardon, reprieve and respite, and to remit, suspend or commute any sentence passed by any court, tribunal or other authority" laid down in Article 45 of the Constitution are not affected by the Ordinance. Although the Ordinance specifies that the qisas punishment can be waived only by the victim or the heirs of the victim, the President remains empowered under the Constitution to commute sentences himself.

A death sentence which has been confirmed by a provincial High Court cannot be carried out if the heirs of the victim pardon the prisoner or reach a compromise with him; an execution can be halted "even at the last moment before execution of the sentence".

The Qisas and Diyat Ordinance specifies that when a death sentence has been imposed as qisas, it must be carried out "by a functionary of the Government by causing death of the convict as the court may direct". As the case in Swabi indicates, the phrase "as the court may direct" appears to include the power to decide the manner and place of execution as well as the executioner.

In 1994 the President reportedly issued a directive to allow a 60-day grace period to about 100 prisoners under sentence of death so as to give them the opportunity to seek a compromise with the victims' families and thus avoid being executed.

Public executions and the "dignity of man"

Following the setting up of the Special Courts for Speedy Trial under the 12th Constitutional Amendment in July 1991, a spate of death sentences was passed by these special courts and the then Prime Minister Nawaz Sharif announced in October 1991 that executions were to be carried out in public as a deterrent to violent crime. Prior to that, public hangings had last been carried out last in 1988, when four men convicted of murder were publicly hanged.

In early 1992 the Supreme Court took up the question as to whether public executions are compatible with Article 14 of the Constitution which says: "The dignity of man ... shall be inviolable". It issued an interim order staying all public executions pending a final decision of the Supreme Court. To Amnesty International's knowledge the Supreme Court has not yet issued a final judgement.

In February 1994, the government of Prime Minister Benazir Bhutto announced that as a matter of policy, all public hangings would be banned. The announcement did not specify if the ban on public executions extended to qisas cases and to death sentences under the Hudood laws which provide for mandatory public stoning to death for certain offences. The government issued a press note which referred to Article 14 of the Constitution and said

that since executions in public of even the worst criminals violated the dignity of man, it constituted a violation of fundamental rights enshrined in the Constitution and was therefore banned.

The Supreme Court of India in 1985 declared public executions unconstitutional. It stated that "a barbaric crime does not have to be visited with a barbaric penalty such as public hanging. ... We have no doubt that it would be a revolting spectacle harking back to earlier centuries."

Among other states with Muslim populations, Kuwait ceased public executions. The newspaper *Qabas* quoted the Prosecutor General, Ghazi al-Sammar, as saying that public executions weakened the deterrent effect of the death penalty and turned convicted prisoners into heroes when they showed courage and composure at the gallows or when they made statements embellishing their crimes (*Qabas*, 12 December 1987).

Amnesty International's concerns and recommendations

Amnesty International has submitted to successive governments of Pakistan its concerns about the use of the death penalty in Pakistan; it now reiterates its concerns and recommendations.

While recognizing the problems faced by governments in combating crime, Amnesty International cannot accept that the death penalty is an appropriate response. In Amnesty International's view, the death penalty violates the right to life and the prohibition of cruel, inhuman and degrading punishment as proclaimed in Articles 3 and 5 of the Universal Declaration of Human Rights. Article 3 says: "Everyone has the right to life, liberty and security of the person." Article 5 states: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."

Amnesty International campaigns for the complete abolition of the death penalty and therefore calls on the government of Pakistan to join a worldwide trend. At present 55 countries have abolished the death penalty for all offences, while 15 have done so for all but the most exceptional crimes. Twenty-seven countries can be considered abolitionist de facto, they retain the death penalty in law but have not carried out any executions in the past 10 years or more. The 97 countries that are now abolitionist in law or practice make up 50 per cent of the total number of states. Among Asian countries, Cambodia abolished the death penalty in 1989, Hong Kong in 1993 and Nepal abolished the death penalty for ordinary crimes in 1990. Bhutan, the Maldives and Sri Lanka are abolitionist de facto as no one has been executed in these countries in the last ten years or more.

The international community has agreed that countries which have not abolished the death penalty, should ensure that the strictest possible procedural and substantive safeguards are followed. Minimum safeguards are set forth in a number of international instruments, including the United Nations Economic and Social Council (ECOSOC) Safeguards guaranteeing the protection of the rights of those facing the death penalty, which was adopted by ECOSOC on 25 May 1984 (resolution 1984/50) and endorsed by the UN General Assembly resolution 39/118, adopted without a vote on 14 December 1984.

Amnesty International fears that the changes in the commutation procedures introduced under the Qisas and Diyat Ordinance may increase the arbitrariness of the application of the death penalty. This possibility is raised by the requirement that death sentences cannot be commuted except with the consent of the heirs of the victim who may grant mercy to the prisoner and accept compensation in place of execution. It is feared that the heirs may be less likely to reach a compromise with a poor prisoner than with one who is wealthy. This would result in the death penalty being applied arbitrarily: poor people sentenced to death would be more likely to be executed than rich ones. Moreover, to bargain in monetary terms about the value of human life appears to violate the inherent dignity of man and betrays a lack of respect for the value of human life.

Executions of the death penalty are cruel, inhuman and degrading by their very nature. Public executions add a further degrading element by exposing the prisoner's suffering to a public in the form of a sensational spectacle. Public executions have a brutalizing and de-humanizing effect on the spectators and society at large which is incompatible with respect for life and human dignity. By proposing to execute a prisoner in a school playground, the authorities also appear to contravene the spirit of the United Nations Convention on the Rights of the Child which Pakistan ratified in 1990. Article 3(1) of the Convention states: "In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interest of the child shall be a primary consideration."

Amnesty International calls on the government of Pakistan:

- stop all executions

On humanitarian and human rights grounds, Amnesty International appeals to the authorities in Pakistan to cease executing prisoners. It urges the President to use his powers under Article 45 of the Constitution to commute all death sentences.

- abolish the death penalty in law

In keeping with its unconditional opposition to the death penalty, Amnesty International urges the government to abolish the death penalty in law. In this regard, Amnesty

International would like to draw the attention of the government to the statement by the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions made in his report of 14 December 1994: "... the Special Rapporteur would like to express his view that, although the death penalty is not prohibited under international law, there is no such thing as a right to capital punishment, restricted only by some limitations contained in the pertinent international instruments. In view of the irreparability of loss of life, the impossibility of remedying judicial errors and, indeed, the well-founded doubts expressed by a wide range of experts in criminology, sociology, psychology, etc. as to the deterrent effect of capital punishment, the Special Rapporteur once again calls on the Governments of all countries where the death penalty still exists to review this situation and make every effort towards its abolition."

- ratify relevant international human rights instruments

Amnesty International appeals to the Government of Pakistan to become a party to relevant international human rights instruments, including the International Covenant on Civil and Political Rights (ICCPR).