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Capital Punishment in Islam





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About this Brief



For nearly two decades, Justice Project Pakistan has represented people facing the death penalty and worked to strengthen the safeguards that stand between the State and the taking of a human life. Through this work, we have seen that Islamic jurisprudence and international human rights law converge on some of the most fundamental principles of criminal justice. Islam places the sanctity of life, justice, mercy, restraint, due process, protection of the vulnerable and prevention of wrongful punishment at its core. These principles are also central to international human rights law. As lawyers and advocates, we have found that arguments grounded in both traditions can be among the most compelling and effective ways to advance death penalty reform.

This policy brief brings these principles together in a practical framework for death penalty reform. It examines Islamic jurisprudence alongside international human rights standards and identifies how both can inform the way the death penalty is legislated, imposed and reviewed. It is intended as a resource not only for Pakistan, but for lawyers, judges, policymakers, parliamentarians, scholars, academics, diplomats and civil society across the world and in Muslim-majority countries.

We hope this brief travels far beyond Pakistan. It does not seek to close the debate on Islam and capital punishment. It seeks to open it differently, by providing a framework for examining the death penalty through principles grounded in both Islamic jurisprudence and international human rights law.

Finally, this work is dedicated to Professor Dr. Sami Ur Rahman. His scholarship, courage and deep commitment to Islam have made him an invaluable part of JPP's journey. He has brought to this work both a profound respect for the Islamic legal tradition and a conviction that its principles of justice, mercy, dignity and protection of life can speak powerfully to the human rights challenges of our time. Through our collaboration at the Faisalabad Conference and now this brief, he has helped give intellectual form to ideas that JPP has carried and advocated for over many years.

Sir, we are deeply grateful for your scholarship, your courage and your faith in us. We hope this is only the beginning of our work together to open new conversations, inspire others around the world, and show just how expansive, humane and deeply rooted in justice the Islamic legal tradition is.

Contents

Opening Context

About this Brief ii

Executive Summary 1

About the Authors 3

Policy Issue 5

Source Hierarchy and Methodology 6

Islamic Legal Framework

01 Foundational Principle: Sanctity of Human Life in Islam 7

02 Qisas, Diyat and the Preference for Forgiveness 9

03 Hudud, Evidentiary Strictness and the Principle of Doubt 12

04 Ta'zir and the Requirement of Public Interest 15

05 Juveniles, Mental Capacity and Vulnerable Persons 19

06 Fair Trial as a Shari'ah Requirement 21

07 Mandatory Death Penalty and Judicial Discretion 23

Reform Framework

Applying the Framework to Pakistan: Reform Progress and Remaining Gaps 25

Convergence Matrix: Islamic Principles and International Human Rights Standards 27

Recommendation Implementation Roadmap 29

Conclusion 30

Executive Summary

This policy brief examines capital punishment in Islam and its convergence with international human rights standards. It does not approach Islamic law and human rights law as inherently opposed. Rather, it demonstrates that the most defensible Islamic legal position begins with the sanctity of life, lawful authority, due process, evidentiary certainty, mercy, proportionality, legal capacity, and protection against wrongful execution. These principles substantially overlap with the safeguards required by the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Rights of the Child (CRC), the UN Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, and the jurisprudence of the UN Human Rights Committee.

The central premise is that Islamic law does not support an unrestricted, arbitrary, politically instrumental, or procedurally defective death penalty regime. In fact, Islamic law places strict limits and safeguards around the taking of life. The Qur'an treats human life as sacred and permits its deprivation only where it is authorised by law, imposed by a competent judicial authority, and preceded by due process. At the level of the Qur'anic text, capital punishment is expressly contemplated in two principal contexts. The first is qisas for intentional killing, which is accompanied by express avenues for forgiveness (afw), compensation (diyat), reconciliation (sulh), and mercy. The second is Qur'an 5:33, concerning hirabah and grave corruption in the land (ifsad fi al-ard), where death is one of several possible sanctions rather than an automatic punishment.

Beyond these express Qur'anic contexts, other capital punishments developed through the Sunnah, hadith, and juristic interpretation. The death penalty for all offences traditionally associated with the hudud framework is therefore not expressly prescribed in the Qur'an.For example, the Qur'an prescribes flogging for zina, whereas rajm (stoning) for a married offender derives principally from the Sunnah and classical jurisprudence. The classical death penalty for apostasy rests primarily on hadith and subsequent jurisprudence and remains subject to significant interpretive debate. Even within classical hudud doctrine, severe punishment is constrained by exceptionally strict standards of proof and the principle of shubha, under which fixed punishments should be averted where there is legally material doubt.

Ta'zir provides further scope for restraint and reform. Where no fixed qisas or hadd punishment applies, lawful authorities have significant discretion to determine proportionate sanctions in the interests of justice and public welfare. This creates space for non-lethal sanctions, rehabilitation and legislative reform consistent with contemporary human rights standards.

Pakistan retains the death penalty across a broad statutory framework. According to the National Commission for Human Rights (NCHR) and Justice Project Pakistan's (JPP) Prison Data Report 2026, 3,220 people are currently on death row as of July 2026, including 15 women, while no executions have been carried out since December 2019. Pakistan has made important progress, including abolishing the death penalty for drug offences and other non-lethal offences. Significant gaps remain: some prisoners remain on death row for offences that no longer carry the death penalty, fair-trial concerns persist, mental-health safeguards have not been fully institutionalised, and capital punishment remains available for offences beyond intentional killing.

Pakistan is a State party to the ICCPR and the CRC. Article 6 of the ICCPR restricts the death penalty to the "most serious crimes" in countries that have not abolished it, prohibits its use for offences committed by persons under 18, and prohibits the execution of pregnant women. The UN Human Rights

Committee has interpreted the “most serious crimes” threshold as limited to crimes involving intentional killing and has found mandatory death sentences and capital sentences imposed following unfair trials incompatible with Article 6. The CRC separately prohibits capital punishment for offences committed by persons under 18. Taken together, these Islamic legal principles and international human rights standards provide a clear framework for reviewing Pakistan’s death penalty laws and practices. Both place limits on the taking of life, require strong safeguards against wrongful punishment, and provide a basis for greater restraint in the use of capital punishment. Against this framework, the brief identifies a series of practical reforms for Pakistan. These include converting the current de facto halt on executions into a formal moratorium; restricting capital punishment to intentional killing, at minimum; removing mandatory death sentences; reviewing all capital offences; codifying mitigation hearings; ensuring age determination and mental-health assessment in capital cases; establishing a death penalty review commission; strengthening legal aid and forensic safeguards. The brief further recommends that qisas, diyat and compromise processes be subject to effective judicial safeguards to ensure that forgiveness, compensation and settlement are voluntary, informed and free from coercion. It also supports court-supervised mediation and other restorative processes through which victims’ heirs and offenders may, where they freely consent, pursue afw (forgiveness), diyat (compensation), sulh (reconciliation) and other lawful forms of resolution, with particular safeguards for women, minors and other vulnerable heirs. Finally, it calls for meaningful and transparent clemency and commutation procedures.

Taken together, these reforms can be framed not as a departure from Islamic law, but as giving practical effect to its principles of sanctity of life, justice, restraint, mercy, reconciliation and the prevention of irreversible injustice.

About the Authors

Capital Punishment in Islam: Convergence with International Human Rights Standards was prepared by Prof. Dr. Sami Ur Rahman, Sadia Tanveer and Abeer Fatima, and commissioned by Justice Project Pakistan as part of its work on criminal justice reform and reducing the scope of the death penalty in Pakistan. The publication was edited by Sarah Belal, Executive Director of JPP, with research and editorial contributions from Rimsha Asif, Policy & Advocacy Officer at JPP.



Prof. Dr. Sami Ur Rahman

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He has authored two books and published more than 40 research papers on legal issues. He is the author of the only book of its kind published to date in Pakistan dedicated to mooting, reflecting his longstanding contribution to advocacy and legal education in the country. He has also been actively involved in developing moot court programmes and competitions, including international competitions such as the Jessup and Stetson Moot Court Competitions. He is among Pakistan's youngest appointed Professors and Deans of Law.

He served as Convener of the 2025 "Reimagining Justice" conference at The University of Faisalabad, convened by Justice Project Pakistan and the University, which brought together Islamic scholars, legal experts, government representatives, academics and human rights actors to examine the relationship between Islamic law and international human rights standards on capital punishment.

His scholarship on Islamic legal principles, together with his contribution to legal education and engagement with contemporary questions of justice and human rights, underpins the research and analysis of this brief.



