



**Submission to Report of the Secretary-General to the
Human Rights Council on the question of the death
penalty, pursuant to decision 18/117 and resolution
22/11 of the Human Rights Council**

Introduction

While Pakistan has taken important steps in recent years to bring its use of capital punishment closer in line with international human rights law,¹ there remain key systemic issues in the provision of safeguards against unlawful use of the death penalty, particularly with regard to juveniles and persons with psychosocial disabilities. Despite eliminating the death penalty for drug offences and for the crime of railway sabotage, Pakistan's death row population witnessed a significant increase from 2022-2023. As of October 2023, there are 6,039 individuals on death row in Pakistan, nearly double the 3,831 recorded in 2022.²

Limiting the scope of the death penalty to the most serious crimes

Pakistan has taken the important step of reducing the number of capital crimes. Before November 2022, Pakistan applied the death penalty for 33 offences, many of which do not meet the standard laid down in the ICCPR.³ In its Second Periodic Report to the Human Rights Committee on compliance with the ICCPR, submitted in June 2022, the Government of Pakistan confirmed that it was examining the provisions of its criminal law to narrow the scope of the death penalty.⁴ Subsequently, the Government of Pakistan eliminated the death penalty for railway sabotage in November 2022,⁵ and drug offences in July 2023.⁶

Despite these positive developments in reducing the scope of the death penalty, Pakistan, in its ICCPR state report, contested the definition of the 'most serious crimes' as laid down by the Human Rights Committee. Pakistan additionally voted against Resolution L.34 at the 54th Session of the Human Rights Council. This resolution affirmed the Committee's definition of the 'most serious crimes', upheld procedural human rights safeguards that States must apply in their use of capital punishment, and opposed the death penalty for drug offences.

¹ On December 17, 2014, Pakistan lifted a seven-year moratorium on the death penalty in the wake of the tragic attack on the Army Public School in Peshawar. Following a period of executions from 2014 to 2019 which saw 516 individuals being executed in Pakistan, there have been no executions in Pakistan since December 2019. On 12th October 2022, a significant policy action was taken by the Ministry of Interior, Ministry of Commerce, and Ministry of Foreign Affairs which called for a hold on the execution of death sentences to align with Pakistan's international human rights law obligations under the GSP+ arrangement.

² Justice Project Pakistan. *Death Penalty in Pakistan: Data Mapping Capital Punishment*. (2023) <https://jpp.org.pk/report/death-penalty-in-pakistan-data-mapping-capital-punishment/>

³ A full list of Pakistan's capital crimes is as follows: murder; robbery resulting in death; terrorism; kidnapping or abduction of a minor; kidnapping for ransom or extortion; abduction to subject someone to unnatural lust; blasphemy; adultery; stripping a woman's clothes; gang rape; harabaha (robbery, rape or terrorism) with murder; sexual abuse; unnatural offences; mutiny and insubordination; abetment of mutiny; disclosure of parole, watchword, or countersign; giving or fabricating false evidence with intent to procure conviction of a capital offence; high treason; offences against the state; offences in relation to the enemy; arms trading; and hijacking and harboring hijacking.

⁴ Human Rights Committee, *Second periodic report submitted by Pakistan under article 40 of the Covenant, due in 2020* (Dec. 7, 2022), UN Doc. CCPR/C/PAK/2, ¶ 63.

⁵ See The Railway (Amendment) Bill 2022; see also Sardar Sikander Shaheen, *Senate passes Railways (Amendment) Bill 2022 unanimously*, Business Recorder (Oct. 12, 2022), available at <https://www.brecorder.com/news/40202520>.

⁶ Gazette of Pakistan, *Control of Narcotics Substances (Amendment) Act 2023*, (2023) https://na.gov.pk/uploads/documents/64d4d874b52c0_506.pdf; Pakistan Today, *Pakistan ends capital punishment for drug trafficking convicts* (July 2023), <https://www.pakistantoday.com.pk/2023/07/26/pakistan-ends-capital-punishment-for-drug-trafficking-convicts/>

Sentencing Practices for Capital Offences

The Supreme Court of Pakistan's precedent states that only in the most exceptionally aggravated offences is "the infliction of the death penalty" justified.⁷ However, Pakistan's lower courts continue to impose death sentences for less serious and non-lethal crimes.⁸ Alarming, since the removal of the death penalty for drug offences, two reported death sentences were handed down for these crimes by the lower courts.⁹ Furthermore, as of October 2023, there are **1,026** individuals on death row for drug-related offences.¹⁰ This highlights a pressing need to implement existing sentencing guidelines for the judiciary¹¹ and a policy for re-evaluation of sentences for those on death row for drug offences.