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Her practice spans civil, family, human rights and commercial law, including contract analysis, transaction advisory, legal audit, due diligence, risk assessment and corporate governance. She has also worked extensively in mediation and alternative dispute resolution, including through the Islamabad High Court Mediation Centre, where she has supported the resolution of more than 300 cases and contributed to the training of judges and lawyers in mediation.

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Ms. Abeer Fatima is a third-year student at LGS International Degree Programme pursuing the External LLB programme of the University of London. Her academic interests centre on the intersection of law, public policy and social justice, with a particular interest in how legal frameworks can advance human dignity, equality before the law and the effective protection of fundamental rights.

She is particularly interested in contemporary human rights challenges and in the role that legal research and policy analysis can play in building more inclusive, accountable and rights-based societies. Her contribution to this brief reflects her developing interest in these questions and in the relationship between legal principles, public policy and social change.

Abeer contributed to the research and development of this brief, bringing an emerging perspective to a project examining the relationship between Islamic jurisprudence, international human rights standards and death penalty reform in Pakistan.

Policy Issue

Pakistan retains the death penalty for 29 offences, many of which do not involve intentional killing. This raises important questions under international human rights law, particularly the “most serious crimes” standard. It also raises questions under Islamic legal principles, because Islamic criminal justice does not support punishment that is arbitrary, excessive, imposed in the face of material doubt, or reached through defective procedures. The central policy issue is therefore:



How can Pakistan’s death penalty framework be reviewed in light of Islamic principles of justice, mercy, due process, and sanctity of life, while also moving closer to international human rights standards?

Islamic law itself provides an important framework for this review. Its requirements of lawful authority, proof, due process, proportionality and protection of vulnerable persons place strict limits on the use of capital punishment. A death penalty framework that does not adequately reflect these safeguards cannot be defended merely by invoking “Islam”. Examining these principles alongside international human rights standards provides a basis for identifying where Pakistan’s existing framework can be strengthened and reformed.

Source Hierarchy and Methodology

This brief draws on Islamic legal sources, international human rights law, and Pakistan-specific law and evidence. It distinguishes between primary sources, juristic interpretation and contemporary legal standards, while giving appropriate weight to each within its own legal framework.

Primary Islamic sources: Qur'anic verses and authenticated hadith are treated as the highest normative sources of Islamic law. Qur'anic references are cited by chapter and verse. Hadith references are used carefully, with the relevant collection and number identified where possible.

Classical and contemporary Islamic jurisprudence: Classical juristic principles, including maqasid al-shari'ah, qisas, diyat, hudud, ta'zir, shubha, taklif, and siyasah shar'iyyah, are used to interpret the criminal-law framework. Contemporary Islamic legal scholarship is used to identify areas of doctrinal diversity and the scope for reform.

International law: The brief draws primarily on binding treaty obligations and authoritative UN interpretations, including the ICCPR, CRC, UN Human Rights Committee General Comment No. 36, the ECOSOC Safeguards, and relevant UN standards on fair trial, legal aid and detention conditions.

Pakistan-specific law and data: The brief draws on Pakistan's constitutional and statutory framework, relevant Supreme Court jurisprudence, treaty obligations and current public data. Key sources include Articles 9, 10A, 14 and 25 of the Constitution of Pakistan, the Juvenile Justice System Act 2018, relevant Supreme Court developments, the NCHR/JPP Death Penalty Statistics Report 2025 and NCHR/JPP latest Prison Data Report 2026[1].

Use of secondary research: Academic articles, policy reports, and comparative research are used only where they support, explain, or contextualise primary Islamic and international legal sources. Recent ta'zir-focused articles are used as supporting material to explain flexibility, proportionality, rehabilitation, and contemporary application; they are not treated as determinative of Islamic doctrine where primary sources or stronger juristic authorities are required. Non-peer-reviewed or advocacy sources are treated as background only and are not relied upon for determinative legal propositions.

1. National Commission for Human Rights (NCHR) and Justice Project Pakistan (JPP), Prison Data Report 2026. The report records 3,220 people under sentence of death across Punjab, Sindh, Khyber Pakhtunkhwa, Balochistan, Azad Jammu and Kashmir, and Gilgit-Baltistan in 2026, compared with 3,394 in July 2025.

Foundational Principle: Sanctity of Human Life in Islam

Islamic criminal justice begins not with punishment, but with the sanctity of life. The Qur'an states:

> "Whoever kills a soul unless for a soul or for corruption [done] in the land - it is as if he had slain mankind entirely. And whoever saves one - it is as if he had saved mankind entirely.[2]

The Qur'an also commands:

> "Do not kill the soul which Allah has made sacred except by right.[3]

The phrase "except by right" is legally significant: it does not authorise private vengeance, mob violence, political killing, or arbitrary state action. Rather, it confines the taking of life to lawful authority, substantive legality, and due process. Islamic law therefore treats life as a trust protected by God, society, and the legal order.

This principle also aligns with the maqāṣid al-sharīʿah—the higher objectives or purposes that Islamic legal theory understands the Shari'ah to pursue. In this brief, Shari'ah is used in its technical sense to refer to the divinely grounded normative framework derived principally from the Qur'an and the Sunnah. It is distinguished from fiqh, which consists of the human juristic interpretation, elaboration, and application of those sources. Within the maqāṣid framework, the preservation of human life (ḥifẓ al-nafs) is recognised as one of the fundamental interests that the law seeks to secure. In al-Shāṭibī's systematic elaboration of this doctrine, these core interests fall within the ḍarūriyyāt—the indispensable necessities upon which individual and social well-being depend—and conventionally include the protection of religion, life, intellect, lineage, and property. The inclusion of life among these indispensable objectives is particularly significant in the context of capital punishment. It requires a legal system claiming Islamic legitimacy to treat the preservation of life, prevention of wrongful killing, and avoidance of irreversible injustice as central to both the design and application of criminal law. Contemporary policy analysis should therefore begin from the proposition that any capital regime claiming Islamic legitimacy must protect life more than it takes life. Capital punishment cannot be treated as an ordinary or presumptively preferred sanction, but must be

2. Qur'an 5:32. Translation based on Saheeh International, https://quran.com/5/32.

3. Qur'an 6:151 and 17:33, https://quran.com/6/151; https://quran.com/17/33.

approached within a legal framework structured around restraint, evidentiary certainty, due process, mercy, and the prevention of irreversible error.[4]

Islamic law also rejects extra-judicial killing. The Qur'anic principle of personal responsibility provides that no bearer of burdens bears the burden of another.[5] This principle abolished pre-Islamic collective retaliation, tribal excess, and status-based vengeance. A lawful Islamic penal system must therefore ensure that only the legally responsible offender, and not a family, tribe, sect, or political group, is held accountable.

International human rights law begins from the same foundational concern. Article 6(1) of the ICCPR provides that every human being has the inherent right to life and that no one shall be arbitrarily deprived of life.[6] The Human Rights Committee has described the right to life as "the supreme right" from which no derogation is permitted, even in situations of public emergency.[7]

Policy implication: Pakistan's capital punishment framework should be assessed not merely by asking whether Islamic law recognises capital punishment, but by asking whether every part of the system - legislation, investigation, trial, appeal, detention, clemency, and execution policy - protects life, prevents error, and guards against arbitrary deprivation of life.



4. Abū Isḥāq al-Shāṭibī, Al-Muwāfaqāt fī Uṣūl al-Sharī'ah, vol. 2, discussion of maqāṣid and al-ḍarūriyyāt; Mohammad Hashim Kamali, Principles of Islamic Jurisprudence, 3rd ed. (Islamic Texts Society, 2003), chapters on maqāṣid al-sharī'ah. See also Mohammad Hashim Kamali, Actualization (Taf'īl) of the Higher Purposes (Maqāṣid) of Shariah (IIIT), on the meaning, scope and contemporary application of the maqāṣi

5. Qur'an 6:164; 35:18, https://quran.com/6/164; https://quran.com/35/18.

6. ICCPR, Article 6(1).

7. UN Human Rights Committee, General Comment No. 36, paras. 2-3.

Qisas, Diyat and the Preference for Forgiveness

The clearest Qur'anic framework for capital punishment arises through qisas in cases of intentional killing. The Qur'an provides:

> "O you who have believed, prescribed for you is legal retribution for those murdered... But whoever overlooks from his brother anything, then there should be a suitable follow-up and payment to him with good conduct. This is an alleviation from your Lord and a mercy.[8]"

The following verse states:

> "And there is for you in legal retribution [saving of] life, O you [people] of understanding, that you may become righteous.[9]"

These verses establish accountability for intentional killing but simultaneously introduce mercy, forgiveness, and compensation. The Qur'an does not present qisas as compulsory execution in every murder case. Rather, it constructs a legal framework in which the heirs of the victim may demand qisas, accept diyat, or forgive. The use of the word "brother" in Qur'an 2:178 is also significant because it morally re-humanises the offender even while recognising accountability.[10]

This feature supports the view that qisas has a restorative dimension. Najia Humayun's analysis describes qisas as a restorative justice model because it brings the victim's heirs, offender, community, and state into a legal process that can result in accountability, reparation, forgiveness, or commutation rather than execution alone.[11] Susan Hascall similarly argues that qisas can be understood through the lens of restorative justice, provided the

8. Qur'an 2:178, https://quran.com/2/178.

9. Qur'an 2:179, https://quran.com/2/179.

10. Najia Humayun, "The Islamic Position on Capital Punishment: A Restorative Justice Model Which Aligns with International Law," Berkeley Journal of Middle Eastern & Islamic Law, Vol. 12 (2021), pp. 12-14, https://doi.org/10.15779/Z38028PD80 .

11. Humayun, ibid., pp. 10-13.

process is voluntary, regulated, and protected from coercion.[12]

The Qur'an also states, in relation to retribution and bodily injury:

> "Whoever gives [up his right as] charity, it is an expiation for him.[13]"

This does not erase accountability; rather, it gives positive normative value to forgiveness where it is freely and genuinely chosen. The State's role should therefore be twofold. First, it must ensure that diyat, afw and sulh are not reduced to transactional pressure, intimidation, economic compulsion, or unequal bargaining, and that the decision of every legally competent heir is informed and voluntary. Second, the State should make meaningful opportunities for reconciliation available where the victim's heirs and the offender are themselves willing to explore such a course.

This may include court-supervised or clemency-linked victim-offender mediation, conducted by an independent and appropriately trained neutral facilitator, through which the parties may explore forgiveness, compensation, apology, reconciliation, and other lawful restorative outcomes. The State should facilitate rather than impose such a process. Participation must remain voluntary, refusal to participate must carry no adverse consequence, and appropriate safeguards must protect women, minors, and other vulnerable heirs from coercion or exclusion. Such an approach gives practical effect to the Qur'anic preference for mercy and reconciliation while preserving the rights of victims and the requirements of justice. It also provides a principled basis for incorporating restorative processes into Pakistan's mercy and clemency framework, including through victim-offender mediation where the parties freely consent.

From an international law perspective, this restorative structure converges with ICCPR Article 6(4), which provides that anyone sentenced to death shall have the right to seek pardon or commutation and that amnesty, pardon, or commutation may be granted in all cases.[14] Within the Islamic law of qisas—legally regulated retaliation for intentional homicide or bodily injury—the corresponding avenues of mercy and settlement include afw, diyat, and sulh.

Afw means the voluntary waiver or forgiveness of the right to qisas by the person legally entitled to exercise that right; under section 309 of the Pakistan Penal Code[15], an adult and sane wali may waive qisas without compensation. Diyat refers to financial compensation payable in respect of homicide or bodily injury; under section 299(e)[16] of the Pakistan Penal Code, it is the compensation specified by law and payable to the heirs of the victim. Sulh refers to the consensual compounding or settlement of the right of qisas; section 310[17] of the Pakistan Penal Code permits the entitled wali to compound that right upon acceptance of badal-i-sulh, meaning mutually agreed compensation that may take the form of cash, property, or another legally permissible consideration.

12. Susan C. Hascall, "Restorative Justice in Islam: Should Qisas Be Considered a Form of Restorative Justice?" Berkeley Journal of Middle Eastern & Islamic Law, Vol. 4 (2011), pp. 35-78.

13. Qur'an 5:45, https://quran.com/5/45.

14. ICCPR, Article 6(4).

15. Pakistan Penal Code (PPC) 1860, s 309.

16. Pakistan Penal Code (PPC) 1860, s 299(e).

17. Pakistan Penal Code (PPC) 1860, s 310.

These mechanisms are not legally identical to executive pardon or commutation under Article 6(4), because they operate primarily through the rights of the victim or the victim's heirs rather than through an exercise of State clemency. This distinction does not exclude the State's separate power of clemency in ta'zir cases. The Supreme Court of Pakistan has expressly recognised that where punishment is imposed as ta'zir, the President retains the power under Article 45 of the Constitution to grant pardon, commutation or remission. This issue is discussed further below in relation to ta'zir.

They nevertheless perform a comparable protective function by preserving legally recognised avenues through which qisas may be waived, settled, or replaced by compensation, thereby creating space for mercy and reconciliation. The Qur'anic foundation for this structure is particularly evident in Qur'an 2:178, which prescribes qisas in cases of killing while expressly recognising remission by the victim's side and accompanying compensation as an alleviation and mercy. Accordingly, Pakistan should ensure that these mechanisms remain voluntary, informed, accessible, and protected from coercion, while maintaining a separate and effective system of executive clemency and commutation.

Policy implications:

Courts should ensure that every compromise, forgiveness, or diyat arrangement is voluntary, informed, and free from coercion. The State should provide adequate victim support services to ensure that poverty or financial vulnerability does not compel victims or their families to pursue settlement. Women, minors, and other vulnerable heirs should be independently heard and their interests protected before any compromise is accepted. At the same time, the possibility of forgiveness and commutation should be preserved at every stage permitted by law.



Hudud, Evidentiary Strictness and the Principle of Doubt

Classical Islamic criminal jurisprudence distinguishes between hudud, qisas/diyat, and ta'zir, but these categories do not rest on an identical textual basis. The term hudud (singular: hadd, literally a limit or boundary) developed in classical fiqh as a technical category for certain offences whose punishments were regarded as specifically prescribed or fixed by authoritative Islamic legal sources. The Qur'an itself does not provide a separate list of "hudud offences"; rather, it addresses particular prohibited acts and, in some instances, specifies their punishments. Thus, the Qur'an prescribes one hundred lashes for zina (unlawful sexual intercourse), eighty lashes for qadhf (false accusation of zina), and amputation for qualifying theft. Qur'an 5:33, dealing with hirabah—classically understood as violent banditry, armed aggression, or conduct involving grave corruption in the land—provides a range of sanctions that includes, in specified circumstances, killing or crucifixion. Hudud should therefore not be understood as synonymous with capital punishment: several punishments expressly prescribed in the Qur'an for offences later classified within the hudud framework are non-lethal.

The classical doctrine was further developed through the Sunnah and juristic interpretation. Muslim jurists applied the methodologies of usul al-fiqh—the principles through which legal rules are derived and interpreted from the Qur'an, Sunnah, and other recognised juristic sources—and the different schools of law elaborated the constituent elements of offences, evidentiary requirements, applicable punishments, defences, repentance, and circumstances creating legal doubt. Some capital punishments associated with classical Islamic criminal law are therefore not expressly prescribed as death penalties in the Qur'an itself. For example, while the Qur'an prescribes flogging for zina, rajm (stoning) in specified cases involving a married offender derives principally from the Sunnah and subsequent classical juristic doctrine. Similarly, the dominant classical position treated apostasy as potentially punishable by death, although the Qur'an does not expressly prescribe a temporal death penalty for apostasy, and jurists and contemporary Muslim scholars have differed over its classification, conditions, relationship with political rebellion, repentance, and modern application. This distinction between express Qur'anic text, rules grounded principally in the Sunnah, and subsequent juristic elaboration is important. Islamic criminal law cannot accurately be presented as a single body of fixed Qur'anic punishments.

Even where an offence was classified as hadd in classical jurisprudence, punishment did not follow merely because the prohibited conduct was alleged to have occurred. The substantive and evidentiary requirements were exceptionally demanding. A widely cited juristic maxim states: idra'u al-hudud bi'l-shubuhat[18]—avert hudud punishments in cases of legally material doubt. Although transmitted in different formulations in the hadith literature, the principle became an important safeguard in Islamic criminal jurisprudence. Its significance extends beyond the formal burden of proof: substantial uncertainty concerning the facts, the evidence, the voluntariness of a confession, the legal characterisation of the conduct, or the applicability of the prescribed punishment weighs against the imposition of the severest and irreversible sanctions.

18. Jami' al-Tirmidhi, Hadith 1424, https://sunnah.com/tirmidhi:1424. The report is discussed in hadith scholarship with varying assessments; the principle is nevertheless widely used as a juristic maxim in Islamic criminal law.