Safeguards for persons under the age of 18

Under the Juvenile Justice Systems Act 2018 (JJSA), persons under the age of 18 are afforded a wide range of legal and procedural safeguards from capital punishment and harsh prison sentences. Pakistan maintains it has not and does not sentence persons under the age of 18 to death.¹² Despite such assertions, it is unclear whether the safeguards under the JJSA have reduced the number of juveniles being sentenced to death.¹³

While the JJSA was promulgated with the intent to abolish capital punishment for individuals under the age of 18, it is unclear if it has achieved this goal.¹⁴ No sensitization of law enforcement means courts routinely try and sentence children as adults to death due to inadequate age determination procedures.¹⁵

Considering that more than 70% of children are not registered at birth in Pakistan, courts routinely and improperly sentence minors to death.¹⁶ The weaknesses in age determination protocols are exacerbated by the fact that the JJSA "does not accord the benefit of the doubt to the child in case of conflicting or inconclusive evidence."¹⁷

⁷ *Muhammad Sharif v. the State* (2009 PLD 709) (confirming *Ifthikhar Ahmed Khan v. Asghar Khan & another* (2009 SCMR 502)).

⁸ Foundation for Fundamental Rights & Reprieve, *The Pakistan Capital Punishment Study*, 2 (2019), <https://reprieve.org/wp-content/uploads/sites/2/2019/04/Pakistan-Capital-Punishment-Study.pdf>

⁹ Daily Pakistan, *Convict sentenced to death in drug recovery case*, (January 2024) <https://dailypakistan.com.pk/16-Jan-2024/1669615>; Ary News, *Karachi anti-narcotics court awards death sentence to drug smuggler* (January 2024) <https://arynews.tv/karachi-anti-narcotics-court-awards-death-sentence-drug-smuggler/>

¹⁰ Justice Project Pakistan, *Death Penalty in Pakistan: Data Mapping Capital Punishment* (2023) <https://jpp.org.pk/report/death-penalty-in-pakistan-data-mapping-capital-punishment/>

¹¹ As laid down by the Lahore High Court in *Ghulam Murtaza vs. The State*, PLD 2009 Lahore 362.

¹² Human Rights Committee, *Second periodic report submitted by Pakistan under article 40 of the Covenant, due in 2020* (Dec. 7, 2022), UN Doc. CCPR/C/PAK/2, ¶ 69.

¹³ There are reports that the Government executed at least six children between 2014 and 2019, highlighted in: Human Rights Council, *Briefing on Recommendations for the Universal Periodic Review of Pakistan*, ¶ 25.

¹⁴ *Pakistan: Poor and marginalized suffer disproportionately from capital punishment*, International Federation for Human Rights 30 (Oct. 2019).

¹⁵ Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Pakistan*, U.N. Doc A/HRC/53/13 (Mar. 31, 2023), ¶ 25

¹⁶ Correspondence with The Advocates for Human Rights (Jul. 8, 2022), on file with the authors.

¹⁷ Justice Project Pakistan (JPP) Follow-up report on Pakistan Under Para. 18, CCPR/C/PAK/CO/1, 120th Session of Human Rights Committee (Sept. 2019).

These glaring issues stem from the fact that the Government has failed to pass rules under the JJSA, outlining the procedural framework through which the provisions of the JJSA will be implemented, including age determination protocols and safeguards for juveniles in the criminal justice system.¹⁸ The exception is the province of Khyber Pakhtunkhwa, which passed JJSA rules in August 2023 that lay down protocols for age determination.¹⁹

a. Case Study: Munawar Ali

Munawar Ali was 16 years old at the time of his arrest, evidenced by his School Leaving Certificate. In 2004, he was sentenced to death under Pakistan's problematic anti-terrorism laws. The Anti-Terrorism Act (1997) frequently results in juveniles being tried and sentenced as adults, due to a lack of due process safeguards. Despite strong indications of his juvenility, his appeals were rejected at the appellate level. Two execution warrants were issued for him, both of which were stayed at the last minute. The victim's heirs have forgiven Munawar (amounting to a pardon under Pakistan's law), however, this compromise has been rejected by the courts. Munawar is now 36 years old and languishes on death row in Larkana, Sindh.

b. Case Study: Muhammad Azam

Muhammad Azam was arrested in 1998 when he was 17, and has spent 25 years on death row. His conviction for a fatal shooting and armed robbery was questionable as confessions and witness statements were extracted using torture and fabricated evidence. He was sentenced to death, despite legal safeguards against the execution of juveniles. His appeals for commutation on grounds of his juvenility have been dismissed by the sentencing court, as his age was not brought up in his original trial.

Safeguards for persons with psychosocial disabilities

Traditionally, Pakistan's criminal justice system fails to provide meaningful protection to persons with psychosocial disabilities at all stages, including arrest, trial, sentencing, detention and execution. The situation is further compounded by the absence of procedural safeguards and structural problems of Pakistan's under-resourced and overstretched criminal justice system, where forensic mental health assessments are largely absent.²⁰

In February 2021, the Supreme Court delivered a landmark ruling titled *Safia Bano v. Home Department*, wherein it barred the execution of individuals with severe psychosocial disabilities "unable to comprehend the rationale behind their execution."²¹ The judgement

¹⁸ Justice Project Pakistan, Valerie Khan, *Pakistan's Compliance with the Convention on the Rights of the Child* (2023) <https://jpp.org.pk/gspplusweek/>

¹⁹ Government of Khyber Pakhtunkhwa, Home and Tribal Affairs Department, *The Khyber Pakhtunkhwa Juvenile Justice Systems Rules 2023* (2023).