The evidentiary architecture of the classical hudud doctrine illustrates this caution. The Qur'an, for example, prescribes punishment for zina but simultaneously establishes stringent protection against unsupported accusations by requiring four witnesses in cases of accusation and prescribing punishment for qadhf.[19] The legal structure therefore treats both the prohibited conduct and the danger of false accusation as serious matters. In capital cases, this concern becomes even more significant. A death sentence cannot acquire Islamic legitimacy merely because an offence is described in Islamic legal terminology. Where a conviction depends upon torture or coercion, an unreliable or retracted confession, doubtful identification, materially defective investigation, unreliable testimony, denial of effective legal representation, or other serious procedural unfairness, the degree of certainty required for an irreversible punishment is fundamentally undermined.

The clearest Qur'anic contexts in which death is expressly contemplated are qisas for intentional homicide and Qur'an 5:33 in relation to hirabah and grave corruption in the land. Even in these contexts, however, death is not presented as an unrestricted or invariably mandatory consequence. Qisas is accompanied by express avenues for forgiveness, compensation, and reconciliation, while Qur'an 5:33 itself provides a range of sanctions whose precise application was further elaborated by jurists. Capital punishments derived principally from hadith and subsequent fiqh, rather than from an express Qur'anic prescription of death, should therefore not automatically be treated by the modern State as immutable statutory requirements. Their textual basis, scope, conditions, juristic treatment, and contemporary justification require careful and independent legal scrutiny.

Where the Qur'an does not expressly prescribe or contemplate death, the combined principles of shubha, sanctity of life, maqasid al-shari'ah, proportionality, and the irreversible character of execution support a strong presumption in favour of non-lethal punishment. This does not deny the existence or historical authority of classical juristic positions. It recognises, rather, the distinction between revealed text and human juristic interpretation and the resulting scope for lawful legislative choice where Islamic legal sources do not mandate a single irreversible outcome. In such circumstances, choosing the less severe sanction is consistent with the protection of life, prevention of irreversible injustice, and the broader objectives of Islamic law.

This restrained approach is also supported by comparative scholarship on Islamic criminal law.[20] Penal Reform International's study on Shari'ah and the death penalty concludes that Islamic legal doctrine does not require the routine or expansive use of capital punishment and emphasises that stringent evidentiary requirements, the doctrine of doubt, and differences within the juristic tradition substantially restrict the circumstances in which death may lawfully be imposed. Mohammed S. El-Awa's[21] comparative analysis similarly demonstrates that Islamic penal law cannot be reduced to a catalogue of fixed punishments: criminal responsibility and sentencing also depend upon the source and classification of the offence, applicable rules of proof, the existence of doubt, public interest, proportionality, and the scope of judicial or governmental discretion. The historical recognition of a capital punishment within parts of the classical juristic tradition therefore does not, by itself, require a modern Muslim State to legislate or impose death where legitimate interpretive and legislative space exists for a less severe sanction.

Policy implication: Pakistan should subject every capital offence to a source-sensitive and rights-based statutory review. At minimum, offences that do not involve

19. Qur'an 24:2 and 24:4; see also Qur'an 5:33 and 5:38 for hirabah and theft respectively.

20. Penal Reform International, Sharia Law and the Death Penalty: Would Abolition of the Death Penalty be Unfaithful to the Message of Islam? (2015), pp. 6, 15-29,

21. See Mohammed S. El-Awa, Punishment in Islamic Law: A Comparative Study (American Trust Publications, 1982); Rudolf Peters, Crime and Punishment in Islamic Law (Cambridge University Press, 2005), https://doi.org/10.1017/CBO9780511610677.

intentional killing should be removed from the scope of capital punishment. Any remaining death-eligible offence should be subject to the highest standards of evidentiary reliability, effective legal representation, procedural fairness, mitigation, appellate review, and protection against punishment where legally material doubt remains.



Ta’zir and the Requirement of Public Interest

Ta’zir refers in classical Islamic jurisprudence to discretionary or unquantified punishment for wrongdoing that is not governed by a fixed hadd punishment or qisas, as well as, in appropriate circumstances, cases in which the legal requirements for a fixed punishment are not satisfied.[22] Its discretionary character does not mean unrestricted penal authority. Rather, ta’zir enables the lawful authority to respond to wrongdoing in light of the nature of the conduct, culpability of the offender, harm caused, prevention, correction, rehabilitation, and public welfare (maslahah). The exercise of that discretion must therefore remain bounded by legality, proportionality, necessity, equality, reasoned decision-making, and protection against arbitrary or politically motivated punishment.

Accordingly, when ta’zir discretion is described as being constrained by “Shari’ah norms,” this does not mean an undefined appeal to everything characterised as Islamic. It means that State and judicial discretion must remain consistent with the normative limits of the revealed sources and with the juristic principles through which those sources are applied, including justice, prevention of harm, proportionality, public welfare, and protection against arbitrary punishment.

Classical and contemporary scholarship accordingly treats ta’zir as the area of Islamic criminal law with the greatest capacity to respond to offences for which no fixed Qur’anic punishment is prescribed. Contemporary scholarship identifies sanctions ranging from admonition and fines to imprisonment and other corrective measures, with the appropriate sanction determined according to the seriousness of the wrongdoing and the legitimate needs of society.[23] This flexibility is particularly important in relation to modern offences—such as cybercrime, corruption, abuse of public authority, economic crime, and modern narcotics offences—which do not possess independently prescribed Qur’anic punishments and therefore require legislative and judicial determination through ta’zir, siyasah shar’iyyah, and public-interest reasoning.

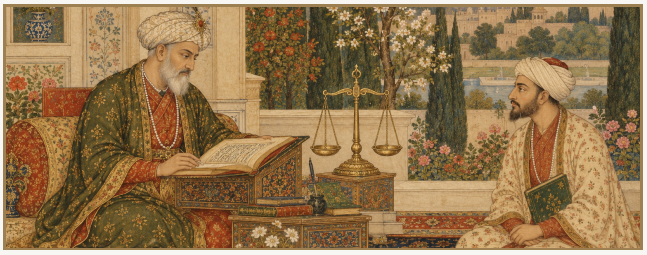
Narcotics offences provide a particularly relevant example. Narcotic drugs are not the subject of an independently prescribed Qur’anic criminal punishment. Islamic jurists and contemporary scholars commonly analyse their prohibition by reference to their intoxicating or mind-impairing effects, including through analogy (qiyas) with khamr, while the particular criminal sanctions applicable to possession, trafficking, or other drug-related conduct fall within the discretionary domain of ta’zir.[24] This means that recognising the social harm caused by narcotics does not itself require capital punishment; the State retains authority to choose proportionate preventive, punitive, and rehabilitative measures. Pakistan’s own recent legislation demonstrates this flexibility. The Control of Narcotics Substances (Amendment) Act 2023 removed death as a prescribed punishment from the relevant provisions of

22. Mohammad Hashim Kamali, Crime and Punishment in Islamic Law: A Fresh Interpretation (Oxford University Press 2019), ch XIII, “Discretionary Punishment of Ta’zīr”; Rudolph Peters, Crime and Punishment in Islamic Law: Theory and Practice from the Sixteenth to the Twenty-First Century (Cambridge University Press 2006).

23. Abdul Hakim and others, “The Flexibility of Ta’zir Punishment in the Islamic Penal System” (2026) 3(1) Jurnal Sahabat ISNU-SU 94–97; Ja’afar Agaji Abdullahi and Isah Abubakar Idris, “Ta’zir Punishment in Islam and Its Implication in Our Society” (2023) 3(4) Middle East Journal of Islamic Studies and Culture 43–46.

24. Kamali, Crime and Punishment in Islamic Law, ch X, “Issues over Wine Drinking (Shurb),” including discussion of intoxicants and narcotics; Control of Narcotics Substances (Amendment) Act 2023 (Act XXXVIII of 2023).

section 9 of the Control of Narcotic Substances Act 1997, replacing the capital sanction with non-lethal penalties.[25] This reform is significant both domestically and conceptually: it demonstrates that a grave contemporary offence falling within the discretionary penal sphere may be addressed robustly without treating death as an immutable Islamic requirement.



The relevance of ta'zir is even more significant in Pakistan's law of intentional homicide. Section 302 of the Pakistan Penal Code distinguishes expressly between death as qisas under section 302(a) and punishment as ta'zir under section 302(b). Where qatl-i-amd is not proved in either of the special forms required by section 304 for qisas, section 302(b) authorises the court, having regard to the facts and circumstances of the case, to impose either death or imprisonment for life as ta'zir.[26] The Supreme Court has repeatedly recognised the distinction: unlike qisas, sentencing under section 302(b) involves judicial choice between the legally available punishments and therefore requires consideration of the circumstances relevant to sentence. The statutory framework thus places ta'zir at the centre of a substantial part of Pakistan's law governing punishment for intentional homicide, rather than confining it to peripheral or minor offences.

This distinction has an important consequence for mercy, remission, and commutation. Article 45 of the Constitution empowers the President to grant pardon, reprieve and respite and to remit, suspend, or commute a sentence passed by any court, tribunal, or other authority. In Hakim Khan v Government of Pakistan (PLD 1992 SC 595), the Supreme Court addressed the relationship between this constitutional power and Islamic criminal law. The Court recognised, in relation to sentences imposed as ta'zir, that such punishment is imposed through the authority of the State and that the President continues to possess the power of commutation and remission.[27]

This distinction is especially important for death sentences imposed under section 302(b) PPC: their character as ta'zir, rather than qisas, provides a clear Islamic-law basis for the State to consider individualised mercy and commutation rather than treating execution as an immutable consequence.

The constitutional position was further developed in Nazar Hussain v The State (PLD 2010 SC 1021), where the Supreme Court treated Article 45 as an independent constitutional source of presidential clemency and remission power and considered the policies regulating its exercise. The Court recognised that the President may differentiate between categories of offenders in granting remission and that death-sentence mercy petitions may be considered individually[28]. Article 45 therefore provides an institutional mechanism through which considerations central to ta'zir—individual culpability, mitigation, rehabilitation, proportionality, changed circumstances, delay, and public welfare—can inform the final treatment of a sentence. The power is discretionary rather than an entitlement to commutation, but its existence is particularly significant where the death sentence itself has been imposed as ta'zir.

The President's constitutional jurisdiction should, however, be distinguished from the

25. Council of Islamic Ideology, Opinion on Death Penalty Crimes, obtained by the Ministry of Law and Justice (on file with the authors). The Council observed that, in respect of ta□zir offences, the State may determine, in light of the nature of the offence and prevailing circumstances, whether the death penalty should be retained, reduced or abolished.

26. Pakistan Penal Code 1860, ss 302 and 304; Iftikhar-ul-Hassan v Israr Bashir PLD 2007 SC 111; Muhammad Sharif v The State PLD 2009 SC 709.

27. Constitution of the Islamic Republic of Pakistan 1973, art 45; Hakim Khan and others v Government of Pakistan PLD 1992 SC 595.

28. Nazar Hussain and another v The State PLD 2010 SC 1021. See also Haji Abdul Ali v Haji Bismillah PLD 2005 SC 163 on presidential remission under Article 45 in relation to a section 302(b) conviction.

statutory remission and commutation powers exercised by other executive authorities. Sections 401 and 402 of the Code of Criminal Procedure confer suspension, remission, and commutation powers on the Provincial Government, while section 402-C contains restrictions concerning sentences under Chapter XVI of the Pakistan Penal Code. These statutory limitations do not erase the separate constitutional character of Article 45. Pakistani case law has recognised that an Article 45 remission granted by the President stands on a different constitutional footing from ordinary statutory remission. The distinction should therefore be reflected clearly in any revised mercy-petition framework.

Classical jurists also differed over whether death could ever be imposed as ta'zir for exceptionally grave wrongdoing threatening public order. Some jurists recognised such a possibility in narrowly defined circumstances, while others treated the extension of ta'zir to death with considerably greater caution. Even where capital ta'zir was accepted, it was exceptional rather than the ordinary consequence of discretionary criminalisation and was linked to necessity, prevention of grave harm, and public welfare.[29] The very discretionary character of ta'zir therefore cannot logically be treated as creating a general presumption in favour of death. On the contrary, where public protection can be achieved through a less severe effective sanction, the principles of proportionality, protection of life, and prevention of irreversible injustice favour the non-lethal alternative. International human rights law reinforces that conclusion. The Human Rights Committee interprets the "most serious crimes" limitation in Article 6 of the ICCPR as confined to crimes of extreme gravity involving intentional killing. It expressly excludes drug offences, corruption and other economic or political crimes, abduction, and sexual offences from the category of crimes capable of justifying capital punishment.[30] For Pakistan, the convergence is significant: ta'zir provides doctrinal space for legislative adaptation and non-lethal punishment, while Article 6 requires that this discretion not be used to extend capital punishment to non-lethal offences. The Human Rights Committee has specifically welcomed Pakistan's removal of the death penalty for narcotics offences in 2023 while continuing to call for the restriction of capital punishment to offences involving intentional killing.

A recent Qur'an-focused scholarly argument by Amirhamzeh Salarzaei contends that capital punishment is Qur'anically justified only in exceptional cases: qisas for murder and fisad fi al-ard where it involves homicide or grave public-order killing.[31] This view is not the only juristic position, but it supports a strong Islamic reform argument: where the Qur'an does not expressly require death and where the offence does not involve intentional killing, the State has broad discretion to choose non-lethal penalties. Pakistan's statutory death penalty includes offences beyond intentional killing. The NCHR/JPP 2025 report refers to 29 death-eligible offences, including non-lethal offences such as kidnapping, perjury, and blasphemy.[32] Such breadth is difficult to reconcile with the restrictive spirit of Islamic criminal justice and with ICCPR Article 6 as interpreted by the Human Rights Committee.

Policy implication: Pakistan should treat the discretionary character of ta'zir as a basis for narrowing rather than expanding capital punishment. Non-lethal offences—including modern statutory offences for which no fixed Qur'anic capital punishment exists—should be addressed through proportionate non-lethal sanctions. In murder cases where death has been imposed as ta'zir under section 302(b)

29. Mohammed S El-Awa, Punishment in Islamic Law: A Comparative Study (American Trust Publications 1982), discussion of ta'zir; Kamali, Crime and Punishment in Islamic Law, ch XIII; Rudolph Peters, Crime and Punishment in Islamic Law, discussion of discretionary punishment and siyasah.

30. UN Human Rights Committee, General Comment No 36, CCPR/C/GC/36 (2018), para 35.

31. Amirhamzeh Salarzaei, "A Critical Review of the Multiplicity of Capital Punishment with Reference to Definitive Quranic Verses," Journal of Comparative Criminal Jurisprudence, Vol. 5, Issue 1 (2025), abstract and findings.

32. NCHR/JPP, The Death Penalty Statistics Report 2025, Chapter 1, p. 8.

PPC, the discretionary nature of the sentence should be expressly reflected in sentencing, mitigation, mercy, and commutation procedures. Presidential clemency under Article 45 should operate as a meaningful mechanism for individualised review, particularly where mitigation, rehabilitation, prolonged delay, evidentiary concerns, vulnerability, or other circumstances make execution unnecessary or disproportionate.



Juveniles, Mental Capacity and Vulnerable Persons

Islamic criminal responsibility depends on taklif: legal capacity, maturity, intention, and soundness of mind. The Prophet Muhammad (peace be upon him) is reported to have said that the pen is lifted from three: the sleeping person until waking, the child until maturity, and the person lacking intellect until recovery.[33] The principle is clear: punishment presupposes comprehension, volition, and legal responsibility.

Classical Islamic law often linked legal maturity to bulugh (puberty) and discernment. In the contemporary capital punishment context, however, a fixed age of 18 provides a clearer and more protective standard, consistent with Pakistan's treaty obligations, the CRC and the objectives of Shari'ah. The CRC defines a child as every human being below 18 unless majority is attained earlier under applicable law, and Article 37 categorically prohibits capital punishment for offences committed by persons below 18.[34] ICCPR Article 6(5) contains the same prohibition.[35]

Pakistan's domestic law already reflects this protection. The Juvenile Justice System Act 2018 prohibits sentencing a child offender to death and provides a specialised juvenile justice framework.[36] The central policy challenge is implementation: age determination must be mandatory whenever age is disputed or unclear; benefit of doubt should favour the accused; and birth registration gaps should not expose children to death eligibility.