²⁰ Defendants are rarely informed of the fact that their disability may be a mitigating factor in sentencing, and because they often lack adequate legal representation, the issue is rarely raised in court. Police, prison officials, lawyers and judges lack basic understanding of psychosocial disabilities and its interaction with criminal culpability.

²¹ Human Rights Committee, Second periodic report submitted by Pakistan under article 40 of the Covenant, due in 2020 (Dec. 7, 2022), UN Doc. CCPR/C/PAK/2, ¶ 65.

established key safeguards for defendants with psychosocial disabilities on death row, and reiterated and upheld protections that must be afforded to such persons at every stage in the criminal justice system to ensure due process.

The Court issued directions to the Federal and Provincial Governments to establish forensic mental health facilities for under trial prisoners and convicts with psychosocial disabilities, and for in-depth training and capacity-building of lawyers, judges, police, prison officials and psychiatrists. Further, it called for the establishment of medical boards staffed by mental health professionals to determine whether a death row prisoner may be exempt from execution on grounds of psychosocial disability.²²

There have been no indications that the Government of Pakistan has implemented any of the Court's directions. The draft Criminal Law & Justice Reforms Bill 2021 attempted to codify the *Safia Bano* judgement by amending the Criminal Procedural Code 1898, and the Pakistan Penal Code 1860, but it was never tabled, and there have been no subsequent attempts to introduce similar legislation. Without concrete laws that codify the directions of the Supreme Court, and proper sensitising and training of relevant stakeholders, the provision of safeguards to these vulnerable defendants will remain inadequate.

a. Case Study: Saleem Ahmed

Saleem Ahmad was arrested for murder in 2001. The investigation officer testified to having knowledge of his mental illness and the trial court acknowledged that he was “insane” and “did not have any orientation about time and space,” but he was sentenced to death in 2004. Saleem has been prescribed strong anti-psychotic drugs since 2013. He was scheduled to be executed on November 7th, 2017, but this was cancelled by the District and Session court, who directed that a fresh medical report be submitted in line with the *Safia Bano* judgement. In 2018, a court-appointed medical board confirmed his psycho-social disability again and suggested that he be shifted to Punjab Institute of Mental Health (PIMH), yet he remains in the hospital cell of Central Jail, Lahore on the insistence of the trial court judge.

b. Case Study: Sheraz Butt

Sheraz Butt is an inmate at Central Jail, Lahore. Sheraz was arrested and sentenced to death for fatally stabbing his mother in 2012. His appeal was rejected by the High Court, and is currently pending before the Supreme Court. Sheraz has a documented history of schizophrenia, and his health continues to deteriorate due to harsh prison conditions. He has been evaluated by psychiatrists from PIMH on numerous occasions, and has consistently been noted to be suffering from chronic schizophrenia. It has been suggested that he be shifted to a forensic psychiatric facility. However, Sheraz continues to languish on death row, despite the precedent set in the *Safia Bano* judgement to redirect prisoners suffering from psychosocial disabilities to forensic psychiatric facilities.

²² An in-depth analysis directions of the Supreme Court can be found here: Justice Project Pakistan, *Trapped Inside: Mental Illness and Incarceration* (2022) <https://jpp.org.pk/report/trapped-inside-mental-illness-incarceration/>

Recommendations

- Continue removing the death penalty for all crimes that do not fall within the scope of the “most serious crimes” and commute the death sentences for all those convicted for these crimes.
- Formulate and notify sentencing guidelines providing for the imposition of death sentences only for the most serious crimes and in the most aggravated cases, in line with the practice of the superior judiciary and international law.
- Formulate and notify guidelines regarding the resentencing of prisoners facing the death penalty for drug offences.
- Formulate detailed enabling rules under the JJSA 2018, and amend the law to provide the benefit of doubt to the accused in cases of inconclusive or conflicting evidence pertaining to juvenility.
- Formulate and notify judicial guidelines incorporating international safeguards pertaining to determination of age for those charged with capital offences.
- Enact legislation that codifies the *Safia Bano* judgement.
- In line with the directions of the Supreme Court, capacity-build trial court judges, prosecutors, lawyers and court staff on protections and safeguards entitled to persons with psychosocial and/or intellectual disabilities, including forensic mental health assessment at the federal and provincial levels.
- Amend the Prison Rules for all provinces to describe the functions and responsibilities for mental health professionals assigned to provide mental health services to prisoners on death row.