Persons with serious psychosocial or intellectual disabilities also require specific protection. Islamic law's emphasis on intellect (aql) and legal capacity supports the exclusion from capital punishment where they cannot understand the nature or consequences of their acts or proceedings. International standards reinforce this protection. The Human Rights Committee has stated that States must refrain from executing persons who have diminished ability to understand the reasons for their sentence and persons with serious psychosocial or intellectual disabilities.[37]

Pakistan's Supreme Court has also moved in this direction. The NCHR/JPP report records that Safia Bano reaffirmed dignity and procedural safeguards and prohibited the execution of prisoners with severe psychosocial disabilities.[38] However, the same report notes that provinces have not yet fully established the required forensic mental-health facilities and review mechanisms.[39]

Pregnant women and nursing mothers are also afforded specific protections. ICCPR Article 6(5) prohibits execution of pregnant women.[40] Islamic legal tradition also suspends capital punishment for pregnant women to protect the unborn child, and hadith reports concerning women who confessed to zina indicate postponement until childbirth and,

33. Sunan Abi Dawud, Hadith 4403, https://sunnah.com/abudawud:4403.

34. CRC, Article 1 and Article 37(a).

35. ICCPR, Article 6(5).

36. Juvenile Justice System Act, 2018 (Pakistan), section 16.

37. UN Human Rights Committee, General Comment No. 36, para. 49.

38. NCHR/JPP, The Death Penalty Statistics Report 2025, Executive Summary, pp. 5-7; citing Safia Bano (Supreme Court of Pakistan, 2021).

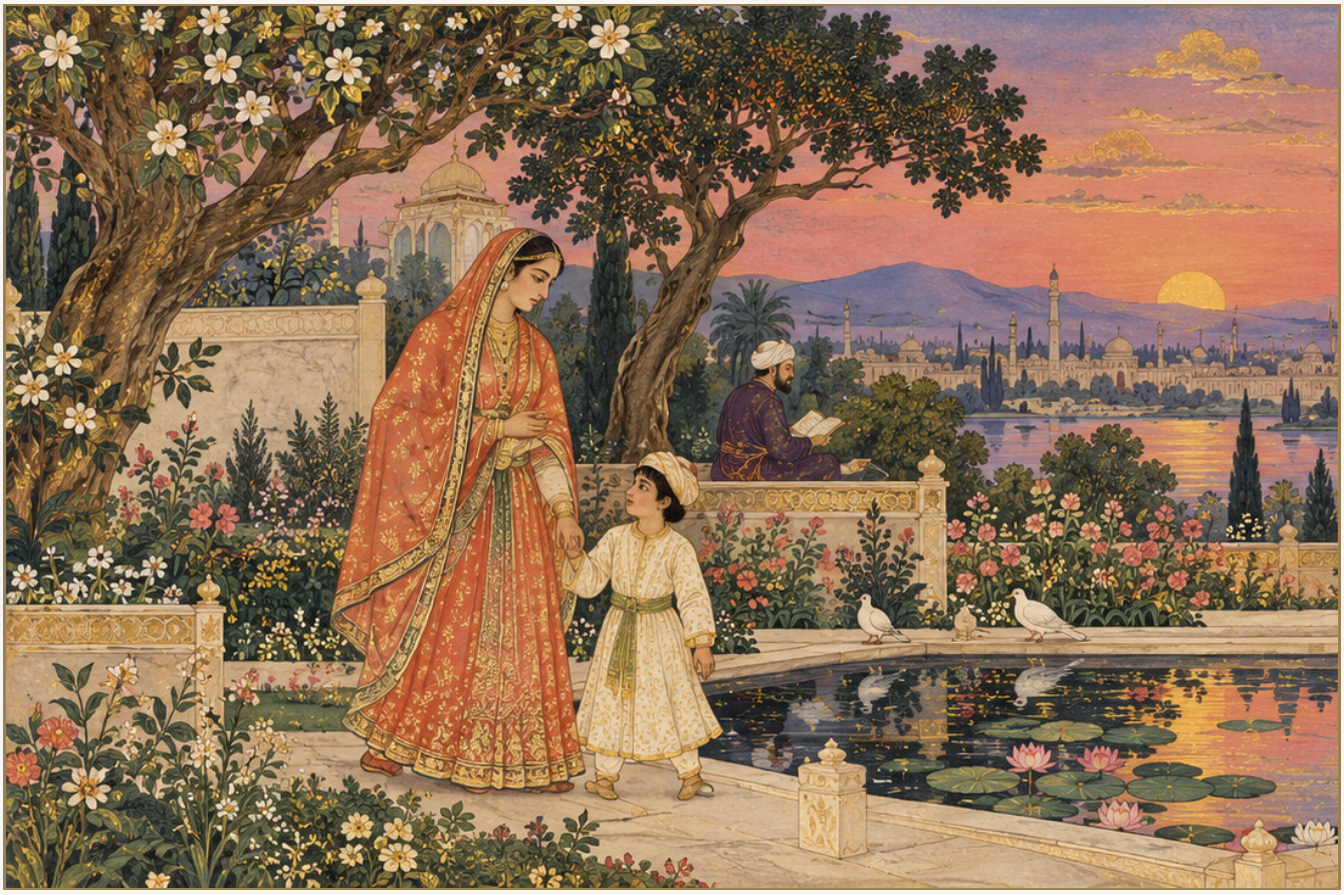
39. Ibid.

40. ICCPR, Article 6(5).

in some narrations, until the child no longer depends on nursing.[41]

Policy implication:

Pakistan should strengthen age-determination safeguards at every stage of capital proceedings, including through independent review where credible evidence of juvenility emerges after conviction. Where age remains uncertain, the benefit of doubt should favour the accused; where juvenility is established, the death sentence should be set aside. No person should be sentenced to death or executed without appropriate mental-health assessment where there are indicators of psychosocial or intellectual disability, supported by functioning forensic mental-health boards, periodic review and disability-informed clemency procedures. Pakistan should also strengthen the protection already provided under section 382 of the CrPC, which requires postponement of execution where a woman sentenced to death is found to be pregnant and permits commutation to imprisonment for life[42] and extend appropriate safeguards to nursing mothers and primary caregivers of infants, taking account of caregiving responsibilities and the best interests of dependent children expressly considered before execution is authorised.



41. See Sahih Muslim, reports concerning al-Ghamidiyyah; see also Penal Reform International, Sharia Law and the Death Penalty, discussion of pregnant women and dependent children.

42. Code of Criminal Procedure, 1898, s. 382, provides that where a woman sentenced to death is found to be pregnant, the High Court shall postpone execution and may, if it thinks fit, commute the sentence to imprisonment for life.

Fair Trial as a Shari'ah Requirement

Due process is not merely a modern human rights requirement; it is central to Islamic justice. The Qur'an commands that trusts be rendered to whom they are due and that judgment between people be made justly.[43] It commands believers to stand firmly for justice even against themselves, their parents or relatives.[44] It also warns that hatred of a people must not lead to injustice.[45]

These verses establish core judicial ethics: independence, impartiality, equality, reasoned judgment and resistance to bias or political pressure. In capital cases, these requirements are heightened because the punishment is irreversible. A lawful punishment requires a lawful process. Where the process does not establish guilt and punishment to the degree of certainty required by Islamic law, the severest punishment cannot acquire legitimacy merely from the gravity of the alleged offence, in a few exceptional cases under the doctrine of Siyasah.

Islamic criminal jurisprudence gives practical effect to these principles through its rules governing proof, confession, testimony and legally material doubt. This is particularly clear in the classical hudud framework, where exceptionally strict evidentiary requirements and the principle of shubha operate to prevent the severest punishment where the required certainty has not been established. The widely recognised maxim tudra ul Hudood bi'l Shubhaat—avert hudud punishments in cases of legally material doubt—therefore has an important procedural dimension.[46] Uncertainty in the evidence, the voluntariness of a confession, the reliability of testimony or the lawful basis for punishment weighs against imposing an irreversible sanction.

The consequence is particularly important in capital cases. Where a conviction depends upon torture or coercion, an involuntary or unreliable confession, doubtful identification, materially defective investigation, unreliable testimony or other serious procedural unfairness, the degree of certainty required for an irreversible punishment is undermined. Islamic legal principles therefore support withholding the most severe punishment where legally material doubt remains rather than allowing procedural failure to be overcome by the seriousness of the alleged offence.

This does not mean that failure to satisfy the requirements for the most severe punishment necessarily results in impunity. As discussed above, Islamic criminal law distinguishes between hudud, qisas/diyat, ta'zir and siyasah, and recognises circumstances in which the legal requirements for a fixed punishment are not satisfied but a lawful discretionary response may remain available. Where culpability is otherwise established through reliable and lawful evidence, a lesser or ta'zir punishment may therefore be available, depending on the classification of the offence and the evidence established.[47] The alternative to an unsafe death sentence is not necessarily the absence of accountability, but a punishment or other legal response proportionate to what has actually been proved through a lawful process.

International human rights law reflects many of the same requirements. Article 14 of the ICCPR

43. Qur'an 4:58, https://quran.com/4/58.

44. Qur'an 4:135, https://quran.com/4/135.

45. Qur'an 5:8, https://quran.com/5/8.

46. Jami al-Tirmidhi, Hadith 1424. See also Penal Reform International, Sharia Law and the Death Penalty: Would Abolition of the Death Penalty be Unfaithful to the Message of Islam? (2015), pp. 15–29; Mohammed S. El-Awa, Punishment in Islamic Law: A Comparative Study (American Trust Publications, 1982), discussion of hudud, evidence and the principle of doubt. As already noted in Section 3, the hadith is transmitted in different formulations and its chains have received differing assessments; the principle nevertheless became widely recognised as a juristic maxim in Islamic criminal law. The existing brief already uses Tirmidhi 1424 for this proposition.

47. See Mohammed S. El-Awa, Punishment in Islamic Law: A Comparative Study (American Trust Publications, 1982), chapters on hudud, qisas, ta'zir and evidence; Abdul Hakim, Ali Yanda Safaruddin, Masdalena Harahap, Jia Novita Damanik and M. Syaifullah Fatwa, "The Flexibility of Ta'zir Punishment in the Islamic Penal System," Jurnal Sahabat ISNU-SU, Vol. 3, No. 1 (May 2026), pp. 94–97; Ja'afar Agaji Abdullahi and Isah Abubakar Idris, "Ta'zir Punishment in Islam and Its Implication in Our Society," Middle East Journal of Islamic Studies and Culture, Vol. 3, No. 4 (2023), pp. 43–46. These are the sources already used in Section 4 to support the flexibility of ta'zir and the availability of non-lethal discretionary sanctions.

guarantees equality before courts, a fair and public hearing by a competent, independent and impartial tribunal, the presumption of innocence, adequate time and facilities for defence, legal assistance, examination of witnesses, interpretation and review. General Comment No. 36 states that a violation of fair-trial guarantees in proceedings leading to a death sentence renders the sentence arbitrary in nature and contrary to Article 6.[48]

The UN Safeguards further require that capital punishment be imposed only when guilt is based on "clear and convincing evidence leaving no room for an alternative explanation of the facts," and following a legal process that provides all possible safeguards to ensure a fair trial, at least equal to those contained in Article 14 of the ICCPR.[49]

These safeguards have direct implications for Pakistan, where capital defendants may face weak investigation, delayed trials, inadequate defence, coerced confessions, limited forensic capacity and prolonged death-row incarceration. The NCHR/JPP report notes that indigent defendants continue to face trials without adequately trained capital-defence lawyers and that failures to identify juvenility, mental illness and mitigation persist at every stage.[50]

Policy implication: Every person facing capital charges should have access to competent legal counsel, and capital proceedings should be subject to heightened forensic and evidentiary standards. Coerced confessions and evidence obtained through torture must be excluded, and no capital conviction should rest solely on a confession unless it is independently corroborated and judicially verified as voluntary. Anti-terrorism and other special court proceedings involving capital charges should be reviewed to ensure independence, due process, effective appeal and proportionality.



48. International Covenant on Civil and Political Rights, Article 14; UN Human Rights Committee, General Comment No. 36 on Article 6 of the International Covenant on Civil and Political Rights, on the right to life, CCPR/C/GC/36 (2018), para. 41. These are already the authorities cited in the existing Section 6.

49. ECOSOC Resolution 1984/50, Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, Safeguards 4 and 5.

50. NCHR/JPP, The Death Penalty Statistics Report 2025, relevant discussion of fair-trial safeguards, legal representation, juvenility, mental illness and mitigation.

Mandatory Death Penalty and Judicial Discretion

The mandatory death penalty is incompatible with both Islamic legal reasoning and international human rights standards. It removes the court's ability to consider intention, role, age, mental capacity, coercion, duress, repentance, provocation, evidentiary doubt, the possibility of reform and other mitigating circumstances before determining whether the most severe and most irreversible punishment is justified.

From an Islamic law perspective, mandatory death sentences are difficult to defend because the principal categories of Islamic criminal law do not treat death as an automatic consequence of conviction. In qisas, the Qur'anic framework expressly preserves forgiveness, diyat and reconciliation. In hudud, strict evidentiary requirements and shubha operate to avert the severest punishment where legally material doubt remains. In ta'zir, punishment is inherently discretionary and must be determined in light of proportionality, culpability, public welfare and the circumstances of the offence and offender. Across these categories, Islamic criminal law preserves mechanisms through which the individual circumstances of a case can affect whether the most severe punishment is imposed.

Judicial discretion is therefore not simply a procedural concession. It allows the court to give effect to distinctions that Islamic criminal jurisprudence itself treats as relevant: intention and degree of participation, legal capacity, coercion or duress, evidentiary doubt, mitigation, repentance, the possibility of reform and, where applicable, forgiveness and reconciliation. A mandatory sentence prevents this individual assessment and risks treating materially different offenders and circumstances as though they were legally identical. It also risks converting an exceptional and carefully constrained punishment into an automatic consequence of conviction, contrary to the principles of justice, mercy, proportionality and prevention of wrongful punishment that run through Islamic criminal jurisprudence.

This reasoning has particular significance in Pakistan because section 302(b) of the Pakistan Penal Code itself provides a choice between death and imprisonment for life as ta'zir. As discussed above, the discretionary character of ta'zir requires the sentencing court to consider the circumstances relevant to punishment rather than treating death as an inevitable consequence of conviction. Where the law provides a choice between death and a lesser punishment, that discretion should be real, reasoned and informed by mitigation.

International human rights law reaches a similar conclusion. The Human Rights Committee has stated that, in every capital case, the sentencing court must consider the personal circumstances of the offender and the particular circumstances of the offence, including mitigating factors. A mandatory death sentence that prevents the court from determining whether death is warranted in the individual case is therefore arbitrary under Article 6 of the ICCPR.[51] The Committee has further clarified that the later availability of pardon or commutation is not an adequate substitute for judicial discretion at sentencing. The UN Safeguards, as later reinforced by ECOSOC, require adequate time and

51. UN Human Rights Committee, General Comment No. 36, para. 37.

opportunity for appeal and clemency and insist on fair trial guarantees in all capital cases.[52]

Individualised sentencing requires more than formally giving a judge a choice between death and another punishment. The court must have a meaningful opportunity to consider mitigation before deciding whether an irreversible sentence is justified. This should include the offender's role and intention, age and legal capacity, coercion or duress, personal circumstances, degree of participation, possibility of rehabilitation, evidentiary concerns and any other circumstances relevant to culpability and punishment. A reasoned sentencing judgment should explain why, after considering those circumstances, no lesser punishment is adequate.

Policy implication: Pakistan should abolish mandatory death sentences and require individualised sentencing in every capital case. Statutory mitigation procedures should require courts to consider culpability, capacity, coercion, duress, evidentiary doubt, personal circumstances, rehabilitation and all other relevant mitigating factors before death may be imposed. Courts should give written reasons explaining why no lesser punishment is adequate, and death sentences imposed under a mandatory regime should be reviewed and commuted or resentenced.



52. ECOSOC Resolution 1996/15, Safeguards guaranteeing protection of the rights of those facing the death penalty, summary and operative content, https://digitallibrary.un.org/record/222533.

Applying the Framework to Pakistan: Reform Progress and Remaining Gaps

Pakistan's current death penalty framework demonstrates both the progress already possible and the reforms that remain necessary. According to the NCHR/JPP Death Penalty Statistics Report 2025, 3,394 people remained on death row as of July 2025, including 18 women, while no executions have been carried out since December 2019.[53] Pakistan has also taken important legislative steps to narrow the scope of capital punishment, including removing the death penalty for drug offences in 2023 and for several other non-lethal offences.[54]These developments demonstrate that Pakistan's death penalty framework is neither fixed nor incapable of reform.

Viewed through the Islamic legal framework developed in this brief, these reforms are significant. They demonstrate that narrowing the scope of capital punishment through legislative choice is compatible with Islamic law, even where religious considerations are invoked as a constraint on reform. The removal of the death penalty for drug offences is particularly relevant. As discussed above, modern narcotics offences fall within the discretionary sphere of ta'zir, where the State retains authority to determine proportionate sanctions in light of justice, public welfare and the prevention of harm. Pakistan's decision to replace death with non-lethal penalties therefore illustrates how ta'zir, maslahah and siyasah shar'iyyah can provide a basis for contemporary penal reform.

Significant gaps nevertheless remain between Pakistan's current framework and the principles identified in this brief. Capital punishment remains legally available for offences beyond intentional killing. Where offences do not involve intentional killing and fall within the discretionary sphere of ta'zir, the principles of sanctity of life, proportionality, public welfare and prevention of irreversible injustice provide substantial scope for the State to choose non-lethal sanctions. This approach also converges with the "most serious crimes" standard under international human rights law, which restricts capital punishment to crimes of extreme gravity involving intentional killing.

The same framework applies to the administration of capital punishment. Some prisoners remain on death row for offences that no longer carry the death penalty, demonstrating the need for systematic review of existing sentences following legislative reform. Failures to identify juvenility or serious psychosocial or intellectual disability engage the Islamic requirements of taklif, intellect and legal capacity. Weak legal representation, coerced confessions, inadequate investigation and unreliable evidence engage the principle of shubha and the heightened certainty required before an irreversible punishment may be imposed. These are therefore not simply procedural weaknesses; they go directly to whether the conditions necessary for the lawful imposition of the most severe punishment have been satisfied.

Mandatory sentencing and weaknesses in mitigation and clemency raise similar concerns. As discussed above, Islamic criminal jurisprudence preserves mechanisms through which individual circumstances can affect punishment: qisas incorporates forgiveness,

53. NCHR/JPP, The Death Penalty Statistics Report 2025, Executive Summary, p. 5.

54. Ibid.

diyat and reconciliation; hudud doctrine requires strict proof and avoidance of severe punishment in cases of legally material doubt; and ta'zir requires the exercise of discretion in light of culpability, proportionality and public welfare. A capital framework that does not adequately allow for mitigation, individualised sentencing, mercy and commutation risks excluding safeguards that Islamic criminal law itself recognises as relevant to punishment.

Taken together, Pakistan's recent reforms demonstrate that death penalty reform need not be framed as a choice between Islamic law and international human rights law. The analysis in this brief points instead to substantial areas of convergence: protection of life, restraint in the use of irreversible punishment, evidentiary certainty, individualised responsibility, protection of vulnerable persons, judicial fairness, proportionality, mercy and the prevention of wrongful execution. Pakistan's existing reform trajectory provides a foundation on which these principles can now be translated into a more coherent death penalty framework.

The following matrix brings these areas of convergence together and identifies their practical implications for Pakistan.



Convergence Matrix: Islamic Principles and International Human Rights Standards

Reform area	Islamic legal principle	International human rights standard	Policy consequence for Pakistan
Sanctity of life	Hifz al-nafs; Qur'an 5:32; Qur'an 6:151; Qur'an 17:33	ICCPR Article 6; right to life; prohibition of arbitrary deprivation	Treat death penalty as exceptional; prevent arbitrariness and wrongful execution
Lawful authority	No private vengeance; punishment only by competent authority	Legality and independent court requirements	Prohibit extra-judicial killing and ensure competent judicial process
Qisas and mercy	Afw, diyat, sulh; Qur'an 2:178; Qur'an 5:45	Right to seek pardon or commutation under ICCPR Article 6(4)	Strengthen clemency, compromise oversight, and voluntary settlement safeguards
Evidentiary certainty	Shubha principle; strict proof for severe penalties	Clear and convincing evidence under UN Safeguards; fair trial under ICCPR Article 14	Exclude coerced confessions; require high forensic and evidentiary standards
Ta'zir discretion	Public interest, proportionality, rehabilitation	Restriction to most serious crimes; no arbitrary punishment	Replace non-lethal ta'zir capital offences with proportionate non-lethal penalties
Juveniles	Capacity, maturity, taklif; lifted-pen hadith	CRC Article 37; ICCPR Article 6(5)	Categorically prohibit death for offences committed below 18; mandatory age determination
Mental disability	Responsibility depends on intellect and volition	HRC GC36; disability and dignity norms; CRPD	Mandatory mental-health screening; prohibit execution of serious psychosocial/intellectual disability cases

Reform area	Islamic legal principle	International human rights standard	Policy consequence for Pakistan
Pregnant women and mothers	Protection of unborn/dependent child; postponement in juristic tradition	ICCPR Article 6(5); ECOSOC safeguards; regional standards	Prohibit execution of pregnant women; protect nursing mothers and primary caregivers
Mandatory death penalty	Mercy, discretion, doubt, mitigation	HRC GC36 prohibition of mandatory death sentences	Abolish mandatory death penalty and require mitigation hearings
Detention and death row	Human dignity; prohibition of cruelty	Mandela Rules; CAT; ICCPR Articles 6, 7, 10	Improve death-row conditions; review prolonged death-row incarceration



Recommendation Implementation Roadmap

Time frame	Action	Responsible actors
0–3 months	Announce a formal moratorium and establish the Death Penalty Review Commission, reflecting the Islamic principles of sanctity of life, restraint in punishment and prevention of irreversible injustice. Suspend executions in cases involving vulnerable prisoners or serious fair-trial concerns.	Federal Government, President, Ministry of Law and Justice, Ministry of Human Rights
3–6 months	Introduce legislation to restore judicial discretion in capital sentencing by reviewing and repealing provisions that impose fixed or mandatory punishments, including those introduced under the CNSA and other laws, and codify ta'zir sentencing safeguards, giving effect to proportionality, judicial discretion and public interest (maslahah).	Provincial Home Departments, Prison Authorities, Courts
6–12 months	Introduce legislation to codify ta'zir sentencing safeguards and remove mandatory giving effect to judicial discretion, proportionality and public interest (maslahah).	Parliament, Ministry of Law and Justice, Council of Islamic Ideology, where appropriate
6–12 months	Establish specialised capital defence panels and independent forensic and mental-health review mechanisms, reflecting Islamic requirements of due process, legal capacity and protection against punishment where doubt remains.	Federal and Provincial Legal Aid Bodies, Bar Councils, Health Departments
12–18 months	Codify mitigation hearings, age-determination procedures, and transparent clemency procedures, reinforcing mercy, mitigation and the protection of juveniles and persons lacking full legal capacity.	Parliament, Judiciary, Executive Authorities
18–24 months	Publish the first annual death penalty compliance report and submit an update to relevant UN mechanisms, strengthening accountability and lawful governance in the administration of capital punishment.	NCHR, Ministry of Human Rights, Ministry of Foreign Affairs

Conclusion

Capital punishment in Islam is not an unrestricted penal power. Islamic criminal law begins with the sanctity of life and places substantive, evidentiary and procedural restraints around the taking of life. Qisas recognises accountability for intentional killing while preserving forgiveness, diyat and reconciliation. Hudud doctrine requires exceptionally strict proof and recognises shubha as a basis for averting the severest punishment where legally material doubt remains. Ta'zir is discretionary and provides significant space for proportionality, rehabilitation, public welfare and legislative reform.

The distinction between the Qur'an, Sunnah and subsequent juristic interpretation is important to this analysis. Not every capital punishment recognised within classical jurisprudence is expressly prescribed as death in the Qur'an, and where Islamic legal sources leave room for interpretation or State discretion, a modern Muslim State is not required to choose the most severe available punishment. The principles of sanctity of life, mercy, proportionality and prevention of irreversible injustice provide a strong basis for choosing restraint.

These principles converge in important respects with international human rights law. Both require protection of life, lawful process, reliable evidence, individualised responsibility, fair trial and protection of vulnerable persons. Both provide safeguards against arbitrary or wrongful execution and recognise the importance of mercy, commutation and review. The two legal traditions are not identical, but their areas of convergence provide a practical framework for death penalty reform.

Pakistan has already demonstrated that such reform is possible. The removal of the death penalty for drug offences and other non-lethal offences, alongside the continuing halt on executions, shows that the scope of capital punishment can be reconsidered without abandoning Pakistan's Islamic legal framework. The next stage is to make that reform more coherent: restricting capital punishment to intentional killing at minimum, removing mandatory death sentences, strengthening fair-trial and evidentiary safeguards, protecting juveniles and persons with psychosocial or intellectual disabilities, institutionalising mitigation and meaningful clemency, and ensuring that mercy and reconciliation remain real possibilities within the law.

Death penalty reform in Pakistan therefore need not be framed as a choice between Islam and human rights. It can instead be grounded in principles that both traditions recognise: protection of life, justice, restraint, mercy and the prevention of irreversible injustice.



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